TEXAS REGISTER

IN THIS ISSUE

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Volume 19, Numbers 35, Part I

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Texas Register

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POSTMASTER: Please send form 3579 changes to the *Texas Register*, P.O. Box 13824, Austin, TX 78711-3824.

How to Use the Texas Register

Information Available: The 10 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Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.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.

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 19 (1994) is cited as follows: 19 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 "19 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 19 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*, releases cumulative supplements to each printed volume of the *TAC* twice each year.

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.

Texas Appraiser Licensing and Certification Board

Provisions of the Texas Appraiser Licensing and Certification Act

Rules Relating to Professional Conduct and Ethics

Texas Funeral Service Commission

Licensing and Enforcement-Practice and Procedure

Licensing and Enforcement-Specific Substantive Rules

General Land Office

Coastal Area Planning

Texas Water Development Board

Advisory Committees

Texas Youth Commission

Administrative Provisions

Texas Commission on Law Enforcement Officer Standards and Education

Administration Division

Training and Educational Providers and Related Matters Division

Pre-Licensing and Reactivation Courses, Tests, and Endorsement of Eligibility Division

Proficiency Certificates and Other Post-Basic Licenses Division

Texas Department of Human Services

Medicaid Eligibility

Long Term Care Nursing Facility Requirements for Licensure and Medicaid Certification

Intermediate Care Facilities for the Mentally Retarded (ICFs-MR)

Texas Department of Transportation

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Oversize and Overweight Vehicles and Loads

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Texas Board of Private Investigators and Private Security Agencies

Examination

Texas Department of Insurance

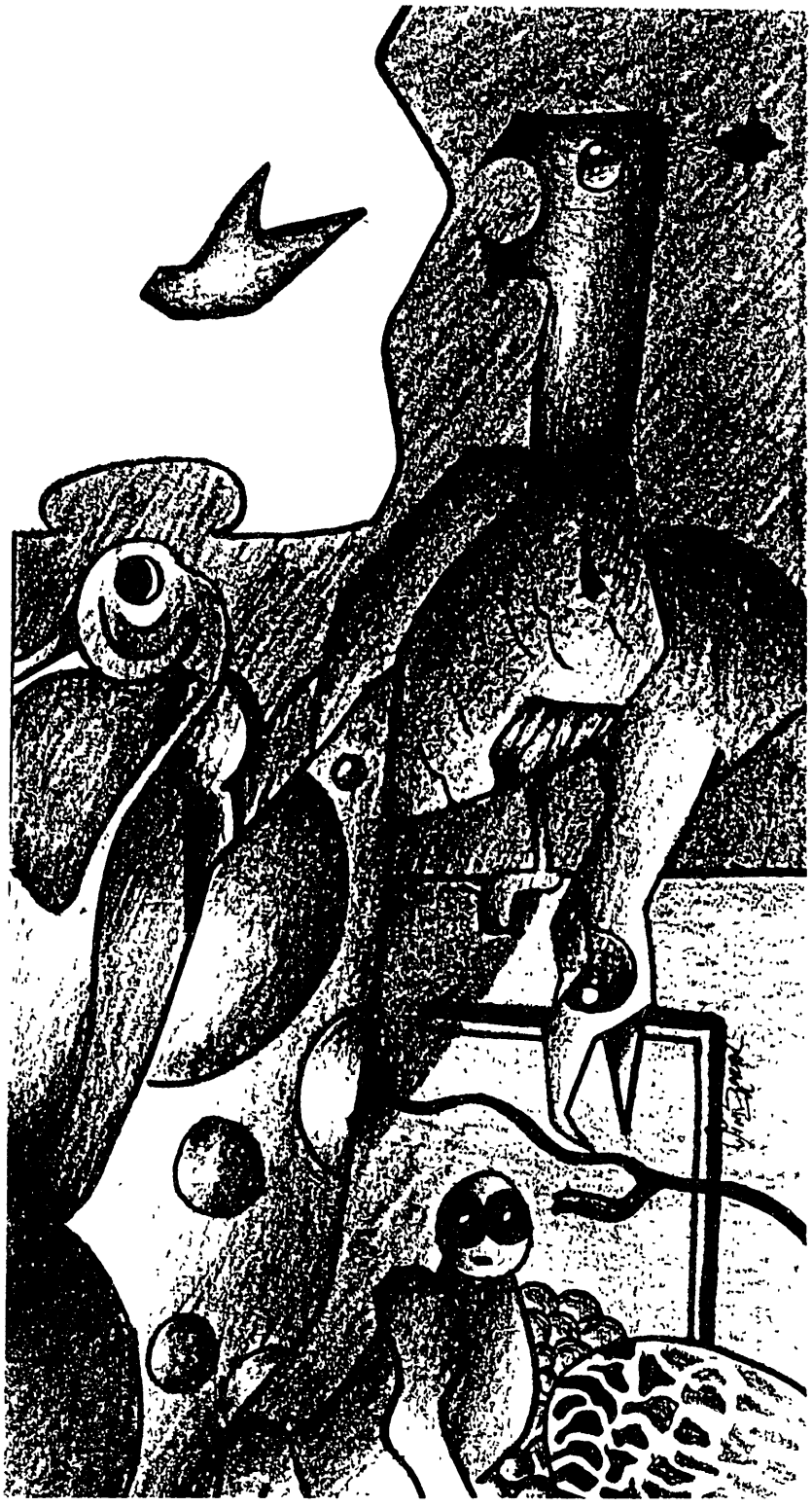
Corporate and Financial Regulation

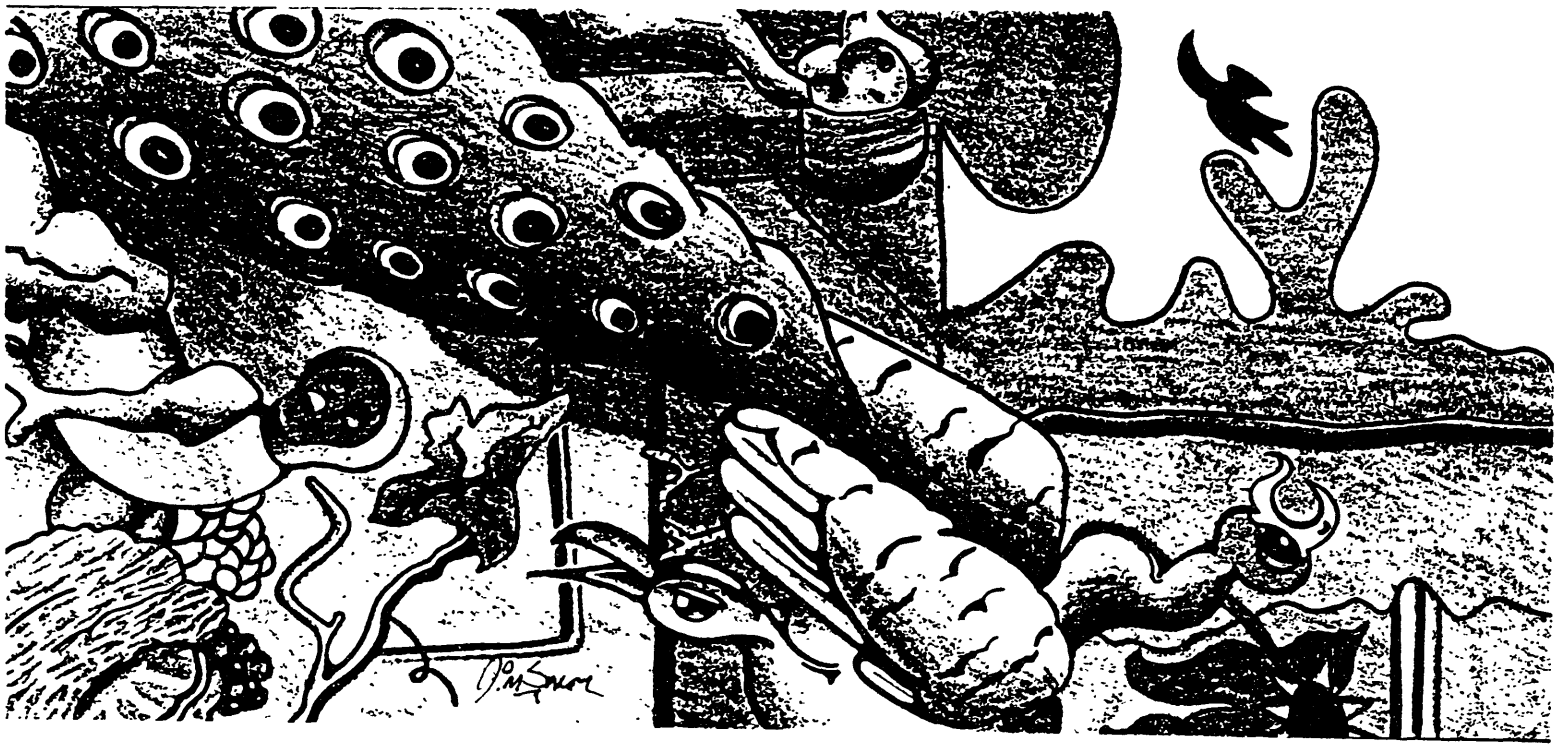
Title Insurance

Agent's Licensing

Texas Natural Resource Conservation Commission

General Rules





THE GOVERNOR

As required by Texas Civil Statutes, Article 6252-13a, §6, the ***Texas Register*** publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments Made April 28, 1994

To be **Presiding Judge of the First Administrative Judicial Region** for a term to expire four years from date of qualification, effect July 11, 1994: James B. Zimmermann, 6227 Lakehurst Avenue, Dallas, Texas 75230. Judge Zimmermann will be replacing Judge Pat McDowell of Dallas, whose term expires July 10, 1994.

Appointments Made April 29, 1994

To be a member of the **Finance Commission of Texas** for a term to expire February 1, 2000: Kay Glover, 216 Deck Cove, Austin, Texas 78728. Ms. Glover will be replacing Milton Thomas, Jr., whose term expired.

To be a member of the **Finance Commission of Texas** for a term to expire February 1, 2000. Steven C. Hastings, 1020 Alamo Drive, Southlake, Texas 76092-8888. Mr. Hastings will be replacing Dana Cook of Missouri City, whose term expired

To be a member of the **Finance Commission of Texas** for a term to expired February 1, 2000: Jeff Austin, Jr., Route 7, Box 328A, Jacksonville, Texas 75766. Mr. Austin will be replacing Scott Smith of Denison, whose term expired.

To be a member of the **State Board of Barber Examiners** for a term to expire January 31, 1997. Lynda M. Dobrowolski, 1809 North Highway 281, Marble Falls, Texas 78654. Ms. Dobrowolski will be replacing Thelma R. Walker of Fort Worth, whose term expired.

To be a member of the **Brazos Valley Regional Review Committee** for a term to expire January 1, 1995: The Honorable Robert C. Appel, Jr., Mayor of Brenham, P.O. BOx 1059, Brenham, Texas 77834-1059. Mayor Appel will be replacing Toni Mathews of Franklin, whose term expired.

To be a member of the **Concho Valley Regional Review Committee** for a term to expire January 1, 1995. The Honorable William Eaton Blackburn, Mayor of Junction, P O. Box 446, Junction, Texas 76849. Mayor Blackburn will be replacing Virginia Wales of Mertzon, who is no longer eligible.

Appointments Made May 2, 1994

To be a member of the **Sabine River Authority of Texas Board of Directors** for a term to expire July 6, 1999· Clarence Earl Williams, Jr., 807 Sandalwood, Orange, Texas 77632. Mr. Williams will be replacing Horace McQueen of Tyler, whose term expired.

To be a member of the **Sabine River Authority of Texas Board of Directors** for a term to expire July 6, 1999: Jerry Stallworth, P.O. Box 236, Marshall, Texas 75671-0236 Mr. Stallworth will be replacing Red Davis of Hemphill, whose term expired.

To be a member of the **Texas Board of Human Services** for a term to expire January 20, 1999: Max Ray Sherman, Dean, Lyndon B Johnson School of Public Affairs, The University of Texas at Austin, P.O. Drawer Y, University Station, Austin, Texas 78713-7450. Dean Sherman will be filling the unexpired term of Cassandra Carr of Austin, who resigned.

To be a member of the **Governor's Advisory Committee on Immigration and Refugees** for a term to expire February 1, 1995 Salvador Balcorta, 2706 Wheeling, El Paso, Texas 79930 Mr. Balcorta will be replacing Lauro Carrillo-Alvarado of El Paso, whose term expired

To be a member of the **Governor's Advisory Committee on Immigration and Refugees** for a term to expire February 1, 1995. Richard A. Rosenthal, 13913 Piping Rock, Houston, Texas 77077. Mr Rosenthal is being appointed to a new position pursuant to Vernon's Government Code, §752.021

To be members of the **Psychological Associate Advisory Committee** pursuant to Senate Bill Number 1424, 73rd Legislature Term expires February 1, 1995: Stephen Clark Smith, 132 Stratton Circle, Beaumont, Texas 77707.

Terms expire February 1, 1997: John Etta Slaughter, 1314 Fontaine Drive, San Antonio, Texas 78219; Amy Rider Bridges, 600 Snowbird, Irving, Texas 75062.

Terms expire February 1, 1999. Susan Elliott White, Ph.D , 5725 Mira Grande, El Paso, Texas 79912; Kimberly Copeland, 2102 West Loop 289 #86, Lubbock, Texas 79407.

Appointments Made May 3, 1994

To be a member of the **Texas State Board of Examiners of Psychologists** for a term to expire October 31, 1999. James Donald Goldston, 3405 Kingfisher, Denton, Texas 76201. Mr Goldston will be replacing Ronald Allan Brandon of Temple, whose term expired.

To be a member of the **Texas State Board of Examiners of Psychologists** for a term to expire October 31, 1995: Ann M. Enriquez, P.O. Box 17112, El Paso, Texas 79917. Mr. Enriquez will be filling the unexpired term of Olga Mapula of El Paso, who resigned

To be a member of the **Texas State Board of Examiners of Psychologists** for a term to expire October 31, 1999 Denise Shade, 7139 Townbluff, Dallas, Texas 75248 Ms Shade will be replacing Dr Lawrence Schoenfeld of San Antonio, whose term expired

To be a member of the **Family Practice Residency Advisory Committee** for a term to expire August 29, 1996. Sheryl H. Boyd, Ed.D , 3101 32nd Street, Lubbock, Texas 79410 Dr Boyd will be replacing Dr. Jack Eidson of Weatherford, whose term expired

Issued in Austin, Texas, on May 4, 1994

TRD-9440293 Ann W Richards
Governor of Texas

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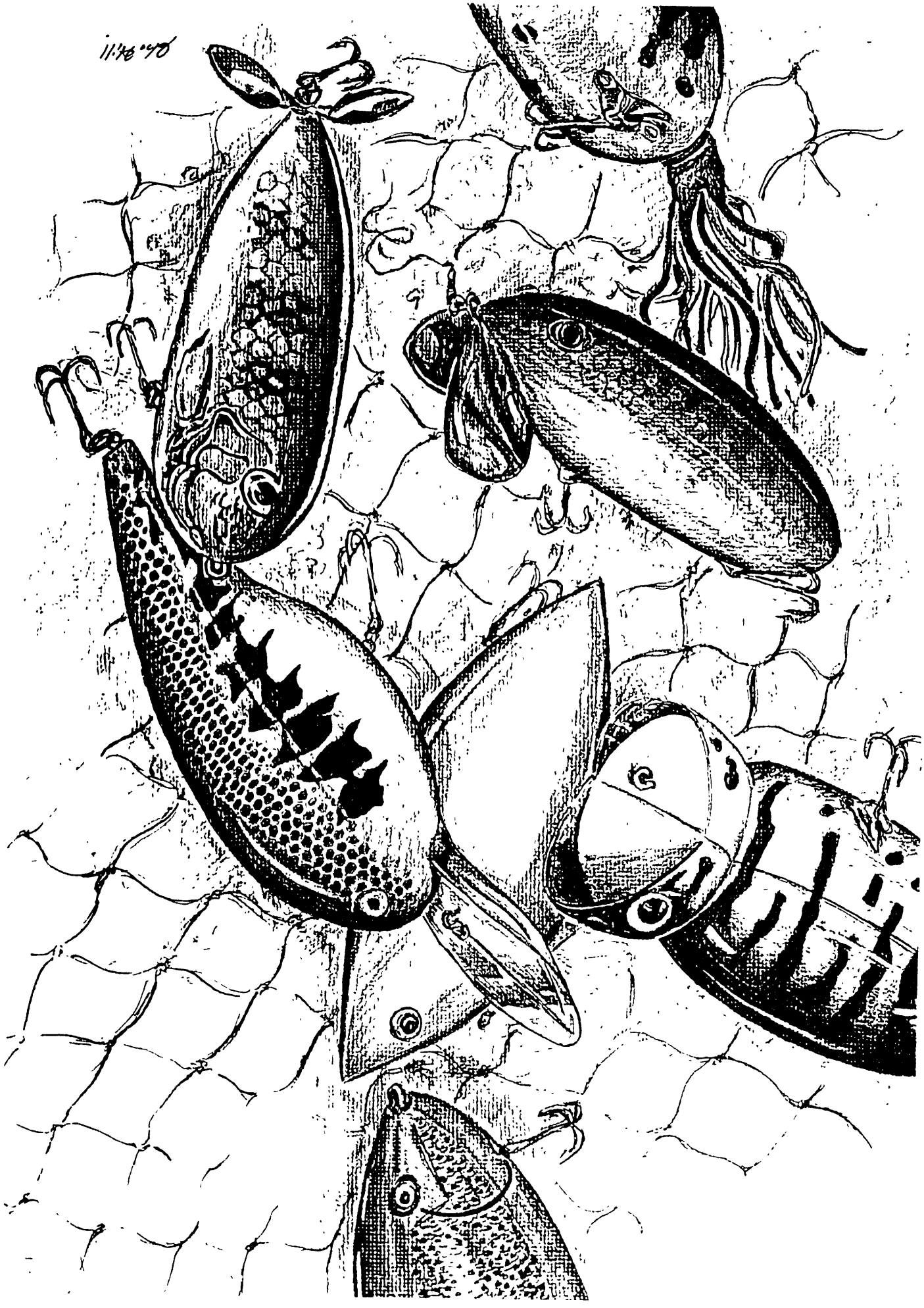

PROPOSED RULES

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 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 3. Boll Weevil Eradication Program

Subchapter D. Collection of Assessments and Assessment Penalties

• **4 TAC §3.70, §3.71**

The Texas Department of Agriculture (the department) proposes new §3.70 and §3.71, concerning collection of assessment and penalties set by the boll weevil eradication foundation. The proposal establishes requirements and procedures governing exemptions from payment of boll weevil eradication assessment penalties. The department has determined that environmental, biological and certain other undue hardships may be acceptable instances which would warrant an exemption from payment of established penalties.

Rick Smathers, coordinator, Cotton Programs, 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. Smathers also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a reduced financial burden to individuals eligible for the exemption. 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 proposal may be submitted to Rick Smathers, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, and must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code, §74.116, which provides the Texas Department of Agriculture with the authority to adopt rules setting criteria for exemption from payment of assessment penalties. The code sections that will be affected by the proposal are Texas Agriculture Code, Chapter 74, Subchapter D.

§3.70. Statement of Authority for Collection of Assessments and Assessment Penalties. Senate Bill 30, 73rd Legislature, 1993 (now codified at the Texas Agriculture Code, Chapter 74, Subchapter D), provides for the establishment of the Boll Weevil Eradication Foundation (the foundation) to establish and implement a boll weevil eradication program for Texas. The Code, Chapter 74, §74.113, provides the foundation with the authority to establish, by referenda of cotton growers, eradication zones and an assessment rate and method for collection of assessments for each zone. The Code, §74.115, provides that a cotton grower who fails to pay an assessment levied by the foundation when due may be subject to a penalty set by the foundation board. That section further provides other remedies for failure to pay an assessment and assessment penalty, including destruction of cotton. The Code, Chapter 74, §74.116, provides for an exemption for payment of assessment penalties and authorizes the Texas Department of Agriculture to adopt criteria for exemption from payment of assessment penalties.

§3.71. Exemption from Assessment Penalties.

(a) Any cotton grower who fails to pay assessments and/or penalties upon the appropriate due date may apply for consideration for a hardship waiver (exemption from penalty) in writing on a form prescribed by the commissioner, stating the conditions under which he requests such a waiver. Such waivers shall apply only to penalties and will be considered only upon submission of the following documentation. Additional information may be provided.

(1) an assignment of deficiency payments for cotton or any other crop to cover the amount due for assessments and penalties, and a general crop lien for all crops and products of such crops if deficiency payments are insufficient,

(2) a financial statement from a bank or other lending institution financing the farming operation indicating inability to pay, or

(3) an income tax statement showing taxable net income for the taxable year in which grower seeks a waiver.

(b) Determination as to whether or not a waiver will be granted by the foundation will be based on the completed application received and satisfactory documentation of the following criteria, including, but not limited to:

(1) adverse conditions of family health supported by a physician;

(2) a natural or physical disaster resulting in at least 30% crop loss and not covered by insurance;

(3) a biological disaster such as severe insect or disease infestation not controllable by currently available pesticides or pest management strategies;

(4) a financial disaster, such as theft or fire, supported by appropriate documentation, or

(5) any other extraordinary circumstances, for which documentation must be submitted.

(c) A cotton grower will not qualify for an exemption under this section in a year for which the amount computed by subtracting the assessments and penalties due under this subchapter from the cotton grower's net income subject to federal income taxation is greater than $15,000.

(d) A cotton grower who applies for an exemption under this section must use a form prescribe by the commissioner. Forms may be obtained by contacting the Texas Department of Agriculture, Coordinator for Cotton Programs, P.O. Box 12847, Austin, Texas 78711. A cotton grower must file a separate application for each year for which the cotton grower claims an exemption.

(e) The commissioner shall forward to the foundation a completed exemption

application form. The foundation shall determine whether the applicant qualifies for a full, partial or reduced exemption and shall notify the commissioner of its determination in writing.

(f) Upon notification by the foundation that a cotton grower qualifies for an exemption, the commissioner shall exempt the cotton grower from payment of an assessment penalty under the Agriculture Code, §74.115, and take no further action.

(g) On the foundation's recommendation, the commissioner may establish a payment plan for a cotton grower applying for an exemption under this section

(h) The commissioner shall promptly notify an applicant of the foundation's determination regarding the applicant's request for an exemption by mail at the applicant's last known address.

(i) If an exemption under this section is denied, assessments and penalties for the year for which the application is made are due to the foundation on the later of:

(1) the date on which they would be due in the absence of an application for exemption; or

(2) 30 days after the date the applicant receives notice of the denial

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 May 9, 1994

TRD-9440559 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Earliest possible date of adoption: June 13, 1994

For further information, please call: (512) 463-7583

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TITLE 10. COMMUNITY DEVELOPMENT

Part V. Texas Department of Commerce

Chapter 187. Job Training Partnership Act Rules

Subchapter C. Job Training Plans

- **10 TAC §§187.140-187.154**

The Texas Department of Commerce proposes new §§187.140-187.154, concerning rules to implement the Job Training Partnership Act, pursuant to Texas Government Code, §481.0044, which authorizes the policy board of the Texas Department of Commerce to adopt rules to administer department programs. Sections 187.140-187.144 prescribe general provisions for developing, approving and amending local job training plans. Sections 187.145-187.147 prescribe the development and approval of competency systems. Sections 187. 148-187.151 describe the approval process of Title III job training plans and provide specific guidance for carry-over funds, services to displaced homemakers, and rapid response grants. Section 187.152 provides for a Certificate of Continuing Eligibility. Section 187.153 and §187.154 describe the procedures for allotment of state reserve funds to substate areas. These sections are proposed to define and facilitate the establishment of job training plans prepared by the local service delivery areas and substate areas of the state.

Fabian S. Gomez, staff attorney, Texas Department of Commerce, 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 Gomez also has determined that for each year of the first five years the proposed sections are in effect, the public benefits anticipated as a result of enforcing the sections will be to facilitate the development and implementation of effective state and local systems for managing job training, employment and related programs in this state. 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 proposal may be submitted, in duplicate, to Fabian S Gomez, Staff Attorney, Work Force Development Division, Texas Department of Commerce, P.O. Box 12728, Austin, Texas 78711, within 30 days of the publication of the proposed sections.

The new rule is proposed under the Texas Government Code, §481.0044(a), which authorizes the policy board to adopt rules necessary for the administration of department programs, and Texas Civil Statutes, Article 4413(52), §5A, (as amended by Senate Bill 405, §29, Acts 1993, 73rd Legislature), which give the policy board of the Texas Department of Commerce the authority to adopt necessary rules for the implementation and management of the job training program. The sections are also proposed pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, Subchapter B, which mandates the rulemaking procedures for state agencies.

The following statutes are affected by the proposed §§187.140-187.154: Texas Labor Code, §§301.046, 301.047 and 301.050.

§187.140. Plan Submission for Review and Approval. All SDA job training plans developed pursuant to Federal Act, §103 and §104, Texas Labor Code, §301.046, and all SSA substate plans developed pursuant to Federal Act, §313, shall be submitted to the department at the address shown in §187.131 of this title (relating to Address for all Submissions, Notices, and Requests for Information or Forms).

§187.141. Standards for Plan Approval or Disapproval. A Title II job training plan or a Title III substate plan will be approved unless that plan does not comply with the elements listed in Federal Act, §105(b)(1) or does not provide for sufficient resources, services, and level of activities to meet annual performance standards.

§187.142. Plan Modification or Amendment. An approved two-year plan may be changed by either modification or amendment. Either method of change must be submitted to the department for review before implementation. Each subrecipient submitting a plan modification or amendment must provide evidence that the PIC and Chief Elected Official(s) (CEOs) are aware of the intent and substance of the change The Program Summary and Statement of Approval form, available from the department, may be used to transmit a plan change to the department to document that the PIC and CEO(s) have been advised of the amendment.

§187.143. Criteria for Plan Modification.

(a) A plan modification is a revision of an approved plan which requires approval by the PIC and CEO(s) of a service delivery area and must be submitted jointly to the State Council and governor for review and approval. A plan modification is subject to the provisions of Federal Act §104 and §105, and notice of the modification must be published in a newspaper of general circulation by the SDA for public review and comment no later than 80 days before the effective date of the modification.

(b) A plan modification must be submitted to the department if any of these conditions occur:

(1) a change in grant recipient or administrative entity;

(2) a change in the geographic area served; or

(3) an obligation of Title II or Title III allocation for the second year of the two-year plan period.

§187.144. Criteria for Plan Amendment.

(a) A plan amendment is a minor adjustment to an approved job training plan and does not require publication or approval by the PIC and CEO(s) of the service delivery area, prior to submission to the department. Plan amendments may be either formal or administrative, described as follows:

(1) Formal-An amendment that includes changes affecting the approved job training plan contract. Formal amendments must be submitted to the department at least

30 days prior to the effective date of the amendment. A contract amendment reflecting those items affected by the plan amendment must also be submitted for review

(2) Administrative-An administrative amendment is used for all other changes to an approved job training plan which do not affect the contract. Administrative amendments must be submitted to the department by letter at least 15 days prior to the effective date of the amendment

(b) A Title II plan formal amendment must be used to

(1) change the budget to incorporate carry-over of unexpended funds,

(2) adjust the budget due to deobligation, reobligation or reallocation of funds;

(3) change the rate of service to significant segments; and

(4) transfer funds in accordance with Subchapter F of this title (relating to Financial Management Rules)

(c) Title II formal plan amendments that adjust the budget also will require changes to performance standards and the Participant Planning Summary

(d) A Title III plan formal amendment must be used to change the budget due to deobligation or reobligation of funds These changes also require changes to performance standards and the Participant Planning Summary.

(e) If SDAs and SSAs have established a local policy that plan amendments must be approved by the PIC chair and CEO prior to submission to the department, a statement of their approval must be included with the plan amendment submitted

§187.145. Competency System Development and Approval. Each SDA shall develop adult and youth competency systems to enhance the employability of JTPA participants Such competency systems must be approved by official action of the PIC and by the department SDAs and PICs must develop systems reflecting employer driven skills standards. Competency statements and the overall level of achievement required for successful completion of each competency system must be approved by official action of the PIC, as evidence that the content to be mastered and the level of mastery represent what is required for employment at the local level

§187.146 Submission for State Approval

(a) After being approved by a PIC, each new or revised competency plan must be submitted to the department for approval, prior to participant enrollment in competency-related training activities. Each new submission must include evidence that the PIC and CEO(s) approve of the submission (e.g., a Program Summary and Statement of Approval Form may be used), and a cover letter describing the request and the name of the appropriate SDA contact person

(b) When submitted as part of the narrative in a job training plan, the competency system description must state the competency area, the outcomes to be achieved, and the types of agencies with which the SDA plans to contract to provide competency training

(c) The department has authority to monitor and review previously approved SDA competency systems, and may require periodic submissions of revised competency systems, to ensure that SDAs continue to assess the effectiveness of their competency systems

§187.147 Elements of a Sufficiently Developed Competency System

(a) Each competency system submitted to the department for approval shall include all required elements of a sufficiently developed competency system, as described in the guidelines for *PIC-Recognized Youth Employment Competencies* in Appendix B, 55 *Federal Register* 20343

(b) Before being determined eligible to participate in a program, each participant must be assessed to determine employment competency needs. Such pre-assessment score for each participant must be at or below the PIC-approved levels of need Each PIC shall establish levels of need, including the following minimum levels

(1) For youth pre-employment/work maturity skills, deficiency in five of the 11 core competencies listed in the guidelines for *PIC-Recognized Youth Employment Competencies* in Appendix B, 55 *Federal Register* 20343.

(2) For basic education systems, youth participants must be at least one full grade-level below chronological grade-level, be identified by the school district as being at risk of dropping out of school, or are dropouts returning to school Adult participants must be at least one full grade-level below the 12th grade-level in reading, writing, math, or English language proficiency, or deficient in any one of the five areas of General Educational Development (GED), or have failed one or more sections of the Texas Assessment of Academic Skills (TAAS)

(3) For youth or adult job specific occupational skills systems, evidence that the participant does not possess the core competencies included in the approved system.

§187.148. Substate Plans.

(a) After initial review of an SSA's plan, the department will inform each SSA of any deficiencies.

(b) The governor is authorized to grant final approval or disapproval of a plan in accordance with Federal Act, §105(b)(1)-(3) and 20 CFR, §631.50.

§187.149 Carry-Over Funds. SSAs may carry-over up to 15% of their fund allocation into the next program year. Prior to the expenditure of newly allocated funds, any carry-over funds must be fully expended in training programs which span multiple program years.

§187 150. Services to Displaced Homemakers. SSAs may furnish services to displaced homemakers, pursuant to Federal Act, §311(b)(4), if the SSAs determine that services to displaced homemakers would not have an adverse impact on the delivery of services to eligible dislocated workers based upon local demand for service and the local economy. SSAs furnishing such services must document their analysis of these factors in their Title III substate plan.

§187 151. Rapid Response Grants.

(a) Pursuant to Federal Act, §314(b) and 20 CFR, §631.30(b), the department may contract with a local SSA to expedite the provision of services in cases of substantial layoffs as defined in 20 CFR, §631 2, or a public announcement by an employer of fifty or more workers of an impending closure of a specific facility including the planned date of final closure.

(b) The eligibility of SSAs in which a substantial layoff has occurred or in which an impending closure has been publicly announced to receive rapid response grant funds shall be determined by the following criteria

(1) the size of the layoff and number of persons affected;

(2) the time of year relative to a program year cycle,

(3) the size of the community,

(4) the existing applicant pool, and

(5) the amount of funds available at the local level.

(c) SSAs shall submit a letter of request for rapid response funds together with a corresponding line-item budget which appropriates costs to the proper cost categories of rapid response or basic read-

justment. SSAs shall thereafter submit a budget report to the department on a monthly basis for each layoff for which the SSA has received rapid response funds.

(d) For purposes of distinguishing rapid response activities from basic readjustment, all services involving individual applicants or participants shall be considered basic readjustment. Rapid response activities deal with the group of dislocated workers as a whole, not as individuals. Prelayoff assistance and early readjustment assistance, when provided by the SSA, shall be classified and charged to the basic readjustment cost category.

(e) To provide for a transition of dislocated workers from a rapid response program to a Title II funded program or other restraining sources SDAs shall accept eligibility documentation and certification and assessment or testing results completed during the rapid response activities.

(f) The local SSAs shall address dislocations involving fewer than 51 workers, except when substate action or resources are not available or are deemed insufficient by the department.

§187.152. Certificate of Continuing Eligibility. An SSA that elects to issue a Certificate of Continuing Eligibility (CCE), pursuant to Federal Act, §316(b), must include in its Title III plan, for review and approval by the department. a copy of the Certificate of Continuing Eligibility and a description of the SSA's policy regarding the following:

(1) who will receive such a certificate;

(2) when the certificate will be issued;

(3) the length of time such certificate will be in effect; and

(4) whether the SSA will accept a certificate from outside its service delivery area.

§187.153. Allotment of Dislocated Worker State Reserve Funds. To achieve an equitable distribution of funds reserved to the state pursuant to Federal Act, §302(c), the governor may reserve not more than 40% of the amount of allotted funds to the state under §302(a)(1) for:

(1) state administration, technical assistance, and coordination of the programs authorized under the Federal Act;

(2) statewide, regional, or industrywide projects;

(3) rapid response activities as described in Federal Act, §314(b);

(4) establishment of coordination between the unemployment compensation system and the worker adjustment program system; and

(5) discretionary allocation for basic readjustment and retraining services to provide additional assistance to areas that experience substantial increases in the number of dislocated workers, to be expended in accordance with the substate plan or modification thereof.

§187.154. Discretionary Fund Distribution Process.

(a) The discretionary funds allotted to the substate areas shall be distributed as follows:

(1) If a layoff occurs due to a large dislocation or military base closing, the local SSA shall meet with the department dislocated worker staff to determine its capacity to provide immediate employment and training services.

(2) If the local SSA can provide immediately needed services, funds for such services will be allotted directly to the SSA.

(3) The department will establish the capability of delivering rapid response services by issuing a request for proposals for a statewide or regional rapid response service provider(s) early in the program year to SSAs or SSA consortia and public or private agencies and organizations. The resulting contract will be activated on an as-needed basis if the state determines that the local SSA, or other local provider, is unable to directly provide necessary rapid response services

(b) The funds allotted for substate area assistance shall be distributed under the following procedure:

(1) SSAs shall submit requests for specific layoffs which have occurred since April 1 of the previous program year, and not for services to dislocated workers in general.

(2) SSAs shall demonstrate coordination with other area resources and document a specific increase in the number of dislocated workers in the SSA.

(3) SSAs shall indicate financial need by providing information on total expenditures and obligations versus total available resources. SSAs must provide evidence that their formula allocation does not cover the additional need and must specify the amount of funds used to cover training costs of participants carried over from the previous program year or actively enrolled in long-term training activities spanning two program years

(4) SSAs must provide a narrative describing a project design which details the needs assessment used to identify the types of services to be provided, the results of such assessment, the planned program delivery system, and an explanation of how these services are appropriate to the characteristics of the affected workers. The SSAs must include with their narrative a participant planning summary and a line item budget.

(5) Upon approval of funding, the SSAs must submit a formal plan amendment which will include the information provided in the project design narrative. Such plan amendment shall be submitted according to §187.142 and §187.144 of this title (relating to Plan Modification or Amendment and Criteria for Plan Amendment)

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 May 2, 1994.

TRD-9440380 Deborah C. Kastrin
Executive Director
Texas Department of Commerce

Proposed date of adoption: September 1, 1994

For further information, please call: (512) 320-1809

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Subchapter E. State Monitoring and Sanctions Policies

• 10 TAC §§187.170-187.196

The Texas Department of Commerce proposes new §§187.170-187.196, concerning rules to implement the Job Training Partnership Act, pursuant to Texas Government Code, §481 0044, which authorizes the policy board of the Texas Department of Commerce to adopt rules to administer department programs Sections 187.170-187.174 set forth the purpose and authority of this subchapter, provide general definitions and describe the state monitoring function and the timeline for responses to monitoring reports Sections 187. 175-187 178 describe the scope and responsibilities of a local level monitoring system and prescribe methods of assessment and oversight of such monitoring system. Sections 187 179-187 182 set forth the purpose and procedures for the imposition of state sanctions to resolve problem findings reported through monitoring activities Sections 187 183-187 187 set forth the purpose and procedures for providing state technical assistance or imposing a reorganization to resolve problem findings reported through monitoring activities Sections 187 188-187 192 describe the subrecipient's responsibility for annual audits, set forth the contents of such audits and prescribe the elements of a subrecipient annual audit plan Sections 187 193-187 196 outline the audit submission and audit resolution process The sections are proposed to define and facilitate the identification of subrecipients with compliance problems to timely address such problems through technical assistance or sanctions and to facilitate the establishment of a

comprehensive state and local monitoring system.

Fabian S. Gomez, staff attorney, Texas Department of Commerce, 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. Gomez also has determined that for each year of the first five years the proposed sections are in effect, the public benefits anticipated as a result of enforcing the sections will be to facilitate the development and implementation of effective state and local systems for managing job training, employment and related programs in this state. 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 proposal may be submitted, in duplicate, to Fabian S. Gomez, Staff Attorney, Work Force Development Division, Texas Department of Commerce, P.O. Box 12728, Austin, Texas 78711, within 30 days of the publication of the proposed sections.

The new rule is proposed under the Texas Government Code, §481.0044(a), which authorizes the policy board to adopt rules necessary for the administration of department programs; and Texas Civil Statutes, Article 4413(52), §5A, (as amended by Senate Bill 405, §29, Acts 1993, 73rd Legislature), which give the policy board of the Texas Department of Commerce the authority to adopt necessary rules for the implementation and management of the job training program. The sections are also proposed pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, Subchapter B, which mandates the rulemaking procedures for state agencies.

The following statutes are affected by the proposed §§187.170-187.197: Texas Labor Code, §301.052.

§187.170. Purpose and Authority. This subchapter establishes procedures for a State Monitoring Plan, under the authority of Federal Act §164(a) as specified in 20 CFR, §627.475, to facilitate the identification of subrecipients with compliance problems and to timely address such problems through technical assistance or sanctions.

§187.171. Definitions. For purposes of implementing this subchapter, in addition to the definitions and references in §187.102 of this title (relating to General Definitions), the following words and terms when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

Problem Findings-The significant issues contained in a monitoring report issued by the department that identify noncompliance with JTPA policy, subrecipient job training plans, or contractual requirements

Recurring Problem-Any problem or finding identified from one program year to the next and reflecting substantially the same circumstances or programmatic flaws previously identified These problems or findings are not by category or area of review.

§187.172. State Monitoring.

(a) Each SDA/SSA shall be monitored annually by the department to assess the subrecipient's administrative, fiscal, contractual and program activities. State monitoring includes the following:

(1) evaluation of SDA/SSA policies for program quality and outcomes to ensure compliance with the objectives of the Federal Act and its regulations;

(2) determination of whether SDA/SSAs have demonstrated substantial compliance with oversight requirements;

(3) evaluation of job training plans to ensure they meet the criteria contained in Federal Act, §105(b)(1); and

(4) examination of SDA/SSA expenditures against the cost categories and cost limitations specified in the Federal Act and its regulations.

(b) The state monitors also review on-site problem resolution, management observations, quality programming, and technical assistance needs of each subrecipient, and the department may conduct unscheduled monitoring visits if it receives notice of possible violations of program activities.

§187.173. The Monitoring Report. The department will prepare a monitoring report which shall describe any possible violations discovered during a monitoring review and detail the required corrective action to be taken by the subrecipient to correct an alleged violation.

§187.174. Responses to Monitoring Reports

(a) The SDA/SSA shall provide the department with an initial response to the problems or findings in a monitoring report within 30 calendar days from the SDA/SSA's receipt of the report. If the SDA/SSA's response proposes acceptable corrective action and no further verification is required, the department will issue a letter closing the report If the response is unacceptable, or verification is inadequate, the SDA/SSA shall be required to perform additional corrective actions or provide additional documentation The department may also conduct an on-site monitoring visit during this phase

(b) Follow-up responses from the SDA/SSA shall be due every 15 days after the initial response until all findings have been resolved The SDA/SSA shall provide additional information to be considered concerning the violation and indicate the proposed corrective action and the time line for completion of the corrective action.

(c) If the SDA/SSA does not fully resolve all problems or findings within 180 days after the receipt of the monitoring report, sanctions shall be imposed, as provided in §§187.180-187.188 of this title (relating to State Sanctions Policy and Procedures).

§187.175. Local Monitoring Plan Development. Each SDA/SSA shall develop its own local-level monitoring plan which shall be made part of its job training plan SDA/SSA local-level monitoring plans shall use and incorporate all Technical Assistance Guides (TAGS) provided by DOL, and shall include the following:

(1) a schedule or time table for monitoring all JTPA funded activities and subcontractors including annual reviews of the subcontracts;

(2) management review of all monitoring reports to include acknowledgment of receipt and written responses to the report recommendations;

(3) copies of all monitoring reports to the affected JTPA staff of the unit monitored; and

(4) copies of all written reports, responses, and back-up material, documents and notes collected in conjunction with each monitoring review, which records will be retained by each SDA/SSA for three years after the date each record is established, or until any litigation, audit, investigation or claim involving such record has been finally resolved.

§187.176. Subrecipient Roles and Responsibilities.

(a) The SDA/SSA shall assign the responsibility for monitoring to a specific person or group to carry out an organized, comprehensive review of designated JTPA program administration and activities. The SDA/SSA shall provide adequate staff and training to implement monitoring activities on a regular and timely basis to ensure compliance with JTPA requirements.

(b) The SDA/SSA must schedule monitoring reviews on a formal basis The initial monitoring reviews of subcontractors should occur during the early stages of a contract for monitoring efforts to be effective in identifying and correcting problem areas to prevent liabilities in the form of disallowed costs.

(c) The SDA/SSA staff assigned to monitoring responsibilities shall:

(1) report to the executive director or equivalent level of management to

ensure appropriate action on problems and recommendations;

(2) document its monitoring activities and the resulting problem identifications;

(3) make recommendations for corrective action whenever noncompliance with JTPA requirements is identified; and

(4) conduct follow-up reviews to ensure that corrective actions have fully resolved all problems or findings and that technical assistance is provided as needed

(d) The SDA/SSA staff, however, shall not monitor any program, activity or managerial administrative function which they directly administer.

(e) The monitoring reports shall identify problems of noncompliance with JTPA laws and regulations and provide recommendation for corrective action and guidance to enhance program quality. The SDA/SSA monitoring staff shall consult with appropriate resource persons or department staff to analyze their compliance problems and develop appropriate recommendations.

§187.177. Assessment of Subrecipient Monitoring Functions. To ensure that its local monitoring function is being performed in a comprehensive and effective manner, the SDA/SSA management shall:

(1) require periodic written reports to management outlining monitoring reviews, noncompliance issues, and the status of corrective actions (copies of such reports to be provided to the PIC, Chief Elected Official and interested SDA/SSA staff);

(2) hold officially-documented briefings to the PIC or appropriate subcommittee at its regularly scheduled meetings, and

(3) require an annual independent review of the monitoring function to determine its effectiveness in meeting the subrecipient's monitoring plan requirements.

§187 178. PIC Oversight Standards.

(a) Pursuant to 20 CFR, §627.475, the following general standards for private industry council oversight responsibilities are established Each SDA/SSA shall develop a local policy to ensure the following

(1) PIC members are informed of their responsibility to independently monitor and oversee all JTPA funded activities including approval of the local Monitoring Plan;

(2) the PIC receives regular reports on all state or federal audits and monitoring reviews of the subrecipient, as well as audits and monitoring reviews performed by the local monitoring staff;

(3) the subrecipient's monitoring is available to and provides monitoring reports and information as requested on a regular basis to the PIC member(s) or committee responsible for independent oversight; and

(4) PIC members are provided the opportunity to attend training and receive technical assistance to enable them to perform proficiently in their oversight role.

(b) The PIC may delegate to a member or committee the responsibility to review and recommend action on all audits and monitoring reports received by the administrative entity.

§187.179 State Sanctions Policy and Procedures. The department may impose sanctions or penalties on subrecipients that are not in compliance with JTPA statutes, regulations or rules. Examples of noncompliance include the following:

(1) failure to take corrective action to resolve monitoring problems or findings within the time specified in §187. 174 of this title (relating to Responses to Monitoring Reports);

(2) failure to respond to audit resolution issues within the time specified in §187.195 of this title (relating to Routine Audit Resolution Time Sequence);

(3) failure to take timely corrective action for a violation of procurement standards, as set forth in Subchapter F of this title (relating to Financial Management Rules); and

(4) failure to meet performance standards or take required corrective action pursuant to a technical assistance plan developed under §187.186 of this title (relating to Technical Assistance Plan).

§187 180. Sanctions Procedures.

(a) The department's executive director shall send a notice of pending sanctions to the SDA/SSA, the PIC chair, and the Chief Elected Official, indicating the violation, the corrective action to be taken, the impending sanction, and the process by which the SDA/SSA may appeal the sanction.

(b) The deliberateness, gravity and frequency of the violation shall determine the type and degree of sanctions, which may include the following

(1) restrictions on drawdown of funds;

(2) suspension or revocation of all or part of a job training plan; substate plan, or contract;

(3) imposition of a reorganization plan; or

(4) such changes as deemed necessary by the department to secure compliance.

§187.181. Repeated Problems or Findings.

(a) If a state monitoring review reveals repeated findings that have not been corrected from a prior year's monitoring report, the SDA/SSA shall be deemed to be in continued violation.

(b) The department's executive director shall consider imposing sanctions if it is determined that a continued violation by an SDA/SSA constitutes willful disregard of these rules, gross negligence, or failure to observe accepted standards of administration, and is of significant impact to program quality or outcomes. The department's executive director may request the State Council to recommend to the governor a revocation of all or part of the SDA/SSA's job training plan.

§187.182. Imposition of Sanctions.

(a) If an SDA/SSA does not provide the department with evidence of implementation of required corrective action within tens days of the SDA/SSA's receipt of a notice of impending sanctions, the department's executive director shall notify the SDA/SSA, the PIC Chair, and the Chief Elected Official that an appropriate sanction is being imposed upon the SDA/SSA until such time that necessary action is taken to correct the violation.

(b) If the initial sanction imposed is insufficient to correct the violation, the department's executive director will recommend to the governor the issuance of a notice of intent to revoke all or part of the SDA/SSA's job training plan and/or contract, subject to the provisions for appeal in Federal Act, §164(b)(2)(A).

(c) The department's executive director will postpone sanctions if satisfactory evidence is received of the initiation of required corrective action within 10 days of the SDA/SSA's receipt of the notice of impending sanctions. The postponement shall continue until corrective action by the SDA/SSA has been completed and verified. The department's executive director shall implement sanctions if such corrective action is not completed or remains unverified.

§187.183. Technical Assistance and Reorganization. Pursuant to Federal Act, §106(j)(2), the department has developed the procedures described in §§187.185-187.188 of this title (relating to Technical Assistance and Reorganization) to implement policies for providing technical assis-

tance to any SDA/SSA which does not meet performance standards under the criteria established in Subchapter D of this title (relating to Performance Standards).

§187.184. Failure to Meet Performance Standards. If a monitoring report or the performance report generated by the Management Information System (MIS), or any other periodic report, indicates that an SDA/SSA has failed to meet any performance standards, the department will review the subrecipient's JTPA program to identify the program factors or conditions contributing to such failure.

§187.185. Technical Assistance Plan.

(a) The SDA/SSA in conjunction with the department shall develop a technical assistance plan which will include the following:

(1) identification of the failed standards;

(2) identification of program deficiencies which contributed to the failure;

(3) analysis of any compliance problems or audit findings;

(4) description of extenuating circumstances contributing to the failure,

(5) description of SDA/SSA actions proposed to enhance performance;

(6) description of state technical assistance to be provided;

(7) a time line for corrective actions; and

(8) a listing of expected results of corrective actions.

(b) The technical assistance plan shall be executed by the SDA/SSA director, the PIC chair, the Chief Elected Official(s) and the department's executive director, to be effective no later than October 31 following the issuance of the latest annual MIS performance report on the subject SDA/SSA.

(c) The subject SDA/SSA shall conduct monthly reviews of the technical assistance plan and provide the department with a written report on corrective actions taken.

§187.186. SDA/SSA Reorganization Plan due to Consecutive Failure.

(a) An SDA/SSA which fails to meet particular performance standards for a second consecutive program year is subject to reorganization pursuant to Federal Act, §106(j)(4). The department shall make such assessment after a comprehensive review of an SDA/SSA's JTPA programs, including a review of the following:

(1) the effectiveness of technical assistance plans and corrective actions for the previous year;

(2) the SDA/SSA's procurement activities and subcontracts;

(3) the SDA/SSA's administrative capabilities; and

(4) the effectiveness of the PIC in its oversight of SDA/SSA programs and activities.

(b) Based on the comprehensive review outlined in subsection (a) of this section, the department shall develop, and recommend to the State Council for final recommendation to the governor, an SDA/SSA reorganization plan which will detail specific actions to be taken by the SDA/SSA to strengthen its administration and improve its program performance. The SDA/SSA reorganization plan will incorporate elements of the technical assistance plan implemented in the previous year, including an assessment of the reasons for the SDA/SSAs failure to improve performance, and shall prescribe the required corrective actions, which may include the elements described in Federal Act, §106(j)(4) (B)

(d) The subject SDA/SSA shall conduct monthly reviews of the reorganization plan and provide the department with a written report on corrective actions taken.

(e) An SDA/SSA that is subject to a reorganization plan may appeal to the Secretary of Labor to rescind or revise such plan under the provisions of Federal Act, §106(j)(6) and 20 CFR, §627. 471.

§187.187. Sanctions for Continued Violations. The department's executive director shall impose the sanction procedures provided for in §§187.180-187.183 of this title (relating to State Sanctions Policy and Procedures) if it is determined that continued failure by an SDA/SSA to meet performance standards or take required corrective action constitutes evidence of willful disregard of the technical assistance plan or the State and Federal JTPA Acts.

§187.188. Subrecipient Annual Audit Requirement.

(a) Pursuant to 20 CFR, §627.480, each subrecipient of JTPA funds shall arrange for an annual financial and compliance audit, conducted by an independent public auditor, on funds received under the Act, Titles I-IV, except when otherwise required by state law.

(b) Such audits shall be conducted pursuant to the compliance standards and references for non-federal audits prescribed in 20 CFR, §627.480(a), for the subrecipient categories of governments, non-governmental subrecipients, and commercial organizations which are subrecipients and receive $25,000 or more a year in federal funds to operate a JTPA program. The subrecipient shall provide the department with a copy of the audit report within 180 days from the end of the JTPA fiscal year.

§187.189. Audit Costs. The costs of audits made in accordance with the provisions of Office of Management and Budget (OMB) Circular A-128, and 20 CFR, §627.435, are allowable charges if such costs are necessary and reasonable to administer a JTPA program. Additional audits of economy, efficiency and program results may be performed by the subrecipient and are allowable costs.

§187.190. Competitive Bidding to Procure Auditor.

(a) As provided in the Single Audit Act of 1984 (P.L. 98-502), a competitive bidding process shall be used by all subrecipients to engage an independent public auditor.

(b) Any subrecipient that engages the same independent public auditor to perform the required annual audits for more than five consecutive years will be required to demonstrate the continuing independence of such auditor. This requirement applies to the individual auditor as well as the auditor's firm or organization.

§187.191. Contents of Audit Report.

(a) The independent audit report submitted to the department should be guided by the rules in this subchapter and the following laws or publications:

(1) the Single Audit Act of 1984 (P. L. 98-502);

(2) American Institute of Certified Public Accountants (AICPA) Industry Audit Guide, Audits of State and Local Government Units;

(3) American Institute of Certified Public Accountants (AICPA) Industry Audit Guide, Audits of Certain Non-Profit Organizations; and

(4) the department's JTPA Financial Management Handbook.

(b) The audit report must include a copy of the independent auditor's final letter to management and, as a minimum, a supplemental statement of revenues and expenditures for JTPA funds for each contract under which funds are received, including:

(1) federal flow-through revenues;

(2) non-federal matching funds;

(3) detail of expenditures by cost categories;

(4) fund balances at the beginning and end of the audit period;

(5) a schedule reconciling any differences in reported expenditures in the closeout and the audit; and

(6) expenditures by adult and youth categories.

§187.192. Subrecipient Annual Audit Plan. Subrecipients must maintain an annual audit plan to establish minimum standards and procedures for audit reports and corrective action plans to resolve problem audit findings. Such audit plan must include, as a minimum:

(1) audit schedules and work plans indicating the subrecipient's fiscal year end and reporting due dates;

(2) procedures for timely review of audit findings and resolution of problem audit findings; and

(3) procedures for review of subcontractor audits and resolution of problem audit findings and questioned costs.

§187.193. Audit Submissions.

(a) Within 180 days after the close of a subrecipient's fiscal year, the subrecipient shall forward to the Audit Resolution Section of the Texas Department of Commerce (Audit Section), an audit report completed in accordance with 20 CFR, §§627.480 and 187. 189-187.193 of this title (relating to Subrecipient Audit Responsibility).

(b) Subrecipients must take corrective action, including debt collection for disallowed costs, to resolve any audit problem findings that impact a JTPA program. Such corrective actions must be instituted within six months after receipt of an audit report by the Audit Section.

(c) Subrecipients may submit to the Audit Section additional documentation pertaining to any resolution findings or questioned costs identified in an audit report.

§187.194. Informal Resolution Process.

(a) After review of the audit by the department, the department will issue an Initial Determination Letter to the subrecipient offering the opportunity to informally resolve issues not resolved during the routine audit resolution process The subrecipient may submit additional documentation or meet with officials of the department to discuss the allowability of any remaining questioned costs. The Initial Determination Letter will also include administrative findings that remain unresolved as well as sanctions that the department may impose if a resolution is not timely reached.

(b) The department shall issue a Final Determination Letter detailing the remaining issues if problem findings are not completely resolved during the Informal Resolution Process. If these issues include questioned costs, and there is no additional information to support the costs, the costs will be disallowed and a debt by the subrecipient shall be established by the department.

§187.195 Failure to Submit Audit. The department shall issue a delinquent notice to a subrecipient if an audit is not received within 180 days from the end of the subrecipient's fiscal year. If no response is received within 15 days from the delinquent notice date, the department shall issue a certified letter providing the subrecipient with a final 15-day period to respond. If no response is received to either notice, the executive director of the department may withhold funds on any of the subrecipient's current contracts pending receipt of the audit report, or may issue other sanctions as provided in §187.180 of this title (relating to Sanctions Procedures).

§187.196. Appeals from Final Determinations. A Final Determination Letter issued pursuant to §187.194 of this subchapter (relating to Informal Resolution Process) shall provide the subrecipient with notice of the right to appeal an adverse determination and shall outline the procedure for making such appeal.

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 May 2, 1994.

TRD-9440381 Deborah C. Kastrin
Executive Director
Texas Department of Commerce

Proposed date of adoption: September 1, 1994

For further information, please call: (512) 320-1809

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TITLE 22. EXAMINING BOARDS

Part VI. Texas State Board of Registration for Professional Engineers

Chapter 131. Practice and Procedure

Application for Registration

• 22 TAC §131.54

The Texas State Board of Registration for Professional Engineers proposes an amendment to §131.54, general application information Subsection (d) of the section is amended to clarify the supplemental documents which must be submitted with an application for registration and also provide for the acceptance of an incomplete application pending receipt of documents from third-party sources over which the applicant has no control. Subsection (e) is amended to delete redundant language

Charles E. Nemir, P.E., executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule

Mr Nemir 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 clarification of the application submission requirements. There will be no effect on small businesses as a result of enforcing the rule. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Charles E. Nemir, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P O. Drawer 18329, Austin, Texas 78760.

The amendment is proposed under Texas Civil Statutes, Article 3271a, §8(a) , which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.54. General Application Information.

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

(d) **Certain items must be submitted for an application to be considered complete. The executive director may accept an incomplete application pending receipt of documents from third-party sources over which the applicant has no control. Such documents may include transcripts and verifications from other states. Reference statements must be included with the application. For an application to be considered complete, it must include the following:** [The executive director may accept an application prior to the receipt of supplemental documents such as transcripts of degrees over which the applicant has no control as to time of submission to the board. The board will not consider an application until the following are provided:]

(1)-(2) (No change)

(3) **official** transcript(s) of degree(s) **in accordance with §131.93 of this title (relating to Transcripts);**

(4) (No change.)

(5) **official** documentation **from the appropriate examining board** verifying that the applicant has passed the fundamentals of engineering examination;

(6)-(7) (No change.)

(e) The board may request additional information or the executive director may recommend the applicant provide additional information. If an applicant declines to provide additional information for an accepted application as recommended by the executive director, the application will be referred for board consideration with documentation of such declination. If, after notification in writing, the applicant fails to provide any part of the required information for a complete [an accepted] application within the time specified [by the deadlines set] by the executive director, the application will be referred to the board to be not approved as an incomplete application. [For an accepted application to be considered complete, it must contain at minimum the application form, the supplementary experience record, transcript(s) of degree(s), and reference statements.] Withholding information, misrepresentation, or untrue statements on the application for registration or supplemental experience documents may [will] be cause for rejection of the application.

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

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

Issued in Austin, Texas, on May 5, 1994.

TRD-9440413 Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Proposed date of adoption: June 14, 1994

For further information, please call: (512) 440-7723

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Engineering Experience

• 22 TAC §131.81

The Texas State Board of Registration for Professional Engineers proposes an amendment to §131.81, concerning experience evaluation. Paragraph (12) of the section is amended to delete the erroneous exemption under §21 of the Texas Engineering Practice Act, which is no longer applicable.

Charles E. Nemir, P.E., executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Nemir 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 the elimination of the erroneous language. There will be no effect on small businesses as a result of enforcing the rule. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Charles E. Nemir, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760.

The amendment is proposed under Texas Civil Statutes, Article 3271a, §8(a) , which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.81. Experience Evaluation. The evaluation of the engineering experience claimed by an applicant for registration under the Texas Engineering Practice Act (the Act), §12(a)(1), (2), or §21, will include, but not be restricted to, the following.

(1)-(11) (No change.)

(12) Applicants who claim foreign engineering experience must have, in addition to other experience, at least two years of engineering experience in the United States and show that they have learned to use the United States standards, codes, and other engineering procedures in their engineering practice [except those who are applying under the Act, §21]. Engineering experience claimed for a graduate degree in engineering will not be acceptable for the experience requirement of this paragraph.

(13)-(18) (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 May 5, 1994.

TRD-9440414 Charles E. Nemir, P.E
Executive Director
Texas State Board of
Registration for
Professional Engineers

Proposed date of adoption: June 14, 1994

For further information, please call: (512) 440-7723

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Education

• 22 TAC §131.93

The Texas State Board of Registration for Professional Engineers proposes an amendment to §131.93, concerning transcripts. The section is amended to specify that a transcript must be provided to the board from each school from which an engineering degree or 15 or more semester hours of credit in engineering science or mathematics are claimed on an application for registration.

Charles E. Nemir, P.E., executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Nemir 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 clarification that a transcript must be provided from each school from which an engineering degree or 15 or more semester hours of credit in engineering science or mathematics are claimed. There will be no effect on small businesses as a result of enforcing the rule. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Charles E. Nemir, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760.

The amendment is proposed under Texas Civil Statutes, Article 3271a, §8(a) , which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.93. Transcripts. An official transcript bearing the seal of the institution involved must be provided to the board for each school from which an engineering degree or 15 or more semester hours of credit in engineering science or mathematics are claimed on an application, regardless of the section of the Act under which application is being made. The applicant is responsible for ordering and paying for all such transcripts, which are to be forwarded directly to the board office by the respective registrars. Normally, if a legible transcript has been received and accepted for an application, a similar transcript need not be submitted to support any subsequent application from the same applicant.

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 May 5, 1994.

TRD-9440415 Charles E. Nemir, P E
Executive Director
Texas State Board of
Registration for
Professional Engineers

Proposed date of adoption: June 14, 1994

For further information, please call: (512) 440-7723

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Examinations

• 22 TAC §131.103

The Texas State Board of Registration for Professional Engineers proposes an amendment to §131.103, concerning engineer-in-training. The section is amended to specify that a degree in engineering or engineering-related science must be a bachelor's degree.

Charles E. Nemir, P.E., executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Nemir 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 clarification that an engineering or engineering-related science degree must be a bachelor's degree. There will be no effect on small businesses as a result of enforcing the rule. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Charles E. Nemir, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760.

The amendment is proposed under Texas Civil Statutes, Article 3271a, §8(a) , which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.103. Engineer-in-Training. Individuals who have an EAC/ABET-accredited engineering degree or a bachelor's [four year] degree in engineering or engineering-related science approved by the board and have successfully passed the fundamentals of engineering examination are eligible to apply for engineer-in-training certification.

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 May 5, 1994.

TRD-9440416 Charles E Nemir, P E
Executive Director
Texas State Board of
Registration for
Professional Engineers

Proposed date of adoption: June 14, 1994

For further information, please call: (512) 440-7723

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Board Review of Application

• 22 TAC §131.112

The Texas State Board of Registration for Professional Engineers proposes an amendment to §131.112, concerning approved applications. The section is amended to include §21 of the Texas Engineering Practice Act under which an application for registration will be reviewed.

Charles E. Nemir, P.E., 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.

Mr. Nemir 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 clarification that an application for registration will be reviewed under §21 of the Act. There will be no effect on small business as a result of enforcing the rule. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Charles E. Nemir, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760.

The amendment is proposed under Texas Civil Statutes, Article 3271a, §8(a) , which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.112. Approved Applications. The executive director or the designated representative will review an application for registration under the Texas Engineering Practice Act (the Act), §12(a)(1), (2), or §21, and will recommend approval or non-approval of the applicant's engineering experience and education after which the application will be circulated to the engineer board members for review.

(1)-(7) (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 May 5, 1994

TRD-9440417 Charles E Nemir, P E
Executive Director
Texas State Board of
Registration for
Professional Engineers

Proposed date of adoption: June 14, 1994

For further information, please call. (512) 440-7723

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Part VIII. Texas Appraiser Licensing and Certification Board

Chapter 153. Provisions of the Texas Appraiser Licensing and Certification Act

• 22 TAC §§153.1, 153.20, 153.21, 153.35, 153.37

The Texas Appraiser Licensing and Certification Board proposes amendments to §153 1, concerning Definitions; §153.20, concerning Guidelines for Revocation and Suspension, §153.21, concerning Appraiser Trainees; §153.35, concerning Recordkeeping, and §153.37, concerning Offenses

The proposed amendment to §153.1 will add the words "or appraiser services" to duties an appraiser trainee may perform.

The proposed amendment to §153.20 will use the words "appraiser services" in place of "appraisal services" or "appraisals" to clarify the intention Provisions have been added concerning full disclosure False or misleading conduct or advertising is specifically prohibited

The proposed amendment to §153 21 adds "appraiser services" to the duties an appraiser trainee may perform and conforms with amendment to §153 1, listed above

Proposed amendments to §153.35 and §153.37 replace the words "appraisal" with "appraiser services" to clarify intentions

Renil C. Liner, commissioner, has determined that for the first five-year period the sections are in effect there will be no additional cost to state or local government as a result of enforcing or administering the sections.

Mr. Liner 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 clarification of the type of activity which is being regulated.

There will be no effect on small businesses There will be no local employment impact. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Renil C. Liner, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188

The amendments are proposed under Texas Civil Statutes, Article 6573a.2, the Texas Appraiser Licensing and Certification Act, §5, which provide the Texas Appraiser Licensing and Certification Board with authority to adopt rules for the licensing and certification of real estate appraisers.

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

Appraiser Trainee-A person approved by the Texas Appraiser Licensing and Certification Board to perform appraisals or appraiser services under the direction of a sponsoring certified appraiser.

§153.20 Guidelines for Revocation and Suspension, Investigations.

(a) The board may suspend or revoke a license or certification issued under the provisions of the Act at any time when it has been determined that the person holding the license or certification.

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

(4) has accepted payment for appraiser [appraisal] services and has failed to deliver the agreed service in the agreed upon manner,

(5) has refused to refund payment received for appraiser [appraisal] services when he or she has failed to deliver the appraiser [appraisal] service in the agreed upon manner;

(6) has accepted payment for services contingent upon a minimum, maximum, or pre-agreed value estimate except when such action would not interfere with the appraiser's obligation to provide an independent and impartial opinion of value

and full disclosure of the contingency is made;

(7) has offered to perform **appraiser** [appraisal] services or has agreed to perform such services when employment to perform such services is contingent upon a minimum, maximum, or pre-agreed value estimate **except** when such action would **not** interfere with the appraiser's obligation to provide an independent and impartial opinion of value **and full disclosure of the contingency is made;**

(8)-(11) (No change.)

(12) has failed to actively, personally, and diligently supervise an appraiser trainee under his or her sponsorship or any person not licensed or certified under the Act who assists the licensee or certificate holder in performing real estate **appraiser services** [appraisals];

(13) has had a final civil judgement entered against him or her on grounds of fraud or willful or grossly negligent misrepresentation in the making of **real estate appraiser services** [an appraisal of real estate] .

(14) (No change.)

(15) has knowingly or intentionally engaged in false or misleading conduct or advertising with respect to client solicitation.

(b)-(n) (No change.)

§153.21. Appraiser Trainees.

(a) A person desiring to be an appraiser trainee under the sponsorship of one or more state certified appraisers may apply to the board on the application form prescribed by the board. A prospective trainee must be a citizen of the United States or a lawfully admitted alien; be at least 18 years of age; be a legal resident of this state for at least 60 days immediately before the filing of the application; and satisfy the board as to the prospective trainee's honesty, trustworthiness, and integrity. Once a person is approved as an appraiser trainee by the board, the person may perform appraisals **or appraiser services** only under the direction and direct supervision of a sponsoring certified appraiser unless one of the following events occurs:

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

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

§153.35. Recordkeeping. A person licensed or certified under the Act shall retain all business records relating to **appraiser services** [an appraisal] performed by the applicant or person for at least five years after the date of the **appraiser service** [appraisal]

§153.37. Offenses.

(a) A person not licensed or certified under the Act commits a Class B misdemeanor if the person knowingly or intentionally uses any title, designation, initials, or other insignia or identification that would mislead the public as to the person's credentials, qualifications, competency, or ability to perform certified or licensed **appraiser** [appraisal] services.

(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 May 3, 1994.

TRD-9440325 Renil C Liner
Commissioner
Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption June 13, 1994

For further information, please call. (512) 465-3950

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Chapter 157. Rules Relating to Professional Conduct and Ethics

• 22 TAC §§157.1-157.5

The Texas Appraiser Licensing and Certification Board proposes new §§157 1-157 5, concerning Rules Relating to Professional Conduct and Ethics.

The proposed new rules require a certified or licensed real estate appraiser to communicate his or her opinion and advice in a way that will not be misleading. They may not engage in conduct that is unlawful, unethical or improper. Section 157 1 concerns Professional Independence. Section 157.2 relates to Hypothetical Conditions Section 157 3 deals with Undisclosed Fees Section 157.4 relates to Confidentiality The new rules will help clarify appropriate professional conduct and ethics and provides the listed unethical behavior as a violation of §153.20(a)(2), which could result in revocation or suspension of licensure The proposed rules are in compliance with federal Title XI, FIRREA (12 U.S C , §3331 et seq) and its interpretations and guidelines

Renil C Liner, commissioner, has determined that for the first five-year period the sections are in effect there will be no additional cost to state or local government as a result of enforcing or administering the sections

Mr Liner 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 is to provide better protection to the public and clarify the type of appraiser-related activities which are unacceptable

There will be no effect on small businesses. There will be no local employment impact. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Renil C Liner, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The new sections are proposed under Texas Civil Statutes, Article 6573a.2, the Texas Appraiser Licensing and Certification Act, §5(5), which provide the Texas Appraiser Licensing and Certification Board with authority to adopt rules establishing a code of professional conduct and ethics for certified or licensed real estate appraisers.

§157.1. General. It is essential that a licensed, certified, or registered appraiser arrive at and communicate his or her opinion and advice in a manner that will not intentionally mislead the consumers of appraiser services in the marketplace An appraiser must perform ethically and competently. All licensed, certified, or registered appraisers must not engage in conduct that is unlawful, unethical, or improper and must comply with the following standards. If an appraiser acts in a manner deemed unethical by these rules, the appraiser has committed a violation under §153.20(a)(2) of this title (relating to Guidelines for Revocation and Suspension, Investigation).

§157 2. Professional Independence. An appraiser must reasonably be perceived to act as a disinterested third party. An appraiser must render an unbiased appraiser service and must perform assignments with independence.

§157.3 Hypothetical Conditions. The development of an appraiser service based on a hypothetical condition is unethical unless the report clearly describes the rationale for this assumption, the nature of the hypothetical condition, and its effect on the result of the appraiser service

§157 4. Undisclosed Fees. The payment of undisclosed fees, commissions, or things of value in connection with the procurement of appraiser services is unethical.

§157.5. Confidentiality. An appraiser must protect the confidential nature of the appraiser-client relationship.

(1) An appraiser must not disclose confidential factual data obtained from a client or the results of an assignment prepared for a client to anyone other than:

(A) the client and persons specifically authorized by the client; .

(B) such third parties as may be authorized by due process of law; and

(C) a duly authorized professional peer review committee.

(2) It is unethical for a member of a duly authorized professional peer review committee to disclose confidential information or factual data presented to the committee.

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 May 3, 1994.

TRD-9440324 Renil C Liner
Commissioner
Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption June 13, 1994

For further information, please call: (512) 465-3950

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Part X. Texas Funeral Service Commission

Chapter 201. Licensing and Enforcement-Practice and Procedure

• 22 TAC §201.16

The Texas Funeral Service Commission (the "Commission") proposes new §201 16, concerning a memorandum of understanding (MOU) between the Commission and the Texas Department of Health (the "TDH"). The new section implements the provisions of Senate Bill 284, 72nd Legislature, 1991, which requires the Commission and the TDH to enter into a MOU to facilitate cooperation between the two agencies by describing the duties of each agency under authority of Health and Safety Code, Chapter 193 and Chapter 195, and Texas Civil Statutes, Article 4582b. The bill also requires the agencies to adopts the MOU by rule. The new section covers the joint procedures to be used by the two agencies for the referral, investigation and resolution of complaints affecting the administration and enforcement of state laws relating to vital statistics, and the licensing of funeral directors and funeral establishments The new section adopts by reference 25 TAC §181.27, as proposed by the Texas Department of Health and published in the May 3, 1994, issue of the *Texas Register* (19 TexReg 3334).

Larry A. Farrow, executive director, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Mr. Farrow also has determined that for each year of the first five years the new section as proposed is in effect the public benefit anticipated as a result of enforcing the proposed section will be to have a closer working relationship between the two agencies, expedite the filing of death certificates, and enhance the administration and enforcement of state laws relating to vital statistics and the licensing of funeral directors and funeral establishments. There will be no cost to small businesses. There is no expected economic cost to persons who are required to comply with the new section as proposed. There will be no impact on local employment.

Public comments on the proposed new section may be submitted to Larry A. Farrow, Executive Director, Texas Funeral Service Commission, 5100 Cameron Road, Suite 550, Austin, Texas 78753. Mr. Farrow will accept comments for 30 days following publication of the proposal in the *Texas Register.*

The new section is being proposed under Senate Bill 284, 72nd Legislature, 1991, which provides the Commission with authority to adopt by rule a memorandum of understanding with the TDH to facilitate cooperation between the two agencies in implementing and enforcing the Health and Safety Code, Chapter 193 and Chapter 195, and Texas Civil Statutes, Article 4582b Authority also exists pursuant to Texas Civil Statutes, Article 4582b, §5, which vest the Commission with authority to adopt rules necessary to administer Article 4582b. This new rule affects the Health and Safety Code, Chapters 193 and 195, and Texas Civil Statutes, Article 4582b

§201.16. Memorandum of Understanding with the Texas Department of Health The Texas Funeral Service Commission adopts by reference a joint memorandum of understanding with the Texas Department of Health (25 TAC §181.27). The document is published by and available at the Texas Funeral Service Commission, 8100 Cameron Road, Suite 550, Austin, Texas 78753.

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

Issued in Austin, Texas, on May 4, 1994

TRD-9440433 Wayne L Goodrum
General Counsel
Texas Funeral Service Commission

Earliest possible date of adoption June 13, 1994

For further information, please call (512) 834-9992

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Chapter 203. Licensing and Enforcement-Specific Substantive Rules

• 22 TAC §203.1

The Texas Funeral Service Commission proposes an amendment to §203 1, concerning definitions which are applicable to and are a part of the Commission's substantive rules. The proposed amendment is required to coordinate and conform those substantive rules with amended regulations concerning price disclosure and fraudulent and deceptive practices applicable to the sale of funeral services and merchandise, adopted by the Federal Trade Commission to its Funeral Practices Trade Regulation Rule at 16 CFR, Part 453-Funeral Industry Practices which will become effective July 19, 1994. The purpose of the proposed amendments is to afford an overall level of protection to consumers of funeral services and merchandise which is as great as, or greater than, the protection afforded by the recent amendments to 16 CFR, Part 453.

Wayne L. Goodrum, general counsel, has determined that there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule as proposed.

Mr. Goodrum also has determined that, for each year of the first five-year period the proposed amendment will be in effect the public benefit anticipated as a result of the amendment will be the enhanced protection afforded by the proposed amendment to members of the general public who become consumers of funeral services and merchandise against unfair and deceptive practices by providers of such services and merchandise. There will be no effect on small businesses. There is no anticipated economic cost for persons who are required to comply with the rule as proposed.

Comment on the proposed amendment may be submitted to Wayne L. Goodrum, General Counsel, Texas Funeral Service Commission, 8100 Cameron Road, Suite 550, Austin, Texas 78753

The amendment is proposed pursuant to Texas Civil Statutes, Article 4582b, §5, which provide the Texas Funeral Service Commission with the authority to adopt rules to administer Article 4582b

The proposed amendment affects Texas Civil Statutes, Article 4582b.

§203 1 Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Alternative Container-An unfinished wood box or other non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of fiberboard, pressed-wood, composition materials (with or without an outside covering) or like materials.

Cash advance item-Any item of service or merchandise described to a purchaser as a "cash advance, accommodation, cash disbursement" or similar terms. A cash advance item is also any item **which is not an offering of the funeral provider but is** obtained from a third party and paid for by the funeral provider on the purchaser's behalf Cash advance items may include, but

are not limited to, [the following items Cemetery] cemetery or crematory services, pallbearers, public transportation, clergy honoraria, flowers, musicians or singers, nurses, obituary notices, gratuities and death certificates.

[Courses of instruction-As specified in Texas Civil Statutes Article 4582b, §1(J), shall include a course in practical funeral directing and embalming.

Funeral ceremony-a service commemorating the deceased with the body present.

Funeral goods-Any "funeral merchandise," as defined by Texas Civil Statutes, Article 4582b, §1(N), which is sold or offered for sale directly to the public for use in connection with funeral services.

Funeral provider-Any person, partnership or corporation, **including a funeral director or a funeral establishment and any employee or agent,** that sells or offers to sell funeral goods and funeral services to the public.

Funeral services-For purposes of §§203.7, 203.9, 203. 11, and 203.18 of this title (relating to Comprehension of Disclosures; Price Disclosure; Clarification of Fraudulent or Deceptive Conduct in Providing Funeral Services or Merchandise; and Presentation of Required Price Lists, Consumer Brochures, and Written Memorandum or Purchase Agreements), any funeral service as defined in Texas Civil Statutes, Article 4582b, §1(0), sold or offered for sale to the public, which may be used to:

(1) care for and prepare deceased human bodies for burial, cremation, or other final disposition; and

(2) arrange, supervise, or conduct the funeral ceremony or final disposition of deceased human bodies.

[Licensed funeral establishment-In Texas Civil Statutes Article 4582b, §1(G), in addition to its ordinary meaning, also means commercial embalming establishment where apprentice is an applicant for only an embalming license.]

Memorial service-a ceremony commemorating the deceased without the body present.

Outer burial container-any "outer enclosure," as defined in Texas Civil Statutes, Article 4582b, §1(P), which is designed for placement in the grave above or around the casket and includes containers commonly known as burial vaults, grave boxes, and grave liners.

Services of funeral director and staff-the services of the funeral director and staff which are not included in the prices of other categories that must be separately stated on the retail price list or written memorandum furnished by a funeral provider in arranging and supervising a funeral, including but not limited to conducting the arrangement conference, planning the funeral, obtaining necessary permits, placing obituary notices, any other services offered by the funeral establishment, and any unallocated overhead.

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 May 4, 1994.

TRD-9440440 Wayne L. Goodrum
General Counsel
Texas Funeral Service Commission

Earliest possible date of adoption: June 16, 1994

For further information, please call (512) 834-9992

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• 22 TAC §203.7

The Texas Funeral Service Commission proposes an amendment to §203.7, concerning disclosures required to be made by providers of funeral services and merchandise. The proposed amendment is required to coordinate and conform existing substantive rules with amended regulations concerning price disclosure and fraudulent and deceptive practices applicable to the sale of funeral services and merchandise, adopted by the Federal Trade Commission to its Funeral Practices Trade Regulation Rule at 16 CFR, Part 453-Funeral Industry Practices, which will become effective July 19, 1994. The purpose of the proposed amendments is to afford an overall level of protection to consumers of funeral services and merchandise which is as great as, or greater than, the protection afforded by the recent amendments to 16 CFR, Part 453.

Wayne L. Goodrum, general counsel, 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. Goodrum 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 the enhanced protection afforded by the proposed amendment to members of the general public who become consumers of funeral services and merchandise against unfair and deceptive practices by providers of such services and merchandise. 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 Wayne L. Goodrum, General Counsel, Texas Funeral Service Commission, 8100 Cameron Road, Suite 550, Austin, Texas 78753.

The amendment is proposed pursuant to Texas Civil Statutes, Article 4582b, §5, which provide the Texas Funeral Service Commission with the authority to adopt rules to administer Article 4582b.

The proposed amendment affects Texas Civil Statutes, Article 4582b.

§203.7. Comprehension of Disclosure.

(a) Unfair or deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider to fail to furnish accurate price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies, including at least the price of embalming, transportation of remains, use of facilities, caskets, outer burial containers, immediate burials, or direct cremations, to persons inquiring about the purchase of funerals. Any funeral provider who complies with the preventive requirements of these rules is not engaged in the unfair or deceptive acts or practices as defined in this chapter.

(b) To prevent unfair or deceptive acts or practices, funeral **providers** [directors] must make all disclosures required by these rules [those sections] in a clear and conspicuous manner. **No statement or information may be included in a casket, outer burial container, or general price list which alters or contradicts the information required by these rules to be included in those lists.**

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 May 4, 1994.

TRD-9440439 Wayne L. Goodrum
General Counsel
Texas Funeral Service Commission

Proposed date of adoption: June 16, 1994

For further information, please call (512) 834-9992

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• 22 TAC §203.8

The Texas Funeral Service Commission proposes an amendment to §203.8, concerning disclosures required to be made by providers of funeral services and merchandise. The proposed amendment is required to coordinate and conform existing substantive rules with amended regulations concerning price disclosure and fraudulent and deceptive practices applicable to the sale of funeral services and merchandise, adopted by the Federal Trade Commission to its Funeral Practices Trade Regulation Rule at 16 CFR, Part 453-Funeral Industry Practices, which will become effective July 19, 1994. The purpose of the proposed amendments is to afford an overall level of protection to consumers of

funeral services and merchandise which is as great as, or greater than, the protection afforded by the recent amendments to 16 CFR, Part 453

Wayne L Goodrum, general counsel, 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. Goodrum 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 the enhanced protection afforded by the proposed amendment to members of the general public who become consumers of funeral services and merchandise against unfair and deceptive practices by providers of such services and merchandise 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 Wayne L Goodrum, General Counsel, Texas Funeral Service Commission, 8100 Cameron Road, Suite 550, Austin, Texas 78753

The amendment is proposed pursuant to Texas Civil Statutes, Article 4582b, §5, which provide the Texas Funeral Service Commission with the authority to adopt rules to administer Article 4582b

The proposed amendment affects Texas Civil Statutes, Article 4582b

§203 8 Telephone Price Disclosures To prevent unfair or deceptive acts or practices, funeral **providers** [directors] must [ ]

[(1) tell persons who call the funeral establishment and ask about the terms, conditions, or prices at which funeral goods or funeral services are offered, that price information is available over the telephone, and

[(2)] tell persons who ask by telephone about the funeral establishment's offerings or prices any accurate information from the **Retail Price List, as defined in Texas Civil Statutes, Article 4582b, §1(S),** [price lists] **and any other readily available information that** [which] reasonably answers the **question.** [question, and any other information which reasonably answers the question and which is readily available]

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 May 4, 1994

TRD-9440438 Wayne L Goodrum
General Counsel
Texas Funeral Service Commission

Proposed date of adoption June 16, 1994

For further information, please call (512) 834-9992

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• 22 TAC §203.9

The Texas Funeral Service Commission proposes an amendment to §203 9, concerning disclosures required to be made by providers of funeral services and merchandise The proposed amendment is required to coordinate and conform existing substantive rules with amended regulations concerning price disclosure and fraudulent and deceptive practices applicable to the sale of funeral services and merchandise, adopted by the Federal Trade Commission to its Funeral Practices Trade Regulation Rule at 16 CFR, Part 453-Funeral Industry Practices, which will become effective July 19, 1994 The purpose of the proposed amendments is to afford an overall level of protection to consumers of funeral services and merchandise which is as great as, or greater than, the protection afforded by the recent amendments to 16 CFR, Part 453

Wayne L Goodrum, general counsel, 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 Goodrum 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 the enhanced protection afforded by the proposed amendment to members of the general public who become consumers of funeral services and merchandise against unfair and deceptive practices by providers of such services and merchandise 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 Wayne L Goodrum, General Counsel, Texas Funeral Service Commission, 8100 Cameron Road, Suite 550, Austin, Texas 78753

The amendment is proposed pursuant to Texas Civil Statutes, Article 4582b, §5, which provide the Texas Funeral Service Commission with the authority to adopt rules to administer Article 4582b

The proposed amendment affects Texas Civil Statutes, Article 4582b

§203 9 Price Disclosure

(a) To prevent unfair or deceptive acts or practices, funeral providers must give a printed or typewritten Retail Price List, as defined in Texas Civil Statutes, Article 4582b. §1(S), for retention to persons who inquire in person about the offering, availability or price of funeral goods or services offered by the funeral provider.

(b) The Retail Price List must be given upon beginning any in-person discussion of the prices of or the overall type of funeral service or disposition, or of specific funeral goods or services offered by the funeral provider, whichever occurs first, and before showing any casket or outer burial container.

(c) The requirement of subsection (b) of this section applies whether the discussion takes place in the funeral establishment or elsewhere; provided, however, that when the deceased is removed for transportation to the funeral establishment, an in-person request at that time for authorization to embalm does not, by itself, trigger the requirement to give the Retail Price List if the funeral provider, in seeking prior embalming approval, discloses that embalming is not required by law. Any other discussion during that time about prices or the selection of funeral services triggers the requirement to give consumers a Retail Price List.

(d) The Retail Price List as defined in Texas Civil Statutes, Article 4582b, §1(S), must **contain a caption describing the list as a "Retail Price List," the name, address, and telephone number of the funeral establishment's place of business, the effective date for the price list, and the printed notices required by Texas Civil Statutes, Article 4582b, §1(S), and §203.11(g)(2)(A)(i) of this title (relating to Clarification of Fraudulent or Deceptive Conduct in Providing Funeral Services or Merchandise).**

(e) **The Retail Price List must** also contain[.] the retail **prices (expressed** [prices, expressed] either as a flat fee, or as the price per hour, mile or other **unit of computation), and the information specified below for at least each** [information,] of the following **items, if offered for sale:** [terms.]

(1) forwarding of remains to another funeral establishment, together with a list of the services provided for any quoted price;

(2) receiving remains from another funeral establishment, together with a list of the services provided for any quoted price;

(3) the price range for the direct cremations offered by the funeral establishment, together with:

(A) a separate price for a direct cremation where the purchaser provides the container;

(B) separate prices for each direct cremation offered **where the purchaser obtains a casket**[, including an unfinished wood box] or alternative **container from the funeral provider;** [container;] and

(C) a description of the services and container (where applicable), included in each price;

(4) the price range for the immediate burials offered by the funeral establishment, together with:

(A) separate price for the immediate burial where the purchaser provides the casket;

(B) separate prices for each immediate burial offered where the purchaser obtains [including] a casket or alternative container from the funeral provider; and

(C) description of the services and container (where applicable) included in that price;

(5) transfer of remains to funeral establishment; [acknowledgement cards];

(6) embalming; [specifically itemized cash advance items. (These prices must be given to the extend then known or reasonably ascertainable. If the prices are not known or reasonably ascertainable, a good faith estimate shall be give and a written statement of the actual charges shall be provided before the final bill is paid.)]

(7) other preparation of the body;

(8) casket prices. The Retail Price List must contain the retail prices of all caskets and alternative containers offered which do not require special ordering and enough information to identify each. In lieu of the requirement to include individual casket and alternative container prices on the same list as other retail prices, the price range for the caskets and alternative containers offered by the funeral provider may be listed on the Retail Price List under the following conditions:

(A) The Retail Price List must contain the range of prices for caskets and alternative containers offered by the funeral provider, together with the following statement: A complete price list will be provided at the funeral establishment.

(B) A separate casket price list must be given at the time the Retail Price list is required to be given pursuant to subsection (b) of this section.

(C) The separate list must contain the following:

(i) a caption describing the list as a Casket Price List;

(ii) the name, address and telephone number of the funeral establishment's place of business;

(iii) the retail prices of all caskets and alternative containers offered which do not require special ordering and enough information to identify each;

(iv) the effective date for the stated prices; and

(v) the notice required by Texas Civil Statutes, Article 4582b, §1(S);

(9) outer burial container prices. The Retail Price List must contain the retail prices of all outer burial containers offered which do not require special ordering and enough information to identify each container. In lieu of the requirement to include individual outer burial container prices on the same list as other retail prices, the price range for the outer burial containers offered by the funeral provider may be listed on the Retail Price List under the following conditions:

(A) The Retail Price List must contain the range of prices for outer burial containers offered by the funeral provider, together with the following statement: A complete price list will be provided at the funeral establishment.

(B) The separate outer burial container price list must be given at the time the Retail Price list is required to be given pursuant to subsection (b) of this section.

(C) The separate list must contain the following:

(i) a caption describing the list as an Outer Burial Container Price List;

(ii) the name, address and telephone number of the funeral establishment's place of business;

(iii) the retail prices of all outer burial containers offered which do not require special ordering and enough information to identify each;

(iv) the effective date for the stated prices; and

(v) the notice required by Texas Civil Statutes, Article 4582b, §1(S);

(10) use of funeral establishment facilities and staff for viewing the deceased;

(11) use of funeral establishment facilities and staff for funeral ceremony;

(12) use of funeral establishment facilities and staff for memorial service;

(13) use of funeral establishment equipment and staff for graveside service;

(14) use of funeral establishment's hearse;

(15) use of funeral establishment's limousines;

(16) Either subparagraph (A) or (B) of this paragraph (which shall be the only fee for services, facilities, or unallocated overhead permitted to be nondeclinable, unless otherwise required by law):

(A) the price for the services of funeral director and staff, together with a list of the principal basic services provided for any quoted price; however, if the charge cannot be declined by the purchaser:

(i) The following statement must be included: This fee for our basic services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.); and

(ii) The quoted price shall include all charges for the recovery of unallocated funeral establishment overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services"; or

(B) alternatively, the fee for the services of funeral director and staff may be included in the price of caskets and, if so, shall include all charges for recovery of unallocated funeral establishment overhead.

(i) Where the alternative of including the fee for the services of funeral director and staff in the price of caskets is chosen, the following statement must be shown on the Retail Price List, together with the prices of individual caskets (or the range of casket prices where a separate casket price list is used), and on any separate Casket Price List together with the individual casket prices: Please note that a fee for the use of our basic services is included in the price of our caskets. Our services include (specify here the principal basic services included in the quoted price).

(ii) Funeral providers may include in the required disclosure the phrase "and overhead" after the word "services;"

(17) other itemized services provided by the funeral establishment staff, which must be declinable; and

(18) specifically itemized cash advance items. These prices must be given to the extent then known or reasonably ascertainable. If the prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.

(f) To further prevent unfair or deceptive acts or practices, funeral providers must give an itemized written memorandum or funeral purchase agreement (as defined in Texas Civil Statues, Article 4582b, §1(T)) for retention to each person who arranges a funeral, or other disposition of human remains, at the conclusion of the discussion of arrangements. The statement must contain at least the following information:

(1) the itemized cost of the funeral goods and funeral services selected by the customer from the retail price list;

(2) each cash advance item or amount paid or owed by the funeral provider to another person on behalf of the customer, and each fee which the funeral provider charges the customer for the cost of advancing funds or becoming indebted to another person on behalf of the customer, together with the statement required by §203.11(f)(2);

(3) the total cost of the goods and services selected;

(4) the following printed notices:

(A) Charges are made only for items that are used. If the type of funeral selected requires extra items, we will explain the reasons for the extra items in writing on this memorandum. (As required by Texas Civil Statutes, Article 4582b, §1(T); and

(B) Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below; and

(5) the name, mailing address, and telephone number of the Texas Funeral Service Commission, and a statement indicating that complaints may be directed to the Commission; and

(6) the name, address, and telephone number of the funeral establishment.

(g) Funeral providers may give persons any other price information in any other format, so long as the requirements of the commission's rules are also complied with.

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 May 4, 1994.

TRD-9440437 Wayne L Goodrum
General Counsel
Texas Funeral Service Commission

Earliest possible date of adoption: June 16, 1994

For further information, please call: (512) 834-9992

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• 22 TAC §203.11

The Texas Funeral Service Commission proposes an amendment to §203.11, concerning disclosures required to be made by providers of funeral services and merchandise. The proposed amendment is required to coordinate and conform existing substantive rules with amended regulations concerning price disclosure and fraudulent and deceptive practices applicable to the sale of funeral services and merchandise, adopted by the Federal Trade Commission to its Funeral Practices Trade Regulation Rule at 16 CFR, Part 453-Funeral Industry Practices, which will become effective July 19, 1994. The purpose of the proposed amendments is to afford an overall level of protection to consumers of funeral services and merchandise which is as great as, or greater than, the protection afforded by the recent amendments to 16 CFR, Part 453

Wayne L Goodrum, general counsel, 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. Goodrum 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 the enhanced protection afforded by the proposed amendment to members of the general public who become consumers of funeral services and merchandise against unfair and deceptive practices by providers of such services and merchandise. 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 Wayne L. Goodrum, General Counsel, Texas Funeral Service Commission, 8100 Cameron Road, Suite 550, Austin, Texas 78753.

The amendment is proposed pursuant to Texas Civil Statutes, Article 4582b, §5, which provide the Texas Funeral Service Commission with the authority to adopt rules to administer Article 4582b.

The proposed amendment affects Texas Civil Statutes, Article 4582b.

§203.11. Clarification of Fraudulent or Deceptive Conduct in Providing Funeral Services or Merchandise.

(a) Embalming provisions.

(1) Deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(A) represent that state or local law requires that a deceased person be embalmed;

(B) fail to disclose that embalming is not required by law except in certain special cases.

(2) Preventive requirements. To prevent these deceptive acts or practices, funeral **providers** [directors] must:

(A) not represent that a deceased person is required to be embalmed for:

(i) **direct cremation;**

(ii) **immediate burial[,]** ;or [a funeral using a sealed casket, or if]

(iii) **a closed-casket funeral without viewing or visitation when** refrigeration is **available;** [available and the funeral is without viewing or visitation and with a closed casket when state or local law does not require embalming]; and

(B) place the following disclosure on the retail price list, in immediate conjunction with the price shown for embalming: [Except in special cases, embalming] **Embalming** is not required by law Embalming may be necessary, however, if you select certain funeral arrangements, such as a **funeral** [funerals] with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial.

(b) Casket for cremation provisions.

(1) Deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a **funeral establishment, a crematory, or other** funeral provider to:

(A) represent that state or local law requires a casket for direct cremation;

(B) represent that a casket [(other than an unfinished wood box)] is required for direct cremation; or

(C) require that a casket be purchased for direct cremation.

(2) Preventive requirements. To prevent these deceptive acts or practices, funeral **providers who arrange direct cremations must:** [directors must]

(A) if direct cremations are arranged, place the following disclosure in immediate conjunction with the price range shown for direct cremation: If you want to arrange a direct cremation, you can use an [unfinished wood box or] alternative container. Alternative containers **encase the body and** can be made of materials like **fiberboard** [heavy cardboard] or composition materials (with or without an outside covering)[, or pouches of canvas]. **The containers we provide are (specify here the containers provided).**

(B) make an alternative container available for direct cremations.

(c) Outer burial container provisions.

(1) Deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(A) represent that state or local laws or regulations, or particular cemeteries, require outer burial containers when such is not the case;

(B) fail to disclose to persons arranging funerals that state law does not require the purchase of an outer burial container.

(2) Preventative requirements. To prevent these deceptive acts or practices, funeral providers must place the following disclosure **in immediate conjunction with** [on] the outer burial container **prices or price range listed on the retail price list,** [price list. The] **and if the** prices of outer burial containers are listed on **a separate outer burial container** [the retail] price list, in immediate conjunction with those prices: In most areas of the country, no state or local law makes you buy a container to surround the casket in the grave. However, many cemeteries **require** [ask] that you have such a container so that the graves will not sink in. Either a **burial vault** [grave liner] or a **grave liner** [burial vault] will satisfy these requirements.

(d) General provisions on legal and cemetery requirements.

(1) Deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for funeral providers to **represent** [present] that federal, state, or local laws, or particular cemeteries or crematories, require the purchase of any funeral goods or funeral services when such is not the case.

(2) Preventive requirements. To prevent these deceptive acts or practices, as well as the deceptive acts or practices **identified in subsections (a)(1), (b)(1), and (c)(1) of this section,** [the] funeral **providers** [directors] must identify and briefly describe in writing on the statement of funeral goods and services selected any legal, cemetery, or crematory requirement which the funeral **provider** [director] represents to persons as compelling the purchase of funeral goods or funeral services for the funeral which that person is arranging.

(e) Provision on preservation and protective value claims. In selling or offering to sell funeral goods and funeral services to the public, it is a deceptive act or practice for a funeral **provider** [director] to:

(1) represent that funeral goods or funeral services will delay the natural decomposition of human remains for a long-term or indefinite time, or

(2) represent that funeral goods have protective features or will protect the body from graveside substances, when such is not the case.

(f) Cash advance provisions.

(1) Deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral **provider** [director] to:

(A) represent that the price charged for a cash advance item is the same as the cost to the funeral director for the item when such is not the case, or

(B) fail to disclose to persons arranging funerals that the price being charged for a cash advance item is not the same as the cost to the funeral provider for the item when such is the case.

(2) Preventive requirements. To prevent these deceptive acts or practices, funeral **providers** [directors] must place the following sentence in the **itemized statement of funeral goods and services selected, in immediate conjunction with the list of itemized cash advance items required by §203. 9(f)(2) of this title (relating to Price Disclosure), if the funeral provider makes a charge upon, or receives and retains a rebate, commission or trade or volume discount upon a cash advance item:** [general price list, at the end of the cash advance disclosure:] **We charge you for our services in obtaining: (specify here the cash advance items for which charges are made for obtaining the items).** [We charge you for our services in buying these items, if the funeral provider makes a charge upon, or receives and retains a rebate, commission or trade or volume discount upon a cash advance item.]

(g) [Casket for cremation provision.

[(1) Unfair or deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral establishment, or a crematory, to require that a casket other than an unfinished wood box be purchased for direct cremation.

[(2) Preventive requirements To prevent this unfair or deceptive act or practice, funeral providers directors must make an unfinished wood box or alternative container available for direct cremations, if they arrange direct cremations.

[(h)] Other required purchases of funeral goods or funeral services

(1) Unfair or deceptive acts or practices. In selling or offering to sell funeral goods or funeral services, it is an unfair or deceptive act or practice for a funeral provider to:

(A) condition the furnishing of any funeral goods or funeral services to a person arranging a funeral upon the purchase of any other funeral good or service, except as required by law or as otherwise permitted by **these rules;** or [this part.]

(B) charge any fee as a condition to furnishing any funeral goods or funeral services to a person arranging a funeral, other than the fees for:

(i) **services of funeral director and staff permitted by §203.9(e)(16);**

(ii) **other funeral services and funeral goods selected by the purchaser from the retail price list; and**

(iii) **other funeral goods or services required to be purchased, as explained on the funeral purchase agreement, in accordance with subsection (d)(2) of this section.**

(2) Preventive requirements.

(A) To prevent this unfair deceptive act or practice, funeral providers must:

(i) place the following disclosure in the retail price list, immediately above the prices required by these rules to be listed: The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected. Provided, however, that if the charge for "services of funeral director and staff" cannot be declined by the purchaser, the statement shall include the following sentence between the second and third sentences of the preceding required sentence [sentence:] However, any funeral arrangements you select will include a charge for our services [between the second and third sentences of the statement specified.] The preceding statement may include the phrase "and overhead" after the word "services" if the fee includes a charge for recovery of unallocated funeral establishment overhead; and

(ii) On the statement of funeral services selected, place the disclosures required by §203.9(f)(4). [Place the following disclosure on the statement of funeral services selected. "Charges are only for those items that are used. If we are required by law to use any items, we will explain the reasons in writing below."]

(B) A funeral provider does [shall] not violate this section by failing to comply with a request for a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide.

(h) Embalming without approval.

(1) Unfair or deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for any funeral provider to charge a fee for embalming a deceased human body unless:

(A) approval has been obtained, under conditions set out in paragraph (2) of this subsection, from a family member or other authorized person; and

(B) in seeking approval, the funeral provider discloses that a fee will be charged if a funeral which requires embalming (such as a funeral with viewing) is selected and that no fee will be charged if a service which does not require embalming (such a direct cremation or immediate burial) is selected, unless embalming was previously authorized and performed.

(2) Conditions under which a fee for embalming may be charged are:

(A) where the approval for embalming (expressly so described) has been obtained, without solicitation, prior to the embalming;

(B) in cases where embalming is performed without prior approval, only when the funeral provider was previously selected by a person authorized to make funeral arrangements and that funeral provider:

(i) exercised due diligence to attempt to contact a family member or other authorized person and such effort is documented as required by §203.19 of this title (relating to Required Documentation for Embalming);

(ii) had no reason to believe the family did not want embalming performed; and

(iii) subsequent approval is obtained for the already performed embalming.

(C) In seeking approval, a funeral provider must disclose that a fee will be charged if the family selects a funeral which requires embalming, such as a funeral with viewing, and that no fee will be charged if the family selects a service which does not require embalming, such as direct cremation or immediate burial.

(3) Preventive requirements. To prevent these unfair or deceptive acts or practices, funeral providers must include on the itemized statement of funeral goods and services selected, the following statement: If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below.

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 May 4, 1994.

TRD-9440436 Wayne L. Goodrum
General Counsel
Texas Funeral Service Commission

Earliest possible date of adoption: June 16, 1994

For further information, please call: (512) 834-9992

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• 22 TAC §203.17

The Texas Funeral Service Commission proposes an amendment to §203.17, concerning disclosures required to be made by providers of funeral services and merchandise. The proposed amendment is required to coordinate and conform existing substantive rules with amended regulations concerning price disclosure and fraudulent and deceptive practices applicable to the sale of funeral services and merchandise, adopted by the Federal Trade Commission to its Funeral Practices Trade Regulation Rule at 16 CFR, Part 453-Funeral Industry Practices, which will become effective July 19, 1994. The purpose of the proposed amendments is to afford an overall level of protection to consumers of funeral services and merchandise which is as great as, or greater than, the protection afforded by the recent amendments to 16 CFR, Part 453.

Wayne L. Goodrum, general counsel, 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. Goodrum 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 the enhanced protection afforded by the proposed amendment to members of the general public who become consumers of funeral services and merchandise against unfair and deceptive practices by providers of such services and merchandise. 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 Wayne L. Goodrum, General Counsel, Texas Funeral Service Commission, 8100 Cameron Road, Suite 550, Austin, Texas 78753.

The amendment is proposed pursuant to Texas Civil Statutes, Article 4582b, §5, which provide the Texas Funeral Service Commission with the authority to adopt rules to administer Article 4582b.

The proposed amendment affects Texas Civil Statutes, Article 4582b.

§203.17. Clarification of Other Itemized Services Provided by Funeral Establishment [Home] Staff. Other itemized services provided by the funeral establishment [home] staff in Texas Civil Statutes, Article 4582b, §1(S), is interpreted to include only those services, if any, of the funeral director and staff which are not included in the definition of services of funeral director and staff, as defined in §203.

1(n) of this title (relating to Definitions) and which therefore must be declinable. [shall include services of the funeral director and staff which are not included in the prices of other categories on the retail price list or written memorandum which may be furnished by a funeral provider in arranging and supervising a funeral, including but not limited to conducting the arrangement conference, planning the funeral, obtaining necessary permits, placing obituary notices and any other services offered by the funeral establishment.]

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 May 4, 1994.

TRD-9440435 Wayne L Goodrum
General Counsel
Texas Funeral Service Commission

Earliest possible date of adoption June 16, 1994

For further information, please call (512) 834-9992

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• 22 TAC §203.18

The Texas Funeral Service Commission proposes an amendment to §203 18, concerning disclosures required to be made by providers of funeral services and merchandise The proposed amendment is required to coordinate and conform existing substantive rules with amended regulations concerning price disclosure and fraudulent and deceptive practices applicable to the sale of funeral services and merchandise, adopted by the Federal Trade Commission to its Funeral Practices Trade Regulation Rule at 16 CFR, Part 453-Funeral Industry Practices, which will become effective July 19, 1994 The purpose of the proposed amendments is to afford an overall level of protection to consumers of funeral services and merchandise which is as great as, or greater than, the protection afforded by the recent amendments to 16 CFR, Part 453

Wayne L Goodrum, general counsel, 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 Goodrum 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 the enhanced protection afforded by the proposed amendment to members of the general public who become consumers of funeral services and merchandise against unfair and deceptive practices by providers of such services and merchandise. 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 Wayne L Goodrum, General Counsel, Texas Funeral Service Commission, 8100 Cameron Road, Suite 550, Austin, Texas 78753

The amendment is proposed pursuant to Texas Civil Statutes, Article 4582b, §5, which provide the Texas Funeral Service Commission with the authority to adopt rules to administer Article 4582b.

The proposed amendment affects Texas Civil Statutes, Article 4582b.

§203 18 Presentation of Required Price Lists, Consumer Brochures, and Written Memorandum or Purchase Agreement. In order to provide the maximum protection to the consuming public, the presentation of required price lists and purchase agreements will be as follows:

(1) The retail price list [list, which includes the general price list, casket price list and outer burial enclosure price list,] will be presented for retention to any consumer who inquires in person about any funeral services, cremation or merchandise and prior to the consumer viewing or selecting any merchandise or service

(2) Consumer information **brochures, containing information specified by the Commission.** [brochures] will be presented in the same manner and timing as price lists

(3) The written memorandum or funeral purchase agreement must be presented for retention to the person who arranges a funeral, cremation or other disposition of a dead human body upon the conclusion of the discussion of arrangements

(4) When a separate casket price list or a separate outer burial container price list is provided to pursuant to and in accordance with §203. 9(8) or (9) of this title (relating to Price Disclosure), there is no requirement that the provision of such separate price lists be provided for retention by the customer.

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 May 4, 1994

TRD-9440434 Wayne L Goodrum
General Counsel
Texas Funeral Service Commission

Earliest possible date of adoption June 16, 1994

For further information, please call (512) 834-9992

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 15. Coastal Area Planning

Subchapter A. Management of the Beach/Dune System

• 31 TAC §15.11

The General Land Office proposes new §15 11, concerning certification of local government dune protection and beach access plans (plans) The Texas Natural Resources Code, Chapters 61 and 63, and 31 TAC §15 3(o) require all local governments with jurisdiction over gulf beaches to submit plans to the General Land Office The General Land Office adopted rules for management of the beach/dune system (31 TAC §§15 1-15.10) in February, 1993, which provide the minimum standards for content and implementation of local plans

The General Land Office has reviewed the plans identified in subsections (a) and (b) of this section and hereby certifies that all 13 thirteen plans comply with state law Subsection (a) of this section identifies eight local governments whose plans are certified without conditions, Subsection (b) of this section certifies five plans with the condition that the pertinent local governments modifying their plans consistent with General Land Office comments sent to the local governments and referenced in subsection (b) of this section Such modification of plans identified in subsection (b) of this section must be formally adopted by the local governments on or before 180 days from the effective date of this section, unless the provisions of subsection (d)(2) of this section apply

Caryn K Cosper, deputy commissioner for Resource Management, has determined that there will be fiscal implications as a result of enforcing or administering the section The effect on state government for the first five-year period will be due to additional time spent by staff reviewing a limited number of local government permits either at the request of the local government or as part of an audit to be conducted by the General Land Office to monitor compliance with state law Because staff is already performing this function, any increase in fiscal implications is expected to be minimal Specific fiscal impacts cannot be identified as the annual number of permits and certificates reviewed by General Land Office staff varies according to the rate of construction occurring within the geographic scope of the area regulated by this chapter

The estimated effect on local governments for the first five-year period the section will be in effect are expected to be minimal All local governments impacted by this subchapter participate in the Federal Flood Insurance Program, and therefore have adopted commissioners court orders or ordinances gov-

erning beachfront construction, in addition to any local building code requirements. The application requirements in §15.3(s)(4) of this chapter were extracted from various existing requirements for construction applications created by local governments along the Gulf Coast. In addition, this section allows local governments to implement a system for collection of beach user fees which is specifically authorized for expenditures relating to the public beach.

The cost of compliance with the section for small and large businesses is best addressed through a discussion of the cost of compliance for individuals, as businesses are considered "individuals" or "persons" pursuant to the definition of the latter term in 31 TAC §15.2. Estimated cost of compliance for individuals is expected to be minimal, based on the cost of providing information required for a dune protection permit and a beachfront construction certificate. Because the information required under the various plans largely mirrors those necessary to obtain other authorizations for beachfront construction, the cost is expected to be moderate. However, costs are difficult to estimate since the applicants will have differing capacities for providing the required information and the information required will vary from site to site depending not only on the terrain but also the nature and scope of the proposed project. In general, it is anticipated that smaller projects (e.g., a single-family seasonal residence) would incur significantly lower costs than a large-scale commercial project.

In addition to the information costs, costs will be incurred if the applicant proposes damage to dunes or dune vegetation for which mitigation is required. These costs are not predictable on a uniform basis, as they will vary considerably depending on the amount of mitigation required.

Individuals will incur costs when using and accessing the public beach where a beach user fee is charged; however, each jurisdiction charging a beach user fee is required to provide a "free" beach, where no fees are charged. Because individuals are not required to pay beach user fees at all beaches, and such fees vary from jurisdiction to jurisdiction, a uniform cost estimate for individuals cannot be predicted.

Ms. Cosper also has determined that for each year of the first five years the section, as proposed, is in effect the public benefit anticipated as a result of enforcing the section will be increased flood protection for private and public property and beachfront structures, guaranteed preservation and enhancement of public beach use, recreation and access; natural resource and habitat protection; maintenance of the sediment supply to slow erosion; and establishment and maintenance of beach-related facilities and services.

Comments on the proposed rule may be submitted to Ashley K. Wadick, General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 630, Austin, Texas, 78701-1495, Fax: (512) 463-6311. Ms. Wadick will also provide copies of any General Land Office comments referenced in subsection (b) of this section upon written request.

The new section is proposed under the Natural Resources Code, §61.011(d) (5) and §63.121, which provides the General Land Office with the authority to promulgate rules, respectively, for the certification of local government beach access and use plans and for the identification and protection of critical dune areas.

§§15.11. Certification of Local Government Dune Protection and Beach Access Plans.

(a) Certification of local government plans. The following local governments have submitted plans to the General Land Office which are certified as consistent with state law:

(1) Brazoria County;

(2) Chambers County;

(3) City of Port Aransas;

(4) City of Port Arthur;

(5) Jefferson County,

(6) Matagorda County;

(7) Town of Quintana; and

(8) Village of Jamaica Beach.

(b) Conditional certification of local government plans. The following local governments have submitted plans to the General Land Office which are conditionally certified as consistent with state law.

(1) City of Corpus Christi. This certification is valid for 180 days, during which time the City of Corpus Christi will modify its plan consistent with the General Land Office comments submitted to the City of Corpus Christi (October 14, 1993).

(2) City of Galveston. This certification is valid for 180 days, during which time the City of Galveston will modify its plan consistent with the General Land Office comments submitted to the City of Galveston (October 14, 1993).

(3) Galveston County. This certification is valid for 180 days, during which time Galveston County will modify its plan consistent with the General Land Office comments submitted to Galveston County (October 18, 1993).

(4) Kleberg County. This certification is valid for 180 days, during which time Kleberg County will modify its plan consistent with the General Land Office comments submitted to Kleberg County (October 14, 1993).

(5) Village of Surfside Beach. This certification is valid for 180 days, during which time the Village of Surfside Beach will modify its plan consistent with the General Land Office comments submitted to the Village of Surfside Beach (December 3, 1993)

(c) Implementation of conditionally certified plans. Local governments are required to implement conditionally certified plans consistent with the Natural Resources Code, Chapters 61 and 63, and the General Land Office rules for management of the beach/dune system, §§15.1-15.10 of this title (relating to Management of the Beach/Dune System).

(d) Removal of conditions of certification.

(1) Local governments shall submit their modified plans on or before the expiration of the 180-day time period. The General Land Office shall provide to the pertinent local government a determination as to the sufficiency of the modification(s) within 60 days of receipt of the plan. The General Land Office will remove all conditions of the plan's certification by amending this subsection. Such amendments will list the name of the pertinent local government in subsection (a) of this section, and delete the same from subsection (b) of this section. If the General Land Office determines that modifications of plans are insufficient, the General Land Office shall provide specific exceptions to the modifications. If those portions of the plan to which the General Land Office has noted exceptions can be addressed through further comment, plan revision and review, conditional certification will be reissued pursuant to a General Land Office amendment to this subsection, subject to further plan modification.

(2) In the event that a local government chooses not to modify its plan as requested in the General Land Office comments, the local government shall provide in writing the scientific or legal justification as to why such modifications are not feasible. The justification shall be submitted to the General Land Office on or before the due date of the revised plan. The justification will be reviewed by the General Land Office, and a determination as to the sufficiency of the justification will be provided to the local government within 60 days of receipt by the General Land Office. Local government plans shall continue in effect under conditional certification until the sufficiency of the justification is resolved or this section is amended.

(e) Withdrawal of conditional certification. Conditional certification of a local government plan shall be withdrawn by the General Land Office after the 180-day time period if the pertinent local government does not submit to the General Land Office either a formally adopted plan which has been modified consistent with General Land Office comments or the written scientific or legal justification as to why such modification is not feasible. In any event, withdrawal of conditional certification shall only occur after the General Land Office adopts an amendment to this subsection withdraw-

ing conditional certification, with accompanying specific reasons, and the General Land Office has given the pertinent local government written notice of the withdrawal of the conditional certification.

(f) This section does not affect the General Land Office interim certification issued to Nueces County and Cameron County on October 9, 1992 (31 TAC, Subchapter E relating to Interim Approval of Local Government Dune Protection and Beach Access Plans) which continues in effect.

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 May 9, 1994.

TRD-9440558 Garry Mauro
Commissioner
General Land Office

Earliest possible date of adoption: June 13, 1994

For further information, please call: (512) 305-9129

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Part X. Texas Water Development Board

Chapter 379. Advisory Committees

• 31 TAC §379.4

The Texas Water Development Board (board) proposes an amendment to §379. 4, concerning Advisory Committees. The amendment will expand the authority of the Economically Distressed Areas Program (EDAP) Innovative and Alternative Technology Committee to allow this committee to review and report on non-EDAP projects. This broadening of committee authority will significantly increase the contribution that can be made in advancing innovative and alternative technology for cost effective projects.

Pamela Ansboury, director, Finance, has determined that for each year of the first five years 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. Ansboury 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 the review of additional innovative and alternative technologies for public use. There will be no effect on small businesses. There is no anticipated economic cost to individuals. The board staff has determined that the rule will have no direct impact on local economics

Comments on the proposed sections may be submitted to C.R Miertschin, Texas Water Development Board, Engineering Division, P.O. Box 13231, Austin, Texas 78711-3231, (512) 463-7853.

The amendment is proposed under the authority of the Texas Water Code, §6. 101, which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the code and laws of the state and Texas Civil Statutes, Article 6252-33, which require the board to adopt rules for advisory committees to the board.

There are no statutory provisions affected by the proposed amendment.

§379.4. [Economically Distressed Areas Program] Innovative and Alternative Technology Committee.

(a) Purpose and Task. The committee will provide guidance to the executive administrator on the design, construction and monitoring of innovative and alternative technology projects. The committee will provide information to evaluate and, as appropriate, recommend funding of eligible projects to assure optimum use of state and federal funds.

(b) Composition. The committee shall be composed of three representatives from the Texas Natural Resources conservation Commission's staff, three from the United States Environmental Protection Agency's staff and one representative from the Governor's On-site Wastewater Treatment Research Council. The executive administrator may designate other committee members.

(c) Manner of Reporting. The members will review and evaluate applications received by the board for financial assistance, and other proposals, to design, construct, demonstrate or [and] evaluate innovative and alternative technology projects [for the colonias] and shall report its recommendation to the executive administrator.

(d) Expiration Date. This committee is automatically abolished on September 1, 1997, unless the board amends this subsection to establish a different date.

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 May 5, 1994

TRD-9440544 Craig D. Pederson
Executive Administrator
Texas Water Development Board

Proposed date of adoption: June 16, 1994

For further information, please call: (512) 463-7981

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 81. Administrative Provisions

General

• 37 TAC §81.31

The Texas Youth Commission (TYC) proposes new section §81.31, concerning TYC involvement in-family in reducing recidivism advisory committee. The new rule will outline procedures for TYC participation in the Role of the Family in Reducing Recidivism Advisory Committee as established under Government Code, §501.011.

John Franks, director, Fiscal Affairs, has determined that for the first five years 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. Franks 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 more efficient study of programs in TYC juvenile facilities. 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 Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The new section is proposed under and implements the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

§81.31 Communications

(a) Policy. The Texas Youth Commission (TYC) will participate in and support the Role of the Family in Reducing Recidivism Advisory Committee established under Government Code, §501.011. The committee will meet to study and make recommendations on:

(1) visitation policies in Texas Youth Commission juvenile facilities;

(2) the availability and effectiveness of rehabilitation programs in TYC juvenile facilities,

(3) the efficiency of educational and vocational programs in TYC juvenile facilities; and

(4) other issues of special interest to families with a relative detained in TYC juvenile facilities.

(b) Rules.

(1) Procedure.

(A) The advisory committee will meet on a quarterly basis

(B) The committee will consist of 11 members The governor, lieutenant governor and speaker of the house of representatives will each appoint two members The remaining five members will represent TDCJ-Institutions, TYC, TDCJ-Pardons and Paroles, Attorney General's Office and TYC-Community Services Division.

(C) The agenda will be established by the chairperson as appointed by the governor

(D) Minutes of each meeting will be taken by a person designated by the committee

(E) Results of the studies conducted by the committee will be given to the legislature in the form of recommendations It will not be required that the recommendations be implemented.

(F) The committee findings will be made available to the governor, lieutenant governor and speaker of the house through biennial reports.

(2) TYC Duties. TYC assigned staff will

(A) attend the quarterly committee meetings,

(B) actively participate in committee activities;

(C) attempt to provide available resources to the committee;

(D) consider all recommendations made by the committee; and

(E) report committee findings to the agency through the agency's management team and or executive staff.

(3) Evaluation.

(A) The committee's work, usefulness and cost to the agency will be evaluated on an annual basis. The evaluation will be completed by June 15 and will be conducted by the agency's management team and/or executive staff

(B) The agency will report evaluation findings to the Legislative Budget Board.

(4) Abolishment. The committee will be automatically abolished on September 1, 1997, unless the Texas Youth Commission board affirmatively votes to continue the committee in existence.

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 May 5, 1994.

TRD-9440377 Steve Robinson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: June 13, 1994

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

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Part VII. Texas Commission on Law Enforcement Officer Standards and Education

Chapter 211. Administration Division

• 37 TAC §211.66, §211.67

(Editor's note The text of the following sections proposed for repeal will not be published The sections may be examined in the offices of the Texas Commission on Law Enforcement Officer Standards and Education or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin)

The Texas Commission on Law Enforcement Officer Standards and Education (commission) proposes the repeal of §211.66, concerning Agreement Training and §211.67, concerning Academy Advisory Boards. The proposed new §215.66, concerning Agreement Training, will replace §211.66; and the proposed new §215.67, Training Provider Advisory Boards, will replace §211.67.

Truman Lewis, assistant director to the commission, has determined that for the first five-year period the proposed repeals are in effect, there will be no major fiscal implications for state or local government as a result of enforcing or administering these repeals. No increase or decrease in costs nor increase or loss of revenue to state or local government is expected as a result of enforcing or administering these repeals

Mr Lewis also has determined that for each year of the first five years the proposed repeal is in effect, the citizens of Texas will derive a benefit as consistent guidelines are established for both licensed academies and agreement training providers. There will be no effect on small businesses nor anticipated economic costs to persons who comply with these repeals as proposed.

Comments on the proposal may be submitted to Truman Lewis, Assistant Director, Texas Commission on Law Enforcement Officer Standards and Education, 1033 La Posada, Suite 240, Austin, Texas 78752.

The repeals are proposed under the Texas Government Code, Chapter 415, §415.010(1), which provides the commission with authority to pass rules for the administration of this chapter; and under the Texas Government Code, Chapters 2001 and 2002, which taken together establish the procedures for the rule making requirements for the commission.

§211.66. Agreement Training.

§211.67. Academy Advisory Boards.

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 May 4, 1994

TRD-9440315 Truman Lewis
Assistant Director
Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption. June 13, 1994

For further information, please call: (512) 450-0188

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• 37 TAC §211.70

(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 Commission on Law Enforcement Officer Standards and Education or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin)

The Texas Commission on Law Enforcement Officer Standards and Education (commission) proposes the repeal of §211.70, concerning the minimum training standards for reserve law enforcement officers. The proposed new §219.70, concerning Minimum Training Standards for Reserves, will replace §211.70.

Truman Lewis, assistant director to the commission, has determined that for the first five-year period the proposed repeal is in effect, there will be no major fiscal implications for state or local government as a result of enforcing or administering this repeal. No increase or decrease in costs nor increase or loss of revenue to state or local government is expected as a result of enforcing or administering this repeal.

Mr. Lewis also has determined that for each year of the first five years the proposed repeal is in effect, the citizens of Texas will derive a benefit of a better trained law enforcement community when reserves are provided the opportunity to complete the required mandated training course through alternative methods. There will be no effect

on small businesses nor anticipated economic costs to persons who comply with this repeal as proposed.

Comments on the proposal may be submitted to Truman Lewis, Assistant Director, Texas Commission on Law Enforcement Officer Standards and Education, 1033 La Posada, Suite 240, Austin, Texas 78752.

The repeal is proposed under the Texas Government Code, Chapter 415, §415 010(1) which provides the commission with authority to pass rules for the administration of this Chapter, §415 010(9) which provides the commission with authority to establish minimum standards for licensing, §415.031(a) which requires the commission to establish and maintain training programs, and under the Texas Government Code, Chapters 2001 and 2002, which taken together establish the procedures for the rule making requirements for the commission

§211 70 Minimum Training Standards for Reserves

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 May 4, 1994

TRD-9440317 Truman Lewis
Assistant Director
Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption June 13, 1994

For further information, please call (512) 450-0188

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• 37 TAC §211.75

(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 Commission on Law Enforcement Officer Standards and Education or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin)

The Texas Commission on Law Enforcement Officer Standards and Education (commission) proposes the repeal of §211.75, concerning Advisory Boards The proposed new §215 67, concering Training Provider Advisory Boards, will replace §211 75

Truman Lewis, assistant director to the commission, has determined that for the first five-year period the proposed repeal is in effect, there will be no major fiscal implications for state or local government as a result of enforcing or administering this repeal No increase or decrease in costs nor increase or loss of revenue to state or local government is expected as a result of enforcing or administering this repeal

Mr Lewis also has determined that for each year of the first five years the proposed repeal is in effect, the citizens of Texas will derive a benefit as the same guidelines are being established for all training providers. There will be no effect on small businesses nor anticipated economic costs to persons who comply with this repeal as proposed.

Comments on the proposal may be submitted to Truman Lewis, Assistant Director, Texas Commission on Law Enforcement Officer Standards and Education, 1033 La Posada, Suite 240, Austin, Texas 78752.

The repeal is proposed under the Texas Government Code, Chapter 415, §415. 010(1), which provides the Commission with authority to pass rules for the administration of Chapter 415; and under the Texas Government Code, Chapters 2001 and 2002, which taken together establish the procedures for the rulemaking requirements for the commission

§211 75 Advisory Boards.

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 May 4, 1994.

TRD-9440316 Truman Lewis
Assistant Director
Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption June 13, 1994

For further information, please call (512) 450-0188

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• 37 TAC §211.100

(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 Commission on Law Enforcement Officer Standards and Education or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin)

The Texas Commission on Law Enforcement Officer Standards and Education (commission) proposes the repeal of §211.100, concerning the in-service training requirements for agencies, that appoint peace officers or reserves The proposed new §221 100, concerning In-Service Training Requirements for Agencies that Appoint Peace Officers, Reserve Law Enforcement Officers, County Jailers, and Public Security Officers will replace §211 100 in order to place the rule in compliance with applicable State law

Truman Lewis, assistant director to the commission, has determined that for the first five-year period the proposed repeal is in effect, there will be no major fiscal implications for state or local government as a result of enforcing or administering this repeal No increase or decrease in costs nor increase or loss of revenue to state or local government is expected as a result of enforcing or administering this repeal

Mr Lewis also has determined that for each year of the first five years the proposed repeal is in effect, the citizens of Texas will derive a benefit when law enforcement practitioners are adequately trained in contemporary issues that affect all the various segments of society. There will be no effect on small businesses nor anticipated economic costs to persons who comply with this repeal as proposed.

Comments on the proposal may be submitted to Truman Lewis, Assistant Director, Texas Commission on Law Enforcement Officer Standards and Education, 1033 La Posada, Suite 240, Austin, Texas 78752.

The repeal is proposed under the Texas Government Code, Chapter 415, §415 010(1), which provides the Commission with authority to pass rules for the administration of this Chapter; and §415.034(a) and (b), which require the commission to recognize, prepare, or administer continuing education programs, and to require law enforcement agencies to provide such training

§211.100. In-service Training Requirements for Agencies that Appoint Peace Officers or Reserves.

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 May 4, 1994.

TRD-9440320 Truman Lewis
Assistant Director
Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption June 13, 1994

For further information, please call. (512) 450-0188

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Chapter 215. Training and Educational Providers and related matters Division

• 37 TAC §215.66

The Texas Commission on Law Enforcement Officer Standards and Education (commission) proposes new §215 66, concerning the guidelines for the delivery of law enforcement training by contract providers This new rule will replace §211.66

Truman Lewis, assistant director to the commission, has determined that for the first five-year period the proposed new section is in effect, there will be no major fiscal implications for state or local government as a result of enforcing or administering this section. No increase or decrease in costs nor increase or loss of revenue to state or local government is expected as a result of enforcing or administering this section

Mr. Lewis also has determined that for each year of the first five years this section is in effect, the citizens of Texas will derive a benefit as it is necessary to provide guidelines consistent with those applicable to licensed academies in order to maintain quality in the

commission's training effort. There will be no effect on small businesses nor anticipated economic costs to persons who comply with this section as proposed.

Comments on the proposal may be submitted to Truman Lewis, Assistant Director, Texas Commission on Law Enforcement Officer Standards and Education, 1033 La Posada, Suite 240, Austin, Texas 78752.

The new section is proposed under Texas Government Code, Chapter 415, §415.010(1), which provides the commission with the authority to pass rules for the administration of this chapter; §415.010(7) which provides for contracts; §415.010(9) which provides the commission with authority to establish minimum standards; and §415.031(a) which requires the commission to establish and maintain training programs; and under the Texas Government Code, Chapters 2001 and 2002, which taken together establish the procedures for the rulemaking requirements for the commission.

§215.66. Agreement Training.

(a) The commission may, in the discretion of the executive director, enter into an agreement with a law enforcement agency, a law enforcement association, or alternative delivery trainer to conduct training for license holders.

(b) Any such agreement is limited to those terms expressly included in the agreement or incorporated by reference and must be dated and

(1) in writing on a commission form,

(2) signed by a commission staff member,

(3) signed by the chief administrator or head of the sponsoring organization; and

(4) signed by the training coordinator responsible for the administration of that training.

(c) An agreement may approve a specific course(s) and the number of times it will be offered. These contracts are perpetual but may be terminated for cause within ten days by written notice on the part of either party to the contract An agreement may incorporate by reference a law, rule, or any other document. However, any waiver, exception, or deletion must be express.

(d) The commission may terminate an agreement if no training is conducted within each calendar year unless the chief administrator has petitioned the commission for a waiver, and the waiver has been granted. The commission may suspend an agreement, until compliance, for any violation of its terms or of any commission rule or law Any party may terminate it upon written notice to all other parties, received by either the executive director, the coordinator, or any other named person or office

(e) The agreeing agency, association, or alternative delivery trainer must

(1) provide a comprehensive needs assessment to the Commission justifying the need for an agreement. The needs assessment must include as a minimum.

(A) the names of the licensed academies located in the council of governments or regional planning commission area of the requesting party;

(B) a description of the existing law enforcement training programs in the area;

(C) what specific training need(s) are to be addressed by the proposed agreement contract.

(D) the number and types of courses that will be offered during the first quarter of the executed contract;

(2) appoint and maintain an advisory board as required by law and rule,

(3) follow the current requirements set by its advisory board;

(4) select a training facility that meets all academy inspection requirements, if applicable,

(5) select any instructional material, equipment, or resources necessary for the course,

(6) forward for approval, upon commission request, at least one copy of the learning objectives of each course covered by the agreement;

(7) appoint and maintain the appointment of a qualified training coordinator;

(8) insure the training coordinator discharges any responsibilities required by law, rule, or agreement,

(9) select and monitor the performance of qualified instructors,

(10) admit any license holder subject to any reasonable limitations or preferences required by the advisory board,

(11) insure effective training and distribute learning objectives to each student before the course is taught,

(12) teach or insure that each course is taught in accordance with the instructor guide and/or learning objectives provided or approved by the commission,

(13) keep records of all agreement training for at least five years, and

(14) proctor any required examination and insure fair, honest results

(f) Unless expressly waived by the agreement

(1) an advisory board for agreement training must discharge the responsibilities of such boards as required by law or rule, and

(2) a training coordinator for an agreement must discharge the same responsibilities as an academy training coordinator and must hold a valid instructor license

(g) By entering into any such agreement, the commission preapproves specific training which will be fully credited by the commission to each student as basic or inservice training or to the agency as inservice training provided by that agency, unless:

(1) the training was not conducted in compliance with the agreement; or

(2) the advisory board, training coordinator, or instructor substantially failed to discharge any responsibility required by rule.

(h) Once the agreement has been executed, the agreement trainer may be evaluated periodically by the commission as determined by the commission The evaluation may be accomplished by commission staff or by training professionals selected and trained by commission staff

(i) The effective date of this section is September 1, 1994

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 May 4, 1994

TRD-9440313 Truman Lewis
Assistant Director
Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption June 13, 1994

For further information, please call (512) 450-0188

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• 37 TAC §215.67

The Texas Commission on Law Enforcement Officer Standards and Education (commission) proposes new §215 67, concerning Training Provider Advisory Boards This new rule will amend and replace §211 67, concerning Academy Advisory Boards, and §211 75, concerning Advisory Boards

Truman Lewis, assistant director to the commission, has determined that for the first five-year period the proposed new section is in effect, there will be no major fiscal implications for state or local government as a result of enforcing or administering this section No increase or decrease in costs nor increase or loss of revenue to state or local government is expected as a result of enforcing or administering this section

Mr. Lewis also has determined that for each year of the first five years this section is in effect, the citizens of Texas will derive a benefit as it will establish consistent guidelines for both licensed academies and agreement training providers. There will be no effect on small businesses nor anticipated economic costs to persons who comply with this section as proposed.

Comments on the proposal may be submitted to Truman Lewis, Assistant Director, Texas Commission on Law Enforcement Officer Standards and Education, 1033 La Posada, Suite 240, Austin, Texas 78752.

The new section is proposed under Texas Government Code, Chapter 415, §§415.010(1), 415.031(a), and 415.031(c), which provide the commission with the authority to pass rules for the administration of Chapter 415; and under the Texas Government Code, Chapters 2001 and 2002, which taken together establish the procedures for the rule making requirements for the commission

§215.67. Training Provider Advisory Boards.

(a) Each licensed academy and each agreement training provider approved by the commission must establish and maintain an advisory board as required by law. To be established, this board must have at least three members who are appointed by the sponsoring organization. To be maintained, the active, appointed membership of the board must not fall below a quorum for more than 30 days.

(b) The board may have members who are law enforcement personnel. However one-third of the members must be public members having the same qualifications, found in the Government Code, §§415-005, as any commissioner who is required by law to be a member of the general public. The chief administrator or head of the sponsoring organization and the designated training coordinator may only be ex-officio, non-voting members.

(c) The board must elect a chairman and may elect other officers and set its own rules of procedure. A quorum must be present in order to conduct business.

(d) A board must meet at least once each calendar year. More frequent meetings may be called by its chairman, the training coordinator, or the person who appoints the board.

(e) A board will keep written minutes of all meetings. These minutes must be retained for at least five years and a copy forwarded to the commission upon board approval.

(f) Board members will be appointed by the following authority.

(1) for an agency academy, by the chief administrator as defined in §211.1 of this title (relating to definitions);

(2) for a college academy, by the dean or other person who appoints the training coordinator; or

(3) for a regional academy, by the head of the council of governments or other sponsoring entity holding the academy license from names submitted by chief administrators from that area; or

(4) for an agreement training provider, by the chief administrator.

(g) A member may be removed by the appointing authority.

(h) A board is generally responsible for advising on the development of curricula and any other related duty that may be required by the commission

(i) The board must, as specific duties:

(1) effectively discharge its responsibilities and otherwise comply with commission rules;

(2) advise on the need to study, evaluate, and identify specific training needs;

(3) advise on the determination of the types, frequency, and location of course to be offered, and

(4) advise on the establishment of the standards for admission, prerequisites, minimum and maximum class size, attendance, and retention.

(j) A board must advise on the establishment of admission standards, and determine the order of preference between employees or prospective appointees of the sponsoring organization and other persons, if any. No person may be admitted to a training course without meeting the admission standards.

(k) A board may, when discharging its responsibilities, request that a report be made or some other information be provided to them by a training or course coordinator.

(l) The effective date of this section is September 1, 1994.

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 May 4, 1994

TRD-9440314 Truman Lewis
Assistant Director
Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption. June 13, 1994

For further information, please call (512) 450-0188

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Chapter 219. Pre-licensing and Reactivation Courses, Tests, and Endorsement of Eligibility Division

• 37 TAC §219.70

The Texas Commission on Law Enforcement Officer Standards and Education (commission) proposes new §219.70, concerning minimum training standards for reserves, this new rule will replace §211.70, and will provide reserves with convenient means of acquiring mandated training through alternative methods

Truman Lewis, assistant director to the commission, has determined that for the first five-year period the proposed new section is in effect, there will be fiscal implications for state and local units of government as a result of enforcing or administering this section The total cost for fiscal years 1995-1999 is anticipated to be $387,840 00

Mr Lewis also has determined that for each year of the first five years this section is in effect, the public benefit anticipated as a result of enforcing this section will be better trained and more knowledgeable reserves There will be no effect on small businesses The anticipated economic cost to individuals who are required to comply with this section as proposed will vary from a low 0 to a high of $900 per student, depending on the cost to student charged by each provider

Comments on the proposal may be submitted to Truman Lewis, Assistant Director, Texas Commission on Law Enforcement Officer Standards and Education, 1033 La Posada, Suite 240, Austin, Texas 78752

The new section is proposed under Texas Government Code, Chapter 415, §415 010(1), which provides the commission with authority to pass rules for the administration of this chapter, §415 010(9) which provides the commission with the authority to establish minimum standards for licensing, and §415 031(a) which requires the commission to establish and maintain training programs, and under the Texas Government Code, Chapters 2001 and 2002, which taken together establish the procedures for the rule making requirements for the commission

§219 70 Minimum Training Standards for Reserves

(a) The minimum training standards for permanent licensing for a reserve on and after September 1, 1994, shall be

(1) completion of the 560-hour basic peace officer course,

(2) successful completion of the college level law enforcement courses, which are known as the criminal justice transfer curriculum with law enforcement emphasis and the Texas peace officer sequence,

(3) completion of any specifically required supplementary or remedial training, or

(4) credit for sufficient previous training which is equivalent to the current basic peace officer course, including specifically, completion of one each of the separate reserve component courses which together meet or exceed the learning objectives of the basic peace officer course

(b) On and after September 1, 1994, the commission shall issue one of the following licenses to an applicant who meets all other reserve licensing standards, including the appropriate state examination:

(1) a permanent peace officer license to a reserve applicant who meets the full peace officer training standard and who has passed the peace officer exam; or

(2) a conditional reserve license to an applicant who has passed the reserve exam and who

(A) under the professional training path, has received credit for at least the 228-hour basic reserve course, or

(B) under the academic path, has successfully completed at least the college level law enforcement courses which are known as the criminal justice transfer curriculum with law enforcement emphasis and the course, known as Texas peace officer skills, from the Texas peace officer sequence

(c) A conditional reserve license expires if the holder has not received credit for the following training, or successfully completed the following courses, under each respective path, within the specified time from the conditional license date

(1) under the professional training path:

(A) the 190-hour intermediate reserve course within two years,

(B) both the 190-hour intermediate reserve and the 142-hour advanced reserve courses within four years, and

(2) under the academic path

(A) the Texas peace officer laws course within two years; or

(B) both the Texas peace officer laws and procedures courses within four years.

(d) In any event, a conditional reserve license will expire after four years if the holder has not passed the peace officer exam and, if it has expired after four years, such license will never be reinstated or reissued. If it has expired after two years, the commission may reinstate an expired conditional reserve license for the balance of the original four-year period, but only if the holder has been reported to the commission as having successfully completed either the 190-hour intermediate reserve course or the Texas peace officer laws course, under each respective path.

(e) The commission may, through its executive director, review documentation of previous training submitted by a potential license applicant or an appointing agency and may then either

(1) accept that training as equivalent to any training required under the current commission standards, or

(2) require specific supplementary or remedial training necessary to equate the previous training to those current standards

(f) However, if the previous training is out-of-state, the applicant may challenge the state license exam referred to in §211.74 of this title (relating to State Examinations) once. If challenged and passed, the license will be issued. If failed, the applicant may not be retested until successful completion of a supplementary peace officer training course in addition to any out-of-state training which may have been credited

(g) Each reserve course, basic, intermediate, and advanced, shall cover the subjects and be taught in accordance with the current instructor guides provided by the commission

(h) The basic reserve course shall consist of 228 hours of instruction, including the following topics and hours: Introduction and Orientation (2 hours), U.S. & Texas Constitutions and Bill of Rights (10 hours), Penal Code (40 hours), Use of Force-Law (8 hours), Use of Force Concepts (16 hours), Strategies of Defense-Mechanics of Arrest (40 hours), Strategies of Defense-Firearms (40 hours), Traffic Law (24 hours), Code of Criminal Procedure (16 hours), Emergency Medical Assistance (16 hours), Professionalism and Ethics (8 hours), Juvenile Issues-Texas Family Code (8 hours)

(i) The intermediate reserve course shall consist of 190 hours of instruction, including the following subjects and topics: Arrest, Search & Seizure (24 hours), Traffic (48 hours), Patrol Procedures (40 hours), Civil Process and Liability (12 hours), Interpersonal Communications/Report Writing (24 hours), Field Notetaking (4 hours), Texas Alcoholic Beverage Code (4 hours), Emergency Communications (12 hours), Family Violence and Related Assaultive Offenses (16 hours), Recognizing & Interacting with Persons with Mental Illness & Mental Retardation (6 hours)

(j) The advanced reserve course shall consist of 142 hours of instruction, including the following topics and hours: Drugs (8 hours), Multiculturalism and Human Relations (12 hours), Victims of Crime (8 hours), Crowd Management (2 hours), Hazardous Materials Awareness (6 hours), Fitness and Wellness (6 hours), Criminal Investigation (45 hours), Professional Police Driving (32 hours), History of Policing (3 hours), Criminal Justice System (2 hours), Stress Management for Peace Officers (8 hours), Problem Solving and Critical Thinking (4 hours), Professional Policing Approaches (6 hours)

(k) On and after January 1, 1989, an applicant for a conditional reserve license, who has met the minimum training standards for reserves, must pass the required state licensing examination before two years has elapsed after meeting those standards. If not, training or courses that would otherwise meet the minimum standards of this section must be supplemented by completion of the supplementary peace officer training course. The executive director may, in his discretion, determine the exact date of completion or credit in unusual or questionable cases.

(l) The effective date of this section is September 1, 1994.

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 May 4, 1994.

TRD-9440318 Truman Lewis
Assistant Director
Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: June 13, 1994

For further information, please call: (512) 450-0188

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Chapter 221. Proficiency Certificates and other Post-basic Licenses Division

• 37 TAC §221.100

The Texas Commission on Law Enforcement Officer Standards and Education (commission) proposes new §221.100, concerning the in-service training requirements for agencies that appoint peace officers, reserve law enforcement officers, county jailers, and public security officers. this new rule will replace §211.100, which did not address all provisions of the amended Chapter 415, Government Code.

Truman Lewis, assistant director to the commission, has determined that for the first five-year period the proposed new section is in effect, there will be fiscal implications for state

and local units of government as a result of enforcing or administering this section The total cost for fiscal year 1995 is anticipated to be $378,931 80

Mr Lewis also has determined that for each year of the first five years this section is in effect, the citizens of Texas will derive a benefit when law enforcement practitioners are adequately trained in contemporary issues that affect all the various segments of society There will be no effect on small businesses nor anticipated economic costs to persons who comply with this section as proposed

Comments on the proposal may be submitted to Truman Lewis, Assistant Director, Texas Commission on Law Enforcement Officer Standards and Education, 1033 La Posada, Suite 240, Austin, Texas 78752

The new section is proposed under Texas Government Code, Chapter 415, §415 010(1), which provides the Commission with authority to pass rules for the administration of Chapter 415, §415 034(a) and (b), which requires the Commission to recognize, prepare, or administer continuing education programs, and to require law enforcement agencies to provide such training, and under Texas Government Code, Chapters 2001 and 2002, which taken together establish the procedures for the rulemaking requirements for the Commission

§221 100 In-service Training Requirements for Agencies that Appoint Peace Officers Reserve Law Enforcement Officers, County Jailers, and Public Security Officers

(a) An agency that appoints or employs county jailers, or public security officers may provide, as defined in subsection (f) of this section, and during each 24-month period, training and instruction in civil rights, racial sensitivity, and cultural diversity

(b) An agency that appoints peace officers or reserve law enforcement officers shall provide, as defined in subsection (f) of this section, the in-service training program required by this section The program shall consist of one or more in-service courses, that total at least 40 hours during each 24-month period and must

(1) be approved by the commission, and

(2) include education and training in

(A) civil rights, racial sensitivity, and cultural diversity, and

(B) the recognition of cases that involve the following,

(i) child abuse,

(ii) child neglect,

(iii) family violence, and

(iv) sexual assault

(c) An officer appointed to the officer's first supervisory position on or after September 1, 1993 must receive in-service training on supervision as part of a course or courses provided under subsection (b) of this section during the 24-month period after the date of that appointment

(d) All constables and their deputies, as a part of their 40 hour in-service training requirement, shall complete 20 hours of instruction in civil process A constable may, by written certification to the commission, exempt from the civil process training those deputies who do not serve process The first 24-month period shall commence for each peace officer on that officer's date of appointment or September 1, 1993, whichever is later

(e) An agency may voluntarily require of or provide to, any peace officer or other person employed or appointed by that agency, any additional training that exceeds this required in-service program

(f) An agency provides a program or course, for purposes of this section if

(1) the agency orders or requires attendance and successful completion as a condition of continued employment or appointment, and the agency pays all the cost of attendance and provides direct or compensatory time off for attendance, or

(2) the agency requires attendance and successful completion as a condition of continued commissioning, and the agency has issued the commission as provided by law to an officer who is appointed by another entity

(g) An in-service training program shall consist of one or more separate in-service courses, each of which shall have a final examination or skills test, as appropriate, which must be passed before course completion credit will be awarded Any such course shall be reasonably related to the current or prospective duties of each person who attends, and at least one such course provided by each agency should include instruction in recent changes in criminal or civil law

(h) Unless otherwise provided by law, rule, or agreement, an agency or advisory board responsible for any in-service course shall, within its discretion

(1) govern the conduct of that course,

(2) control the length, the number of times taught, and the specific content of any course, and

(3) assign any or all officers to attend any particular course

(i) The effective date of this section is September 1, 1994

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 May 4, 1994.

TRD-9440319 Truman Lewis
Assistant Director
Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: June 13, 1994

For further information, please call: (512) 450-0188

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 15. Medicaid Eligibility

Subchapter F. Budget and Payment Plans

• 40 TAC §15.502, §15.503

The Texas Department of Human Services (DHS) proposes amendments to §15 502 and §15.503, concerning deductions of incurred medical expenses and protection of spousal income and resources in its Medicaid Eligibility chapter The purpose of the amendment to §15 502(b) is to eliminate oxygen as an allowable incurred medical expense. Section 15 502(d) includes a deduction from applied income if a client intends to return home within six months of admission to a facility and needs to meet expenses in maintaining the home Section 15 502(e) clarifies that the separate deduction for maintenance of the home is not allowable in companion cases Section 15 502(f) includes guardianship fees as a deduction from an institutionalized client's applied income Section 15 503(c) eliminates unlimited burial funds as an exclusion in determining the resource assessment and initial eligibility under the spousal impoverishment policy Section 15 503(i) clarifies that unlimited burial funds can not be excluded as a resource

Burton F Raiford, commissioner, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Mr Raiford also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be that allowable expense deductions will be consistent with institutional policy, more clients will be able to maintain their homes during short periods of institutionalization, clients who need guardians will be able to pay for the guardian's services, and agency rules

and federal policy regarding spousal income and resources will be consistent. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections

Questions about the content of the proposal may be directed to Judy Coker at (512) 450-3227 in DHS's Long-Term Care Division. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-111, Texas Department of Human Services W-402, P O Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds

The amendments implement the Human Resources Code §§22 001-22 024 and §§32 001-32 042

§15 502 Deduction of Incurred Medical Expenses

(a) (No change)

(b) Allowable deductions include but are not limited to

[(1) oxygen,]

(1)[(2)] parenteral fluids,

(2)[(3)] routine dental services, including dentures, for NF clients, and emergency dental services not covered by the Emergency Dental Services System,

(3)[(4)] medically necessary prosthetic devices,

(4)[(5)] medically necessary walking aids and special shoes/support devices for feet, and

(5)[(6)] physicals

(c) (No change)

(d) The department allows a deduction from applied income if a client intends to return home within six months of admission to a nursing facility and needs to meet expenses in maintaining the home. The deduction is based on the client's mortgage or rent payment and average utility charges, excluding telephone. The amount deducted cannot exceed the Supplemental Security Income limit, not including the $20 disregard. The first month of the six-month period is the month of admission to the facility.

(e) A separate deduction for maintenance of the home is not allowable in companion cases. The spousal allowance provides for home maintenance in those cases. The home maintenance deduction is allowable if:

(1) the client notifies the eligibility specialist that he expects to be in a nursing facility for at least 30 consecutive days but no more than six months;

(2) the eligibility specialist receives a practitioner's certification within 90 days of admission. The practitioner certifies that the client is likely to leave the facility within six months of admission; and

(3) the eligibility specialist receives evidence within 90 days of admission that the client needs to maintain and provide for the expenses of the home to which he may return.

(f) The department allows a deduction from applied income for guardian fees. The deduction is the amount set by the court as the guardian/fiduciary fee.

§15.503. Protection of Spousal Income and Resources.

(a)-(b) (No change)

(c) The department must complete an assessment of a couple's resources upon request of either spouse or either spouse's representative when one spouse is institutionalized with the intention of remaining for 30 consecutive days Intent to remain is based on the statement of either spouse. Hospital stays and therapeutic home visits are not considered as breaks in the 30-consecutive-day period.

(1) (No change)

(2) Normal resource exclusions apply for assessment of resources and at initial application but not at annual review, except that the following are excluded regardless of value

[(A) separately identifiable burial funds,]

(A)[(B)] home,

(B)[(C)] household goods, and

(C)[(D)] one automobile.

(3)-(5) (No change.)

(d)-(h) (No change)

(i) Effective August 1, 1994, unlimited burial funds can no longer be excluded. The regular policy concerning burial funds, as specified in §15. 442(e) of this title (relating to Personal Property), including $1,500 maximum per spouse, as reduced by the amount of excluded life insurance or irrevocable burial arrangements, funds separately identifiable and styled as burial funds, or tampering applies. A client may designate multiple resources as burial funds but the maximum excludable cannot exceed $1500 per spouse.

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 May 6, 1994.

TRD-9440519 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: August 1, 1994

For further information, please call (512) 450-3765

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Chapter 19. Long Term Care Nursing Facility Requirement for Licensure and Medicaid Certification

Subchapter C. Resident Rights

• 40 TAC §19.217

The Texas Department of Human Services (DHS) proposes amendments to §§19 217, 19.501, 19.502, 19.601, 19 602, 19 802, 19.1001, 19.1005, 19.1201, 19.1308, 19.1501, 19.1922, 19.1928, and 19.1929, concerning care of children in nursing facilities. As a result of a directive by the Senate Health and Human Services Committee of the Texas Legislature, DHS is proposing these amendments, which are intended to address concerns about the care of children in nursing facilities.

The amendments include requiring facilities to follow the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) guidelines for children, to coordinate services with the Early Childhood Intervention Program (ECI), to coordinate the use of the Individual Educational Plan (IEP) by both the schools and the nursing facility, to adopt additional safety measures and ensure appropriate environment; to use consultative pediatric nursing and medical care; to train staff in pediatric issues; to adopt pediatric policies and procedures; and to use assessments, especially developmental, that are pediatric instead of adult.

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposed amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments

Mr. Raiford also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be improved care of children in nursing facilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the

proposed amendments

Questions about the content of the proposal may be directed to Susan Syler at (512) 450-3111 in DHS's Institutional Policy Section Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-099, Texas Department of Human Services W-402, P.O Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds

The amendment implements the Human Resources Code, §§22 001-22 024, 32 001-32 003, and 32 021-32 042

§19 217 Directives and Durable Powers of Attorney for Health Care.

(a)-(b) (No change)

(c) Nursing facilities that provide services to children must ensure that:

(1) prior to admission to the facility, the primary physician, who has been providing care to the child, has discussed advance directives with the family or guardian and documented this discussion; and

(2) the decision made by the family or guardian regarding advance directives is addressed in the comprehensive care plan (see §19.602 of this title (relating to Comprehensive Care Plans)).

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 May 6, 1994

TRD-9440518 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption July 1, 1994

For further information, please call (512) 450-3765

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Subchapter F. Quality of Life

• 40 TAC §19.501, §19.502

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds

The amendments implement the Human Resources Code, §§22 001-22 024, 32 001-32 003, and 32 021-32 042

§19 501. Quality of Life. A facility must care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life. If children are admitted to a facility, care must be provided to meet their unique medical and developmental needs

(1)-(5) (No change)

(6) Accommodations for children. Pediatric residents should be matched with roommates of similar age and developmental levels, when feasible.

§19 502 Activities

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

(e) Toys for pediatric residents must be appropriate for the size, age, and developmental stage of the residents.

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 May 6, 1994

TRD-9440517 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption July 1, 1994

For further information, please call (512) 450-3765

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Subchapter G. Resident Assessment

• 40 TAC §19.601, §19.602

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds

The amendments implement the Human Resources Code, §§22 001-22 024, 32 001-32 003, and 32 021-32 042

§19 601 Resident Assessment. The facility must conduct initially and periodically a comprehensive accurate, standardized, reproducible assessment of each resident's functional capacity

(1)-(3) (No change)

(4) Pediatric resident assessment.

(A) The comprehensive assessment for children must include a record of immunizations, blood screening for lead, and developmental assessment. The local school district's developmental assessment may be used if available. See §19.2013 of this title (relating to Educational Requirements for Persons Under 22).

(B) Facility staff should assess the child's functional status in relation to pediatric developmental levels, rather than adult developmental levels.

(C) The facility staff must ensure pediatric residents receive services in accordance with the guidelines established by the Texas Department of Health's Early Periodic Screening, Diagnosis, and Treatment (EPSDT) Division. For Medicaid-eligible pediatric residents between the ages of six months and six years, screening for lead poisoning must be done in accordance with EPSDT guidelines.

(D) The facility must coordinate educational opportunities for pediatric residents from birth to age three with the local office of Early Childhood Intervention (ECI).

(E) The facility must coordinate educational opportunities for pediatric residents age three to 22 years with the local school district. See §19.2013 of this title (relating to Educational Requirements for Persons Under 22).

§19 602 Comprehensive Care Plans

(a)-(d) (No change)

(e) The Individual Educational Plan (IEP), written by the school district's educational professionals, must be used in care planning for pediatric residents to enhance skills developed in the educational setting. If the IEP requires specific developmental skills, such as hand-to-eye coordination, the facility's care plan must include this. See §19.2013 of this title (relating to Educational Requirements for Persons Under 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 May 6, 1994

TRD-9440516 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption July 1, 1994

For further information, please call (512) 450-3765

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Subchapter I. Nursing Services

• 40 TAC §19.802

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22 001-22.024, 32. 001-32.003, and 32.021-32.042.

§19.802. Additional Nursing Services Staffing Requirements

(a)-(n) (No change.)

(o) Consultative pediatric nursing services must be available to facility staff if the nursing facility has a pediatric resident.

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 May 6, 1994.

TRD-9440515 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: July 1, 1994

For further information, please call: (512) 450-3765

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Subchapter K. Physician Services

• 40 TAC §19.1001, §19.1005

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement the Human Resources Code, §§22.001-22.024, 32. 001-32.003, and 32.021-32.042.

§19.1001. Physician Services. A physician must personally approve in writing a recommendation that an individual be admitted to a facility. Each resident must remain under the care of a physician. The facility must ensure that:

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

(5) a pediatrician or other physician with training or expertise in the clinical care of children with complex medical needs participate in all aspects of the medical care.

§19.1005. Physician Delegation of Tasks.

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

(d) The physician extender providing care to a pediatric resident must have training and expertise in the care of children with complex medical needs.

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 May 6, 1994

TRD-9440514 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: July 1, 1994

For further information, please call (512) 450-3765

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Subchapter M. Dental Services

• 40 TAC §19.1201

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds

The amendment implements the Human Resources Code, §§22.001-22.024, 32 001-32.003, and 32.021-32.042.

§19.1201 Dental Services The facility must assist residents in obtaining routine and 24-hour emergency dental care

(1)-(4) (No change)

(5) The facility must coordinate dental services for pediatric residents age 12 months to 21 years, in accordance with Early Periodic Screening, Diagnosis, and Treatment (EPSDT) guidelines.

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 May 6, 1994.

TRD-9440513 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: July 1, 1994

For further information, please call (512) 450-3765

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Subchapter N. Pharmacy Services

• 40 TAC §19.1308

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds

The amendment implements the Human Resources Code, §§22 001-22 024, 32 001-32.003, and 32 021-32 042

§19.1308 Drug Administration

(a)-(e) (No change)

(f) Nursing facilities must have current medication reference texts or sources, **including information on pediatric medications, dosages, desired effects, and possible side-effects, if facilities have pediatric residents.**

(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 May 6, 1994

TRD-9440512 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption· July 1, 1994

For further information, please call (512) 450-3765

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Subchapter P. Physical Plant and Environment

• 40 TAC §19.1501

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22 001-22 024, 32. 001-32.003, and 32 021-32 042

§19.1501 General Requirements The facility must be designed, constructed, equipped, and maintained to protect the health and ensure the safety of residents, personnel, and the public. If children are admitted to the facility, accommodations, furnishings, and equipment appropriate to children must be provided (See also

§19.505 of this title (relating to Environment).)

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

(3) Space and equipment. The facility must:

(A) provide sufficient space and equipment in dining, health services, recreation, and program areas to enable staff to provide residents with needed services as required by these standards and as identified in each resident's plan of care; [and]

(B) maintain all essential mechanical, electrical, and patient care equipment in safe operating condition; [.]

(C) provide pediatric equipment and supplies in appropriate size for the age and developmental level of the child(ren). The pediatric supplies and equipment must be readily available for use; and

(D) have pediatric emergency equipment and supplies readily available for use.

(4)-(19) (No change.)

(20) Pediatric specifications.

(A) Pediatric residents' rooms should be decorated and furnished in accordance with the age and developmental level of the children.

(B) The environment for pediatric residents must be the least restrictive allowable while remaining within the parameters of safety. All areas of the facility accessible to children must be "child-proof" for safety hazards. This type of safety proofing is above the normal level of hazard control maintained for adult residents and includes addition of safety covers on all electrical outlets.

(C) Indoor and outdoor recreation areas should be designed to encourage exploration within the children's capabilities.

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 May 6, 1994.

TRD-9440511 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: July 1, 1994

For further information, please call: (512) 450-3765

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Subchapter T. Administration

• 40 TAC §§19.1922, 19.1928, 19.1929

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement the Human Resources Code, §§22.001-22.024, 32 001-32.003, and 32.021-32.042.

§19.1922. Resident Care Policies.

(a) The facility must have written policies to govern the nursing care and related medical or other services provided. The written policies must include plans for promoting self-care and independence. If children are admitted to the facility, written policies must address the **unique** care needs of **those** children, **consistent with currently acceptable pediatric practice.** The written policies must also include but are not limited to:

(1)-(24) (No change.)

(b)-(c) (No change.)

§19.1928. Volunteer Program.

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

(c) The facility should promote volunteer programs designed to provide social, emotional, educational, and sensory opportunities for its pediatric residents.

§19.1929. Staff Development. Each facility must implement and maintain programs of orientation, training, and continuing in-service education to develop the skills of its staff (see §19.1903 of this title relating to Required Training of Nurse Aides).

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

(3) Required in-service course content.

(A)-(C) (No change.)

(D) Facilities with pediatric residents must comply with the following:

***(i)* Facility staff must be trained in the use of pediatric equipment and supplies, including emergency equipment and supplies, if children are residents of the facility.**

***(ii)* Facility staff should receive annual continuing education dealing with pediatric issues, including child growth and development and pediatric assessment, if children are residents of the facility.**

(E)[(D)] The Quality Assessment and Assurance Committee, as described in §19.1917 of this title (relating to Quality Assessment and Assurance), must assist in identifying additional topics for continuing in-service education.

(4) (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 May 6, 1994

TRD-9440510 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption. July 1, 1994

For further information, please call (512) 450-3765

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Chapter 27. Intermediate Care Facilities for the Mentally Retarded (ICFs-MR)

Subchapter E. Eligibility and Review

• 40 TAC §§27.503, 27.505, 27.507, 27.509, 27.511, 27.513, 27.515

The Texas Department of Human Services (DHS) proposes amendments to §§27.503, 27.505, 27.507, 27.509, 27.511, 27 513, and 27.515, concerning definitions for level-of-care criteria, eligibility for level-of-care assignment, level-of-care determination, ICF-MR I level-of-care criteria, ICF-MR V level-of-care criteria, ICF-MR VI level-of-care criteria, and ICF-MR/RC VIII level-of-care criteria, in its Intermediate Care Facilities for the Mentally Retarded (ICFs-MR) rule chapter. The purpose of the amendments is to add Americans with Disabilities Act requirements, level-of-care assignments according to special needs, and Adaptive Behavioral Level changes to reflect the American Association on Mental Deficiency definitions

Burton F Raiford, commissioner, has determined that for the first five-year period the proposed amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Mr. Raiford also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be that the ICF-MR rules will contain requirements of the Americans with Disabilities Act. There will be no effect on small businesses There is no anticipated economic cost to persons who are required to comply with the proposed amendments

Questions about the content of the proposal may be directed to Maxcine Tomlinson at (512) 450-3169 in DHS's Institutional Policy Section. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-119, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds

The proposal implements the Human Resources Code, §§32.001-32.042.

§27.503. Definitions for Level-of-Care Criteria. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

Adaptive behavior level (ABL)-The effectiveness or degree to which the individual meets the standards of personal independence and social responsibility expected of the person's age and cultural group. [For the purpose of these rules, deficits in adaptive behavior are identified according to the American Association on Mental Deficiency's adaptive behavior levels (ABL I, II, III, or IV) as presented in the association's Classification in Mental Retardation, 1983 revision.] Assignment of an adaptive behavior level includes assessment of any maladaptive behavior. Maladaptive behaviors may influence the individual's independence in skills performance, self-motivation, and acceptability within his community. Maladaptive behaviors are inappropriate behaviors, emotional disturbances, or personality disorders. **For the purposes of the rules in this chapter, adaptive behavior levels are determined by the codes outlined on the Texas Department of Human Services (DHS) level-of-care assessment form.**

[Ambulatory-Able to walk independently, without assistance.]

Continued stay review-The individual client review conducted by the Texas Department of **Human Services (DHS)** [Health (TDH)] no later than six months following the individual's admission to an ICF-MR facility and at least every six months thereafter. The purpose of each review is to determine if the individual continues to need the care and services provided by the ICF-MR Program and if the level-of-care assignment is appropriate. **DHS** [The Texas Department of Health] may determine that the individual no longer needs the care and services provided by the ICF-MR Program or that the level-of-care assignment is not appropriate. In this case, TDH staff members make a new level-of-care assignment.

Mental retardation-Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period. Subaverage general intellectual functioning refers to measured intelligence on standardized psychometric instruments [of two or more standard deviations below the age group mean for the test used] Developmental period means the period of time from conception to 18 years. Arrest or deterioration of intellectual ability that occurs after this period is functional retardation and does not meet the definition of mental retardation.

[Mobile nonambulatory-Unable to walk without assistance but able to move one's self from place to place with the use of a device.]

[Nonmobile-Unable to move one's self from place to place even with the use of a device.]

§27.505. Eligibility for Level-of-Care Assignment

(a) (No change.)

(b) Individuals must be in need of and able to benefit from the active treatment provided in the 24-hour supervised residential setting of an ICF-MR facility This must be evidenced by information submitted for a level-of-care assignment and determined by the Texas Department of **Human Services** [Health].

(c) (No change.)

§27.507. Level-of-Care Determination.

(a) The level-of-care determination is performed by the Texas Department of **Human Services DHS** [Health] according to the level-of-care criteria in this subchapter. Information submitted to **DHS** [the Texas Department of Health] must be based on current data obtained from standardized evaluations and formal assessments which include physical, emotional, social, and cognitive factors

(b) (No change.)

(c) The ICF-MR Program has four levels of care: ICF-MR I, ICF-MR V, ICF-MR VI, and ICF-MR/RC VIII. Level-of-care determinations for the ICF-MR I, ICF-MR V, and ICF-MR VI levels of care are based on the individual's intellectual functioning Level-of-care determinations are based on the following variables regarding the developmental needs of each individual:

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

(3) **primary diagnosis** [ambulation status]

(d) (No change.)

(e) If an I.Q. score cannot be obtained for a **person with severe or profound deficits in intellectual functioning** [severely or profoundly retarded individual], a social composite score (S.C.) obtained on the Vineland Adaptive Behavior Scale or other professionally accepted scale must be submitted. Documentation must be available that an assessment of intelligence with a standardized instrument was attempted.

(f) (No change.)

(g) Some individuals may have special health care needs [or other special requirements] that necessitate placement in a facility which meets provisions of the National Fire Protection Association's Life Safety Code, 1985 edition, for accommodating special needs. When this occurs, placement in a facility that meets appropriate Life Safety Code requirements takes precedence over placement in a facility that matches the individual's level of care. In other words, if an individual with special needs cannot be placed in a facility that matches his level of care because no available facility has the capacity to meet his special needs, the individual may be placed in a facility with a higher level of care if it can meet his special needs in accordance with the Life Safety Code. This policy entails the following additional **stipulation:** [stipulations.

[(1) Regardless of his level-of-care assignment, an individual who requires a medical care plan is eligible for residence only in a facility that meets the provisions of the 1985 Life Safety Code, Chapter 12 or Chapter 13.

[(2)] A mobile, nonambulatory individual with an ICF-MR I level-of-care assignment is eligible for care in an ICF-MR V facility if no beds are available in an ICF-MR I facility that meets the individual's needs under the 1985 Life Safety Code, Chapter 21.

(h) If **DHS** [the Texas Department of Health] determines that information submitted for a level of care was not correct, the level-of-care assignment is reevaluated. If information originally submitted has changed, the level-of-care assignment is also reevaluated.

(i) If an individual's IQ, adaptive behavior level, **and/or** health status [, and/or ambulation status] are such that he does not meet all the criteria for any one level of care, TDH conducts a special review of his application for a level of care. TDH may ask him to submit current psychological, social, medical, and/or other evaluations.

(j) The criteria for each level of care include a profile of typical developmental needs for that level of care. Based

on I.Q., adaptive behavior level, **and** health status [, and ambulation status], an individual may meet the criteria for two levels of care. In this situation, application is made for the level of care that best meets the individual's developmental needs. This determination is based on the profile that most closely describes the individual. A single deficit in any of the categories of skills noted in a profile does not necessarily make the individual ineligible for that level of care.

§27.509. ICF-MR I Level-of-Care Criteria. The individual eligible for the ICF-MR I Program must have the potential to participate in a training program that will prepare him for eventual placement in a less-structured living setting The individual **requires services to assist him to function with as much self-determination and independence as possible. These services may include training and assistance in maintaining the home, managing money, using community resources, acquiring independence, and improving skills and/or behaviors related to self-care, socialization, cognitive development, sensory-motor functions, communications, and work (when appropriate to the individual's age)** [requires training in the skills of independent living. This training includes using community resources, maintaining the home, managing money, and acquiring independence in self-care areas. If appropriate to the individual's age, the individual requires placement in a sheltered workshop or in community employment training. The individual demonstrates sufficient self-direction to participate in the active treatment of the program] The individual may have maladaptive behaviors that require programmatic intervention but do not prevent his participation in the active treatment of the program.

(1) (No change)

(2) Adaptive behavior level. The individual exhibits mild to moderate deficits in adaptive behavior with an adaptive behavior level of I or II **noted on the level-of-care assessment form** [obtained by formal assessment].

(3) (No change.)

[(4) Ambulation status. The individual is fully ambulatory or mobile nonambulatory.]

§27.511 ICF-MR V Level-of-Care Criteria. The individual eligible for the ICF-MR V Program may need assistance and supervision in the refinement of self-help skills The individual may require training in socialization skills, work skills and behaviors (if appropriate to the individual's age), motor skills, care of belongings and personal area, and group recreation skills. The individual may require daily supervision and management to ensure completion of scheduled activities and compliance with staff requests. The individual may have maladaptive behaviors that require programmatic intervention. The individual may also have health care needs requiring daily supervision by licensed nursing personnel.

(1) (No change.)

(2) Adaptive behavior level. The individual exhibits moderate to severe deficits in adaptive behavior with an adaptive behavior level of II or III **noted on the level-of-care assessment form** [obtained by formal assessment].

(3) (No change.)

[(4) Ambulation status. The individual may be ambulatory, mobile nonambulatory, or nonmobile.]

§27.513 ICF-MR VI Level-of-Care Criteria. The individual eligible for the ICF-MR VI Program requires extensive supervision and assistance in the completion of self-help activities. The individual requires a highly structured environment with ongoing supervision. The individual may also have medical needs requiring close supervision and nursing intervention. Training is necessary in basic self-help skills, sensory-motor development, compliance with daily routines and group activities, and socially appropriate behaviors. Maladaptive behaviors often are present and require active programmatic intervention

(1) (No change.)

(2) Adaptive behavior level. The individual exhibits extreme deficits in adaptive behavior with an adaptive behavior level of III or IV **noted on the level-of-care assessment form** [obtained by formal assessment].

(3) (No change.)

[(4) Ambulation status The individual may be ambulatory, mobile nonambulatory, or nonmobile.]

§27.515. ICF-MR/RC VIII Level-of-Care Criteria.

(a) (No change)

(b) Except as specified in §27.507(i) of this title (relating to Level-of-care Determination), individuals must meet all the following criteria to qualify for the ICF-MR/RC VIII level of care·

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

(3) Adaptive behavior level. The individual exhibits moderate to extreme deficits in adaptive behavior as evidenced by an adaptive behavior level of II, III, or IV which has been **noted on the level-of-care assessment form** [obtained by formal assessment].

(4) (No change.)

[(5) Ambulation status. The individual may be ambulatory, mobile nonambulatory, or nonmobile.]

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 May 6, 1994.

TRD-9440509 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption· July 1, 1994

For further information, please call· (512) 450-3765

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TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 25. Traffic Operations

General

• 43 TAC §25.7

(Editor's note The text of the following section proposed for repeal will not be published The section may be examined in the offices of the Texas Department of 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 §25.7, concerning Highway Crossings by Oversize/Overweight Vehicles Repeal of this section is necessary due to the contemporaneous adoption of new §§28.80-28. 82, which incorporates that subject matter in an amended form with minor wording changes and rephrasing for clarity, continuity, and style. The new section will enable the requestor to better understand the process and preparation of the contract for moving oversize and overweight vehicles across highway from private property to other private property

Bert A. Lundell, director, Central Permit Office, 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. Lundell has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed repealed section.

Mr. Lundell 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 a more efficient and uniform manner of executing contracts authorizing the movement of oversize and overweight vehicles to cross highways from private property to other private property. 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 Bert A Lundell, Director, Central Permit Office, 125 East 11th Street, Austin, Texas 78701-2483 The deadline for receipt of comments will be 5 00 p m on June 14, 1994

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 repealed section The public hearing will be held at 9 00 a m on Thursday, May 26, 1994, in Room 101, Building 200, 200 East Riverside Drive, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1 5 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 identical or similar comments through a representative member where possible Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc , for proper reference Any suggestions or requests for alternative language or other revisions in the proposed text should be submitted in written form Presentations must remain pertinent to the issue being discussed A person may not assign a portion of his or her time to anther 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 have special communication or accommodation needs and who plan to attend the hearings may contact Eloise Lundgren, Director of the Public Information Office, 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588

The repeal is proposed under Texas Civil Statutes, Article 6666, which provide 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 by Texas Civil Statutes, Article 6701d 11, §5-2/3, which authorize the Commission to execute contracts to indemnify the department for the cost of providing repairs and maintenance to highway crossing locations when the requestor desires to move oversize and overweight vehicles across highways from private property to other private property

§25 7 Highway Crossings by Over size/Overweight Vehicles

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 May 9, 1994

TRD-9440552 Diane L Northam
Legal Executive Assistant
Texas Department of Transportation

Earliest possible date of adoption June 13, 1994

For further information, please call (512) 463-8630

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Oversize and/or Overweight Permits

• 43 TAC §§25.60-25.67

(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 §§25. 60-25.67, concerning Oversize and/or Overweight Permits Repeal of these sections is necessary due to the contemporaneous adoption of new §§28 10-28 16, which incorporates that subject matter in an amended form with updated requirements The new sections will provide increased safety to the traveling public and the permit applicant through more uniform regulation and control of the movements of oversize and overweight vehicles and loads by clarifying the department's authority, policies, and procedures concerning the issuance of permits for these movements

Bert A Lundell, director, Central Permit Office, 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 repeals

Mr. Lundell has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed repealed sections

Mr. Lundell 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 a more efficient and uniform manner of administering the issuance of permits for the movement of oversize and overweight vehicles and loads 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 Bert A. Lundell, Director, Central Permit Office, 125 East 11th Street, Austin, Texas 78701-2483 The deadline for receipt of comments will be 5:00 p m on June 14, 1994

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 repealed sections The public hearing will be held at 9 00 on Thursday, May 26, 1994, in Room 101, Building 200, 200 East Riverside Drive, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1 5. 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 identical or similar comments through a representative member where possible Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc., for proper reference Any suggestions or requests for alternative language or other revisions in the proposed text should be submitted in written form 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 have special communication or accommodation needs and who plan to attend the hearings may contact Eloise Lundgren, Director of the Public Information Office, 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588.

The repeals are proposed under Texas Civil Statutes, Article 6666, which provide 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 by Texas Civil Statutes, Article 6701 1/2, which authorize the Commission to issue permits for the movement of oversize manufactured housing, and industrialized housing and buildings, Texas Civil Statutes, Article 6701a, which authorize the Commission to issue permits for the movement of oversize and overweight loads that cannot be reasonably dismantled, Texas Civil Statutes, Article 6701a-2, which authorize the Commission to issue permits for the movement of oversize portable buildings, Texas Civil Statutes, Article 6701d-11, §3, which authorize the Commission to issue annual permits for the movement of vehicles, that exceed the allowable vehicle width but do not exceed 144 inches in width, that are used to carry cylindrically shaped bales of hay, Texas Civil Statutes, Article 6701d-12, which authorize the Commission to approve and certify bonds for a vehicle transporting ready-mix concrete, when such vehicle exceeds 34,000 pounds on a tandem axle but does not exceed 46,000 pounds, or a single axle load may not exceed 23,000 pounds, or a gross weight not to exceed 69,000 pounds, Texas Civil Statutes, Article 6701d-14, which authorize the Commission to issue annual permits for the movement of poles required for the maintenance of electric power transmission and distribution lines, Texas Civil Statutes, Article 6701d-19a, which authorize the Commission to approve and certify bonds for a vehicle transporting solid waste, when such vehicle exceeds 34,000 pounds on a tandem axle, but does not exceed 44,000 pounds on the tandem axle or 64,000 pounds gross weight

§25.60 Purpose.

§25.61. Definitions

§25.62 Permit Issuance Requirements and Procedures.

§25.63. Single-Trip Permits Issued Under Texas Civil Statutes, Article 6701a

§25.64. Time Permits Issued Under Texas Civil Statutes, Article 6701a and Article 6701d-14

§25.65. Manufactured Housing, and Industrialized Housing and Building Permits

§25.66 Portable Building Permits

§25.67 Permits for Military and Governmental Agencies

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 May 9, 1994

TRD-9440553 Diane L. Northam
Legal Executive Assistant
Texas Department of Transportation

Earliest possible date of adoption June 13, 1994

For further information, please call (512) 463-8630

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Special Tolerance Permits

• 43 TAC §25.81

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of 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 §25.81, concerning Permit for Over Axle and Over Gross Weight Tolerances. Repeal of this section is necessary due to the contemporaneous adoption of new §28.30, which incorporates that subject matter in an amended form with minor wording changes and rephrasing for clarity, continuity, and style. The new section will enable the permit applicant to better understand the permit issuing process, thereby facilitating the procurement of permits.

Bert A. Lundell, director, Central permit Office, 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 repealed section.

Mr. Lundell has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repealed section.

Mr. Lundell 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 a more efficient and uniform manner of administering the issuance of permits for the movement of oversize and overweight vehicles and loads. 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 Bert A. Lundell, Director, Central Permit Office, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on June 14, 1994.

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 repealed section. The public hearing will be held at 9:00 a.m. on Thursday, May 26, 1994, in Room 101, Building 200, 200 East Riverside Drive, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. 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 identical or similar comments through a representative member where possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc., for proper reference. Any suggestions or requests for alternative language or other revisions in the proposed text should be submitted in written form. 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 have special communication or accommodation needs and who plan to attend the hearings may contact Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588.

The repeal is proposed under Texas Civil Statutes, Article 6666, which provide 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 by Texas Civil Statutes, Article 6701d-11, §5B, which authorize the Commission to issue annual permits for the movement of vehicles, that exceed the legal axle weight limit by a tolerance of 10% and the legal gross weight limit by a tolerance of 5.0%.

§25.81 Permit for Over Axle and Over Gross Weight Tolerances

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 May 9, 1994.

TRD-9440554 Diane L. Northam
Legal Executive Assistant
Texas Department of Transportation

Earliest possible date of adoption June 13, 1994

For further information, please call (512) 463-8630

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Oversize and/or Overweight Permits for Certain Oil Well Related Vehicles

• 43 TAC §§25.90-25.98

(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 §§25.90-25.98, concerning Rules for Oversize and Overweight Permits for certain Policies, and Procedures concerning Vehicles. Repeal of these sections is necessary due to the contemporaneous adoption of new §§28.40-28.47, which incorporates that subject matter in an amended form with updated requirements. The new sections will provide increased safety to the traveling public and the permit applicant through more uniform regulation and control of the movements of oversize and overweight vehicles and loads by clarifying the departments authority, oil well related the issuance of permits for these movements.

Bert A. Lundell, director, Central Permit Office, 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 repeals.

Mr. Lundell has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed repealed sections.

Mr. Lundell 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 a more efficient and uniform manner of administering the issuance of permits for the movement of oversize and overweight vehicles and loads. 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 Bert A. Lundell, Director, Central Permit Office, 125 East 11th Street, Austin, Texas

78701-2483. The deadline for receipt of comments will be 5:00 p.m on June 14, 1994.

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 repealed sections. The public hearing will be held at 9 00 on Thursday, May 26, 1994, in Room 101, Building 200, 200 East Riverside Drive, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1 5 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 identical or similar comments through a representative member where possible Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc , for proper reference Any suggestions or requests for alternative language or other revisions in the proposed text should be submitted in written form. Presentations must remain pertinent to the issue being discussed A person may not assign a portion of his or her time to anther 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 have special communication or accommodation needs and who plan to attend the hearings may contact Eloise Lundgren, Director of the Public Information Office, 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588

The repeals are proposed under Texas Civil Statutes, Article 6666, which provide the Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically by Texas Civil Statutes, Article 6701d-16, which authorize the Commission to formulate and adopt rules and fees governing the issuance of oversize and overweight permits for the movement of certain oil well related vehicles

§25.90 Purpose

§25 91 Definitions.

§25 92. Application for Permit

§25 93 Permit Qualifications and Requirements

§25 94 Registration Requirements

§25 95 Maximum Permit Weight Limits

§25.96. Permit Fee Calculations.

§25.97. Permit Movement Conditions.

§25 98 Permits for Vehicles Transporting Liquid Products Related To Oil Well Production.

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 May 9, 1994.

TRD-9440555 Diane L Northam
Legal Executive Assistant
Texas Department of Transportation

Earliest possible date of adoption. June 13, 1994

For further information, please call: (512) 463-8630

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Oversize-Overweight Permits for Unladen Lift Equipment Motor Vehicles

• **43 TAC §§25.200-25.207**

(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 §§25 200-25.207, concerning Rules for Oversize and/or Overweight Permits for Unladen Lift Equipment Motor Vehicles. Repeal of these sections is necessary due to the contemporaneous adoption of new §§28 60-28 66, which incorporates that subject matter in an amended form with updated requirements. The new sections will provide increased safety to the traveling public and the permit applicant through more uniform regulation and control of the movements of oversize and overweight vehicles and loads by clarifying the Department's authority, policies, and procedures concerning the issuance of permits for these movements.

Bert A Lundell, director, Central Permit Office, 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 repealed sections.

Mr Lundell has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed repealed sections

Mr Lundell 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 a more efficient and uniform manner of administering the issuance of permits for the movement of oversize and overweight vehicles and loads 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 Bert A. Lundell, Director, Central Permit Office, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on June 14, 1994.

Pursuant to the Administrative Procedures 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 Thursday, May 26, 1994, in Room 101, Building 200, 200 East Riverside Drive, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. 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 identical or similar comments through a representative member where possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc , for proper reference. Any suggestions or requests for alternative language or other revisions in the proposed text should be submitted in written form. 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 have special communication or accommodation needs and who plan to attend the hearings may contact Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588.

The repeals are proposed under Texas Civil Statutes, Article 6666, which provide 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 by Texas Civil Statutes, Article 6701d-18, which authorizes the Commission to issue annual permits for the movement of unladen lift equipment motor vehicles which because of their design for use as lift equipment exceed the maximum weight and width limitations prescribed by statute; and Texas Civil Statutes, Article 6701d-19b, which authorize the Commission to formulate and adopt rules and fees governing the issuance of oversize and overweight permits for the movement of unladen lift equipment motor vehicles.

§25 200. Purpose.

§25.201. Definitions.

§25.202. Application for Permit.

§25.203. Permit Qualifications and Requirements.

§25.204. Registration Requirements.

§25.205. Maximum Permit Weight Limits

§25.206. Permit Fee Calculations

§25.207. Permit Movement Conditions

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 May 9, 1994.

TRD-9440556 Diane L Northam
Legal Executive Assistant
Texas Department of Transportation

Earliest possible date of adoption June 13, 1994

For further information, please call (512) 463-8630

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Chapter 28. Oversize and Overweight Vehicles and Loads

Subchapter A. General Provisions

• 43 TAC §28.1, §28.2

The Texas Department of Transportation proposes new §28.1, concerning Purpose and Scope, and new §28.2, concerning Definitions. Section 28.1 states that the purpose of the chapter is to insure the safety of the traveling public and the permit applicant, and to protect the integrity of the highways and bridges, through the issuance of permits for the movement of oversize and overweight vehicles and loads, and the execution of special contracts for the movement of oversize and overweight vehicles and loads to travel across the width of a state highway. Section 28.2 defines words and terms used in this chapter

Bert A Lundell, director, Central Permit Office, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these sections.

Mr. Lundell has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering these sections

Mr Lundell also has determined that for each year of the first five years the sections as proposed are in effect the public benefits anticipated as a result of enforcing the sections as proposed will be a more precise understanding of the words and terms used in this chapter, thereby aiding the public's efforts in obtaining permits for the movement of oversize and overweight vehicles and loads. There will be no significant effect on small business. There is no anticipated economic cost to persons who are required to comply with these sections as proposed

Comments on the proposal may be submitted to Bert A. Lundell, Director, Central Permit Office, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5 00 p m. on June 14, 1994

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 Thursday, May 26, 1994, in Room 101, Building 200, 200 East Riverside Drive, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1 5 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 identical or similar comments through a representative member where possible Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc , for proper reference. Any suggestions or requests for alternative language or other revisions in the proposed text should be submitted in written form 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 have special communication or accommodation needs and who plan to attend the hearings may contact Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588

The new sections are proposed under Texas Civil Statutes, Article 6666, which provide 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 6701 1/2, which authorize the commission to issue permits for the movement of oversize manufactured housing, and industrialized housing and buildings, Texas Civil Statutes, Article 6701a, which authorize the commission to issue permits for the movement of oversize and overweight loads that cannot be reasonably dismantled, Texas Civil Statutes, Article 6701a-2, which authorize the commission to issue permits for the movement of oversize portable buildings, Texas Civil Statutes, Article 6701d-11, §3, which authorize the commission to issue annual permits for the movement of vehicles, that exceed the allowable vehicle width but do not exceed 144 inches in width, that are used to carry cylindrically shaped bales of hay; Texas Civil Statutes, Article 6701d-11, §5B, which authorize the commission to issue annual permits for the movement of vehicles, that exceed the legal axle weight limit by a tolerance of 10% and the legal gross weight limit by a tolerance of 5%, Texas Civil Statutes, Article 6701d-12, which authorize the commission to approve and certify bonds for a vehicle transporting ready-mix concrete, when such vehicle exceeds 34,000 pounds on a tandem axle but does not exceed 46,000 pounds, or a single-axle load may not exceed 23,000 pounds, or a gross weight not to exceed 69,000 pounds, Texas Civil Statutes, Article 6701d-14, which authorize the commission to issue annual permits for the movement of poles required for the maintenance of electric power transmission and distribution lines; Texas Civil Statutes, Article 6701d-16, which authorize the commission to formulate and adopt rules and fees governing the issuance of oversize and overweight permits for the movement of certain oil well related vehicles; Texas Civil Statutes, Article 6701d-18, which authorize the commission to issue annual permits for the movement of unladen lift equipment motor vehicles which because of their design for use as lift equipment exceed the maximum weight and width limitations prescribed by statute, Texas Civil Statutes, Article 6701d-19a, which authorize the commission to approve and certify bonds for a vehicle transporting solid waste, when such vehicle exceeds 34,000 pounds on a tandem axle, but does not exceed 44,000 pounds on the tandem axle or 64,000 pounds gross weight, and Texas Civil Statutes, Article 6701d-19b, which authorize the commission to formulate and adopt rules and fees governing the issuance of oversize and overweight permits for the movement of unladen lift equipment motor vehicles

§28 1 Purpose and Scope The department is responsible for regulating the movement of oversize and overweight vehicles and loads on the state highway system, in order to insure the safety of the traveling public, and to protect the integrity of the highways and the bridges This responsibility is accomplished through the issuance of permits for the movement of oversize and overweight vehicles and loads, and the execution of special contracts for the movement of oversize and overweight vehicles and loads to travel across the width of a state highway The sections under this chapter prescribe the policies and procedures for the issuance of permits and the execution of contracts

§28 2 Definitions The following words and terms, when used in this chapter, will have the following meanings, unless the context clearly indicates otherwise

Annual permit-A permit that authorizes movement of an overdimension load

for one year commencing with the "movement to begin" date

Applicant Any person, firm, or corporation requesting a permit

Application-Part I and paragraph C of Part II of Form 1700 as completed by the applicant prior to applying for permit

Axle The common axis of rotation of one or more wheels whether power-driven or freely rotating, and whether in one or more segments

Axle group An assemblage of two or more consecutive axles, with two or more wheels per axle, spaced at least 40 inches from center of axle to center of axle, equipped with a weight equalizing suspension system that will not allow more than a 10% weight difference between any two axles in the group

Cash collection office An office located in a district that has been designated by the district engineer as the place where a permit applicant can make application for a permit, or pay for a permit with cash, cashier's check, or money order

Central permit office (CPO) The department office located in the City of Austin that issues all permits

Closeout-The procedure used by the CPO to terminate a permit, issued under Texas Civil Statutes, Articles 6701d-16 or 6701d-19b, that will not be renewed by the applicant

Commission The Texas Transportation Commission

Crane Any unladen lift equipment motor vehicle designed for the sole purpose of raising, shifting, or lowering heavy weights by means of a projecting, swinging mast with an engine for power on a chassis permanently constructed or assembled for such purpose

Credit card-A MasterCard or VISA credit card and a permit account card

Daylight The period of time that begins 30 minutes before sunrise and ends 30 minutes after sunset

Department The Texas Department of Transportation

District One of the 25 geographical areas, managed by a district engineer, in which the department conducts its primary work activities

District engineer The chief executive officer in charge of a district of the department

Escort vehicle A motor vehicle used to warn traffic of the presence of a permitted vehicle

Form 439-A form titled "Superheavy or Oversize Permit Bond"

Form 440-A form titled "Permit Bond For Superheavy Loads Exceeding 250,000 Pounds Gross Weight

Form 1382-A form titled "Blanket Surety Bond For The Operation Of Vehicles Used Exclusively For The Transportation Of Ready Mix Concrete"

Form 1382-A-A form titled "Certification Of Surety Bond For The Transportation of Ready-Mix Concrete"

Form 1383-A form titled "Amendment To Blanket Surety Bond For Ready-Mix Concrete Vehicles"

Form 1575-A form titled "Blanket Surety Bond For The Operation Of Vehicles Used Exclusively For The Transportation Of Solid Waste"

Form 1576-A form titled "Certification Of Surety Bond For The Transportation Of Solid Waste"

Form 1577-A form titled "Amendment To Blanket Surety Bond For Solid Waste Vehicles"

Form 1700-A form titled "Texas Self-Issue Application and Permit to Move Super Heavy or Oversize Equipment or Load Over State Highways and/or Temporary Registration"

Four-axle group-Any four consecutive axles, having at least 40 inches from center of axle to center of axle, whose extreme centers are not more than 192 inches apart and are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system

Gauge-The transverse spacing distance between tires on an axle, expressed in feet and measured to the nearest inch, from center-of-tire to center-of-tire on an axle equipped with only two tires, or measured to the nearest inch from the center of the dual wheels on one side of the axle to the center of the dual wheels on the opposite side of the axle

Gross weight-The unladen weight of a vehicle or combination of vehicles plus the weight of the load being transported

Highway maintenance fee-A fee established by Texas Civil Statutes, Article 6701a, based on gross weight, and paid by the permittee when the permit is issued

Highway use factor-A mileage reduction figure used in the calculation of a permit fee for a permit issued under Texas Civil Statutes, Articles 6701d-16 and 6701d-19b

Hubometer A mechanical device attached to an axle on a unit or a crane for recording mileage traveled

HUD number-A unique number assigned to a manufactured home by the U S Department of Housing and Urban Development

Indirect cost share-A prorated share of administering department activities, other than the direct cost of the activities, including the cost of providing statewide support services

Load restricted bridge-A bridge that is restricted by the commission, under the provisions of Texas Civil Statutes, Article 6701d-11, §51/2, to a weight limit less than the maximum amount allowed by Texas Civil Statutes, Article 6701d-11, §5

Load restricted road A road that is restricted by the commission, under the provisions of Texas Civil Statutes, Article 6701d-11, §51/2, to a weight limit less than the maximum amount allowed by Texas Civil Statutes, Article 6701d-11, §5

Machinery plate-A license plate issued under Texas Civil Statutes, Article 6675a-2, to a crane or oil well servicing unit

Manufactured home-Manufactured housing, as defined in Texas Civil Statutes, Article 5221f, and industrialized housing and buildings, as defined in Texas Civil Statutes, Article 5221f-1, and temporary chassis systems, and returnable undercarriages used for the transportation of manufactured housing and industrialized housing and buildings, and a transportable section which is transported on a chassis system or returnable undercarriage that is constructed so that it cannot, without dismantling or destruction, be transported within legal size limits for motor vehicles

Night-The period of time that begins 30 minutes after sunset and ends 30 minutes before sunrise

Oil field rig-up truck-An unladen vehicle with an overweight single steering axle, equipped with a winch and set of gin poles used for lifting, erecting, and moving oil well equipment and machinery

Oil well servicing unit-An oil well clean-out unit, oil well drilling unit, or oil well swabbing unit, which is mobile equipment, either self-propelled or trailer-mounted, constructed as a machine used solely for cleaning-out, drilling, servicing, or swabbing oil wells, and consisting in general of, but not limited to, a mast, an engine for power, a draw works, and a chassis permanently constructed or assembled for this purpose

One-trip registration-Temporary registration issued by the CPO on Form 1700, under Texas Civil Statutes, Article 6675a-6e, §3, to an unladen vehicle authorizing its operation on a state highway from a specific origin to a specific destination, along such intermediate points as may be set forth on Form 1700, for a period not longer than 15 days

Overdimension load-A crane, oil well servicing unit, vehicle, a combination of vehicles, vehicle and its load, or combination of vehicles and load that exceeds maximum legal width, height, length, or weight as set forth by Texas Civil Statutes, Article 6701d-11, §3 and §5

Overheight-An overdimension load that exceeds the maximum height specified in Texas Civil Statutes, Article 6701d-11, §3

Overlength-An overdimension load that exceeds the maximum length specified in Texas Civil Statutes, Article 6701d-11, §3

Overweight-An overdimension load that exceeds the maximum weight specified in Texas Civil Statutes, Article 6701d-11, §5

Overwidth-An overdimension load that exceeds the maximum width specified in Texas Civil Statutes, Article 6701d-11, §3.

Permit-The totally completed Part I and Part II of the department's Form 1700, including the permit number issued by the CPO, that authorizes the movement of an overdimension load.

Permit account card (PAC)-A debit card, that can only be used to purchase a permit or temporary registration, issued by a financial institution that is under contract to the department and the Texas State Treasury.

Permit officer-An employee of the CPO who is authorized to issue a permit

Permit plate-A license plate issued under Texas Civil Statutes, Article 6675a-2, to a crane or an oil well servicing vehicle

Permitted vehicle-A crane, oil well servicing unit, vehicle, a combination of vehicles, vehicle and its load, or combination of vehicles and load, operating under the provisions of a permit.

Permittee-Any person, firm, or corporation that is issued a permit by the CPO

Pilot car-An escort vehicle

Pipe box-A container specifically constructed to safely transport and handle oil field drill pipe and drill collars

Principal-The person, firm, or corporation that is insured by a surety bond company.

Registration reduction-A 25% reduction figure that applies to a crane or oil well servicing unit registered for maximum legal weight.

Renewal application form-A form, supplied by the CPO to each permittee receiving a time permit issued under Texas Civil Statutes, Articles 6701d-16 and 6701d-19b, which must be completed and returned to the CPO whenever the permit is to be renewed or closed out.

Single axle-An assembly of two or more wheels whose centers are in one transverse vertical plane or may be included between two parallel transverse planes 40 inches apart extending across the full width of the vehicle

Single-trip permit-A permit issued for an overdimension load for a single continuous movement over a specific route for an amount of time necessary to make the movement.

State highway-A highway or road under the jurisdiction of the Texas Department of Transportation

State highway system-A network of roads and highways as defined by Texas Civil Statutes, Article 6674b

Surety bond-An agreement issued by a surety bond company to a principal that pledges to compensate the department for any damage that might be sustained to the highways and bridges by virtue of the operation of the equipment for which a permit was issued

Tare weight-The empty weight of any vehicle transporting an overdimension load

Temporary registration-A 72-hour temporary registration, 144-hour temporary registration, or one-trip registration

Three-axle group-Any three consecutive axles, having at least 40 inches from center of axle to center of axle, whose extreme centers are not more than 144 inches apart, and are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system

Time permit-A permit issued for either 30, 60, or 90 days, or one year

Traffic control device-All traffic signals, signs, and markings, including their supports, used to regulate, warn, or control traffic

Trailer mounted unit-An oil well clean-out, drilling, servicing, or swabbing unit mounted on a trailer, constructed as a machine used for cleaning out, drilling, servicing, or swabbing oil wells, and consisting in general of, but not limited to, a mast, an engine for power, a draw works, and a chassis permanently constructed or assembled for this purpose

Trunnion axle-Two individual axles mounted in the same transverse plane, with either two or four tires on each axle, that are connected to a pivoting wrist pin that allows each individual axle to oscillate in a vertical plane to provide for constant and equal weight distribution on each individual axle at all times during movement

Trunnion axle group-Two or more consecutive trunnion axles, whose centers are at least 40 inches apart, and are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system

Two-axle group-Any two consecutive axles whose centers are at least 40 inches but not more than 96 inches apart and are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system

Unit-Oil well clean-out unit, oil well drilling unit, oil well servicing unit, and/or oil well swabbing unit

Unladen lift equipment motor vehicle-A motor vehicle designed for use as lift equipment used solely to raise, shift, or lower heavy weights by means of a projecting, swinging mast with an engine for power on a chassis permanently constructed or assembled for such purpose

Variable load suspension axles Axles, whose controls must be located outside of and be inaccessible from the driver's compartment, that can be regulated, through the use of hydraulic and air suspension systems, mechanical systems, or a combination of these systems, for the purpose of adding or decreasing the amount of weight to be carried by each axle during the movement of the vehicle

Vehicle-Every device in, or by which any person or property is or may be transported or drawn upon a public highway, except devices used exclusively upon stationary rails or tracks.

Vehicle supervision fee-A fee required by Texas Civil Statutes, Article 6701a, paid by the permittee to the department, designed to recover the direct cost of providing safe transportation of a permit load exceeding 200,000 pounds gross weight over a state highway, including the cost for bridge structural analysis, monitoring the progress of the trip, and moving and replacing traffic control devices

Weight-equalizing suspension system-An arrangement of parts designed to attach two or more consecutive axles to the frame of a vehicle in a manner that will equalize the load between the axles

Year-A time period consisting of 12 consecutive months that commences with the "movement to begin" date stated in the permit

72-hour temporary registration Temporary registration issued by the CPO on Form 1700 to a vehicle authorizing it to operate at maximum legal weight on a state highway for a period not longer than 72 consecutive hours

144-hour temporary registration-Temporary registration issued by the CPO on Form 1700 to a vehicle authorizing it to operate at maximum legal weight on a state highway for a period not longer than 144 consecutive hours

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 May 9, 1994

TRD 9440546 Diane L Northam
Legal Executive Assistant
Texas Department of Transportation

Earliest possible date of adoption June 13, 1994

For further information, please call (512) 463-8630

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Subchapter B. General Permits

• 43 TAC §§28.10-28.16

The Texas Department of Transportation proposes new §§28 10-28 16, concerning General Permits These new sections replace existing §§25 60-25 67, which are being contemporaneously repealed Sections 28 10 28 16 incorporate the subject matter of the repealed sections in an amended form to comply with House Bill 1607, 72nd Legislature, 1991, that authorizes the issuance of annual permits for the movement of cylindrically shaped bales of hay, comply with House Bill 1895, 73rd Legislature, 1993, that establishes escrow accounts for the payment of permit fees, comply with House Bill 9, 72nd Legislature, First Called Session, 1991, that

provides for a vehicle supervision fee, comply with House Bill 1725, 72nd Legislature, 1991, that authorizes the issuance of a permit for the transportation of oilfield drill pipe and drill collars in a pipe box, comply with Senate Bill 1539, 72nd Legislature, 1991, that establishes escrow accounts for the payment of permit fees for manufactured housing, provide greater protection to the integrity of the highway infrastructure, provide increased safety to the traveling public and the permittee by decreasing hazards from the movement of oversize loads, increase productivity of the trucking industry, thereby aiding the State's economy, provide for minor wording changes, and provide for clarity, continuity, and proper style

Section 28 10, concerning Purpose, describes the Texas Transportation Commissions authority to issue permits for the movement of oversize and overweight vehicles and loads that cannot be reasonably dismantled when the size and weight exceeds the limits allowed by law

Section 28 11, concerning Permit Issuance Requirements and Procedures, provides procedures for applying for a permit for the movement of an oversize and overweight vehicle and load, provides for payment of permit fees, establishes maximum permit weight limits; establishes escort vehicle requirements, provides for general permit provisions, and provides for surety bond requirements

Section 28 12, concerning Single-Trip Permits Issued Under Texas Civil Statutes, Article 6701a, provides for general provisions for the issuance of single-trip permits for the movement of vehicles and loads that are overwidth, overlength, overheight, or overweight, and provides for convoy regulations for overlength loads.

Section 28.13, concerning Time Permits Issued Under Texas Civil Statutes, Article 6701a, Article 6701d-11, §3, and Article 6701d-14, provides for general provisions for time permits that are issued for overwidth or overlength loads; and provides for annual permits for implements of husbandry, power-line poles, and cylindrically shaped bales of hay

Section 28 14, concerning Manufactured Housing, Industrialized Housing and Building Permits, provides for the application, issuance, payment, and escort requirements for permits for manufactured housing or industrialized housing and buildings

Section 28.15, concerning Portable Building Permits, provides for the application, issuance, payment, and escort requirements for permits for portable buildings

Section 28 16, concerning Permits for Military and Governmental Agencies, establishes regulations for the movement of military and governmental loads on public, military, and governmental equipment

Bert A Lundell, director, Central Permit Office, has determined that for the first five-year period the sections are in effect there will be fiscal implications to the state as a result of enforcing or administering the sections The anticipated economic cost to the state for Fiscal Year 1994 is approximately $29,765 This amount includes: $4,335 for issuing annual permits for cylindrically shaped bales of hay; $24,140 for collecting vehicle supervision fees, and $1,290 for administering escrow accounts for the payment of permit fees The anticipated economic cost each year for Fiscal Years 1995-1998 is approximately $89,290 This amount includes $13,000 for issuing annual permits for cylindrically shaped bales of hay, $72,425 for collecting vehicle supervision fees, and $3,865 for administering escrow accounts for the payment of permit fees

It is estimated that revenues will increase by approximately $26,710 for Fiscal Year 1994, which will include $1,280 from issuing annual permits for cylindrically shaped bales of hay, $24,140 from collecting vehicle supervision fees, and $1,290 from administering escrow accounts for the payment of permit fees for manufactured housing, portable buildings and concrete beams It is estimated that revenues will increase by approximately $80,130 each year for Fiscal Years 1995-1998, which will include $3,840 from issuing annual permits for cylindrically shaped bales of hay, $72,425 from collecting vehicle supervision fees, and $3,865 from administering escrow accounts for the payment of permit fees for manufactured housing, portable buildings and concrete beams There is no anticipated fiscal implications to local governments

Mr Lundell has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the sections

Mr Lundell also has determined that for each year of the first five years the sections as proposed are in effect the public benefits anticipated as a result of enforcing and administering the sections as proposed will be to implement previously cited legislation, provide a precise and uniform approach to the issuance of permits for the movement of oversize and overweight vehicles and loads, provide greater protection to the integrity of the highway infrastructure, provide increased safety to the traveling public and the permittee by decreasing hazards from the movement of oversize loads, and increase productivity of the trucking industry, thereby aiding the State's economy

Comments on the proposal may be submitted to Bert A Lundell, Director, Central Permit Office, 125 East 11th Street, Austin, Texas 78701-2483 The deadline for receipt of comments will be 5 00 p m on June 14, 1994

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 a m on Thursday, May 26, 1994, in Room 101, Building 200, 200 East Riverside Drive, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1 5 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 identical or similar comments through a representative member where possible Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc , for proper reference Any suggestions or requests for alternative language or other revisions in the proposed text should be submitted in written form 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 have special communication or accommodation needs and who plan to attend the hearings may contact Elorse Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701- 2483, (512) 463-8588

The sections are proposed under Texas Civil Statutes, Article 6666, which provide 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 by Texas Civil Statutes, Article 6701, which authorize the commission to issue permits for the movement of oversize manufactured housing, and industrialized housing and buildings, Texas Civil Statutes, Article 6701a, which authorize the commission to issue permits for the movement of oversize and overweight loads that cannot be reasonably dismantled, Texas Civil Statutes, Article 6701a-2, which authorize the commission to issue permits for the movement of oversize portable buildings; Texas Civil Statutes, Article 6701d-11, §3, which authorize the commission to issue annual permits for the movement of vehicles, that exceed the allowable vehicle width but do not exceed 144 inches in width, that are used to carry cylindrically shaped bales of hay, Texas Civil Statutes, Article 6701d-12, which authorize the commission to approve and certify bonds for a vehicle transporting ready-mix concrete, when such vehicle exceeds 34,000 pounds on a tandem axle but does not exceed 46,000 pounds, or a single-axle load may not exceed 23,000 pounds, or a gross weight not to exceed 69,000 pounds, Texas Civil Statutes, Article 6701d-14, which authorize the commission to issue annual permits for the movement of poles required for the maintenance of electric power transmission and distribution lines, and Texas Civil Statutes, Article 6701d-19a, which authorize the commission to approve and certify bonds for a vehicle transporting solid waste, when such vehicle exceeds 34,000 pounds on a tandem axle, but does not exceed 44,000 pounds on the tandem axle or 64,000 pounds gross weight

§28 10 Purpose

(a) In accordance with Texas Civil Statutes, Articles 6701a, 6701, 6701a-2, 6701d-11, §3, 6701d-12, 6701d-14, and 6701d 19a, the department may

(1) issue permits for the operation of oversize and/or overweight vehicles for:

(A) the transportation of cargo that cannot be reasonably dismantled when the gross size or weight exceeds the limits allowed by law;

(B) the transportation of oversize portable buildings; or

(C) the movement of oversize manufactured housing and industrialized buildings; and

(D) the movement of cylindrically shaped bales of hay; and

(2) certify surety bonds required for the operation of overweight ready-mix concrete vehicles and vehicles transporting overweight loads of solid waste that exceed maximum legal weight limits as set forth by Texas Civil Statutes, Article 6701d-11, §5.

(b) The following sections in this subchapter set forth the requirements and procedures applicable to those permits and surety bonds.

§28.11 Permit Issuance Requirements and Procedures.

(a) Application for permit

(1) General. The applicant must complete the application, and must comply with the designated methods of payment in subsection (c) of this section prior to contacting the CPO for issuance of a permit The applicant must list a specific load description, such as the model and serial number for any item of machinery, or in the case of concrete beams, the beam number shall be stated.

(A) The owner of a vehicle permitted under the provisions of Texas Civil Statutes, Article 6701a, must file a surety bond with the CPO prior to permit issuance, as provided in subsection (g)(1) and (2) of this section.

(B) When an application is made by telephone, the permit officer will request all information in the application for entry into the department's computer for record keeping purposes and generation of the permit number. The information will be verified and a route will be selected.

(C) The official permit issued by the CPO is stored in the department's mainframe computer located in Austin.

(D) A permit request made by mail or facsimile will be returned to the applicant by mail or facsimile

(E) The CPO is closed on Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

(2) Single-trip permit application. An application for a single-trip permit may be made to the CPO by telephone, by submitting a facsimile permit request, or by taking the application in person to a cash collection office. All applications made by telephone are recorded

(3) Time permit application An application for a time permit issued under Texas Civil Statutes, Articles 6701a and 6701d-14, must be submitted by mail or by facsimile to the CPO.

(b) Permit issuance

(1) General The applicant must legibly enter all information and the permit number on the permit, when the permit request is made by telephone.

(A) The original permit, a facsimile copy of the permit, or a CPO computer-generated permit must be kept in the permitted vehicle until the day after the date the permit expires

(B) A permit is void when an applicant.

(i) gives false or incorrect information;

(ii) does not comply with the restrictions or conditions stated in the permit, or

(iii) changes or alters the information on the applicant's copy of the permit.

(C) A permittee may not transport an overdimension load with a void permit, a new permit must be obtained

(2) Single-trip permit Specific types of single-trip permits are covered in §28 12 of this title (relating to Single-Trip Permits Issued Under Texas Civil Statutes, Article 6701a), §28 14 of this title (relating to Manufactured Housing, Industrialized Housing and Building Permits), and §28 15 of this title (relating to Portable Building Permits)

(3) Time permit. A time permit may be issued by mail or by facsimile. Specific types of time permits are covered in §28 13 of this title (relating to Time Permits Issued Under Texas Civil Statutes, Article 6701a and Article 6701d-14).

(c) Payment of permit fee.

(1) Credit card. A permit ordered by telephone or facsimile may be purchased with a credit card.

(A) A PAC must be established and maintained according to the contract provisions stipulated between the PAC holder and the financial institution under contract to the department and the Texas State Treasury

(B) A permit purchased with a credit card will pay a service charge of $1.00 in addition to the permit fee

(2) Cash Cash is acceptable as payment of a permit ordered by telephone, and the payment must be made at a cash collection office Cash is not the preferred form of payment.

(A) A cashier's check, or a money order is acceptable as payment of a permit, and the payment may be made at a cash collection office or at the CPO prior to receipt of the permit.

(B) A company check or a personal check is not acceptable as payment of a permit

(3) Escrow accounts A permit applicant may establish an escrow account with the department for the specific purpose of paying any fee that is related to the issuance of a permit under this subchapter

(A) A permit applicant that desires to establish an escrow account shall complete and sign an escrow account agreement, and shall return the completed and signed agreement to the department with a check in the minimum amount of $305, which shall be deposited to the appropriate fund by the department in the State Treasury Five dollars per deposit will be charged as an escrow account administrative fee and shall be deposited in the state highway fund

(B) When the permit applicant's escrow account balance has been reduced to $150, the department will generate a statement that will be furnished to the holder of the escrow account with instructions to submit a cashiers's check or money order, payable to the department in the minimum amount of $305, which shall be used to replenish the escrow account

(C) Upon receipt of the replenishment check, the department will charge $5 00 as an escrow account administrative fee, and will credit the remainder of the check to the balance of the escrow account holder

(D) An escrow account holder must submit a written request to the department to terminate the escrow account agreement. Any remaining balance will be returned to the escrow account holder.

(4) Refunds. A permit fee will not be refunded after the permit number has been issued; however, a refund may be made after permit issuance if it is necessary to correct an error made by the permit officer.

(d) Maximum permit weight limits.

(1) General. An overweight permitted vehicle will not be routed over a load-restricted bridge, unless a special exception is granted by the CPO, based on an analysis of the bridge.

(A) An axle group must have a minimum spacing of four feet, measured from center-of-axle to center-of-axle, between each axle in the group, to achieve the maximum permit weight for the group.

(B) The maximum permit weight for an axle group with spacings of five or more feet between each axle will be based on an engineering study conducted by the CPO.

(C) A permitted vehicle will be allowed to have air suspension, hydraulic suspension and mechanical suspension axles in a common weight-equalizing suspension system for any axle group.

(D) Two or more consecutive axle groups must have an axle spacing of 12 feet or greater, measured from the center of the last axle of the preceding group to the center of the first axle of the following group, in order for each group to be permitted for maximum permit weight When two or more consecutive axle groups have an axle spacing of less than 12 feet, measured from the center of the last axle of the preceding group to the center of the first axle of the following group, the department will grant reduced permit weights for each axle group based on the number of axles in the group and the spacing between the groups as shown in the following Appendix A, which is titled "Maximum Permit Weight For Axle Groups Spaced Less Than 12 Feet."

"MAXIMUM PERMIT WEIGHT FOR AXLE GROUPS SPACED LESS THAN 12 FEET"

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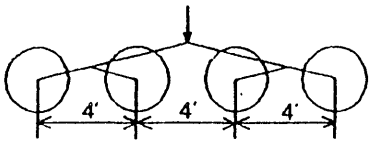

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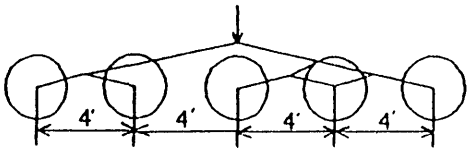

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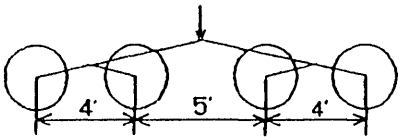

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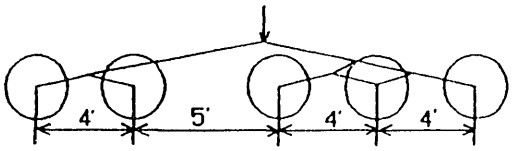

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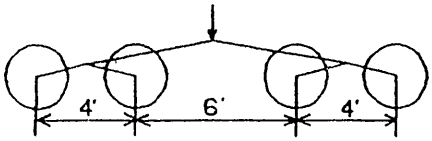

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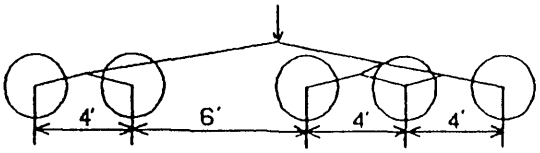

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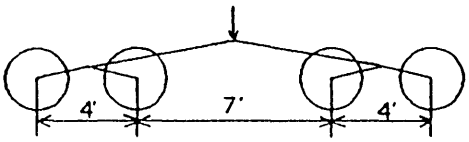

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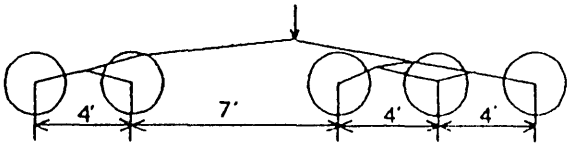

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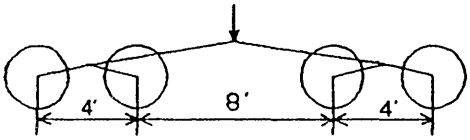

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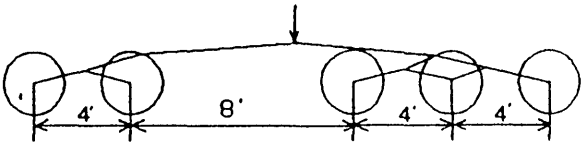

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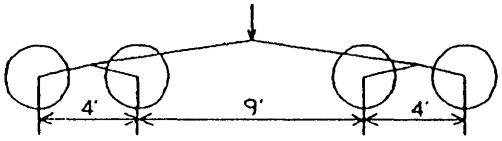

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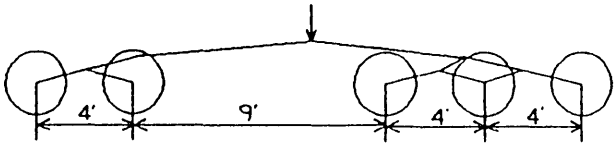

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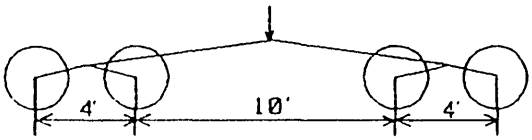

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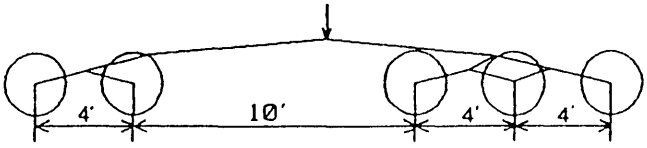

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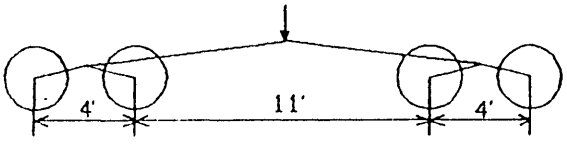

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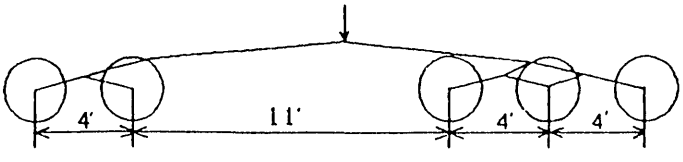


(E) The CPO may permit axle weights greater than those specified in this section, for a specific individual permit request, based on an engineering study of the route and hauling equipment

(2) Maximum axle weight limits Maximum permit weight for an axle or axle group is based on 650 pounds per inch of tire width or the following axle or axle group weights, whichever is the lesser amount.

(A) single axle-25,000 pounds,

(B) two axle group-46,000 pounds,

(C) three axle group-60,000 pounds,

(D) four axle group-70,000 pounds,

(E) five axle group-81,400 pounds,

(F) axle group with six or more axles-determined by the CPO based on an engineering study of the equipment, which will include the type of steering system used, the type of axle suspension, the spacing distance between each axle, the number of tires per axle, and the tire size on each axle.

(3) Weight limits for load-restricted roads Maximum permit weight for an axle or axle group, when traveling on a load restricted road, will be based on 650 pounds per inch of tire width or the following axle or axle group weights, whichever is the lesser amount·

(A) single axle-22,500 pounds;

(B) two axle group-41,400 pounds,

(C) three axle group-54,000 pounds,

(D) four axle group-63,000 pounds,

(E) five axle group-73,260 pounds,

(F) axle group with six or more axles-determined by the CPO based on an engineering study of the equipment, which will include the type of steering system used, the type of axle suspension, the spacing distance between each axle, the number of tires per axle, and the tire size on each axle; and

(G) two or more consecutive axle groups having an axle spacing of less than 12 feet, measured from the center of the last axle of the preceding group to the center of the first axle of the following group-10% less than the permit weights as shown in Appendix A of §28.11(d)(1)(D) of this title (relating to Permit Issuance Requirements and Procedures).

(e) Escort vehicle requirements

(1) General An escort vehicle does not have any authority to control traffic.

(A) The CPO has the authority to require escort vehicles for the safe movement of a permitted vehicle, except for manufactured housing which has specific requirements established in Texas Civil Statutes, Article 6701, provided the CPO has determined that the use of escort vehicles would provide for the safe movement of the permitted vehicle, and would protect the traveling public during the movement of the permitted vehicle

(B) A motorcycle, a motorized bicycle, or a motorized quadricycle may not be used as the primary escort vehicle for a permitted vehicle traveling on the state highway system; however, a police officer may use a motorcycle to control traffic and to assist the primary escort vehicle during the movement of the permitted vehicle

(C) The permittee must select and provide for escort vehicles and police assistance when they are required by the CPO

(D) The permittee must provide any needed assistance from utility companies, telephone companies, television cable companies, etc., when it is necessary to raise or lower any overhead wire, traffic signal, street light, television cable, sign, or other overhead obstruction

(E) Police assistance may be required by the CPO to control traffic when a permitted vehicle is being moved within the corporate limits of cities, or at such times when police assistance would provide for the safe movement of the permitted vehicle and the traveling public

(2) Equipment requirements. The following are special equipment requirements for escort vehicles and permitted vehicles.

(A) An escort vehicle must be equipped with two flashing amber lights or one rotating amber beacon of not less than eight inches in diameter, affixed to the roof of the escort vehicle, which must be visible to the front, sides, and rear of the escort vehicle while actively engaged in escort duties for the permitted vehicle.

(B) An escort vehicle must display a sign, on either the roof of the vehicle, or the front or rear of the vehicle, with the words "OVERSIZE LOAD". The sign must meet the following specifications:

(i) Size: seven feet in length by 18 inches in height.

(ii) Color: yellow background with black lettering.

(iii) Size of lettering: 10 inches high with a brush stroke at least 1.41 inches wide.

(iv) Visibility: The sign must be visible from the front or rear of the vehicle while escorting the permitted vehicle, and such signs must not be used at any other time

(C) An escort vehicle must maintain two-way radio communications with the permitted vehicle and other escort vehicles involved with the movement of the permitted vehicle.

(D) Warning flags must be either red or orange fluorescent material, at least 18 inches square, securely mounted on a staff or securely fastened by at least one corner to the widest extremities of an overwidth permitted vehicle, and at the rear of an overlength permitted vehicle or a permitted vehicle with a rear overhang in excess of four feet

(f) General provisions.

(1) Multiple commodities.

(A) Except as provided in subparagraph (B) of this paragraph, when a permitted commodity creates a single overdimension, two or more commodities may be hauled as one permit load, provided legal axle and gross loads are not exceeded, and provided no illegal dimension of width, length or height is created or made greater by the additional commodities. For example, a permit issued for the movement of a 12-foot wide storage tank may also include a 10-foot wide storage tank loaded behind the 12-foot wide tank provided that the

addition of the 10-foot wide tank does not create an illegal axle or gross weight, or an illegal length, or an illegal height.

(B) When the transport of more than one commodity in a single load creates or makes greater an illegal dimension of length, width, or height the department may issue an oversize permit for such load subject to each of the following conditions.

(i) The permit applicant or the shipper of the commodities files with the department a written certification by the Texas Department of Commerce, approved by the Office of the Governor, attesting that issuing the permit will have a significant positive impact on the economy of Texas and that the proposed load of multiple commodities therefore cannot be reasonably dismantled. As used in this clause the term significant positive impact means the creation of not less than 100 new full-time jobs, the preservation of not less than 100 existing full-time jobs, that would otherwise be eliminated if the permit is not issued, or creates or retains not less than one percent of the employment base in the affected economic sector identified in the certification.

(ii) Transport of the commodities does not exceed legal axle and gross load limits.

(iii) The permit is issued in the same manner and under the same provisions as would be applicable to the transport of a single oversize commodity under this section; provided, however, that the shipper and the permittee also must indemnify and hold harmless the department, its commissioners, officers, and employees from any and all liability for damages or claims of damages including court costs and attorney fees, if any, which may arise from the transport of an oversized load under a permit issued pursuant to this subparagraph.

(iv) The shipper and the permittee must file with the department a certificate of insurance on a form prescribed by the department, or otherwise acceptable to the department, naming the department, its commissioners, officers, and employees as named or additional insureds on its comprehensive general liability insurance policy for coverage in the amount of $5 million per occurrence, including court costs and attorney fees, if any, which may arise from the transport of an oversized load under a permit issued pursuant to this subparagraph. The insurance policy to be procured from a company licensed to transact insurance business in the State of Texas.

(v) The shipper and the permittee must file with the department, in addition to all insurance provided in clause (iv) of this subparagraph, a certificate of insurance on a form prescribed by the department, or otherwise acceptable to the department, naming the department, its commissioners, officers, and employees as insureds under an auto liability insurance policy for the benefit of said insureds in an amount of $5 million per accident. The insurance policy to be procured from a company licensed to transact insurance business in the State of Texas. If the shipper or the permittee is self-insured with regard to automobile liability then that party must take all steps and perform all acts necessary under the law to indemnify the department, its commissioners, officers, and employees as if the party had contracted for insurance pursuant to, and in the amount set forth in, the preceding sentence and shall agree to so indemnify the department, its commissioners, officers, and employees in a manner acceptable to the department.

(vi) Issuance of the permit is approved by written order of the commission which written order may be, among other things, specific as to duration and routes.

(C) An applicant requesting a permit to haul a dozer and its detached blade may be issued a permit, as a non-dismantable load, if removal of the blade will decrease the overall width of the load, thereby reducing the hazard to the traveling public.

(2) Oversize hauling equipment. A vehicle that exceeds the legal size limits, as set forth by Texas Civil Statutes, Article 6701d-11, §3, may only haul a load that exceeds legal size limits, but such vehicle may haul an overweight load that does not exceed legal size limits, except for the special exception granted in §28.13(b)(6) of this title (relating to Time Permits issued under Texas Civil Statutes, Article 6701a and Article 6701d-14).

(3) Registration. A vehicle registered with a permit plate will not be permitted under Texas Civil Statutes, Article 6701a. A permitted vehicle operating under Texas Civil Statutes, Article 6701a, must be registered with one of the following types of vehicle registration:

(A) current Texas license plates that indicate the permitted vehicle is registered for maximum legal gross weight or the maximum weight the vehicle can transport;

(B) Texas 72/144-hour temporary registration; or

(C) current out-of-state license plates that are apportioned for travel in Texas.

(4) Restrictions pertaining to road conditions. Movement of a permitted vehicle is prohibited when:

(A) visibility is reduced to less than 2/10 of one mile; or

(B) the road surface is hazardous due to:

(i) weather conditions such as rain, ice, sleet, or snow; or

(ii) highway maintenance or construction work.

(5) Daylight and night movement restrictions. A permitted vehicle may be moved only during daylight hours, unless an exception is granted based on a route and traffic study conducted by the CPO.

(6) Curfew restrictions. The operator of a permitted vehicle must observe the curfew movement restrictions of any city in which the vehicle is operated.

(7) Amendments. A permit may be amended for the following reasons:

(A) vehicle breakdown;

(B) changing the intermediate points in an approved permit route;

(C) extending expiration date due to vehicle breakdown;

(D) extending expiration date due to weather conditions which would not allow the move to start on time or caused the move to be delayed,

(E) changing route origin, route destination, or vehicle size limits, provided the permit has not begun; and

(F) correcting any mistake that is made due to permit-officer error.

(g) Surety bonds.

(1) General. The following conditions apply to surety bonds, specified in Texas Civil Statutes, Article 6701a, Article 6701d-12, and Article 6701d-19a.

(A) the surety bond must:

(i) be made payable to the department with the condition that the applicant will pay the department for any damage caused to the highway by the operation of the equipment covered by the surety bond;

(ii) be issued on an annual basis with an expiration date of August 31;

(iii) include the complete mailing address and zip code of the principal;

(iv) be filed with the COP and have an original signature of the principal;

(v) have a single entity as principal with no other principal names listed;

(vi) be countersigned by a Texas resident agent of the surety company issuing the surety bond, if it is not issued in the State of Texas.

(B) A certificate of continuation will not be accepted.

(C) The owner of a vehicle bonded under Texas Civil Statutes, Articles 6701a, 6701d-12, or 6701d-19a, that damages the state highway system as a result of the permitted vehicle's movement will be notified by certified mail of the amount of damage and will be given 30 days to submit payment for such damage. Failure to make payment within 30 days will result in the department's placing the claim with the attorney general for collection.

(D) The venue of any suit for a claim against a surety bond for the movement of a vehicle permitted under the provisions of Texas Civil Statutes, Article 6701a, will be any court of competent jurisdiction in Travis County.

(2) Permit surety bonds.

(A) A surety bond required under the provisions of Texas Civil Statutes, Article 6701a, must be submitted on the department's standard surety bond form, Form 439; and be in the amount of $10,000.

(B) An applicant desiring a permit for a load exceeding 250,000 pounds gross weight must obtain a surety bond, issued on Form 440, in the amount of $100,000.

(C) A facsimile copy of the surety bond is acceptable in lieu of the original surety bond, for a period not to exceed ten days from the date of its receipt in the CPO. If the original surety bond has not arrived in the CPO by the end of the ten days, the applicant will not be issued a permit until the original surety bond has been received in the CPO.

(D) The surety bond requirement does apply to the delivery of farm equipment to a farm equipment dealer.

(E) A surety bond is required when a dealer or transporter of farm equipment or a manufacturer of farm equipment obtains a permit.

(F) The surety bond requirement does not apply to driving or transporting farm equipment which is being used for agricultural purposes if it is driven or transported by or under the authority of the owner of the equipment.

(3) Ready-mix concrete or solid waste vehicle surety bonds.

(A) A surety bond is required for a vehicle operated under provisions of Texas Civil Statutes, Article 6701d-12 or Article 6701d-19a. The surety bond must:

(i) be in the amount of $1,000 per vehicle (For example, if 10 trucks are covered by the surety bond then the total amount of the surety bond would be $10,000.);

(ii) indicate the total amount of coverage; and

(iii) be submitted in duplicate to the CPO on Form 1382 or Form 1575.

(B) Form 1382-A or Form 1576 must be completed in duplicate and submitted to the CPO for certification of each vehicle bonded under Forms 1382 or Form 1575.

(C) The CPO will certify and return to the principal, one copy of Form 1382 or Form 1575, and one copy of Form 1382-A or Form 1576.

(D) Form 1382-A or Form 1576 must be carried in the cab of the bonded vehicle.

(E) When a vehicle is added, a new Form 1382 or Form 1575 must be submitted to the CPO that indicates the new increased amount of the surety bond.

(F) Form 1383 or Form 1577 must be used to add or delete a vehicle covered by Form 1382 or Form 1575, and must be completed in duplicate and submitted to the CPO for certification.

(G) The CPO will certify and return to the principal one copy of Form 1383 or Form 1577 when a new vehicle is added to the surety bond. When a vehicle is dropped from the surety bond the CPO will make the necessary revision to the principal's file.

(H) Form 1383 or Form 1577 must be carried in the cab of the bonded vehicle.

(I) A facsimile copy of Forms 1382, 1382-A, 1383, 1575, 1576 or 1577 is not acceptable in lieu of the original surety bond.

§28.12. Single-Trip Permits Issued Under Texas Civil Statutes, Article 6701a.

(a) General.

(1) The requirements stated in §28.11(b)(1) and (2) of this title (relating to Permit Issuance Requirements and Procedures) govern a permit issued under this section.

(2) The following information applies to a single-trip permit issued under Texas Civil Statutes, Article 6701a, for an overdimension load.

(A) The permit fee is $30, and may be issued for an overdimension load that cannot be reasonably dismantled when the department determines that movement may be accomplished without material damage to the highways, bridges, and other appurtenances

(B) A permitted vehicle must be routed over the most direct route available taking into consideration.

(i) the size and weight of the overdimension load in relation to vertical clearances, width restrictions, and weak or load restricted bridges,

(ii) the geometrics of the roadway in comparison to the overdimension load; and

(iii) sections of highways restricted to specific load sizes and weights due to construction, maintenance, and weather conditions.

(C) When a permit applicant desires a route other than the most direct, more than one permit will be required for the trip.

(D) A permitted vehicle will be allowed return movement of the empty oversize/overweight hauling equipment to the permitted vehicle's point of origin, provided the return movement is completed within the time period stated in the permit.

(3) The permitted vehicle will be restricted to daylight movement only, unless an exception is granted by the CPO.

Exceptions will be based on a route and traffic study.

(4) A permitted vehicle operating under a single-trip permit must be registered under Texas Civil Statutes, Article 6675a-2 or Article 6675a-16, for maximum gross weight as set forth by Texas Civil Statutes, Article 6701d-11, §5, not exceeding 80,000 pounds total gross weight.

(5) A permitted vehicle that has been granted night movement must have a front and a rear escort vehicle at all times when the permitted vehicle is moving on the state highway system, unless an exception is granted based on a route and traffic study conducted by the CPO.

(6) The maximum size limits for a permit issued under Texas Civil Statutes, Articles 6701a, 6701a-2, and 6701d-14, for weekend or holiday movement is 14 feet wide, or 16 feet high, or 110 feet long; however, the CPO may allow weekend or holiday movement for a specific permitted vehicle with greater size limits based on a route and traffic study conducted by the CPO.

(b) Overwidth loads.

(1) An overwidth load must:

(A) travel in the outside traffic lane on multi-lane highways, when the width of the load exceeds 12 feet;

(B) have a front escort vehicle if the width of the load exceeds 14 feet but does not exceed 16 feet when traveling on a two-lane highway, unless an exception is granted by the CPO based on a route and traffic study,

(C) have a rear escort vehicle if the width of the load exceeds 14 feet but does not exceed 16 feet when traveling on a roadway of four or more lanes, unless an exception is granted by the CPO based on a route and traffic study; and

(D) have a front and a rear escort vehicle for all roads, when the width of the load exceeds 16 feet, unless an exception is granted by the CPO based on a route and traffic study.

(2) A permitted vehicle exceeding 16 feet in width will not be routed on the main lanes of a controlled access highway. However, the load may be permitted on the frontage roads when such are available, provided the movement will not pose a safety hazard to other highway users.

(3) The CPO may grant an exception to travel on the main lanes based on a route and traffic study.

(4) An applicant requesting a permit to move an overdimension load exceeding 20 feet overall width will be furnished with a proposed route, which the applicant must physically inspect to determine if the overdimension load can safely negotiate the proposed route, unless an exception is granted based on a route and traffic study conducted by the CPO.

(5) The applicant must notify the CPO in writing whether the overdimension load can or cannot safely negotiate the proposed route. If any section of the proposed route is unacceptable, the applicant shall provide the CPO with an alternate route around the unacceptable section.

(6) When a permit is issued for an overwidth trailer, it will be permitted to move empty to and from the job site.

(c) Houses and storage tanks.

(1) Final approval for the issuance of a permit for a house or storage tank exceeding 20 feet in width will reside with each district engineer on the proposed route.

(2) The issuance of a permit for a house exceeding 20 feet in width will depend on:

(A) the amount of inconvenience and hazard to the traveling public, based on traffic volume;

(B) highway geometrics and time of movement; and

(C) the overall width, measured to the nearest inch, of the house includes the eaves or porches.

(3) The issuance of a permit for a storage tank exceeding 20 feet in width will depend on:

(A) the amount of inconvenience and hazard to the traveling public, based on traffic volume;

(B) highway geometrics and time of movement; and

(C) the overall width, measured to the nearest inch, of the storage tank includes valves or other projections.

(4) A tank must be empty.

(5) The proposed route must include the beginning and ending points on a state highway.

(6) A permit will not be issued for a newly constructed house or storage tank that exceeds 32 feet overall width.

(7) A permit will not be issued for an old house or old storage tank that exceeds 40 feet overall width, unless an exception is granted by the CPO, based on a route and traffic study.

(8) A permit may be issued for the movement of an overweight house provided:

(A) the applicant completes and submits to the CPO a copy of a diagram for moving overweight houses, as shown in Appendix B of this section;

(B) each support beam, parallel to the centerline of the highway, is equipped with an identical number of two-axle groups which may be placed directly in line and across from the other corresponding two axle group or may be placed in a staggered offset arrangement to provide for proper weight distribution;

(C) that, when a support beam is equipped with two or more two axle groups, each two axle-group is connected to a common mechanical or hydraulic system to insure that each two-axle group shares equally in the weight distribution at all times during the movement; and, when the spacing between the two-axle groups, measured from the center of the last axle of the front group to the center of the first axle of the following group, is eight feet or more, the front two-axle group is equipped for self-steering in a manner that will guide or direct the axle group in turning movements without tire scrubbing or pavement scuffing; and

(D) the department conducts a detailed analysis of each structure on the proposed route and determines the load can be moved without damaging the roads and bridges.

(9) The CPO may waive the requirement that a loading diagram be submitted for the movement of an overweight house, provided the total weight of all axle groups located in the same transverse plane across the house do not exceed the maximum weight limits specified in §28.11(d)(2) of this title (relating to Permit Issuance Requirements and Procedures).

(d) Overlength loads.

(1) An overlength permit may be issued to a vehicle or vehicle combination transporting a load that projects more than three feet in front of the foremost portion of the vehicle transporting the load, or when the load projects more than four feet beyond the rearmost portion of the load carrying surface of the vehicle transporting the load.

(2) A single vehicle, such as a motor crane, that has a permanently mounted boom is not considered as having either front or rear overhang as a result of the boom because the boom is an integral part of the vehicle.

(3) When a single vehicle with a permanently attached boom exceeds the maximum legal length of 45 feet, a permit will not be issued if the boom projects more than 25 feet beyond the front bumper of the vehicle, or when the boom projects more than 30 feet beyond the rear bumper of the vehicle, unless an exception is granted by the CPO, based on a route and traffic study.

(4) Maximum permit length for a single vehicle is 75 feet.

(5) A load extending more than 20 feet beyond the rearmost portion of the load carrying surface of the permitted vehicle must have a rear escort, unless an exception is granted by the CPO, based on a route and traffic study.

(6) A load extending more than 20 feet beyond the foremost portion of the permitted vehicle must have a front escort, unless an exception is granted by the CPO, based on a route and traffic study.

(7) A permit will not be issued for an overdimension load with:

(A) more than 25 feet front overhang; or

(B) more than 30 feet rear overhang, unless an exception is granted by the CPO, based on a route and traffic study.

(8) A permitted vehicle exceeding 110 feet overall length, but not exceeding 125 feet overall length must have:

(A) a front escort vehicle when traveling on a two-lane highway; or

(B) a rear escort vehicle when traveling on a multi-lane highway.

(9) An applicant requesting a permit to move an overdimension load exceeding 125 feet overall length will be furnished with a proposed route, which the applicant must physically inspect to determine if the overdimension load can safely negotiate the proposed route, unless an exception is granted based on a route and traffic study conducted by the CPO. The applicant must notify the CPO in writing whether the overdimension load can or cannot safely negotiate the proposed route. If any section of the proposed route is unacceptable, the applicant shall provide the CPO with an alternate route around the unacceptable section.

(10) A permitted vehicle exceeding 125 feet overall length must have a front and a rear escort vehicle at all times, unless an exception is granted based on a route and traffic study conducted by the CPO.

(e) Convoy regulations for overlength loads.

(1) A permitted vehicle that is not overwidth or overheight, and does not exceed 150 feet overall length, may be moved in a convoy consisting of not more than four overlength permitted vehicles. A permitted vehicle that is not overwidth or overheight that exceeds 150 feet, but does not exceed 180 feet overall length, may be moved in a convoy consisting of not more than two overlength permitted vehicles.

(2) Each permitted vehicle in the convoy must:

(A) be spaced at least 1,000 feet but not more than 2,000 feet from any other permitted vehicle in the convoy; and

(B) have a rotating amber beacon or an amber pulsating light, not less than eight inches in diameter, mounted at the rear top of the load being transported.

(3) The convoy must have a front escort vehicle and a rear escort vehicle on all highways at all times.

(f) Overheight loads.

(1) Any permitted vehicle that exceeds 17 feet in height must have a front escort vehicle equipped with a height pole to accurately measure overhead obstructions, unless an exception is granted based on a route and traffic study conducted by the CPO.

(2) Any permitted vehicle exceeding 18 feet in height must have a front and rear escort vehicle, unless an exception is granted based on a route and traffic study conducted by the CPO.

(3) An applicant requesting a permit to move an overdimension load with an overall height of 19 feet or greater will be furnished with a proposed route, which the applicant must physically inspect to determine if the overdimension load can safely negotiate the proposed route, unless an exception is granted based on a route and traffic study conducted by the CPO.

(4) An applicant requesting a permit under paragraph (3) of this subsection must notify the CPO in writing whether the overdimension load can or cannot safely negotiate the proposed route. If any section of the proposed route is unacceptable, the applicant shall provide the CPO with an alternate route around the unacceptable section.

(g) Overweight loads

(1) The maximum weight limits for an overweight permit are specified in §28.11(d) of this title (relating to Permit Issuance Requirements and Procedures).

(2) The applicant shall pay, in addition to the single- trip permit fee of $30, a highway maintenance fee in an amount based on the following weights:

GROSS WEIGHT IN POUNDS	HIGHWAY MAINTENANCE FEE
80,001 TO 120,000	$50
120,001 TO 160,000	$75
160,001 TO 200,000	$100
200,001 AND ABOVE	$125

(3) A permit issued for an overdimension load exceeding 200,000 pounds gross weight will have a total permit fee that includes the single-trip permit fee, the highway maintenance fee, and the vehicle supervision fee (VSF).

(4) A permit may be issued to transport an overdimension load exceeding 200,000 pounds gross weight but not exceeding 254,300 pounds gross weight, provided that the axle weights of the load conform to the axle weight limits and axle spacing requirements as set forth by §28.11(d) of this title (relating to Permit Issuance Requirements and Procedures), regardless of whether the load crosses any bridge, and provided the axle spacing distance is 95 feet or greater, measured from the center of the first axle to the center of the last axle.

(5) For a permit issued under paragraph (4) of this subsection, the permittee will pay the $30 single-trip permit fee, the $125 highway maintenance fee, and the vehicle supervision fee of $35.

(6) A permit may be issued to transport:

(A) an overdimension load exceeding 200,000 pounds gross weight but not exceeding 254,300 pounds gross weight, when the axle weights do not conform to the axle weight limits and axle spacing requirements as set forth by §28.11(d) of this title (relating to Permit Issuance Requirements and Procedures), and provided the load does not cross any bridge; or

(B) an overdimension load that exceeds 254, 300 pounds gross weight that does not cross any bridge.

(7) For a permit issued under paragraph (6) of this subsection, the permittee will pay the $30 single-trip permit fee, the $125 highway maintenance fee, and the vehicle supervision fee of $100. If the permittee has additional identical loads that are to be moved over the same route within five days of the movement date of the original permit, the total fee for each additional load will be $30 for the single-trip permit, $125 for the highway maintenance fee, and $35 for the vehicle supervision fee.

(8) A permit may be issued to transport:

(A) an overdimension load that exceeds 200,000 pounds gross weight but does not exceed 254,300 pounds gross weight, when the axle weights do not conform to the axle weight limits and axle spacing requirements as set forth by §28.11(d) of this title (relating to Permit Issuance Requirements and Procedures), and provided the load does cross a bridge;

(B) an overdimension load that exceeds 200,000 pounds gross weight but does not exceed 254,300 pounds gross weight that has an axle spacing distance that is less than 95 feet, measured from the center of the first axle to the center of the last axle, and does cross a bridge; or

(C) an overdimension load that exceeds 254,300 pounds gross weight that does cross a bridge.

(9) For a permit issued under paragraph (8) of this subsection, the permittee will pay the $30 single-trip permit fee, the $125 highway maintenance fee, and the vehicle supervision fee of $800. If the permittee has additional identical loads that are to be moved over the same route within five days of the movement date of the original permit, the total fee for each additional load will be $30 for the single-trip permit, $125 for the highway maintenance fee, and $35 for the vehicle supervision fee.

(10) An applicant may elect to provide written certification from a registered professional engineer stating that the bridges and culverts on the proposed travel route are capable of sustaining the movement of an overdimension load exceeding 200,000 pounds gross weight; however, such certification must be approved by the department.

(11) When the certification required under paragraph (10) of this subsection is approved, the applicant must pay the single-trip permit fee of $30, the highway maintenance fee of $125, and the vehicle supervision fee of $500. If the permittee has additional identical loads that are to be moved over the same route within five days of the movement date of the original permit, the total fee for each additional load will be $30 for the single-trip permit, $125 for the highway maintenance fee, and $35 for the vehicle supervision fee.

(12) When the department has determined that a permit can be issued for an overdimension load exceeding 200,000 pounds gross weight, the applicant must pay the single-trip permit fee, the highway maintenance fee, and the vehicle supervision fee, by cashier's check, bank money order, or PAC, at the time the permit is issued.

(13) The department will not charge an analysis fee for single and multiple box culverts.

(14) An applicant requesting a permit to move an overdimension load that exceeds 254,300 pounds gross weight, or the weight limits in §28.11(d) of this title (relating to Permit Issuance Requirements and Procedures), must submit the following information to the CPO to determine if the permit can be issued:

(A) a detailed loading diagram which indicates the number of axles, the number of tires on each axle, the tire size on each axle, the distance between each axle, the tare and gross weight on each axle, the transverse spacing of each set of dual wheels, the distance between each set of dual wheels, the load's center of gravity, the distance from the center of gravity to the center of the front bolster, the distance from the center of gravity to the center of the rear bolster, the distance from the center of the front bolster to the center of the fifth wheel of the truck, the distance from the center of the rear bolster to the center of the closest axle, and any other measurements as may be needed to verify that the weight of the overdimension load is adequately distributed among the various axle groups in the amounts indicated by the loading diagram; and

(B) a map indicating the exact beginning and ending points relative to a state highway.

(15) The CPO will select a tentative route based on the physical size of the overdimension load excluding the weight. The tentative route must be investigated by the applicant, and the CPO must be advised, in writing, that the route is capable of accommodating the overdimension load.

(16) Upon receipt of the applicant's written notification, the department will conduct a detailed structural analysis of the bridges on the proposed route based on the applicant's proposed loading diagram, or the applicant may elect to provide written certification from a registered professional engineer stating that the bridges and culverts on the proposed travel route are capable of sustaining the movement of the overdimension load. The certification must be approved by the department before the permit will be issued.

(17) A permit may be issued for the movement of oversize and overweight self-propelled earth-moving equipment under the following guidelines.

(A) The weight per inch of tire width must not exceed 650 pounds.

(B) The rim diameter of each wheel must be a minimum of 25 inches.

(C) The maximum weight per axle must not exceed 45,000 pounds.

(D) The minimum spacing between axles, measured from center-of-axle to center-of-axle, must not be less than 12 feet.

(E) The equipment must be moved empty.

(F) The equipment must be licensed with a machinery license plate or a one trip registration.

(G) The route will not include any controlled access highway, unless an exception is granted based on a route and traffic study conducted by the CPO.

(h) Drill pipe and drill collars hauled in a pipe box.

(1) A vehicle or combination of vehicles may be issued a permit under Texas Civil Statutes, Article 6701a, to haul drill pipe and drill collars in a pipe box.

(2) The maximum width must not exceed 9 feet.

(3) The axle weight limits must not exceed the maximum weight limits as specified in §28.11(d)(3) of this title (relating to Permit Issuance Requirements and Procedures).

(4) The height and length must not exceed the legal limits as specified in Texas Civil Statutes, Article 6701d-11, §3.

(5) The permit will be issued for a single-trip only, and the fee will be $30.

(6) The permit is valid only for travel on any farm-to- market and ranch-to-market road, and such road will be specified on the permit; however, the permitted vehicle will not be allowed to cross any load restricted bridge.

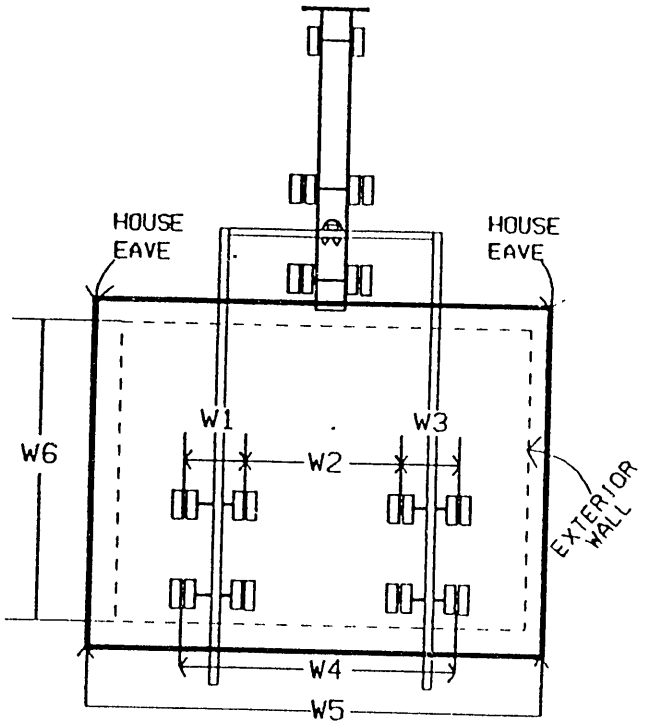
(7) Movement will be restricted to daylight hours only. (8 A surety bond is required prior to issuance of the permit.

(i) Diagram for moving overweight houses. The following Appendix B indicates the type of diagram that is to be completed by the permit applicant for moving an overweight house. All measurements must be stated to the nearest inch.

APPENDIX B

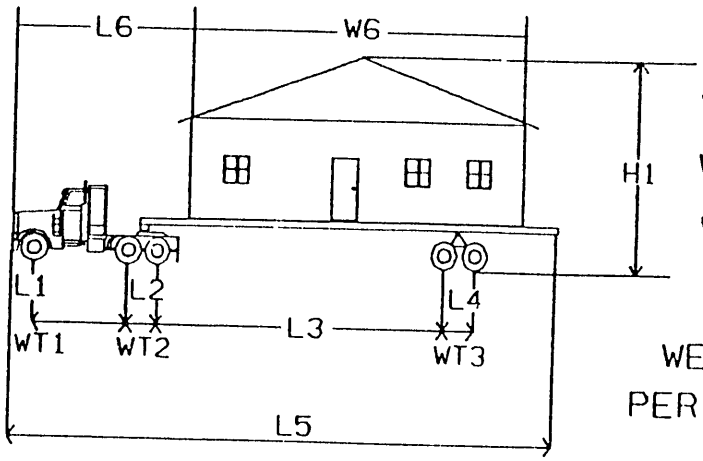
DIAGRAM FOR MOVING OVERWEIGHT HOUSES

PLAN VIEW EXAMPLE



W1 =
W2 =
W3 =
W4 =
W5 =
W6 =

SIDE VIEW EXAMPLE



WT1 =
WT2 =
WT3 =

WEIGHT PER DOLLY =

L1 =
L2 =

L3 =
L4 =
H1 =

L5 =
L6 =

§28.13. Time Permits Issued Under Texas Civil Statutes, Article 6701a, Article 6701d-11, §3, and Article 6701d-14.

(a) General.

(1) The requirements stated in §28.11(b)(1) and (3) of this title (relating to Permit Issuance Requirements and Procedures) govern a time permit issued under Texas Civil Statutes, Article 6701a

(2) A time permit will be issued for an overwidth or overlength load, or an overlength vehicle under the following conditions.

(A) The fee for a 30-day permit is $60, the fee for a 60-day permit is $90; and the fee for a 90-day permit is $120

(B) The time period must be 30, 60, or 90 calendar days, based on the request of the applicant, and will begin with the "movement to begin" date stated on the permit.

(C) The permitted vehicle may not exceed the weight or height limits set forth by Texas Civil Statutes, Article 6701d-11, §3 and §5.

(D) The permitted vehicle must be registered in accordance with Texas Civil Statutes, Article 6675a-2 or Article 6675a-16, for maximum weight for the vehicle or vehicle combination as set forth by Texas Civil Statutes, Article 6701d-11, §5.

(E) The permit will indicate only the truck or truck-tractor transporting the load; however, any properly registered trailer or semi-trailer is covered by the permit, but will not be listed on the permit.

(F) Movement will be during daylight hours only.

(G) The permit route will be limited to seven adjoining districts, unless a specific route with an exact origin and destination is requested by the permit applicant, then the route may include more than seven districts

(H) The permitted vehicle must not cross a load restricted bridge and must not travel over any load restricted road, or through any highway construction or maintenance area.

(I) A time permit is available to all applicants and is not restricted to any class of operators.

(3) A time permit will not be issued to a vehicle or vehicle combination that is registered with temporary registration, or transferred from one permittee to another permittee, or from one vehicle to another vehicle.

(b) Overwidth loads

(1) An overwidth time permit may be issued for the movement of construction and maintenance vehicles and machines, vehicles and machines used for soil conservation work or in the timber industry, implements of husbandry, and overwidth trailers used to haul those vehicles and machines

(2) The maximum width of the permitted vehicle must not exceed 13 feet, and the permitted vehicle shall not exceed legal] weight, height, or length according to Texas Civil Statutes, Article 6701d-11, §3 and §5.

(3) When multiple items are hauled at the same time, the items may not be loaded in a manner that creates.

(A) a width greater than the width of the widest item being hauled,

(B) a height greater than 14 feet; or

(C) an overlength load

(4) The description of the load may include several different construction and maintenance machines, or soil conservation machines, or machines used in the timber industry, or implements of husbandry, and an overwidth hauling trailer; however, when more than one item is being hauled, the gross weight must not exceed the registered gross weight of the vehicle hauling the load.

(5) When the description of the permitted vehicle is listed as a soil conservation machine, then it must be transported on a vehicle licensed with a special soil conservation license plate

(6) When the description of the permitted vehicle is listed as an overwidth trailer, it will be permitted to move empty to and from the job site, or to return from the job site to the permittee's place of business with a load that is less than the width of the trailer, provided the place of business is located on the authorized route stated on the permit, or is within the authorized area of travel indicated on the permit

(c) Overlength loads

(1) An overlength time permit may be issued for the transportation of overlength loads or the movement of an overlength self-propelled vehicle

(2) The maximum overall length for the permitted vehicle may not exceed 110 feet.

(3) The permitted vehicle may not exceed legal weight, height, or width according to Texas Civil Statutes, Article 6701d-11, §3 and §5.

(4) A permitted vehicle transporting utility poles will be allowed emergency night movement for restoring electrical utility service, provided the permitted vehicle has a front and a rear escort vehicle

(5) The maximum length for a single permitted vehicle may not exceed 75 feet

(6) A permitted vehicle with a load extending more than 20 feet beyond the rearmost portion of the load carrying surface must have a rear escort, unless an exception is granted by the CPO, based on a route and traffic study.

(7) A permitted vehicle with a load extending more than 20 feet beyond the foremost portion of the permitted vehicle must have a front escort, unless an exception is granted by the CPO, based on a route and traffic study.

(8) A permit will not be issued when the load has more than 25 feet front overhang, or more than 30 feet rear overhang, unless an exception is granted by the CPO, based on a route and traffic study

(d) Annual permits.

(1) Implements of husbandry. An annual permit may be issued for an implement of husbandry being moved by a dealer in those implements, and for harvesting equipment being moved as part of an agricultural operation

(A) The fee for the permit is $135, plus the highway maintenance fee specified in Texas Civil Statutes, Article 6701a, for an overweight load.

(B) The time period will be for one year and will start with the "movement to begin" date stated on the permit

(C) The maximum width may not exceed 16 feet, maximum height may not exceed 16 feet, maximum length may not exceed 110 feet, and maximum weight may not exceed the limits stated in §28.11(d) of this title (relating to Permit Issuance Requirements and Procedures)

(D) The permitted vehicle must not travel over a load restricted bridge, or through any highway construction or maintenance area, and must travel in the

outside traffic lane on multi-lane highways, when the width of the load exceeds 12 feet.

(E) The permitted vehicle must be registered in accordance with Texas Civil Statutes, Article 6675a-1 or Article 6675a-16, for maximum weight as set forth by Texas Civil Statutes, Article 6701d-11, §5.

(F) Movement will be during daylight hours only.

(G) The permitted vehicle must:

(i) have a front escort vehicle if the width exceeds 14 feet but does not exceed 16 feet when traveling on a two-lane highway, unless an exception is granted by the CPO based on a route and traffic study;

(ii) have a rear escort vehicle if the width exceeds 14 feet but does not exceed 16 feet when traveling on a roadway of four or more lanes, unless an exception is granted by the CPO based on a route and traffic study;

(iii) have a front and a rear escort vehicle if the width of the load exceeds 16 feet, unless an exception is granted by the CPO based on a route and traffic study; and

(iv) not travel on the main lanes of a controlled access highway if the width of the load exceeds 16 feet, unless an exception is granted by the CPO based on a route and traffic study.

(2) Power line poles. An annual permit will be issued under Texas Civil Statutes, Article 6701d-14, for the movement of poles required for the maintenance of electric power transmission and distribution lines.

(A) The fee for the permit is $120.

(B) The time period will be for one year and will start with the "movement to begin" date stated on the permit.

(C) The maximum length of the permitted vehicle may not exceed 75 feet.

(D) The width, height and gross weight of the permitted vehicle may not exceed the limits set forth by Texas Civil Statutes, Article 6701d-11, §3 and §5.

(E) The permitted vehicle must not travel over a load restricted highway or bridge, and must not travel through any highway construction or maintenance area.

(F) The permitted vehicle must be registered in accordance with Texas Civil Statutes, Article 6675a-1 or Article 6675a-16, for maximum weight as set forth by Texas Civil Statutes, Article 6701d-11, §5.

(G) Movement will be between the hours of sunrise and sunset; however, the limitation on hours of operation does not apply to a vehicle being operated to prevent interruption or impairment of electric service, or to restore electric service that has been interrupted.

(H) The speed of the permitted vehicle may not exceed 50 miles per hour.

(I) There must at all times be displayed at the extreme rear end of the permitted vehicle a red flag or cloth of not less than 12 inches square and so hung that the entire area is visible to the driver of a vehicle approaching from the rear.

(3) Cylindrically shaped bales of hay. An annual permit may be issued under Texas Civil Statutes, Article 6701d-11, for the movement of vehicles transporting cylindrically shaped bales of hay

(A) The permit fee is $10.

(B) The time period will be for one year, and will start with the "movement to begin" date stated on the permit.

(C) The maximum width of the permitted vehicle may not exceed 144 inches.

(D) The length, height, and gross weight of the permitted vehicle may not exceed the limits set forth by Texas Civil Statutes, Article 6701d-11, §3 and §5.

(E) The permitted vehicle may travel over all highways including those that are load restricted; however, it must not travel over a load restricted bridge or through any highway construction or maintenance area.

(F) Movement is restricted to daylight hours only

(G) The permit will not be transferred from vehicle to vehicle or from owner to owner, and will not be amended.

(H) The permitted vehicle must be registered in accordance with Texas Civil Statutes, Article 6675a-1 or Article 6675a-16, for maximum weight as set forth by Texas Civil Statutes, Article 6701d-11, §5.

§28.14. Manufactured Housing, and Industrialized Housing and Building Permits.

(a) General information.

(1) A manufactured home that exceeds size limits for motor vehicles as defined by Texas Civil Statutes, Article 6701d-11, §3 and §5, must obtain a permit from the department.

(2) Pursuant to Texas Civil Statutes, Article 6701, a permit may be issued to persons registered as manufacturers or retailers with the Commissioner of Licensing and Regulation, or certified for the transportation of a manufactured home by either the Railroad Commission of Texas or the Interstate Commerce Commission.

(3) The department may issue a permit to the owner of a manufactured home provided that the ownership of the manufactured home and of the towing vehicle is shown to be the same person by the title to the home and to the towing vehicle, or that the owner has duly filed a lease pursuant to Texas Civil Statutes, Article 6701c-1, showing the owner of the manufactured home to be the lessee of the towing vehicle; and to installers registered with the Commissioner of Licensing and Regulation for the transportation of a manufactured home over routes between points when such transportation would be excluded from regulation under Texas Civil Statutes, Article 911b.

(4) The CPO is closed on Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

(5) A manufactured home that exceeds 20 feet overall width, or 16 feet overall height, or 110 feet overall length may not be permitted under Texas Civil Statutes, Article 6701; however, it may be permitted under Texas Civil Statutes, Article 6701a.

(b) Application for permit.

(1) The applicant must complete the application and shall list the manufactured home's HUD number in the space provided for the manufactured housing serial number prior to requesting a permit.

(2) An application can be submitted in person at a cash collection office, by facsimile to the CPO, or by telephone to the CPO. All applications made by telephone are recorded.

(3) When a permit request is made by telephone, the permit officer will request all information in the application for entry into the department's computer for record keeping purposes and generation of the permit number. The information will be verified and a route will be selected.

(4) A permit request made by mail or facsimile will be returned to the applicant by mail or facsimile.

(c) Permit issuance.

(1) Permit issuance is subject to the requirements of §28 11(b)(1)(A) and (B), of this title (relating to Permit Issuance Requirements and Procedures)

(2) The permit may be amended in the case of a breakdown of the towing vehicle

(d) Payment of permit fee

(1) The cost of the permit is $15 00

(2) A permit ordered by telephone must be purchased in accordance with §28.11(c)(1)(A), (B), and (C) of this title (relating to Permit Issuance Requirements and Procedures)

(3) A permit ordered in person at a cash collection office, or by mail, or by facsimile must be purchased in accordance with §28.11(c)(1) and (2), of this title (relating to Permit Issuance Requirements and Procedures)

(4) A permit fee will not be refunded after the permit number has been issued; however, a refund may be made after permit issuance if it is necessary to correct an error made by the permit officer.

(e) Escrow accounts A permit applicant may establish an escrow account with the department for the specific purpose of paying any fee that is related to the issuance of a permit for the transportation of a manufactured home

(1) A permit applicant that desires to establish an escrow account shall complete and sign an escrow account agreement, and shall return the completed and signed agreement to the department with a check in the minimum amount of $305, which shall be deposited to the appropriate fund by the department in the State Treasury. Five dollars will be charged as an escrow account administrative fee and shall be deposited in the state highway fund

(2) When the permit applicant's escrow account balance has been reduced to $150, the department will generate a balance sheet that will be furnished to the holder of the escrow account with instructions to submit a cashier's check or money order, payable to the department in the minimum amount of $305, which shall be used to replenish the escrow account.

(3) Upon receipt of the replenishment check, the department will charge $5.00 as an escrow account administrative fee, and will credit the remainder of the check to the balance of the escrow account holder.

(4) An escrow account holder must submit a written request to the department to terminate the escrow account agreement. Any remaining balance will be returned to the escrow account holder

(f) Permit provisions and conditions

(1) The overall combined length of the manufactured home and the towing vehicle includes the length of the hitch or towing device.

(2) The height is measured from the roadbed to the highest elevation of the manufactured home

(3) The width of a manufactured home includes any roof or eaves extension or overhang on either side.

(4) A permit will be issued for a single continuous movement not to exceed five days

(5) Movement must be made during daylight hours only, and may be made on any day except New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day

(6) The department may limit the hours for travel on certain routes because of heavy traffic conditions.

(7) The department will publish any limitations on movements during the national holidays listed in this subsection, or any limitations during certain hours of heavy traffic conditions, and will make such publications available to the public prior to the limitations becoming effective.

(8) The permit will contain the route for the transportation of the manufactured home from the point of origin, to the point of destination.

(9) The route for the transportation must be the shortest. distance, including divided and interstate systems, except where construction is in progress or bridge or overpass width or height would create a safety hazard.

(10) The department will publish annually a map or list of all bridges or overpasses which, due to height or width, require an escort vehicle to stop oncoming traffic while the manufactured home crosses the bridge or overpass

(11) A permit is void when an applicant,

(A) gives false or incorrect information,

(B) does not comply with the restrictions or conditions stated in the permit; or

(C) changes or alters the information on the applicant's copy of the permit

(12) A permittee may not transport a manufactured home with a void permit; a new permit must be obtained

(g) Escort requirements

(1) A manufactured home exceeding 12 feet in width must have a rotating amber beacon of not less than eight inches in diameter mounted somewhere on the roof at the rear of the manufactured home, and the towing vehicle must have one rotating amber beacon of not less than eight inches in diameter mounted on top of the cab These beacons must be operational during any permitted move over the highways, roads, and streets of this state

(2) A manufactured home with a width exceeding 16 feet but not exceeding 18 feet must have a front escort vehicle on two- lane roadways and a rear escort vehicle on roadways of four or more lanes

(3) A manufactured home exceeding 18 feet in width must have a front and a rear escort on all roadways at all times

(4) The escort vehicle must have

(A) one red 16 inch square flag mounted on each of the four corners of the vehicle,

(B) a sign mounted on the front and rear of the vehicle displaying the words "WIDE LOAD" in black letters at least eight inches high with a brush stroke at least 1.41 inches wide against a yellow background, and

(C) an amber light or lights, visible from both front and rear, mounted on top of the vehicle in one of the following configurations.

(i) two simultaneously flashing lights, or

(ii) one rotating beacon of not less than eight inches in diameter.

(5) Two transportable sections of a multi-section manufactured home, or two single-section manufactured homes, when towed together in convoy may be considered one home for purposes of the escort vehicle requirements, provided the

distance between the two units does not exceed 1,000 feet.

§28 15 Portable Building Permits

(a) General information.

(1) A vehicle or vehicle combination transporting one or more portable buildings that exceed legal length or width limits set forth by Texas Civil Statutes, Article 6701d-11, §3, may obtain a permit under Texas Civil Statutes, Article 6701a-2.

(2) A vehicle or vehicle combination transporting one or more portable buildings that exceed height or weight limits set forth by Texas Civil Statutes, Article 6701d-11, §3 and §5, or exceed 16 feet in width or 80 feet in overall length will not be permitted under Texas Civil Statutes, Article 6701a-2; but may be permitted under provisions of Texas Civil Statutes, Article 6701a

(3) The CPO is closed on Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day

(b) Application for permit

(1) The applicant must complete the application and comply with the designated methods of payment in §28.11(c) of this title (relating to Permit Issuance Requirements and Procedures) prior to requesting a permit.

(2) An application can be made by telephone to the CPO All applications made by telephone are recorded.

(3) The permit officer will request all information in the application for entry into the department's computer for record keeping purposes and generation of the permit number The information will be verified and a route will be selected.

(4) An application may be made in person at a cash collection office, or submitted by facsimile or mail to the CPO.

(5) A permit request made by mail or facsimile will be returned to the applicant by mail or facsimile

(c) Permit issuance.

(1) Permit issuance is subject the requirements of §28. 11(b)(1)(A) and (B) of this title (relating to Permit Issuance Requirements and Procedures).

(2) The permit may be amended in the case of a breakdown of the towing vehicle.

(d) Payment of permit fee

(1) The cost of the permit is $7 50

(2) A permit ordered by telephone must be purchased in accordance with §28.11(c)(1)(A), (B), and (C) of this title (relating to Permit Issuance Requirements and Procedures)

(3) A permit ordered in person at a cash collection office, or ordered by mail or by facsimile must be purchased in accordance with §28.11(c)(1) and (2) of this title (relating to Permit Issuance Requirements and Procedures)

(4) A permit fee will not be refunded after the permit number has been issued; however, a refund may be made after permit issuance if it is necessary to correct an error made by the permit officer.

(e) Escrow accounts A permit applicant may establish an escrow account with the department for the specific purpose of paying any fee that is related to the issuance of a permit for the transportation of a portable building

(1) A permit applicant that desires to establish an escrow account shall complete and sign an escrow account agreement, and shall return the completed and signed agreement to the department with a check in the minimum amount of $305, which shall be deposited to the appropriate fund by the department in the State Treasury Five dollars will be charged as an escrow account administrative fee and shall be deposited in the state highway fund.

(2) When the permit applicant's escrow account balance has been reduced to $150, the department will generate a balance sheet that will be furnished to the holder of the escrow account with instructions to submit a cashier's check or money order, payable to the department in the minimum amount of $305, which shall be used to replenish the escrow account

(3) Upon receipt of the replenishment check, the department will charge $5.00 as an escrow account administrative fee, and will credit the remainder of the check to the balance of the escrow account holder.

(4) An escrow account holder must submit a written request to the department to terminate the escrow account agreement. Any remaining balance will be returned to the escrow account holder.

(f) Permit provisions and conditions

(1) A portable building may only be issued a single-trip permit

(2) Portable buildings may be loaded end-to-end to create an overlength permit load, provided the overall length does not exceed 80 feet

(3) Portable buildings must not be loaded side-by-side to create an overwidth load, or loaded one on top of another to create an overheight load.

(4) A portable building or portable buildings must be loaded in a manner that will create the narrowest width for permit purposes and provide for greater safety to the traveling public.

(5) The permit will be issued for a single continuous movement from the origin to the destination for an amount of time necessary to make the move, not to exceed 10 consecutive days

(6) Movement of the permitted vehicle must be made during daylight hours only.

(7) A permitted vehicle must be routed over the most direct route, taking into consideration the size and weight of the permitted vehicle in relation to vertical clearances, width restrictions, weak or load restricted bridges, the geometrics of the roadway, sections of highways restricted due to construction or maintenance, and weather conditions

(8) A permit applicant desiring a route other than the most direct, must obtain a permit for each segment.

(9) A permit is void when an applicant

(A) gives false or incorrect information,

(B) does not comply with the restrictions or conditions stated in the permit, or

(C) changes or alters the information on the applicant's copy of the permit

(10) A permittee may not transport a portable building with a void permit; a new permit must be obtained

(g) Escort requirements. An escort vehicle must comply with the requirements in §28.11(e) of this title (relating to Permit Issuance Requirements and Procedures).

§28.16. Permits for Military and Governmental Agencies.

(a) The movement of an overdimension load on vehicles registered to the military or governmental agencies must obtain a routing permit from the CPO, and there will not be a charge for the routing

(b) The overdimension load must be moved on military or governmental vehicles that are licensed with either federal or state exempt license plates

(c) The size and weight measurements of the overdimension load must not exceed the permit size and weight limits stated in §28.11(d) of this title (relating to Permit Issuance Requirements and Procedures), and §28.12(f) of this title (relating to Permit Issuance Requirements and Procedures), unless specific permission is granted by the CPO upon request of an authorized representative of the military or a governmental agency.

(d) A surety bond is not required for an overdimension governmental or military load hauled on governmental and military vehicles

(e) The movement of an overdimension military or governmental load transported on vehicles not licensed with federal or state exempt license plates must obtain a permit, and must comply with §28.11 of this title (relating to Permit Issuance Requirements and Procedures), and §28.12 of this title (relating to Single-Trip Permits Issued Under Texas Civil Statutes, Article 6701a)

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 May 9, 1994

TRD-9440547 Diane L Northam
Legal Executive Assistant
Texas Department of Transportation

Earliest possible date of adoption: June 13, 1994

For further information, please call (512) 463-8630

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Subchapter C. Permits for Over Axle and Over Gross Weight Tolerances

• 43 TAC §28.30

The Texas Department of Transportation proposes new §28 30, concerning Permits for Over Axle and Over Gross Weight Tolerances This new section replaces existing §25.81, which is being contemporaneously repealed. In order to provide greater safety to the general traveling public and the permit applicant through more uniform regulation and control of oversize and overweight permit loads, it is necessary to clarify the department's authority, policies, and procedures concerning the issuance of permits for the movement of oversize and overweight vehicles and loads.

Section 28 30, concerning Permits for Over Axle and Over Gross Weight Tolerances, describes the Texas Transportation Commission's authority and procedures for issuing annual permits for the movement of vehicles that exceed the legal axle weight limit by a tolerance of 10% and the legal gross weight limit by a tolerance of 5%. Section 28 30 incorporates the subject matter of the repealed section in an amended form to provide for minor wording changes and rephrasing for clarity, continuity, and style.

Bert A. Lundell, director, Central Permit Office, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering this section

Mr. Lundell has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering this section.

Mr Lundell also has determined that for each year of the first five years the section as proposed is in effect the public benefits anticipated as a result of enforcing and administering the section as proposed will be to provide for improved permit compliance as a result of minor wording changes and rephrasing for clarity, continuity, and style.

Comments on the proposal may be submitted to Bert A. Lundell, Director, Central Permit Office, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p m on June 14, 1994.

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 section. The public hearing will be held at 9 00 a.m. on Thursday, May 26, 1994, in Room 101, Building 200, 200 East Riverside Drive, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1 5. 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 identical or similar comments through a representative member where possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc., for proper reference. Any suggestions or requests for alternative language or other revisions in the proposed text should be submitted in written form. 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 have special communication or accommodation needs and who plan to attend the hearings may contact Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588.

The section is proposed under Texas Civil Statutes, Article 6666, which provide 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 by Texas Civil Statutes, Article 6701d-11, §5B, which authorize the commission to issue annual permits for the movement of vehicles that exceed the legal axle weight limit by a tolerance of 10% and the legal gross weight limit by a tolerance of 5%.

§28.30. Permit for Over Axle and Over Gross Weight Tolerances.

(a) Purpose. In accordance with Texas Civil Statutes, Article 6701d-11, §5B, the department is authorized under certain conditions to issue an annual permit for the operation of a vehicle within certain tolerances above legal axle and gross weight limits, as provided in Texas Civil Statutes, Article 6701d-11, §5. The sections under this subchapter set forth the requirements and procedures to be used in issuing an annual permit.

(b) Scope. An applicant that desires to operate a vehicle that exceeds the legal axle weight by a tolerance of 10% and the legal gross weight by a tolerance of 5.0% on any county road and on any road in the state highway system, excluding the national system of interstate and defense highways, must obtain a permit issued under Texas Civil Statutes, Article 6701d-11, §5B. These tolerance allowances shall also apply to any vehicle operated on a road subject to Texas Civil Statutes, Article 6701d-11, §5 1/2; however, operation of permitted vehicles over load zoned bridges will be limited to 5. 0% over the posted limits

(c) Eligibility. To be eligible for a permit under this section, a vehicle must be registered under Texas Civil Statutes, Article 6675a-1, for the maximum gross weight applicable to the vehicle under Texas Civil Statutes, Article 6701d-11, §5, not to exceed 80, 000 pounds in total gross weight.

(d) Security.

(1) Before a permit may be issued under this section, an applicant, other than an applicant who intends to operate a vehicle that is loaded with timber or pulp wood, wood chips, cotton, or agricultural products in their natural state, must have on file with the department one of the following forms of security in the amount of $15,000, conditioned that payment will be made to the department for any damages to the state highway system and to any county for damages to a road or bridge of such county caused by the operation of any vehicle for which a permit is issued under this section and which has an axle weight or gross weight that exceeds the weights authorized in Texas Civil Statutes, Article 6701d-11, §5 and §5 1/2:

(A) an irrevocable letter of credit issued by a financial institution which deposits are guaranteed by the Federal Deposit Insurance Corporation; or

(B) a blanket bond.

(2) The department may reject a bond which it determines will not provide the intended security.

(3) If payment is made by the issuer in respect of the bond or letter of credit and the applicant does not file with the department a replacement bond or letter of credit in the full amount of $15, 000, or a notification from the issuer of the existing bond or letter of credit that the existing bond or letter of credit has been restored to the full $15,000, within 30 days after the date of such payment, all permits held by the applicant under this section shall automatically expire on the 31st day after such date.

(e) Application for permit.

(1) A person who desires to permit a vehicle as provided in this section, must submit a written application to the CPO.

(2) The application shall be in the form prescribed by the CPO and shall contain the following:

(A) name and address of the applicant,

(B) name of contact person and telephone number;

(C) vehicle information; and

(D) description of commodities to be transported.

(3) The application shall be accompanied by the following documents or information:

(A) a copy of the current registration receipt of the power unit showing that the vehicle is currently registered for the maximum amount allowable for such vehicle,

(B) a list of counties in which the vehicle will be operated,

(C) a nonrefundable fee of $75 in the form of a cashier's check or money order made payable to the State Highway Fund; and

(D) an original bond or letter of credit as required in subsection (d) of this section, unless previously filed by the applicant.

(f) Issuance of permit.

(1) A permit will be issued on the approval of the application and will be mailed to the applicant at the address contained in the application.

(2) The permit shall be carried in the vehicle at all times.

(3) Within 14 days of receipt of the permit, the applicant shall notify by certified or registered mail, return receipt requested, the county clerk of each county if the vehicle will be operated on any county road in that county, and such notification shall contain or be accompanied by the following minimum information:

(A) a copy of the application as required in subsection (e) of this section;

(B) a copy of the bond or letter of credit as required in subsection (d) of this section;

(C) a copy of the registration receipt for the vehicle; and

(D) a copy of the permit issued under this subsection.

(g) Transfer of permit Upon written application on a form prescribed by the CPO, a permit may be transferred to another eligible vehicle for the remaining permit period without additional charges on condition that:

(1) the vehicle for which a permit has been issued will be out of service for more than 30 days for mechanical failure, or

(2) such vehicle is sold or its lease has terminated

(h) Exceptions. A vehicle carrying timber, wood chips, wood pulp, cotton, or other agricultural products in their natural state, may be allowed to exceed the maximum allowable axle weight by 12% without a permit; however, if such vehicle exceeds the maximum allowable gross weight by an amount of up to 5.0%, a permit issued in accordance with this section will be required

(i) Semi-trailer registration. Texas Civil Statutes, Article 6675-6 1/2, provides that the owner of a semi-trailer registered with either a Texas token trailer license plate or a Texas apportioned trailer license plate operated in combination with a permitted vehicle, shall pay a $15 fee to the county where the semi-trailer is registered, and the receipt for the additional registration shall be attached to the annual permit.

(j) Lapse or termination of permit. A permit shall lapse or terminate:

(1) if a new permit application is not submitted to the CPO a minimum of 30 days prior to the original expiration date;

(2) on the sale of the vehicle for which the permit was issued;

(3) on the sale, takeover, or dissolution of the firm, partnership, or corporation to which a permit was issued; or

(4) if the applicant does not replenish the letter of credit or bond as required in subsection (d) of this section.

(k) Void permit. A permit is void when an applicant:

(1) gives false or incorrect information;

(2) does not comply with the restrictions or conditions stated in the permit; or

(3) changes or alters the information in the applicant's copy of the permit.

(l) Movement with void permit. A permittee may not operate a permitted vehicle with a void permit, a new permit must be obtained.

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 May 9, 1994.

TRD-9440548 Diane L Northam
Legal Executive Assistant
Texas Department of Transportation

Earliest possible date of adoption June 13, 1994

For further information, please call (512) 463-8630

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Subchapter D. Permits for Oversize and Overweight Oil Well Related Vehicles

• 43 TAC §§28.40-28.47

The Texas Department of Transportation proposes new §§28.40-28.47, concerning Permits for Oversize and Overweight Oil Well-Related Vehicles These new sections replace existing §§25 90- 25.98, which are being contemporaneously repealed. In order to comply with the Government Code, Chapter 2106, which requires a state agency to set fees at amounts sufficient to recover the indirect costs of that agency, and to provide greater safety to the general traveling public and the permit applicant through more uniform regulation and control of oversize and overweight permit loads, it is necessary to clarify the department's authority, policies, and procedures concerning the issuance of permits for the movement of oversize and overweight vehicles and loads

Section 28 40, concerning Purpose, describes the Texas Transportation Commission's authority to issue permits for the movement of oversize and overweight oil well clean-out, drilling, servicing, or swabbing units, when such units exceed legal size and weight limits.

Section 28 41, concerning Application for Permit, provides procedures for applying for single-trip, time, and annual permits for the movement of an oversize and overweight oil well unit; provides for permit issuance and renewal of time permits, and sets forth methods of payment of permit fees

Section 28 42, concerning Permit Qualifications and Requirements, establishes eligibility requirements for single-trip, time and annual permits; provides that permits cannot be transferred from one owner to another owner, or from one unit to another unit, and establishes conditions that cause a permit to be void

Section 28 43, concerning Registration Requirements, provides for specific types of registration for these units

Section 28 44, concerning Maximum Permit Weight Limits, provides specific formulas for determining maximum weight limits for axles and groups of axles, eligibility for a single-trip or time permit; and the identity of specific bridges on the proposed route that must be analyzed prior to permit issuance

Section 28 45, concerning Permit Fee Calculations, provides specific formulas for calculating single-trip and time permit fees, describes the procedures for using hubometer mileage, highway use factor, and total rate per mile, establishes minimum fees for single-trip and time permits, establishes method of calculating permit fee for a unit with closely spaced axle groups, and establishes conditions for applying a registration reduction to the permit fee

Section 28 46, concerning Permit Movement Conditions, establishes conditions regulating permit movement based on time of day and size of unit, establishes escort requirements, and establishes movement routes

Section 28 47, concerning Permits for Vehicles Transporting Liquid Products Related to Oil Well Production, establishes specific types of vehicle that can obtain permit, provides procedures for applying for permits, sets forth permit qualifications and requirements, establishes permit fees, and provides for permit movement conditions

Bert A Lundell, director, Central Permit Office, has determined that for the first five-year period the sections are in effect there will be fiscal implications to the state as a result of enforcing or administering the sections It is estimated that revenues will increase by approximately $17,675 for Fiscal Year 1994, which will result from the collection of the department's indirect cost share for administering these permits It is estimated that revenues will increase by approximately $70,700 each year for Fiscal Years 1995-1998 There is no anticipated fiscal implication to local governments

Mr Lundell has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the sections

Mr. Lundell also has determined that for each year of the first five years the sections as proposed are in effect the public benefits anticipated as a result of enforcing and administering the sections as proposed will be to comply with Government Code, Chapter 2106, provide greater protection to the integrity of the highway infrastructure, provide increased safety to the traveling public and the permittee by decreasing hazards from the movement of oversize loads, increase productivity of the trucking industry, thereby aiding the state's economy, provide for minor wording changes, and provide for clarity, continuity, and style

Comments on the proposal may be submitted to Bert A Lundell, Director, Central Permit Office, 125 East 11th Street, Austin, Texas 78701-2483 The deadline for receipt of comments will be 5 00 p.m on June 14, 1994

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 Thursday, May 26, 1994, in Room 101, Building 200, 200 East Riverside Drive, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1 5 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 identical or similar comments through a representative member where possible Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc , for proper reference Any suggestions or requests for alternative language or other revisions in the proposed text should be submitted in written form 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 have special communication or accommodation needs and who plan to attend the hearings may contact Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588

The sections are proposed under Texas Civil Statutes, Article 6666, which provide 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 by Texas Civil Statutes, Article 6701d-16, which authorize the commission to formulate and adopt rules and fees governing the issuance of oversize and overweight permits for the movement of certain oil well-related vehicles

§28 40. Purpose. In accordance with Texas Civil Statutes, Article 6701d-16, the department may issue a permit for the operation of an oil well clean-out, drilling, servicing, or swabbing unit, which is a piece of fixed-load mobile machinery or equipment used for the purpose of cleaning out, drilling, servicing or swabbing oil wells, when the unit cannot comply with one or more of the restrictions set out in Texas Civil Statutes, Article 6701d-11, §3 and §5 The following sections in this subchapter set forth the requirements and procedures applicable to those permits

§28 41 Application for Permit

(a) General information. The CPO is closed on Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day

(b) Application for initial time permit

(1) The applicant for an initial time permit must call the CPO, and advise the permit officer of the unit's make and model, vehicle identification number, license number, the size and weight dimensions, and specify which districts will comprise the area of travel

(2) The CPO will verify unit information and number of districts in permit route, calculate permit fee, and advise the applicant of the permit fee.

(3) The applicant, upon notification of permit cost, may mail the permit fee, which must be a cashier's check or a money order, to the CPO, or may pay the permit fee at a cash collection office with a cashier's check, money order, or cash

(c) Issuance of initial time permit

(1) When payment of the permit fee is made at a cash collection office, the CPO will fax the permit to the cash collection office, upon verification from the cash collection office that the permit fee has been collected, and will mail the permit and a renewal application form to the applicant

(2) When payment of the permit fee is made by mail or credit card, the CPO will fax a copy of the permit to the applicant's office, and will mail the permit and a renewal application form to the applicant.

(d) Application for renewal of time permit

(1) The applicant must complete and mail a renewal application form for each permit that is to be renewed or closed out to the CPO

(2) The renewal application form must be submitted not more than 14 days prior to the expiration date of the original permit.

(3) The CPO will:

(A) verify unit information and number of districts in permit route;

(B) check mileage traveled on last permit;

(C) calculate new permit fee; and

(D) advise applicant of permit fee.

(4) An applicant with two or more permits that expire on the same day must renew each permit that is expiring or closeout each permit that is not being renewed.

(e) Issuance of renewed time permit.

(1) An applicant may mail the permit fee, which must be a cashier's check or money order to the CPO. The CPO will mail the permit and a renewal application form to the applicant upon receipt of the permit fee.

(2) When payment of the permit fee is made with a credit card, the CPO will mail the permit and a renewal application form to the applicant.

(f) Application for single-trip permit.

(1) The applicant must complete the application and call the CPO or submit the application by facsimile to the CPO.

(2) The CPO will:

(A) review and verify unit size and weight information;

(B) check route and mileage to be traveled;

(C) compute the permit fee; and

(D) advise applicant of the permit fee.

(3) An applicant may purchase the permit with a credit card, a cashier's check, a money order, or cash.

(A) When payment of the permit fee is made with a credit card, the applicant must advise the permit officer of the credit card number and the expiration date of the card.

(B) When payment of the permit fee is made with a cashier's check, a money order, or cash, the applicant must deliver the fee to a cash collection office.

(g) Issuance of single-trip permit.

(1) When payment of the permit fee is made by credit card, the CPO will advise the applicant of the permit number, and if requested by the applicant, will fax a copy of the permit to the applicant's office.

(2) When payment of the permit fee is made by cashier's check, money order, or cash, the CPO will issue the permit number to the applicant after verification has been made that the permit fee was delivered to the cash collection office.

(h) Application for annual permit for oil field rig-up truck. The applicant must submit the application by mail to the CPO, specifying which districts will comprise the area of travel, and must submit the permit fee, which must be a cashier's check or a money order.

(i) Issuance of annual permit for oil field rig-up truck. The CPO will check and verify the information in the application, and will mail the permit to the applicant.

§28.42. Permit Qualifications and Requirements.

(a) Texas Civil Statutes, Article 6701d-16, provide an optional procedure for the issuance of a permit for the movement of an oversize and/or overweight oil well servicing unit, when such equipment cannot comply with one or more of the restrictions set out in Texas Civil Statutes, Article 6701d-11, §3 and §5.

(b) The department may, as an alternative to any other procedure authorized by law, upon application, issue a permit for the movement of a unit, when the department is of the opinion that the unit may be moved without material damage to the state highway system or serious inconvenience to highway traffic.

(c) A unit, permitted under Texas Civil Statutes, Article 6701d-16, is eligible for:

(1) permit weight limits above those established by §28.11(d)(2) of this title (relating to Permit Issuance Requirements and Procedures);

(2) a single-trip permit;

(3) a time permit;

(4) an annual permit;

(5) travel on load restricted roads; and

(6) must not cross any load restricted bridge.

(d) The issuance of a permit for an oversize and/or overweight unit is not a guarantee by the department that the highways can safely accommodate such movement. The owner of a unit is strictly liable for any damage caused to the state highway system or any of its structures or appurtenances by movement of the unit, whether the unit is permitted or not.

(e) A permit may not be transferred from one unit to another unit or from one owner to another owner.

(f) A unit permitted under this section must keep the permit and any attachments to the permit in the unit until the day after the date the permit expires.

(g) A permit is void when an applicant;

(1) gives false or incorrect information;

(2) does not comply with the restrictions or conditions stated in the permit; or

(3) changes or alters the information on the applicant's copy of the permit.

(h) A permittee may not transport an oversize and/or overweight unit with a void permit; a new permit must be obtained.

(i) A single-trip permit may be amended to extend the time period, if weather conditions or mechanical breakdown cause the movement to be delayed.

(j) A time permit will be issued in accordance with the following provisions.

(1) The unit must not exceed any of the following dimensions:

(A) 12 feet in width;

(B) 14 feet, 6 inches in height; or

(C) 95 feet in length.

(2) The applicant may designate not more than 12 districts, which will make up the permit travel area.

(3) The CPO will list the designated districts on the permit, and attach a map indicating the districts.

(4) The permit may be amended only to indicate:

(A) a new hubometer serial number;

(B) a new license plate number; or

(C) the addition and deletion of designated districts, provided the number of districts does not exceed a total of 12.

(k) An annual permit for an oil field rig-up truck will be issued in accordance with the following provisions.

(1) The vehicle must not exceed:

(A) legal height or length limits, as provided in Texas Civil Statutes, Article 6701d-11, §3;

(B) 850 pounds per inch of tire width on the front axle;

(C) 25,000 pounds on the front axle; or

(D) legal weight on all other axles.

(2) The applicant may designate to the CPO as many as 12 districts for which the permit will be valid.

(3) The CPO will list, on the permit, the designated districts for which the permit is valid and attach a map indicating said districts.

(4) The permit may not be amended.

(5) The vehicle may not pull a trailer.

(6) The vehicle may not cross any load-restricted bridge, or travel through any highway construction or maintenance area.

§28.43. Registration Requirements.

(a) A unit must be licensed with one of the following:

(1) a permit plate;

(2) a 72-hour or 144-hour temporary registration; or

(3) a truck license as specified in Texas Civil Statutes, Article 6675a.

(b) A trailer-mounted unit must be towed by a truck-tractor licensed in accordance with Texas Civil Statutes, Article 6675a.

(c) An oil field rig-up truck, operating under an annual permit, must be licensed in accordance with Texas Civil Statutes, Article 6675a.

§28.44. Maximum Permit Weight Limits.

(a) The maximum permit weight for any single axle, not connected to another axle by a weight equalizing suspension system, must not exceed 30,000 pounds or 850 pounds per inch of tire width, whichever is less.

(b) The maximum permit weight for any group of axles on a unit will be determined by calculating the "W" weight for the group, using the formulas in Appendix B, "Maximum Permit Weight Formulas", as shown in subsection (g) of this section, and comparing the calculated "W" weight with the corresponding "W" weight that is established in Appendix A, "Maximum Permit Weight Table", as shown in subsection (g) of this section.

(c) The maximum permit weight per inch of tire width for axles that are steerable must not exceed 950 pounds, and the maximum permit weight per inch of tire width for axles that are not steerable must not exceed 850 pounds.

(d) A unit that does not have any group of axles that exceeds the limits established in Appendix A, "Maximum Permit Weight Table", and Appendix B, "Maximum Permit Weight Formulas", as shown in subsection (g) of this section, will be permitted with a single-trip or time permit for travel on any route that does not include a load restricted bridge.

(e) A unit that has any group of axles that exceeds the limits established by Appendix A, "Maximum Permit Weight Table," and Appendix B, "Maximum Permit Weight Formulas," as shown in subsection (g) of this section, will be eligible, on an individual case by case basis, for a single-trip permit only; permit approval or denial will be based on a detailed route study and an analysis of each bridge on the proposed travel route to determine if the route and bridges are capable of sustaining the movement.

(f) A bridge that has been analyzed and determined to be incapable of sustaining the unit will be excluded from the permit route .

(g) The table entitled, "Maximum Permit Weight Table," is Appendix A, and the list of formulas entitled, "Maximum Permit Weight Formulas," is Appendix B. The indicated appendices are shown as follows.

APPENDIX A

MAXIMUM PERMIT WEIGHT TABLE

Length(L) Feet	Weight(W) (lbs/ft)	Length(L) Feet	Weight(W) (lbs/ft)	Length(L) Feet	Weight(W) (lbs/ft)
4	7250	30	3676	55	3111
5	6345	31	3646	56	3094
6	5947	32	3616	57	3077
7	5698	33	3586	58	3061
8	5500	34	3557	59	3045
9	5326	35	3529	60	3030
10	5169	36	3501	61	3015
11	5027	37	3474	62	3000
12	4898	38	3448	63	2985
13	4781	39	3423	64	2971
14	4675	40	3399	65	2957
15	4579	41	3376	66	2943
16	4492	42	3354	67	2929
17	4413	43	3333	68	2915
18	4340	44	3313	69	2901
19	4272	45	3293	70	2887
20	4208	46	3274	71	2874
21	4146	47	3255	72	2861
22	4087	48	3236	73	2848
23	4030	49	3218	74	2835
24	3974	50	3200	75	2822
25	3920	51	3182	76	2809
26	3867	52	3164	77	2796
27	3815	53	3146	78	2783
28	3764	54	3128	79	2771
29	3714	55	3111	80	2759

APPENDIX B
MAXIMUM PERMIT WEIGHT FORMULAS

$$W = T / (L + 4)$$

"W" - The value of the equivalent distributed load expressed in pounds per linear foot.

"T" - The sum of the axle loads or equivalent axle loads of any group of two or more axles expressed in pounds. Any combination of axle loads may be considered as a group, up to the total number of axles for the unit.

"L" - The length between axles, expressed in feet and measured to the nearest inch, from the center of the first axle to the center of last axle in the axle group, series of groups, or total axles for the unit.

A unit with axle groups composed of various numbers of tires per axle or with axle groups with a gauge distance greater than 6.0 feet on each axle may have additional reduction factors applied to each axle before summing "T." The revised equivalent axle load is calculated by the following formula.

$$A = (RS)(\text{THE AXLE LOAD})$$

"A" - Equivalent axle load for axles with gauge greater than 6.0 feet and/or more than four tires.

"R" - A reduction factor for a unit with a gauge distance greater than 6.0 feet, calculated by the following formula.

$$R = (6.0 + G) / (2 G)$$

"G" - The gauge distance, expressed in feet and measured to the nearest inch, from the center of the outside dual wheels on one side of the axle to the center of the outside dual wheels on the opposite side of the axle. The gauge distance of an axle equipped with two tires per axle must be measured to the nearest inch from center of tire to center of opposite tire.

"S" - A reduction factor based on the number of tires per axle.

S = 1.0 for axles with four or fewer tires, and

S = 0.96 for axles with eight tires.

§28.45. Permit Fee Calculations.

(a) Permit fee formulas.

(1) The permit fee for a time permit is calculated by the following formula:

Hubometer Mileage	X	Highway Use Factor	X	Total Rate Per Mile	X	Registration Reduction	+	Indirect Cost Share	=	Permit Fee

(2) The permit fee for a single-trip permit is calculated by the following formula:

Mileage To Be Traveled	X	Highway Use Factor	X	Total Rate Per Mile	X	Registration Reduction	+	Indirect Cost Share	=	Permit Fee

(b) Hubometer mileage.

(1) A unit operated with a time permit must be equipped with a hubometer. The permittee must maintain the hubometer in good working condition.

(2) Mileage for a time permit is determined by an amount estimated by the applicant for the first time permit, or from the unit's hubometer mileage reading from the previous time permit.

(3) Actual mileage to be traveled is used to calculate the permit fee for a single-trip permit.

(c) Highway use factor.

(1) The highway use factor for a time permit is 0.3.

(2) The highway use factor for a single-trip permit is 0.6.

(d) Total rate per mile.

(1) The total rate per mile is the combined mileage rates for width, height, and weight for the unit. Texas Department of Transportation Page 13 of 19 Oversize and overweight Vehicles and Loads

(2) The mileage rate for width is $0.06 per mile for each foot (or fraction thereof) above legal width.

(3) The mileage rate for height is $0.04 per mile for each foot (or fraction thereof) above legal height.

(4) The mileage rate for a single axle or any axle within a group that exceeds 20,000 pounds, but is less than or equal to 25,000 pounds, is calculated by multiplying $0.045 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1000 pounds.

(5) The mileage rate for a single axle or any axle within a group that exceeds 25,000 pounds, but is less than or equal to 30,000 pounds, is calculated by multiplying $0.055 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

(e) Permit fees.

(1) The minimum fee for a single-trip permit or time permit is either the calculated permit fee or $31, whichever is the greater amount.

(2) The annual permit fee for an oil field rig-up truck is $52.

(3) A unit that is overlength only must obtain a time permit with a fee of $31, and is not required to have a hubometer.

(4) A unit that does not exceed legal size and weight limits and is licensed with a permit plate must purchase an annual permit with a permit fee of $52 per axle. The unit is not required to have a hubometer.

(5) An applicant using a credit card to purchase a permit will pay a service charge of $1.00 in addition to the permit fee.

(6) The permit fee for a trailer mounted unit is based on the overall width, overall height, and all axle weights, including the truck-tractor axles.

(7) A unit with two or more axle groups that does not have a spacing of at least 12 feet between the closest axles of the opposing groups must have the permit fee calculated by the following method.

(A) The axle group with the lowest weight will have the axle closest to the next axle group temporarily disregarded from its group in order to create a spacing of at least 12 feet between the two groups for fee calculation purposes.

(B) An axle group will not have more than one axle disregarded.

(C) The permit fee for the axle group with the temporarily disregarded axle must be based on the actual weight of the entire axle group minus the legal weight for the remaining axles of the group.

(8) The CPO will calculate the renewed time permit fee in the following method.

(A) An applicant requesting a permit for a unit that has traveled in excess of the mileage stated in the previous time permit must pay for the excess mileage traveled, in addition to the fee for the renewed time permit.

(B) An applicant requesting a permit for a unit that has traveled less than the mileage stated on the previous time permit will receive a credit on the purchase price of the renewed time permit for that unit or another unit.

(9) A refund is made to the applicant when the time permit process is stopped for all units listed in the applicant's account, provided the amount of the refund exceeds $31.

(f) Registration reduction.

(1) A unit licensed for maximum legal weight will receive a reduction of 25% in the computation of the permit fee.

(2) A unit licensed with a permit plate or a 72/144 hour temporary registration does not receive a registration reduction in the computation of the permit fee.

§28.46. Permit Movement Conditions.

(a) A unit exceeding 9 feet in width, 14 feet in height, or 65 feet in length is restricted to daylight movement only. Movement is prohibited when:

(1) visibility is reduced to less than 2/10 of one mile; or

(2) the road surface is hazardous due to weather conditions (such as rain, ice, sleet, or snow) or highway maintenance or construction work

(b) A unit exceeding 175, 000 pounds gross weight must:

(1) have front and rear escort vehicles to prevent traffic from traveling beside the unit as it crosses a bridge,

(2) cross all multi-lane bridges by centering the unit on a lane line;

(3) cross all two-lane bridges in the center of the bridge; and

(4) cross each bridge at a speed not greater than 20 miles per hour.

(c) A unit exceeding 12 feet in width must be centered in the outside traffic lane of any highway that has paved shoulders.

(d) A permitted unit may not cross any load restricted bridge.

(e) A single-trip permit:

(1) is limited to a maximum of seven consecutive days;

(2) is routed from the point of origin to the point of destination and has the route listed on the permit; and

(3) allows the unit to be returned to the point of origin on the same permit, provided the return trip is made within the time period stated in the permit.

(f) A time permit:

(1) is effective for three consecutive months (For example, a permit issued with a beginning date of January 15 will terminate on April 14, or a permit issued with a beginning date of July 1 will terminate on September 30); and

(2) allows the unit to travel on all state-maintained highways.

(g) An annual permit for an oil field rig-up truck allows the unit to travel:

(1) on all state-maintained highways, within not more than 12 designated districts; and

(2) at night, provided the unit does not exceed nine feet in width.

§28.47. Permits for Vehicles Transporting Liquid Products Related To Oil Well Production.

(a) General provisions. A vehicle combination consisting of a truck-tractor and semi-trailer specifically designed with a tank and pump unit for transporting liquid fracing products, liquid oil well waste products, and unrefined liquid petroleum products to an oil well, and for transporting unrefined liquid petroleum products or liquid oil well waste product from an oil well not connected to a pipeline, may secure an annual permit issued under provisions of Texas Civil Statutes, Article 6701d-16, to haul liquid loads over all state-maintained highways.

(b) Application for permit.

(1) A request for an annual permit issued under Texas Civil Statutes, Articles 6701d-16, must be submitted to the CPO by mail.

(2) The permit request must be received by the CPO not more than 14 days prior to the date that the permit is to begin.

(c) Permit qualifications and requirements.

(1) The semi-trailer must be of legal size and weight.

(2) The semi-trailer must be registered for the maximum legal gross weight.

(3) Only one semi-trailer will be listed on a permit.

(4) The permit may be transferred from an existing trailer being removed from service and placed on a new trailer being added to the permittee's fleet, if the permittee supplies the CPO with:

(A) the existing valid permit number;

(B) the make and model of the new trailer;

(C) the license number of the new trailer; and

(D) a transfer fee of $31 per permit to cover administrative costs.

(d) Permit fee.

(1) The permit fee is based on the axles of the semi-trailer and the drive axles of the truck-tractor. The fee for the permit is determined as follows:

(A) $52 per axle-to haul liquid oil well waste products or unrefined liquid petroleum products from oil wells not connected by a pipeline and return empty;

(B) $52 per axle-to haul liquid products related to oil well production to an oil well and return empty; and

(C) $104 per axle-to haul liquid products related to oil well production to an oil well and return with liquid oil well waste products or unrefined liquid petroleum products from an oil well not connected to a pipeline.

(2) Each permit will be charged a $20 issuance fee in addition to the permit fee.

(e) Permit movement conditions.

(1) The permit load must not cross any load restricted bridge.

(2) The permit is effective for one year beginning on the "movement to begin" date.

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 May 9, 1994.

TRD-9440549 Diane L Northam
Legal Executive Assistant
Texas Department of Transportation

Earliest possible date of adoption: June 13, 1994

For further information, please call: (512) 463-8630

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Subchapter E. Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles

• 43 TAC §§28.60-28.66

The Texas Department of Transportation proposes new §§28.60-28.66, concerning Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles These new sections replace existing §§25 200-25.207, which are being contemporaneously repealed. In order to comply with the Government Code, Chapter 2106, which requires a state agency to set fees at amounts sufficient to recover the indirect costs of that agency, and to provide greater safety to the general traveling public and the permit applicant through more uniform regulation and control of oversize and overweight permit loads, it is necessary to clarify the department's authority, policies, and procedures concerning the issuance of permits for the movement of oversize and overweight vehicles and loads

Section 28.60, concerning Purpose, describes the Texas Transportation Commission's authority to issue permits for the movement of oversize and overweight unladen lift equipment motor vehicles, when such vehicles exceed legal size and weight limits.

Section 28 61, concerning Application for Permit, provides procedures for applying for single-trip, time, and annual permits for the movement of an oversize and overweight unladen lift equipment motor vehicles, provides for permit issuance and renewal of time permits; and sets forth methods of payment of permit fees.

Section 28.62, concerning Permit Qualifications and Requirements, establishes eligibility requirements for single-trip, time and annual permits; provides that permits cannot be transferred from one owner to another owner, or from one unit to another unit, and establishes conditions that cause a permit to be void.

Section 28.63, concerning Registration Requirements, provides for specific types of registration for these vehicles.

Section 28.64, concerning Maximum Permit Weight Limits, provides specific formulas for determining maximum weight limits for axles and groups of axles; eligibility for a single-trip or time permit; and the identity of specific bridges on a proposed route that must be analyzed prior to permit issuance

Section 28.65, concerning Permit Fee Calculations, provides specific formulas for calculating single-trip and time permit fees; describes the procedures for using hubometer mileage, highway use factor, and total rate per mile; establishes minimum fees for single-trip and time permits; establishes method of calculating permit fee for a unit with closely spaced axle groups, and establishes conditions for applying a registration reduction to the permit fee

Section 28.66, concerning Permit Movement Conditions, establishes conditions regulating permit movement based on time of day and size of unit; establishes escorts requirements, and establishes movement routes

Bert A Lundell, director, Central Permit Office, has determined that for the first five-year period the sections are in effect there will be fiscal implications to the state as a result of enforcing or administering the sections It is estimated that revenues will increase by approximately $5,525 for Fiscal Year 1994, which will result from the collection of the department's indirect cost share for administering these permits. It is estimated that revenues will increase by approximately $22,100 each year for Fiscal Years 1995-1998 There is no anticipated fiscal implications to local governments

Mr. Lundell has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the sections.

Mr. Lundell has also determined that for each year of the first five years the sections as proposed are in effect the public benefits anticipated as a result of enforcing and administering the sections as proposed will be to comply with the Government Code, Chapter 2106, provide greater protection to the integrity of the highway infrastructure; provide increased safety to the traveling public and the permittee by decreasing hazards from the movement of oversize loads, increase productivity of the trucking industry, thereby aiding the state's economy, provide for minor wording changes, and provide for clarity, continuity, and style.

Comments on the proposal may be submitted to Bert A Lundell, Director, Central Permit Office, 125 East 11th Street, Austin, Texas 78701-2483 The deadline for receipt of comments will be 5.00 p m. on June 14, 1994

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 Thursday, May 26, 1994, in Room 101, Building 200, 200 East Riverside Drive, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5 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 identical or similar comments through a representative member where possible Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc , for proper reference Any suggestions or requests for alternative language or other revisions in the proposed text should be submitted in written form. 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 have special communication or accommodation needs and who plan to attend the hearings may contact Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588.

The sections are proposed under Texas Civil Statutes, Article 6666, which provide 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 by Texas Civil Statutes, Article 6701d-18, which authorize the commission to issue annual permits for the movement of unladen lift equipment motor vehicles which because of their design for use as lift equipment exceed the maximum weight and width limitations prescribed by statute; and Texas Civil Statutes, and Article 6701d-19b, which authorize the commission to formulate and adopt rules and fees governing the issuance of oversize and overweight permits for the movement of unladen lift equipment motor vehicles.

§28.60. Purpose In accordance with Texas Civil Statutes, Articles 6701d-18 and 6701d-19b, the department may issue a permit for the operation of an unladen lift equipment motor vehicle when such vehicle cannot comply with one or more of the restrictions set out in Texas Civil Statutes, Article 6701d-11, §3 and §5. The following sections in this subchapter set forth the requirements and procedures applicable to those permits

§28.61 Application for Permit.

(a) General information. The CPO is closed on Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

(b) Application for initial time permit

(1) An applicant for an initial time permit must call the CPO, and advise the permit officer of the crane's make and model, vehicle identification number, license number, and the size and weight dimensions, and specify which districts will comprise the area of travel.

(2) The CPO will verify crane information, check number of districts in permit route, calculate permit fee, and advise the applicant of the permit fee

(3) The applicant, upon notification of permit cost, may mail the permit fee, which must be a cashier's check or a money order, to the CPO, or pay the permit fee at a cash collection office with a cashier's check, money order, or cash.

(c) Issuance of initial time permit.

(1) When payment of the permit fee is made at a cash collection office, the CPO will fax the permit to the cash collection office, upon verification from the cash collection office that the permit fee has been collected, and will mail the permit and a renewal application form to the applicant.

(2) When payment of the permit fee is made by mail or credit card, the CPO will fax a copy of the permit to the applicant's office, and will mail the permit and a renewal application form to the applicant.

(d) Application for renewal of time permit.

(1) The applicant must complete and mail a renewal application form for each permit that is to be renewed or closed out to the CPO.

(2) The renewal application form must be submitted not more than 14 days prior to the expiration date of the original permit.

(3) The CPO will:

(A) verify crane information and number of districts in permit route;

(B) check mileage traveled on last permit;

(C) calculate new permit fee; and

(D) advise applicant of permit fee.

(4) An applicant with two or more permits that expire on the same day must renew each permit that is expiring or closeout each permit that is not being renewed.

(e) Issuance of renewed time permit.

(1) An applicant may mail the permit fee, which must be a cashier's check or money order to the CPO. The CPO will mail the permit and a renewal application form to the applicant upon receipt of the permit fee.

(2) When payment of the permit fee is made with a credit card, the CPO will mail the permit and a renewal application form to the applicant.

(f) Application for single-trip permit.

(1) The applicant must complete the application and call the CPO or submit the application by facsimile to the CPO.

(2) The CPO will:

(A) review and verify crane size and weight information;

(B) check route and mileage to be traveled;

(C) compute the permit fee; and

(D) advise applicant of the permit fee.

(3) An applicant may purchase the permit with a credit card, a cashier's check, a money order, or cash.

(A) When payment of the permit fee is made with a credit card, the applicant must advise the permit officer of the credit card number and expiration date of the card.

(B) When payment of the permit fee is made with a cashier's check, a money order, or cash, the applicant must deliver the fee to a cash collection office.

(g) Issuance of single-trip permit.

(1) When payment of the permit fee is made by credit card, the CPO will advise the applicant of the permit number, and if requested by the applicant, will fax a copy of the permit to the applicant's office.

(2) When payment of the permit fee is made by cashier's check, money order, or cash, the CPO will issue the permit number to the applicant after verification has been made that the permit fee was delivered to the cash collection office.

(h) Application for annual permit under Texas Civil Statutes, Article 6701d-18. The applicant must submit the application by mail to the CPO, specifying which districts will comprise the area of travel, and must submit the permit fee, which must be a cashier's check or a money order.

(i) Issuance of annual permit under Texas Civil Statutes, Article 6701d-18. The CPO will check and verify the information in the application, and will mail the permit to the applicant.

§28.62. Permit Qualifications and Requirements

(a) Texas Civil Statutes, Article 6701d-19b, provides an optional procedure for the issuance of a permit for the movement of an oversize and/or overweight crane, which is designed for use as lift equipment, when the crane cannot comply with one or more of the restrictions set out in Texas Civil Statutes, Article 6701d-11, §3 and §5.

(b) The department may, as an alternative to any other procedure authorized by law, upon application, issue a permit for the movement of the crane, when the department is of the opinion that the crane may be moved without material damage to the state highway system or serious inconvenience to highway traffic.

(c) A crane, permitted under Texas Civil Statutes, Article 6701d-19b, is eligible for:

(1) permit weight limits above those established by §28.11(d)(2) of this title (relating to Permit Issuance Requirements and Procedures);

(2) a single-trip permit;

(3) a time permit;

(4) travel on a load restricted road; and

(5) must not cross any load restricted bridge.

(d) The issuance of a permit for an oversize and/or overweight crane is not a guarantee by the department that the highways can safely accommodate such movement. The owner of the crane is strictly liable for any damage caused to the state highway system or any of its structures or appurtenances by movement of the crane, whether the crane is permitted or not.

(e) A permit may not be transferred from one crane to another crane or from one owner to another owner.

(f) A crane permitted under this section must keep the permit and any attachments to the permit in the crane until the day after the date the permit expires.

(g) A permit is void when an applicant;

(1) gives false or incorrect information;

(2) does not comply with the restrictions or conditions stated in the permit; or

(3) changes or alters the information on the applicant's copy of the permit.

(h) A permittee may not transport an oversize and/or overweight crane with a void permit, a new permit must be obtained.

(i) A single-trip permit may be amended to extend the time period, if

weather conditions or mechanical breakdown cause the movement to be delayed.

(j) A time permit will be issued in accordance with the following provisions.

(1) The crane must not exceed any of the following dimensions:

(A) 12 feet in width;

(B) 14 feet, 6 inches in height; or

(C) 95 feet in length.

(2) The applicant may designate not more than 12 districts, which will make up the permit travel area.

(3) The CPO will list the designated districts on the permit, and attach a map indicating the districts.

(4) The permit may be amended only to indicate:

(A) a new hubometer serial number;

(B) a new license plate number; or

(C) the addition and deletion of designated districts, provided the number of districts does not exceed a total of 12.

(k) An annual permit under Texas Civil Statutes, Article 6701d-18, will be issued in accordance with the following provisions.

(1) The crane must not exceed:

(A) the weight limits established in §28.11(d)(1), (2) and (3) of this title (relating to Permit Issuance Requirements and Procedures);

(B) a gross weight of 120,000 pounds;

(C) legal height and length limits as specified in Texas Civil Statutes, Article 6701d-11, §3; and

(D) 10 feet in width.

(2) The applicant may designate to the CPO as many as 12 districts for which the permit will be valid.

(3) The CPO will list the designated districts on the permit, and attach a map indicating the districts.

(4) The permit may not be amended.

(5) The crane must not travel on any load-restricted road or cross any load-restricted bridge, or travel through any highway construction or maintenance area.

(6) The crane may travel at night with front and rear escort vehicles.

§28.63. Registration Requirements.

(a) A crane permitted under Texas Civil Statutes, Article 6701d-19b, must be licensed with either:

(1) a permit plate;

(2) a 72-hour or 144-hour temporary registration; or

(3) a truck license as specified in Texas Civil Statutes, Article 6675a.

(b) A crane permitted under Texas Civil Statutes, Article 6701d-18, must be registered with either:

(1) a machinery plate; or

(2) a truck license as specified in Texas Civil Statutes, Article 6675a.

§28.64. Maximum Permit Weight Limits.

(a) The maximum permit weight for any single axle, not connected to another axle by a weight equalizing suspension system, must not exceed 30,000 pounds or 850 pounds per inch of tire width, whichever is less.

(b) The maximum permit weight for any group of axles on a crane will be determined by calculating the "W" weight for the group, using the formulas in Appendix B, "Maximum Permit Weight Formulas", as shown in subsection (g) of this section, and comparing the calculated "W" weight with the corresponding "W" weight that is established in Appendix A, "Maximum Permit Weight Table", as shown in subsection (g) of this section.

(c) The maximum permit weight per inch of tire width for axles that are steerable must not exceed 950 pounds, and the maximum permit weight per inch of tire width for axles that are not steerable must not exceed 850 pounds.

(d) A crane that does not have any group of axles that exceeds the limits established in Appendix A, "Maximum Permit Weight Table", and Appendix B, "Maximum Permit Weight Formulas", as shown in subsection (g) of this section, will be permitted with a single-trip or time permit for travel on any route that does not include a load restricted bridge.

(e) A crane that has any group of axles that exceeds the limits established by Appendix A, "Maximum Permit Weight Table," and Appendix B, "Maximum Permit Weight Formulas," as shown in subsection (g) of this section, will be eligible, on an individual case by case basis, for a single-trip permit only; permit approval or denial will be based on a detailed route study and an analysis of each bridge on the proposed travel route to determine if the route and bridges are capable of sustaining the movement.

(f) A bridge that has been analyzed and determined to be incapable of sustaining the crane will be excluded from the permit route.

(g) The table entitled, "Maximum Permit Weight Table," is Appendix A, and the list of formulas entitled, "Maximum Permit Weight Formulas," is Appendix B. The indicated appendices are shown as follows.

APPENDIX A
MAXIMUM PERMIT WEIGHT TABLE

Length(L) Feet	Weight(W) (lbs/ft)	Length(L) Feet	Weight(W) (lbs/ft)	Length(L) Feet	Weight(W) (lbs/ft)
4	7250	30	3676	55	3111
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11	5027	37	3474	62	3000
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13	4781	39	3423	64	2971
14	4675	40	3399	65	2957
15	4579	41	3376	66	2943
16	4492	42	3354	67	2929
17	4413	43	3333	68	2915
18	4340	44	3313	69	2901
19	4272	45	3293	70	2887
20	4208	46	3274	71	2874
21	4146	47	3255	72	2861
22	4087	48	3236	73	2848
23	4030	49	3218	74	2835
24	3974	50	3200	75	2822
25	3920	51	3182	76	2809
26	3867	52	3164	77	2796
27	3815	53	3146	78	2783
28	3764	54	3128	79	2771
29	3714	55	3111	80	2759

APPENDIX B
MAXIMUM PERMIT WEIGHT FORMULAS

$$W = T / (L + 4)$$

"W" - The value of the equivalent distributed load expressed in pounds per linear foot.

"T" - The sum of the axle loads or equivalent axle loads of any group of two or more axles expressed in pounds. Any combination of axle loads may be considered as a group, up to the total number of axles for the crane.

"L" - The length between axles, expressed in feet and measured to the nearest inch, from the center of the first axle to the center of last axle in the axle group, series of groups, or total axles for the crane.

A crane with axle groups composed of various numbers of tires per axle or with axle groups with a gauge distance greater than 6.0 feet on each axle may have additional reduction factors applied to each axle before summing "T." The revised equivalent axle load is calculated by the following formula.

$$A = (RS)(\text{THE AXLE LOAD})$$

"A" - Equivalent axle load for axles with gauge greater than 6.0 feet and/or more than four tires.

"R" - A reduction factor for a crane with a gauge distance greater than 6.0 feet, calculated by the following formula.

$$R = (6.0 + G) / (2 G)$$

"G" - The gauge distance, expressed in feet and measured to the nearest inch, from the center of the outside dual wheels on one side of the axle to the center of the outside dual wheels on the opposite side of the axle. The gauge distance of an axle equipped with two tires per axle must be measured to the nearest inch from center of tire to center of opposite tire.

"S" - A reduction factor based on the number of tires per axle.

S = 1.0 for axles with four or fewer tires, and

S = 0.96 for axles with eight tires.

§28.65. Permit Fee Calculations.

(a) Permit Fee Formulas.

(1) The permit fee for a time permit is calculated by the following formula:

Hubometer Mileage		Highway Use Factor		Total Rate Per Mile		Registration Reduction	+	Indirect Permit Cost Share	=	
	X		X		X		+		=	

(2) The permit fee for a single-trip permit is calculated by the following formula:

Mileage To Be Traveled		Highway Use Factor		Total Rate Per Mile		Registration Reduction	+	Indirect Permit Cost Share	=	
	X		X		X		+		=	

(b) Hubometer mileage.

(1) A crane operated with a time permit must be equipped with a hubometer. The permittee must maintain the hubometer in good working condition.

(2) Mileage for a time permit is determined by an amount estimated by the applicant for the first time permit, or from the crane's hubometer mileage reading from the previous time permit.

(3) Actual mileage to be traveled is used to calculate the permit fee for a single-trip permit.

(c) Highway use factor.

(1) The highway use factor for a time permit is 0.3.

(2) The highway use factor for a single-trip permit is 0.6.

(d) Total rate per mile.

(1) The total rate per mile is the combined mileage rates for width, height, and weight for the crane.

(2) The mileage rate for width is $0.06 per mile for each foot (or fraction thereof) above legal width.

(3) The mileage rate for height is $0.04 per mile for each foot (or fraction thereof) above legal height.

(4) The mileage rate for a single axle or any axle within a group that exceeds 20,000 pounds, but is less than or equal to 25,000 pounds, is calculated by multiplying $0.045 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

(5) The mileage rate for a single axle or any axle within a group that exceeds 25,000 pounds, but is less than or equal to 30,000 pounds, is calculated by multiplying $0.055 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

(e) Permit fees.

(1) The minimum fee for a single-trip permit or time permit is either the calculated permit fee or $31, whichever is the greater amount.

(2) The fee for an annual permit issued under Texas Civil Statutes, Article 6701d-18, is $50.

(3) A crane that is overlength only must obtain a time permit with a fee of $31, and is not required to have a Texas Department of Transportation Page 14 of 16 Oversize and Overweight Vehicles and Loads hubometer.

(4) An applicant using a credit card to purchase a permit will pay a service charge of $1 in addition to the permit fee.

(5) A crane with two or more axle groups that does not have a spacing of at least 12 feet between the closest axles of the opposing groups must have the permit fee calculated by the following method.

(A) The axle group with the lowest weight will have the axle closest to the next axle group temporarily disregarded from its group in order to create a spacing of at least 12 feet between the two groups for fee calculation purposes.

(B) An axle group will not have more than one axle disregarded.

(C) The permit fee for the axle group with the temporarily disregarded axle must be based on the actual weight of the entire axle group minus the legal weight for the remaining axles of the group.

(6) The CPO will calculate the renewed time permit fee in the following method.

(A) An applicant requesting a permit for a crane that has traveled in excess of the mileage stated in the previous time permit must pay for the excess mileage traveled, in addition to the fee for the renewed time permit.

(B) An applicant requesting a permit for a crane that has traveled less than the mileage stated on the previous time permit will receive a credit on the purchase price of the renewed time permit for that crane or another crane.

(7) A refund is made to the applicant when the time permit process is stopped for all cranes listed in the applicant's account, provided the amount of the refund exceeds $31.

(f) Registration reduction

(1) A crane licensed for maximum legal weight will receive a reduction of 25% in the computation of the permit fee.

(2) A crane licensed with a permit plate or a 72/144-hour temporary registration does not receive a registration reduction in the computation of the permit fee.

§28.66. Permit Movement Conditions.

(a) A crane will be permitted for night movement provided that it does not exceed 10 feet six inches in width, 14 feet in height, or 95 feet in length. A crane moving at night must be accompanied by a front and rear escort vehicle

(b) Movement is prohibited when:

(1) visibility is reduced to less than 2/10 of one mile; or

(2) the road surface is hazardous due to weather conditions (such as rain, ice, sleet, or snow), or highway maintenance or construction work.

(c) Load-restricted bridges shall not be crossed.

(d) A crane exceeding 175,000 pounds gross weight must:

(1) have front and rear escort vehicles to prevent traffic from traveling beside the crane as it crosses a bridge,

(2) cross all multi-lane bridges by centering the crane on a lane line,

(3) cross all two-lane bridges in the center of the bridge, and

(4) cross each bridge at a speed not greater than 20 miles per hour

(e) A crane exceeding 12 feet in width must be centered in the outside traffic lane of any highway that has paved shoulders

(f) A single-trip permit:

(1) is limited to a maximum of seven consecutive days;

(2) is routed from the point of origin to the point of destination and has the route listed on the permit; and

(3) allows the crane to be returned to the point of origin on the same permit, provided the return trip is made within the time period stated in the permit

(g) A time permit is effective for three consecutive months (For example, a permit issued with a beginning date of January 15 will terminate on April 14, or a permit issued with a beginning date of July 1 will terminate on September 30.)

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 May 9, 1994

TRD-9440550 Diane L Northam
Legal Executive Assistant
Texas Department of Transportation

Earliest possible date of adoption June 13, 1994

For further information, please call (512) 463-8630

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Subchapter F. Highway Crossings by Oversize and Overweight Vehicles and Loads

• 43 TAC §§28.80-28.82

The Texas Department of Transportation proposes new §§28 80-28 82 concerning Highway Crossing by Oversize/Overweight Vehicles and Loads. These new sections replace existing §25.7, which is being contemporaneously repealed. It is necessary to clarify the department's authority, policies, and procedures concerning the execution of contracts, between the department and a requester, authorizing the requester to move oversize and overweight vehicles across highways from private property to other private property right. The new sections incorporate the subject matter of the repealed section in an amended form to provide for minor wording changes, and rephrasing for clarity, continuity, and style.

Section 28.80, concerning Purpose, specifies the Texas Transportation Commission's authority to execute contracts to indemnify the department for the cost of providing repairs and maintenance to highway crossing locations when the requester desires to move oversize and overweight vehicles across highways from private property to other private property

Section 28 81, concerning Surety Bond, provides that the requester shall execute a surety bond, with a company authorized to do business in the state, in an amount determined by the commission to compensate for the cost of repairing and maintaining the highway crossing location

Section 28 82, concerning Preparation of Contract, provides for periodic maintenance and repairs to the crossing, provides that the crossing shall be kept free of debris, objectionable dust, lights, or noise, and provides that all traffic-control devices and flaggers, if required, shall be in accordance with the Texas Manual of Uniform Traffic Control Devices.

Bert A Lundell, director, Central Permit Office, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering these sections

Mr Lundell has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering these sections

Mr Lundell also has determined that for each year of the first five years the sections as proposed are in effect the public benefits anticipated as a result of enforcing and administering the sections as proposed will be to provide a precise and uniform approach to the execution of contracts to move oversize and overweight vehicles across highways from private property to other private property, uniform enforcement of contract conditions and requirements, and improved safety to the traveling public

Comments on the proposal may be submitted to Bert A Lundell, Director, Central Permit Office, 125 East 11th Street, Austin, Texas 78701-2483 The deadline for receipt of comments will be 5 00 p m on June 14, 1994

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 Thursday, May 26, 1994, in Room 101, Building 200, 200 East Riverside Drive, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1 5 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 identical or similar comments through a representative member where possible Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc , for proper reference Any suggestions or requests for alternative language or other revisions in the proposed text should be submitted in written form 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 have special communication or accommodation needs and who plan to attend the hearings may contact Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588.

The sections are proposed under Texas Civil Statutes, Article 6666, which provide 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 by Texas Civil Statutes, Article 6701d-11, §5-2/3, which authorizes the commission to execute contracts to indemnify the department for the cost of providing repairs and maintenance to highway crossing locations when the requester desires to move oversize and overweight vehicles across highways from private property to other private property

§28.80. Purpose. In accordance with Texas Civil Statutes, Article 6701d-11, §5-2/3, a person, firm, or corporation may request authorization to operate a vehicle, that does not comply with one or more of the restrictions of Texas Civil Statutes, Article 6701d-11, §3 and §5, across the width of any road in the state highway system, other than a controlled-access highway as defined in Texas Civil Statutes, Article 6674w, from private property to other private property provided that the commission has contracted with the requester to indemnify the department for the cost of repair and maintenance to the portion of such highway crossed by such vehicles.

§28.81. Surety bond. The requester shall, prior to exercising any rights thereunder, execute an adequate surety bond in such amount as may be determined by the commission to compensate for the cost of maintenance and repairs as provided herein, approved by the state treasurer and the attorney general, with a corporate surety authorized to do business in this state, conditioned on the requester fulfilling the obligations of the contract.

§28.82. Preparation of contract.

(a) The department will contract with the requester to indemnify the state for the cost of maintenance or repair to that portion of the highway crossed by vehicles which cannot comply with one or more restrictions of Texas Civil Statutes, Article 6701d-11, §3 and §5.

(b) The department will, at the expense of the requester, periodically maintain and repair the vehicle crossing in accordance with established departmental regulations, specifications, and engineering standards and practices.

(c) If the proposed vehicle crossing requires initial upgrading or reconstruction to safely and adequately accommodate the vehicles which will be using the highway crossing, the requester will bear the entire cost of such work. Construction plans, specifications, traffic control plans, and any other related work will be provided by the requester at no cost to the state. At the sole option of the department, it may elect to do this work or provide for this work by separate contract with the requester bearing the entire cost

(d) The requester will be responsible for furnishing, installing, maintaining, and removing when no longer required all traffic control devices which are required at the crossing to insure the safety of the traveling public. At the sole option of the department, it may elect to do this work or provide for this work by separate contract with the requester bearing the entire cost. All traffic-control devices and flaggers, if required, shall be in accordance with the Texas Manual on Uniform Traffic Control Devices.

(e) The requester shall indemnify the department for the cost of maintenance and repair to the vehicle crossing. The requester shall, at the entire expense of the requester, provide and keep in force a surety bond in an amount determined by the state to cover the cost of such maintenance and repair The bond will require approval by the attorney general and state treasurer.

(f) The requester shall keep the roadway free of debris and objectionable dust, lights, or noise.

(g) The requester shall provide the department with the department's certificate of insurance covering the latest insurance requirements for contractors doing state highway construction work.

(h) The responsibilities of the requester as set forth in the contract shall not be transferred, assigned, or conveyed to a third party without approval of the department.

(i) If, in the sole judgment of the department, it is determined at a future date that traffic conditions have so changed that the existence or use of the vehicle crossing is impeding maintenance, damaging the highway facility, impairing safety, or that the vehicle crossing is not being properly operated, or that it constitutes a nuisance, or if for any other reason it is in the department's judgment that such a facility is not in the public interest, the vehicle crossing shall be modified if corrective measures acceptable to both the department and the requester can be applied to eliminate the objectionable features of the facility or terminated and the use of the area as a vehicle crossing discontinued.

(j) Upon termination of the contract the department shall make an inspection of the crossing site. If additional repairs, modifications, or rehabilitation is required to return the highway to its original condition, the requester shall bear the entire expense of such work.

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 May 9, 1994.

TRD-9440551 Diane L. Northam
Legal Executive Assistant
Texas Department of Transportation

Earliest possible date of adoption: June 13, 1994

For further information, please call: (512) 463-8630

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ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 22. EXAMINING BOARDS

Part XX. Texas Board of Private Investigators and Private Security Agencies

Chapter 429. General Provisions

• 22 TAC §429.2

The Texas Board of Private Investigators and Private Security Agencies adopt an amendment to §429 2, with changes to the proposed text as published in the March 1, 1994, issue of the *Texas Register* (19 TexReg 1435)

The Board has determined that the addition of this section is necessary to comply with House Bill 1862

The rule will require job-specific testing for managers of licensed companies.

The board received one comment in favor of adoption, from Texas Burglar and Fire Alarm Association

The agency agrees with the comment, and feels that the training for alarm company mangers will be equivalent to testing

The new rule is adopted under Texas Civil Statutes, Article 4413(29bb), which provide the Texas Board of Private Investigators and Private Security Agencies with the authority to promulgate all rules and regulations necessary in carrying out the provisions of this Act

§429.2. Examination.

(a) All applicants to qualify as manager or supervisor shall be required to pass a written examination. This includes applicants:

(1) reinstating a suspended license;

(2) applying to manage or supervise an original license or adding an additional category or categories to an existing license; and

(3) qualifying to manage or supervise another licensee, other than one currently being managed or supervised.

(b) The passing grade of an examination shall be 75% of the total points possible.

(c) The examination shall cover the Act and Board Rules as well as specific testing on all categories of licensure; except that in the case of an alarm systems company category, the specific testing shall not apply and a certificate of completion issued by a Board approved alarm installer training school shall be provided in order to qualify for the category of alarm systems company.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 6, 1994

TRD-9440480 Clema D Sanders
Executive Director
Texas Board of Private Investigators and Private Security Agencies

Effective date: May 27, 1994

Proposal publication date. March 1, 1994

For further information, please call: (512) 463-5545

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Chapter 436. Alarm Installer and Alarm Systems Salesperson Training and Testing

• 22 TAC §§436.1-436.6

The Texas Board of Private Investigators and Private Security Agencies adopts new rule of §436 1-436.6, with changes to the proposed text as published in the January 14, 1994, issue of the *Texas Register*.

The Board has determined that the addition of this section is necessary to comply with Article 4413(29bb), §3(A), which was revised September 1, 1993, to implement the provisions of House Bill 1808

The rule will require that alarm installers and salespersons attend a Board approved school

Comments were basically favorable to the rule Three commenters endorsed the provisions of this proposed rule. One company expressed concern regarding the availability of training schools in less-populated areas of the state. One commenter requested that the Board consider accepting alternate training programs such as the one provided by AT&T because the NBFAA training course would be a financial burden on their employees. It was suggested that such courses could be approved for the continuing education requirement.

Commenting in favor of adoption of the rule were Texas Burglar and Fire Alarm Association, Westinghouse. Commenting against adoption of the rule were Sun Coast Security Distributors, Pitt Engineers and Contractors

The agency agrees with the comments made by the Texas Burglar and Fire Alarm Association, who strongly endorsed the rule. The representative of Sun Coast Distributors who originally opposed the rule later agreed to use the AT&T training as continuing education; the agency agrees with this proposal. Comments concerning the availability of training schools were worked out prior to the Board Meeting; there fore, the agency did not change the rule in response to the comments.

The new rule is adopted under Texas Civil Statutes, Article 4413(29bb), which provide the Texas Board of Private Investigators and Private Security Agencies with the authority to promulgate all rules and regulations necessary in carrying out the provisions of this Act.

§436.1. Application for Training Course Approval.

(a) An application for alarm installer or alarm systems salesperson training school approval shall be on a form prescribed by the Board to show proof that the applicant:

(1) has developed an adequate nationally recognized training course as its curriculum;

(2) will offer courses consisting of at least 20 hours of instruction in alarm system installation;

(3) will provide, as a part of the training program, a test that demonstrates the participant's qualifications to perform the duties allowed by the participant's registration;

(4) will offer at least two training courses each year within 100 miles of each county in the state that has a population in excess of 500,000 people;

(5) has, or has the capacity to provide, adequate space, qualified instructors, and proper instructional material; and

(6) has appointed a manager who will be responsible for training.

(b) A Letter of approval shall be granted by the Director to all qualified schools and shall be valid for one year and may be renewed by submitting an application for renewal 30 day prior to the expiration date along with any required fees.

(c) A manager and a qualified instructor must have successfully completed a nationally recognized course in alarm installation consisting of at least 20 hours and must have assisted in instruction of at least two other nationally recognized courses in alarm installation consisting of at least 20 hours each. Approval by the Director of managers and qualified instructors shall be valid for one year.

§436.2. Attendance, Progress and Completion Records Required. A Board-approved training school shall:

(a) issue an original Certificate of Completion to each qualifying student within 14 days after the student qualifies.

(b) maintain adequate records to show attendance and progress of grades of students.

§436.3. Certificate of Completion Required.

(a) A person who is employed as an alarm systems installer or alarm system salesperson must hold a Certificate of Completion in order to renew his initial registration except that a person that holds a valid registration on September 30, 1993 does not have to obtain a Certificate of Completion for so long as he maintains his registration with his then-current licensee.

(b) The Certificate of Completion shall contain the:

(1) name and approval number of the school;

(2) date of completion;

(3) name and signature of the manager of the school; and

(4) full name and social security number of the student.

(c) The Certificate of Completion shall indicate that the student has passed the required test and shall contain the words "has successfully completed the alarm installers or alarm systems salespersons training course approved the Texas Board of Private Investigators and Private Security Agencies".

§436.4. Records required on Manager. A Board-approved training school shall maintain on file with the Board the name and signature of its manager and shall notify the Board in writing when there has been a change in the school's manager, giving the Board the name of the new manager and furnishing the Board a signature card of the new manager within 14 days after such change.

§436.5. Statutory or Rules Violations.

(a) The Board may refuse to accept a Certificate of Completion from a training school upon receipt of proof of violation of the Act or Board Rules involving an owner, officer, partner, shareholder, manager or instructor.

(b) The Board may withdraw approval of a training school upon receipt of proof that said school has been operated in violation of the Act or Board Rules.

(c) In the event of a denial of approval of a training school or if the Board has withdrawn approval of a training school, the Board shall set forth in writing the reasons for the denial or withdrawing of approval. The applicant shall have the right to appeal in accordance with the Act and Board Rules. if the applicant fails to exercise his right of appeal within 30 days after receipt of notice of denial or withdrawing of approval, the notice shall become final.

§436.6. Continuing Education.

(a) Beginning September 30, 1994, a person employed as an alarm systems installer or alarm systems salesperson must obtain 12 hours of continuing education credits for education in alarm installation in order to renew any registration subsequent to the renewal of his initial registration.

(b) A person that has not obtained his continuing education credits by the date his registration expires may receive a temporary registration for three months after which time he must have met the requirements of this section. A temporary registration that has been granted under this section may not be renewed except as a registration in full compliance with this section.

(c) The Director shall approve classes for continuing education that she determines meets the qualifications of these rules and the Act. Such classes may be provided for and taught by any organization or person that, in the Director's discretion, has the knowledge and experience to provide such information, including informal classes by manufacturers of alarm products; informal classes by alarm associations; or other qualified entity A person wishing to conduct a continuing education class must provide the Director a description of the contents of the curriculum and the qualifications of any instructor. The Director shall inform the person wishing to conduct the class of her approval or disapproval within 15 days of receiving the request. The Director may delegate this responsibility to other employees of the Board.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on May 6, 1994

TRD-9440481 Clema D Sanders
Executive Director
Texas Board of Private Investigators and Private Security Agencies

Effective date: May 27, 1994

Proposal publication date: January 14, 1994

For further information, please call: (512) 463-5545

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 7. Corporate and Financial Regulation

Subchapter S. Multiple-Employer Welfare Arrangements Requirements for Obtaining And Maintaining Certificate of Authorization

• 28 TAC §§7.1901-7.1915

The Texas Department of Insurance adopts new §§7.1901-7.1915, concerning the licensing of multiple-employer welfare arrangements. Sections 7 1902, 7.1904, 7.1905, 7.1906, 7.1908, 7.1910, and 7.1914 are adopted with changes to the proposed text as published in the February 15, 1994, issue of the Texas Register (19 TexReg 1085). Section 7.1916 was not adopted. Sections 7.1901, 7 1903, 7.1907, 7.1909, 7.1911, 7.1912, 7 1913, and 7.1915 are adopted without changes and will not be republished. Pursuant to Insurance Code, Article 3 95-15, a public hearing was held on March 28, 1994, to receive comments from interested persons.

This subchapter is necessary to provide a multiple-employer welfare arrangement (MEWA) or proposed MEWA clear instructions for the filing of an application to obtain a certificate of authority to operate in the State of Texas, and to provide for the general regulation of MEWAs It also is necessary to fully implement legislation creating the Insurance Code, Chapter 3, Subchapter I, concerning the regulation of MEWAs This adoption in-

cludes several changes to the proposed text as published. In §7 1902, the adopted sections delete the term "Business Plan Document" and its definition from §7. 1902, since this term was used in the initial draft but was subsequently eliminated. The term "Business Plan" has replaced it in this adoption, since that term is used in the sections "Business Plan" is defined as the comprehensive, detailed plan by which the MEWA conducts or proposes to conduct its business The definition of "Employee Welfare Benefit Plan" in §7.1902 has been changed to delete "or by an employee organization" since that term is not addressed in Insurance Code, Article 3 95-2(d)(1)-(4). The adopted sections delete the terminology and punctuation "(other than an employee welfare benefit plan)" from the definition of "Multiple-Employer Welfare Benefit Plan" in §7 1902 to eliminate any possible confusion or ambiguity In connection with §7 1903, Form Number 1 in paragraph (1) has been changed to delete a reference to a required filing fee for the filing of a name application Form Number 2 in paragraph (4) has been changed with respect to the manner in which it references filings for audited financial statements, consistent with changes to the text of the subchapter regarding the filing of such audited statements Section 7 1904, subsection 7 1904(a), has been revised to eliminate the words "partially insured," to combine paragraphs (2) and (3), and to move the text of paragraph (4) to §7 1905(a), for improved clarity and organization Section 7 1904(b)(3) has been changed by deleting the words "between the association and", and replacing them with "created in connection with" to correctly address possible parties to the trust agreement referred to in paragraph (3) Section 7.1904(b)(5)(B)(ii) has been deleted to make it clear that the commissioner is the sole agent for service of process in this state, and subsequent clauses have been appropriately resequenced Section 7 1904(b)(5)(B)(v) has been deleted since collective bargaining agreements are not subject to the Insurance Code, Chapter 3, Subchapter I Subsequent clauses have been appropriately resequenced Section 7 1904(b)(5)(B) (ix) has been divided into two clauses for purposes of clarity, and subsequent clauses appropriately resequenced Section 7 1904(b)(6) has been changed by eliminating the text of subparagraph (B) Subparagraphs (C)-(G) have been resequenced as (B)-(F) In §7 1904(b)(7), the term "third- party administrator" has been changed to lower case Section 7 1904(b)(8) has been changed to correctly reflect the number of subparagraphs contained in this paragraph In §7 1904(b)(8)(A) the second sentence has been deleted to avoid confusion, and a qualification has been added so that provision of the information sought is required only if it is available Section 7.1904(b)(8)(C) has been changed to delete the words "service company" and add the word "directors" to mirror the statute Section 7.1904(b)(8)(D) was changed to clarify that the intent of the provision is to require that the underwriting criteria be actuarially justified Section 7 1904(b)(9) has been changed to delete "initial" for clarity and "must be" for consistency Section 7 1904(b) (9)(B) has been changed to correct typographical errors Section 7 1904(b)(10) has been changed to avoid requiring duplicate filings under this subchapter Paragraph 7 1904(b)(12) was changed to clarify its provisions In §7 1905, subsection (a) has been changed to mirror the language of the Insurance Code 3 95-2(c), by including the word "promptly" and changing "may" to "shall" in describing the duties of the commissioner As noted previously, the text of proposed §7 1904(a)(4) as amended has been moved to this subsection to improve organization Section 7 1905(a)(2) and (3) have been changed by inserting the words "the applicant" to enhance readability Section 7 1905(a) (8) has been amended by deleting "in accordance with these sections" and replacing those words with "verified by signature of the actuary who prepared the report" to eliminate any confusion Section 7 1905(a)(16) has been changed to make it clear that various items of disclosure are associated with specific documents to be filed for review Section 7 1905(b) has been changed to clarify the application of the subsection to existing MEWAs and newly organized MEWAs In §7 1906, (a) has been changed to correct a typographical error Section 7 1906(a)(6)(C) has been changed to provide that the statement of current value of the assets and liabilities be certified, unless the application for final certificate of authority is made 90 days or later following the end of the fiscal year of the MEWA, in which case the financial statement is to be an audited statement In §7 1908, the filing fee for processing a name application has been deleted, and subsequent paragraphs appropriately renumbered In §7 1910, subsection (a) has been changed by substituting "former employee" for "beneficiary " In addition, subsections (a) and (b) have been reorganized into a single subsection with five paragraphs instead of three The additional text in paragraph (5) provides the notice include disclosure that the summary plan description is available from the employer, the plan administrator, or the trustee, as appropriate A new subsection (b) has been added, requiring that the notice briefly explain the type of information in the summary plan document In §7 1914, (a) has been changed by deleting the last sentence to eliminate unnecessary duplication of the statute Section 7 1916 has been deleted entirely to eliminate unnecessary duplication of the statute

The new sections as adopted establish a uniform procedure for a multiple-employer welfare arrangement to file an application for an initial certificate of authority and a final certificate of authority They also provide a uniform schedule of fees, and for the payment of fees This schedule addresses filing fees, as well as fees for the appointment of an agent for service, and the annual audited financial statement and actuarial opinion The sections also augment the statutory framework in their provisions addressing filing requirements for the multiple-employer welfare arrangement once it has obtained a certificate of authority to transact business in the State of Texas The adopted sections also include adoption by reference of new forms Number 1, A-120-MEWA, A120M-MEWA, Number 2-MEWA, AND MEWA-SOP to be used by multiple-employer welfare arrangements The Department has filed a copy of the revised forms with the Secretary of State's office, Texas Register section as part of this adoption. Persons desiring copies of the forms can obtain them from the Texas Department of Insurance, Insurer Services Section, P.O. Box 149104, MC 305-2C, Austin, Texas 78714-9104, or at the Insurer Services Section office at 333 Guadalupe, Austin, Texas.

Written comments were received from three separate sources on the sections as published The law firms of Long, Burner, Parks and Sealy, and Sneed, Vine, Wilkerson, Selman and Perry each commented and recommended changes to the sections as published The Office of Public Insurance Counsel commented and recommended changes to the sections as well

Regarding §7 1902, one commenter recommended deletion of the term "Business Plan Document" on the basis that its definition is not the traditional definition of the term as it is used in the welfare benefit plan trade, and that the term was not used in the rule. The department agrees and has deleted the definition of "Business Plan Document" from the adopted sections The term was used in the initial draft, but was subsequently eliminated. In its place the department includes the term "Business Plan", a term which is used in the adopted sections The adopted sections define such term as the comprehensive plan by which the MEWA conducts or proposes to conduct its business One commenter recommended that the definition of "Employee Welfare Benefit Plan" eliminate reference to "an employee organization," because that term is not addressed in the Insurance Code, Article 3 95-2(d)(1)-(4) The department agrees with the comment and deletes the words "an employee organization" from the adopted sections One commenter urged that the definition of "Multiple-Employer Welfare Arrangement" implied that a MEWA could be something other than an employee welfare benefit plan The department does not agree with the commenter that there is an implication that the MEWA can be something other than an established means for the purpose of offering or providing any benefit described in the Insurance Code, Article 3.95-4, or their beneficiaries, and doing business in Texas, as described in the definition. However, the department believes it best to delete the parentheses and all language between them from line two of the definition, for purposes of eliminating any confusion or ambiguity, and the final adoption includes such deletion. One commenter argued that there is no authority to require the filing of a name application as provided in §7.1903(a)(1), nor is the agency authorized to charge a fee for the filing of such application. The department disagrees with the argument that there is insufficient authority to require the filing of a name application Article 3.95-5 provides that no multiple-employer welfare arrangement shall take any name which is the same as or closely resembles the name of any other multiple-employer welfare arrangement possessing a certificate of authority and doing business in this state. The only practical manner to make such a determination is to require MEWAs to file a name application. Therefore, the final adoption requires the filing of a name application. With respect to the

charging of a fee for the filing of such an application, the department notes that processing the name application is not a cost free transaction, but agrees that it is not aware of specific authorization in the statute to charge a MEWA a fee for the performance of such a service. The change to the fee schedule relating to name application is addressed in subsequent comments and responses. Regarding §7 1903(a)(6), one commenter argued that the biographical affidavit required by this provision is not authorized by statute, nor does it produce any information which is relevant to the statutory qualifications of the directors and/or trustees and officers The department disagrees The biographical affidavit provides information on the skills and experience on these individuals which is useful to the commissioner in evaluating the application for a certificate of authority. Under the Insurance Code, Article 3.95-2(c), the commissioner may conduct any investigation deemed necessary or examine any person under oath in connection with the application Given this broad power, the requirement of a biographical affidavit falls within the authority granted in the Insurance Code, Article 3 95-15, for the commissioner to adopt rules that are reasonably necessary to augment this law

Regarding §7 1904(a), one commenter noted that the term "a partially-insured multiple employer welfare arrangement" is not defined and should be eliminated from §7 1904(a)(1) and (2), since the Insurance Code, Article 3 95-2 refers to multiple-employer welfare arrangements and specifically excludes fully-insured multiple-employer welfare arrangements The department acknowledges the distinction made by the commenter, and the final adoption eliminates the descriptive phrase "partially-insured," nonetheless the legislature did utilize the descriptive term "partially-insured" in the statute in Article 3.95-12 One commenter objected to the use of the word "exclusively" in §7 1904(a)(4) The commenter argued that the Insurance Code, Article 3.95-2, provides a complete grandfather of existing MEWAs that make timely filings as required by the Insurance Code, Article 3 95-2 The department disagrees with the argument that Chapter 3, Subchapter I, provides a complete "grandfathering" of existing MEWAs The Insurance Code, Article 3 95-2(g) provides that an existing MEWA may continue to conduct business until a certificate of authority is obtained from the agency However, it does not grandfather existing MEWAs The commissioner may still deny a certificate of authority for an existing MEWA However, with respect to the word,"exclusively", the department agrees that such term should be eliminated from the final adoption For this reason, the final adoption deletes from proposed §7.1904(a)(4) the words "exclusively on the basis" and replaces them with the words "based on the fact." In addition, the final adoption moves the amended text of §7.1904(a)(4) to §7 1905(a) for purposes of better organization, and reduces the number of paragraphs in adopted §7 1904(a)from four to two to clarify its provisions

Regarding §7 1904(b)(1), one commenter urged that the Insurance Code, Article 3 95-2, does not require the articles of association of a MEWA, if it has them, to be certified The commenter also pointed out that the proposed section does not specify the entity that is to certify the articles of association The department responds that the published proposal specified that the articles of association of a MEWA, when applicable, be certified, so that the agency has proof that the articles of association are valid This requirement is based upon the commissioner's authority to investigate the application If the articles of association were not certified, it would be necessary for the agency to contact the authority issuing the articles of association to verify that the corporation or other organization was in fact in existence The filing of certified articles of association are accepted by the agency as proof the entity exists The department believes this requirement is authorized under the Insurance Code, Article 3 95-15, which authorizes the commissioner to adopt rules to carry out the provisions of Insurance Code, Chapter 3, Subchapter I, Multiple-Employer Welfare Arrangements The department does not believe it is necessary to specify the party certifying the articles of association since it is generally known that the authority which issues the articles of association is the proper party to certify such articles of association Identification of the particular party to certify the articles of association would make the regulation unreasonably long, since each state has an agency responsible for this function, but the states are not uniform Regarding §7 1904(b)(3), one commenter noted that the trust agreement is between the trustee and the group sponsoring the MEWA not the MEWA The department agrees that the language addressed by the commenter can be made more clear For this reason, the final adoption deletes the words "between the association and," and replaces those with "created in connection with" in §7 1904(b)(3) The department received a number of comments directed to §7 1904(b)(5), some of which raised questions about inclusion of some of the items in this paragraph In an effort to eliminate any confusion about legal authority, paragraph (5) has been changed to reflect that the provisions of its subparagraphs and clauses have been set out to be consistent with the provisions of 29 U S C , §1022, relating to the same types or items of information Regarding §7 1904(b)(5)(B)(i), one commenter questioned if "administration" should be "administrator " The department intended for the rule to state "administration," since the agency wants to know if the plan will be administered by a corporate fiduciary, a corporate administrator or some other type of administration The word "administration" was used to encompass the duties and responsibilities for the entity administering the plan Regarding §7 1904(b)(5)(B)(ii), one commenter stated that the Insurance Code, Article 3 95-3, requires the appointment of the commissioner as the agent for service of process for a MEWA and this provision should be revised to reflect that The department agrees, after reviewing applicable provisions in connection with this comment The clause addressed was originally included on the basis that the Insurance Code, Article 3 95-13, specifies that the Insurance Code, Article 1 36, shall apply to MEWAs The Insurance Code, Article 1 36, provides for the service of process on MEWA generally, requires a MEWA to appoint an agent for service in this state, and authorizes the commissioner to accept service of process when a MEWA does not appoint an agent for service of process in this state However, based on further review, the department has deleted the provision in question from the adopted sections Regarding §7 1904(b)(5)(B)(v), one commenter noted that these sections do not apply to collective bargaining agreements under §7 1901(b) and should be deleted The department agrees and deletes this provision from the adopted sections Regarding §7 [illegible](B)(vii), one commenter stated a belief that no benefits provided under a welfare benefit plan would have nonforfeiture values The department acknowledges that welfare benefit plans generally do not have nonforfeiture values, but such values are not prohibited Therefore, the department believes this fact should be disclosed when it exists, and consequently makes no change with respect to this comment Regarding §7 1904(b)(5)(B)(ix), one commenter asked about the intent of identifying any organization through which benefits are provided The commenter wanted to know if it referred only to the claims administrator, if different from the administrator, or if it referred to any managed care arrangement through which benefits could be provided The commenter requested clarification The department has attempted to provide an understandable rule, while not burdening the persons who have to administer or comply with the rule with an overly detailed regulation All the parties mentioned by the commenter are considered an organization through which benefits are provided However, to clarify the provision, the final adoption amends this clause by dividing it into two clauses One clause covers the source of financing for the plan while the other clause covers the identity of any organization through which benefits are provided As a result, subsequent clauses in adopted subparagraph (B) are resequenced to comport with the other changes which have been made to it Regarding §7 1904(b)(5)(B)(xiii), one commenter wrote there was no statutory authority for this clause The department disagrees with this comment The Insurance Code Article 3 95-13, provides that Insurance Code, Article 21 28-E, shall be applicable to MEWAs That article requires disclosure of guaranty fund nonparticipation Regarding §7 1904(b)(6)(A), one commenter noted that the Insurance Code, Article 3 95-3(b)(2) only calls for current financial statements to be filed with the application for a certificate of authority. Therefore, the commenter argued, the inclusion of an annual balance sheet and income statement for each of the five years previous to application date is unauthorized The department disagrees The Insurance Code, Articles 3 95-2(c) authorizes the commissioner to conduct any investigation which the commissioner may deem necessary and the Insurance Code, Article 3 92-15 authorizes the commissioner to adopt rules reasonably necessary to carry out the provisions of the Insurance Code, Chapter 3, Subchapter I, Multiple-Employer Welfare Ar-

rangements The department believes the request of an annual balance sheet and income statement for each of the five years previous to the application date, developed on generally accepted accounting principles, is reasonably necessary to enable the commissioner to evaluate the application Current financial statements are a useful tool, but when a financial history is available, the current financial statements can be evaluated more accurately The commenter suggests that this requirement is overly burdensome and would substantially increase the cost and difficulty of applying for the initial certificate of authority The department disagrees, based on a strong underlying presumption that this financial information is prepared by MEWAs in the normal course of business and therefore that such information is readily available already for filing with the application Regarding §7 1904(b)(6)(B), one commenter objected to the requirement that a MEWA file a current audited financial statement with the commissioner no later than six months after receiving its initial certificate of authority The commenter stated the agency could only require the annual audited financial statement under the Insurance Code, Article 3 95-8 and that this requirement was without statutory authority The department responds that the purpose of requiring an interim audited financial statement is to alert the agency to any problems or apparent problems and to permit an attempt to resolve them before the MEWA applies for a final certificate of authority The department notes, however, that the only explicit requirement for an audited financial statement is contained in Article 3 95-8, and for this reason the adoption eliminates the provisions of proposed §7 1904(b)(6)(B) from the regulation Regarding §7 1904)(b)(6)(C)-(G), one commenter stated the information and documents required by these subparagraphs are not authorized by the statute and should be deleted The department responds that the information requested by these subparagraphs gives the agency insight into the financial plan for a MEWA It provides assistance in evaluation and determination of a number of matters, including, for example, the management ability of the MEWA The department believes the requested information is within the authority granted in the Insurance Code, Article 3 95-2 and Article 3 95-15 Article 3 95-2(c) provides that the commissioner has the power to conduct any investigation which the commissioner may deem necessary, and to examine any persons interested in or connected with the MEWA Article 3 95-15 authorizes the commissioner to adopt rules to carry out the provisions of the Insurance Code, Chapter 3, Subchapter I, Multiple-Employer Welfare Arrangements Although no change is made to the text with respect to this comment, the department notes that the final adoption includes the resequencing of proposed subparagraphs (C)-(G) as adopted subparagraphs (B)-(F) resulting from the moving of proposed §7 1904(b)(6)(B) as amended to §7 1906(a) One commenter objected to § 7 1904(b)(8)(A) requiring identification of dependents covered or to be covered under the MEWA, on the basis that the MEWA usually does not have this kind of information The department believes that such information is essential to precise reserving for risk-exposure However, the final adoption makes a change to accommodate the comment The addressed provision is divided in the final adoption into two sentences, the first of which requires inclusion of the number of participating units, and the second of which requires information on the number of covered dependents in instances where such information is known by the MEWA The final adoption also deletes the second sentence in §7 1904(b)(8)(A) to avoid confusion Regarding §7 1904(b)(8)(B) , one commenter stated the agency did not have the statutory authority to request a biographical affidavit and that the subparagraph covered situations that did not exist The department disagrees with the comment The purpose of the subparagraph is to obtain information about individuals providing management services to the MEWA Examples in the paragraph should not be read as an exhaustive list of situations The department believes it has the authority to require the biographical affidavit in this subparagraph since it simplifies the investigation of the application and carries out the purposes of the Insurance Code, Chapter 3, Subchapter I, Multiple-Employer Welfare Arrangements The commenter also indicated that MEWAs usually are not structured so that a trustee or officer of the MEWA represents only particular employers The department responds that it is aware that most directors or trustees are elected based upon a connection with a particular employer It is only to that extent that the proposal addressed the matter of a trustee or director representing an employer The department is aware of the laws governing the duties and responsibilities of trustees and directors, it did not intend to imply, nor does it believe that the subparagraph in question implies, that a director's or trustee's representation of a particular employer has any effect on its fiduciary duties and obligations For this reason the adoption makes no change relating to this comment Regarding §1904(b)(8)(C), one commenter pointed out that the Insurance Code, Article 3 95-2(d)(6), only mentions third-party administrators as a servicer of an employee benefit plan, and that therefore the addition of "service company" in the rule is not authorized The commenter also pointed out that the parties signing the agreement between the MEWA and a third party administrator will vary from situation to situation so they should not be specified in the rule With respect to the first comment, the final adoption deletes the words "service company" from this subparagraph With respect to the second comment, the department agrees that the parties signing the agreement will be either trustees or directors, as provided in the Insurance Code, Article 3 95-7(c), and therefore the final adoption adds the words "or directors" to §7 1904(b) (8)(C) Regarding §7 1904(b)(8)(D), one commenter stated there is no statutory authority for requesting the criteria for underwriting The department responds that the intent of the provision is to require that underwriting criteria utilized by a MEWA be justified on the basis of actuarial soundness The adoption therefore contains amendatory language to make such intent and purpose more clear With respect to the assertion about lack of authority, however, the department believes that the commissioner clearly has authority to request the information addressed in the comment under Article 1 24, which is specifically made applicable to MEWAs as if they are insurers, as well as under Article 3 95-2(c), which provides the commissioner broad examination and investigatory authority with respect to prospective licensees under the Chapter 3, Subchapter I Regarding §7 1904(b) (8)(E), one commenter stated there is no statutory authority for requesting the information described in the subparagraph The department disagrees The Insurance Code, Article 3 95-2(b)(4) requires "a statement showing in full detail the plan on which the MEWA proposes to transact business " The department believes the items specified in the subparagraph are within the scope of that requirement Regarding §7 1904(b)(10)(A)-(C), one commenter stated there is no statutory authority for the items requested in these subparagraphs, that much of the information requested is already requested elsewhere in this subchapter, and recommended the subparagraphs be deleted The department does not agree that these provisions should be deleted But, it is not the intent of the regulation to require unnecessarily duplicative information filing For this reason, the adoption revises paragraph (10) to clarify that such filings are necessary only to the extent that such information has not otherwise been provided by the MEWA in complying with other requirements of these sections One commenter suggested the designation of the officials in §7 1904(b)(13) who are to certify the MEWA is in compliance with the Employee Retirement Income Security Act should be deleted since there is a variation between MEWAs The department believes the designation of the officials who are to sign is illustrative and for those MEWAs that do not have officials with these specific titles, then those officials performing those duties, whatever their title, should execute the certificate However, the adoption clarifies that such designation is illustrative by adding the words "or such other official" after the term "MEWA" and before the comma in line 2 of paragraph (13) Regarding §7 1905(a) , one commenter pointed out that this subsection tracks the Insurance Code, Article 3 95-2(c), but omits the word "promptly" and changed "shall" to "may " The commenter recommended the rule should not change the statutory language since it is unambiguous The department responds that the adoption adds the word "promptly" to the subsection and that "may" has been changed to "shall" to fully conform the adopted subsection to the letter of the statute One commenter questioned the need in §7 1905(a)(8) for verification of the amount of the stop loss insurance The department, for purposes of clarification, has replaced the words "in accordance with these sections" with the words "verified by signature of the actuary who prepared the report" in the adoption to make this paragraph more clear Regarding §7 1905(a)(15), one commenter requested the department clarify that requiring the filing of the plan document or any other document dealing with benefits does not confer on the commissioner or the department the authority to approve or require benefits to be approved The depart-

ment does not believe that the requested clarifications are needed The specific wording of the sections does not attempt to confer authority on the commissioner that is not in the statute, and the department does not believe such wording creates the appearance of such an attempt For these reasons the department considers such clarifications to be unnecessary and the adoption includes no change Regarding §7 1905(a)(16), one commenter objected to the requirement to file identification cards and other documents which may be used to discuss or disclose benefits and plan provisions to individual participants The commenter suggested this could cover correspondence sent to an individual participant The commenter also stated that many of these items exceeded the statutory authority of the agency The department disagrees with the comment The purpose of this requirement is to verify that the MEWA complies with the Insurance Code, Articles 1 35 and 21 28-E, which are made applicable to MEWAs under the Insurance Code, Article 3 95-13 Moreover, the department believes the language used could not be misunderstood to include individual claim-specific correspondence However, the adoption includes additional language to reduce any uncertainty about different items of disclosure associated with specific documents to be filed for review One commenter noted the items required under §7 1905(a)(16)(C) and (D) are not authorized by statute The department disagrees The Insurance Code, Article 3 95-13, makes the Insurance Code, Articles 1 35 and 21 28-E, applicable to MEWAs Regarding §7 1905(b), one commenter claimed that the word "only" negated the grandfather provisions of the statute The department disagrees The department recognizes that existing MEWAs may continue to conduct business until the initial certificate of authority is granted or finally denied by the commissioner However, existing MEWAs are not grandfathered by the statute The statute grants them a safe harbor until their application is acted upon The use of the word "only" is in the context of granting the initial certificate of authority and the conducting of business under the Insurance Code, Chapter 3, Subchapter I, MEWA However, in the interest of clarity, the department has changed adopted subsection (b) in a manner which addresses the practical reality of both existing and newly organized MEWAs, and the differences in timing relating to the inception of their operations Regarding §7 1906(a)(3), one commenter suggested the requirement to file the plan document implies the commissioner has the authority to review benefits The commenter also stated the requirement to indicate the pages that deal with the specific benefits lacked statutory authority The department does not believe that a request to file plan documents implies the commissioner has approval authority over specific benefits addressed in that document Rather, that request, as well as the request to indicate the pages that contain the benefit description, is intended to assist department in locating essential information The department believes the request is within the commissioner's rulemaking authority granted in the Insurance Code, Article 3 95-15 In addition, the requested information provides assistance to the Department in verifying that the MEWA is providing benefits in accord with the provisions of the Insurance Code, Article 3 95-4, relating to types of benefits permitted to be offered by MEWAs Regarding §7 1906(a)(4)(C), one commenter objected to the requirement that an audited statement be filed, on the bases that such a requirement is not supported by the statute, and that it is too costly The department responds that the provisions of Article 3 95-8 contain the only explicit provisions requiring submission of an audited financial statement with respect to MEWAs. For this reason the adoption changes §7 1906(a)(4)(C) to require that the financial statement to be submitted be a certified one, unless the application for final adoption is filed 90 days or later following the close of the fiscal year of the MEWA, in which case the financial statement filed shall be an audited statement Regarding §7 1908(1), one commenter stated the fee for filing a name application is not authorized by statute The department agrees that there is not a specific statutory authorization for this specific fee, and therefore the adoption deletes the provision for a filing fee for a name application Regarding §7 1908(2) and (3), one commenter stated the fees are disproportionately higher than the fees collected by the department for similar licenses The commenter also stated that the licensing and oversight of an insurance company is more complicated than a MEWA The department acknowledges the fees charged are higher than those for similar licenses The fees are higher because a MEWA is not subject to any of the taxes that a similar licensee must pay Therefore, it is necessary for the agency to recover the full cost of the processing of the applications In one of the drafts of HB 1540, which resulted in Chapter 3, Subchapter I fees for specific processes or functions were specified However, in HB 1540 as enacted the provisions in Article 3 95-3 relating to fees state that "[t]he commissioner shall set the fees established in accordance with subsection (a) of this article in amounts reasonable and necessary to defray the cost of administration of this subchapter " The legislature intended the fees to pay for the cost of administration of the subchapter The department also disagrees with the comment that licensing of an insurance company is much more complicated than a creation of MEWA MEWAs vary from one arrangement to another, while the incorporation of one insurance company is practically identical to another In addition, the requirements for filing to assist the department in evaluating an application differs between insurance companies and MEWAs in ways that increase departmental review costs for MEWAs In determining the fees for initial and final certificates of authority for MEWAs, the department staff considered anticipated direct and indirect costs-based on average cost of such resources-of examiners, attorneys, actuaries, technicians and others in the application review and oversight process, as well as administrative and travel costs After considering this matter, the department believes the fees as proposed are reasonable and supported by all relevant factors For this reason, no change is made to the adoption other than to delete the requirement for payment of a fee to file a name application Regarding §7 1910(a), one commenter stated that the requirement to provide a written notice to each beneficiary exceeds the statutory authority and frequently the identity of every beneficiary is not known to the MEWA. While the department does not agree that the requirement exceeds the statutory authority granted the commissioner under the Insurance Code, Article 3 95-15, the department acknowledges the practical problem stated, for this reason, the adoption amends the subsection by replacing the word "beneficiary" with "former employee " This change is made, first on the basis that indirect or constructive notice is provided to beneficiaries by providing direct notice to the employee, and second on the basis that direct notice needs to be provided to participating individuals who are former employees Regarding §7 1910(a)(3), one commenter noted the notice required by the statute is not required to mention the guaranty fund or contain the complaint notice The department disagrees and believes the notice is required under the Insurance Code, Article 3.95-13, because that article makes the Insurance Code, Articles 1 35 and 21 28-E applicable to MEWAs One commenter suggested that the sections should address notification of participating individuals about availability of the summary plan description for review and information The commenter suggested that provisions of §7 1910 (relating to Required Notice to Participants) be expanded to provide that the notice inform participating individuals that a copy of the summary plan description is available from the plan administrator or other personnel, as appropriate The department agrees with the comment that the participating individuals should have the opportunity to obtain a summary plan description for information and review, and that the notice briefly explain the summary plan document However, the adoption contains a slightly different revision to §7 1910 from the one suggested by the commenter The commenter recommended the notice advise that the plan summary be obtained from the plan administrator or the department After consideration, the department believes it would be better that the provision indicate that the summary plan description is available from the plan administrator, the employer, or the trustee, as appropriate The reason the department considers it more appropriate to obtain the summary description from one of these sources is that the department will not have summary plan information that is the most current at every moment in time, while the administrator, employer, or trustee, as appropriate, would have such updated information For this reason, the adopted notice provision requires an indication that the summary plan description is available from one of these sources The adoption also combines proposed subsections (a) and (b) into a single subsection with five paragraphs instead of three It also creates a new subsection (b) that provides the notice briefly explain type of information in the summary plan document Regarding §7 1911(a), one commenter stated there was no statutory authority to require a MEWA to complete a name application The department disagrees The Insurance Code, Article 3 95-5, prohibits a MEWA from using a name

similar to the name of another MEWA possessing a certificate of authority in this state. The Insurance Code, Article 3.95-15, authorizes the commissioner to adopt rules to carry out the provisions of the Insurance Code, Chapter 3, Subchapter I, Multiple-Employer Welfare Arrangements The name application form is utilized with other similar licensing activities with a similar prohibition. This established procedure provides a practical and efficient means of assuring compliance with the Insurance Code, Article 3.95-5. Regarding §7.1911(b), one commenter requested clarification of the entity that will provide the certification of the certificate of authority and whether any fee will be charged for certifying the certificate of authority In the context of this section, the certification of the certificate of authority will be made by the Texas Department of Insurance The charge for certifying a certificate of authority is $10 pursuant to §7 301(d)(3) of this title (relating to Regulatory Fees) Regarding §7 1913(a), one commenter questioned the authority of the commissioner to examine the conduct of a MEWA and suggested that the examination of a MEWA should be limited to those aspects of a MEWA which are brought under the commissioner's jurisdiction by the statute The commenter suggested deleting the language concerning the manner of the examination. The department notes that the Insurance Code, Article 3 95-15 specifically applies the Insurance Code, Articles 1 15 and 1 19 to MEWAs as if MEWAs were insurers These articles authorize the commissioner to examine a MEWA's " financial condition and its ability to meet its liabilities, as well as its compliance with the laws of Texas affecting its business " For these reasons, the adoption retains the language addressing the manner of the examination Regarding §7 1913(b), one commenter noted the examination of a MEWA should be less costly than that of an insurer because the scope of an examination of a MEWA is much narrower The commenter objected to the language "in the same manner and to the same extent provided for domestic insurance companies in the Insurance Code, Article 1 16 " and requested its deletion. The department disagrees The Insurance Code, Article 3 15-13, applies the Insurance Code, Article 1.16, to MEWAs. Article 1 16 provides that the expenses of an examination shall be paid by the entity examined The department is required to charge for the expenses of an examination If the examination of a MEWA does not require the same expenditure of agency resources as an insurance company then the expense will be less. For this reason, the adoption contains no change regarding this comment. One miscellaneous comment recommended making a specific reference to the statute in several sections for purposes of clarifying limitations on applicability. Upon review the department considers this change unnecessary, since §7.1901 clearly states the scope and applicability of these sections In response to a number of general oral comments, the final adoption deletes the last sentence of §7.1914(a), and §7.1916 in its entirety. The basis for each of these is elimination of unnecessary duplication of the statute. With respect to each of these, the legal rights, limitations and/or processes are clearly stated in the Insurance Code.

The new sections are adopted under the Insurance Code, Articles 3.95-15, 1. 03A, and 1.15 The Insurance Code, Article 3.95-15, provides that the Texas Department of Insurance may, on notice and opportunity for all interested persons to be heard, issue such rules, regulations and orders as are reasonably necessary to augment and carry out the provisions of Subchapter I, Chapter 3, of the Insurance Code, which relates to regulation of certain multiple-employer welfare arrangements. Article 1 03A provides the commissioner with the authorization to adopt rules and regulations for the conduct and execution of the duties and functions by the department. Article 1. 15 pertains to examinations of entities regulated pursuant to the Insurance Code and multiple-employer welfare arrangements under Article 3 95-13. Article 1.15, §6, provides the department authority under duty to adopt by rule procedures for the filing and adoption of examination reports. The adopted sections establish regulation of certain multiple-employer welfare arrangements under Insurance Code, Article 3.95-1 through 3.95-15

§7 1902. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise

Business Plan-The comprehensive, detailed plan by which the multiple-employer welfare arrangement conducts or proposes to conduct its business

Employee Welfare Benefit Plan-Any plan, fund, or program established or maintained by an employer or employers as members of an association or group of five or more businesses in the same trade or industry, to the extent that such plan, fund or program is established or maintained for the purpose of providing for its participants or their beneficiaries those benefits which are permitted under the Insurance Code, Article 3 95-4. Such plan must, at a minimum, clearly set out the rights, privileges, duties and obligations of employers, employees, and beneficiaries with respect to the multiple-employer welfare arrangement. The plan must clearly set forth benefits intended to be provided under the plan, persons to whom the benefits are intended to be provided, the source of funding for such intended benefits, and a clear and complete procedure for the application for, and collection of, such benefits by beneficiaries of the plan.

Multiple-Employer Welfare Arrangement-An employee welfare benefit plan, or any other arrangement which is established or maintained for the purpose of offering or providing any benefit described in the Insurance Code, Article 3 95-4 and restated in §7.1908 of this title (relating to Benefits Allowed to be Provided by multiple-employer Welfare Arrangements) to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, provided that the arrangement describes an entity which meets either or both of the following criteria:

(A) one or more of the employer members in the multiple-employer welfare arrangement is either domiciled in this state or has its principal headquarters or principal administrative office in this state; or

(B) the multiple-employer welfare arrangement solicits an employer that is domiciled in this state or has its principal headquarters or principal administrative office in this state.

§7.1904. Application for Initial Certificate of Authority.

(a) Entities which must file applications under this subchapter are set out in paragraphs (1) and (2) of this subsection.

(1) Any person wishing to establish a multiple-employer welfare arrangement which is not fully insured, as that term is defined in the Insurance Code, Article 3 95-1(4), must apply for and obtain a license after September 1, 1993.

(2) To avoid prosecution for engaging in the unauthorized business of insurance, a multiple-employer welfare arrangement which is not fully insured, as that term is defined in the Insurance Code, Article 3.95-1(4), and which was in existence on June 1, 1993, and which has continued after that date to provide any of the services regulated by Insurance Code, Chapter 3, Subchapter I, shall complete its application for initial certificate of authority by June 1, 1994 and timely file an application for final certificate of authority.

(b) A complete application for initial certificate of authority must be submitted to the commissioner In order to be considered complete, the application must contain the items described in paragraphs (1)-(13) of this subsection

(1) certified copy of the articles of incorporation, if applicable;

(2) bylaws, constitution or rules or regulations establishing and operating the multiple-employer welfare arrangement,

(3) trust agreements created in connection with the multiple-employer welfare arrangement. The trust agreements must be signed by all trustees;

(4) a welfare benefit plan document, including documentation or instruments describing the rights and obligations of employers, employees and beneficiaries with respect to the multiple-employer welfare arrangement;

(5) summary plan description with components and characteristics consistent with 29 U.S.C., §1022, as provided in subparagraphs (A) and (B) of this paragraph;

(A) The summary plan description shall be written in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan.

(B) The summary plan description shall contain the items of information set out in clauses (i)-(xii) of this subparagraph as follows:

(i) name and type of administration of the plan,

(ii) name and address of the administrator,

(iii) names and addresses of any trustee or trustees if they are persons different from the administrator,

(iv) plan requirements with respect to eligibility for participation and benefits,

(v) a description of provisions relating to nonforfeitable benefits if any are included in the plan,

(vi) a description of circumstances which may result in disqualification, ineligibility, or denial or loss of benefits,

(vii) the source of financing of the plan,

(viii) the identity of any organization through which benefits are provided,

(ix) the date of the end of the plan year and whether the records of the plan are kept on a calendar, policy, or fiscal year basis;

(x) the procedures to be followed in presenting claims for benefits under the plan,

(xi) remedies available under the plan for the redress of claims which are denied in whole or in part, and

(xii) a statement of guaranty fund non-participation, if applicable, in the same form as set out for insurers and health maintenance organizations in §1.1001 of this title (relating to Disclosure of Guaranty Fund Non-participation)

(6) Financial Statements, as described in subparagraphs (A)-(F) of this paragraph;

(A) A current financial statement. If the multiple-employer welfare arrangement is already in business, the financial statement must include an annual balance sheet and income statement, developed on generally accepted accounting principles, for the past five years, or since the inception of the MEWA, whichever time period is shorter.

(B) A projected balance sheet for a minimum of three years on a quarterly basis, including assumptions used in producing projections and must be developed in conformity with generally accepted accounting principles.

(C) A projected income statement, providing income forecasts for a minimum interval of three years, detailed on a quarterly basis The projected income statement must be developed in conformity with generally accepted accounting principles

(D) A projected cash flow analysis on a quarterly basis, for a minimum of three years Line by line documentation of anticipated cash inflow and outflow by specific account type must be submitted

(E) A statement of the proposed initial cash and cash reserves summary This statement must include all items of funding, including but not limited to loan receipts, loan repayments, and stock sales The statement must include a description of the source and terms of the funding

(F) If an existing multiple-employer welfare arrangement, it must submit a copy of its Federal Form 5500 for the past five years, or since the inception of the MEWA, whichever time period is shorter

(7) a copy of the fidelity bond issued in the name of the multiple-employer welfare arrangement protecting against acts of fraud and dishonesty by its trustees, directors, officers employees, administrator or other individuals responsible for servicing the employer welfare benefit plan. Such bond should be in an amount equal to the greater of 10% of the premiums and contributions received by the multiple-employer welfare arrangement, or 10% of the benefits paid, during the preceding calendar year, with a minimum of $10,000 and a maximum of $500,000 No additional bond will be required of a third party administrator licensed to engage in business in this state,

(8) a business plan which includes the six major areas addressed in subparagraphs (A)-(F) of this paragraph,

(A) Current or proposed operations must be outlined with information by the applicant identifying the number of employers in the group currently participating or proposed to participate in the multiple-employer welfare arrangement. The outline should also include the number of participating units. To the extent such information is available, it also should include the number of dependents covered or to be covered by the multiple-employer welfare arrangement A specific list of the benefits being provided or to be provided must also be included.

(B) Specific information about individuals providing or to provide management services is required. The applicant should indicate whether each trustee is an owner, partner, officer, or director, and/or employee of a participating employer or is committed to participate in the multiple-employer welfare arrangement In addition, the applicant should provide the name and address of the employer represented by each trustee and by each officer and provide the association of the trustee or officer with such employer The applicant must list the individuals responsible for managing or handling funds or assets of the multiple-employer welfare arrangement A biographical affidavit must be completed and filed for each trustee, or officer or director or administrator of the multiple-employer welfare arrangement

(C) With respect to administration of the present or proposed plan, the applicant must give the names and qualifications of individuals, or the third party administrator, responsible for or to be responsible for servicing the program of the multiple-employer welfare arrangement If a third-party administrator is to service the plan, a copy of the company's Texas license should be attached In addition, a copy of the agreement between the multiple-employer welfare arrangement and the third party administrator should be submitted, signed by the administrator and trustees or directors of the multiple-employer welfare arrangement

(D) The applicant must provide documentation that the multiple-employer welfare arrangement has provided or will provide a sufficient number of competent persons to service its program in the areas of claims adjusting and underwriting The applicant should also describe the present or proposed plan to service billings, claims, and underwriting The criteria for underwriting shall be actuarially justified.

(E) The applicant must provide a specific outline and description of the management's marketing efforts The applicant should list the names of all persons

directly employed or to be employed by the arrangement, who solicit participants or adjust claims, indicating the qualifications and credentials of such individuals, and whether such persons hold any license issued by the Department. Any such licenses held should be specified by type.

(F) The applicant must provide documentation showing that a procedure has been established for handling claims for benefits in the event of dissolution of the multiple-employer welfare arrangement.

(9) an actuarial opinion prepared by an actuary who is not an employee of the multiple-employer welfare arrangement and who is a fellow of the Society of Actuaries, a member of the American Academy of Actuaries or an enrolled actuary under the Employee Retirement Income Security Act of 1974 (29 U.S C., §1241 and §1242) The actuarial opinion shall include the items described in subparagraphs (A)-(C) of this paragraph, as follows

(A) a description of the actuarial soundness of the multiple-employer welfare arrangement, including any recommended actions that the multiple-employer welfare arrangement should take to improve its actuarial soundness,

(B) the recommended amount of cash reserves the multiple-employer welfare arrangement should maintain which shall not be less than the greater of 20% of the total contributions in the preceding plan year or 20% of the total estimated contributions for the current plan year, cash reserves shall be calculated with proper actuarial regard for known claims, paid and outstanding, a history of incurred but not reported claims, claims handling expenses, unearned premium, an estimate for bad debts, a trend factor, and a margin for error, (cash reserves required by the Insurance Code, Article 3.95-8, shall be maintained in cash or federally guaranteed obligations of less than five-year maturity that have a fixed or recoverable principal amount, or such other investments as the commissioner may authorize by rule), and

(C) the recommended level of specific and aggregate stop-loss insurance the multiple-employer welfare arrangement should maintain

(10) if the multiple-employer welfare arrangement is in existence at the time of its application, annual reports meeting the substantive requirements of 29 U S.C., §1023 and §1024 shall be filed To the extent that such annual reporting requirements are not otherwise met by existing multiple-employer welfare arrangements in complying with other provisions of this subchapter, a filing under this paragraph must be made, and must at a minimum include the items described in subparagraphs (A)-(C) of this paragraph, as follows:

(A) the administrator's report of essential information for most recent year ending, detailing the size and nature of the plan, and number of participating employees in the plan;

(B) the statement from any insurance company, insurance service, or other similar organization or organizations which sell or guarantee plan benefits, which statement shall detail:

(i) the premium rate or subscription charge and the total of such premiums or subscription charges in relation to the approximate number of persons covered by each class of benefits; and

(ii) the total amount of premiums received, approximate number of persons covered by each class of benefits, and total claims paid by such company, service and other organization, and

(C) the published summary plan description and annual report to participants and beneficiaries of the plan

(11) documentation indicating that the multiple-employer welfare arrangement has applications from not less than five employers and will provide similar benefits for not less than 200 separate participating employees, and that the annual gross premiums of or contributions to the plan will be not less than $20,000 for a vision-benefit-only plan, $75,000 for a dental-benefits-only plan, and $200,000 for all other plans;

(12) documentation that the multiple-employer welfare arrangement possesses a written commitment, binder or policy for stop-loss insurance issued by an insurer authorized to do business in this state providing not less than 30 days notice to the commissioner of any cancellation or non-renewal of coverage and which provides both specific and aggregate coverage with an aggregate retention of no more than 125% of the amount of expected claims for the subsequent plan year and the specific retention amount determined by the actuarial report required by the Insurance Code, Article 3.95-8 and paragraph (9) of this subsection; and

(13) a certification provided by the applicant and signed by the President and Secretary or the Trustee of the MEWA, or other such official, attesting that the multiple-employer welfare arrangement is in compliance with all applicable provisions of the Employee Retirement Income Security Act of 1974. (29 U.S.C., §1001 et seq.)

(c) On finding of good cause, the commissioner may order an actuarial review of a multiple-employer welfare arrangement in addition to the actuarial opinion required by the Insurance Code, Article 3.95-8(a)(2). The cost of any such additional actuarial review shall be paid by the multiple-employer welfare arrangement

(d) Upon application of a multiple-employer welfare arrangement, the commissioner may waive or reduce the requirement for aggregate stop-loss coverage and the amount of reserves required by the Insurance Code, Article 3.95-8(a)(2)(B), if it is determined that the interests of the participating employers and employees are adequately protected

§7.1905 Commissioner Review of Application; Issuance of Temporary Certificate of Authority.

(a) The Commissioner shall promptly review the documentation submitted by the applicant and shall have the power to conduct any investigation which may be necessary and to examine under oath any persons interested or connected with the multiple-employer welfare arrangement. An existing multiple-employer welfare arrangement which timely files notice for an initial and a final certificate of authority will not be denied such certificate based on the fact that it engaged in the business of insurance in this state on an unauthorized basis prior to September 1, 1993 Within 60 days of the filing of the completed application, the Commissioner shall issue an initial Certificate of Authority, which shall be a temporary certificate of authority for a term of one year, to the multiple-employer welfare arrangement, provided that all of the conditions in paragraphs (1)-(16) of this subsection have been met, as follows:

(1) the employers in the multiple-employer welfare arrangement are members of an association or group of five or more businesses which are the same trade or industry, including closely related businesses which provide support, services, or supplies primarily to that trade or industry;

(2) if the applicant is an association, that the association in the multiple-employer welfare arrangement is engaged in substantial activity for its members other than sponsorship of an employee welfare benefit plan;

(3) if the applicant is an association, that the association in the multiple-employer welfare arrangement has been in existence for a period of not less than two years prior to engaging in any activities

relating to the provision of employer health benefits to its members;

(4) the employee welfare plan of the association or group in the multiple-employer welfare arrangement is controlled and sponsored directly by participating employers, participating employees, or both;

(5) the association or group of employers in the multiple-employer welfare arrangement is a not-for-profit organization;

(6) the multiple-employer welfare arrangement has within its own organization adequate facilities and competent personnel, as determined by the Commissioner, to service the employee benefit plan or has contracted with a third-party administrator that holds a current certificate of authority to engage in business in the State of Texas;

(7) the multiple-welfare arrangement has applications from not less than five employers and will provide similar benefits for not less than 200 separate participating employees, and the annual gross premiums or contributions to the plan will be not less than $20,000 for a plan that provides only vision benefits, $75,000 for a plan that provides only dental benefits and $200,000 for all other plans;

(8) the multiple-employer welfare arrangement possesses a written commitment, binder, or policy for stop-loss insurance issued by an insurer that has a certificate of authority to transact business in the State of Texas, providing not less than 30 days notice to the commissioner of any cancellation or non-renewal of coverage; (this instrument shall provide both specific and aggregate coverage with an aggregate retention of no more than 125% of the amount of expected claims for the next plan year and a specific retention amount annually determined by the actuarial report required by Article 3.95-8(a)(2), and verified by the signature of the actuary who prepared the report);

(9) both the specific and aggregate coverage will require all claims to be submitted within 90 days after the claim is incurred and provide a 12-month claims incurred period and a 15-month paid claims period for each policy year;

(10) the contributions shall be set to fund at least 100% of the aggregate retention plus all other costs of the multiple-employer welfare arrangement;

(11) if the reserves required by Article 3.95-8(a)(2)(B) exceed the greater of 40% of the total contributions for the current plan year, or 40% of the total contributions expected for the current plan year, the contributions may be reduced to fund less than 100% of the aggregate retention plus all other costs of the multiple-employer welfare arrangement, but in no event less than the level of contributions necessary to fund the minimum reserves required under Article 3. 95-8(a)(2)(B);

(12) the reserves described in Article 3.95-8(a)(2)(B) have been established or will be established before the final certificate of authority is issued;

(13) the multiple-employer welfare arrangement has established a procedure for handling claims for benefits in the event of dissolution of the multiple-employer welfare arrangement;

(14) the multiple-employer welfare arrangement has obtained the required fidelity bond;

(15) the multiple-employer welfare arrangement has submitted its plan document or any instrument describing the rights and obligations of the employers, employees and beneficiaries with respect to the multiple-employer welfare arrangement; and

(16) the multiple-employer welfare arrangement has submitted a summary plan description and has filed for review any notifications such as an identification card, policy or contract, in connection with the employee welfare benefit plan, which notifications include any of the disclosures set out in subparagraphs (A)-(D) of this paragraph, as follow:

(A) that individuals covered by the plan are only partially insured,

(B) that in the event the plan or the multiple-employer welfare arrangement does not ultimately pay medical expenses that are eligible for payment under the plan for any reason, the participating employer or its participating employee covered by the plan may be liable for those expenses;

(C) that, if applicable, the plan does not participate in the guaranty fund, such disclosure being provided in the same notice format required of insurers and health maintenance organizations in §1.1001 of this title (relating to Disclosure of Guaranty Fund Non participation); and

(D) the toll-free number for the complaints section of the Texas Department of Insurance consumer services division.

(b) Unless excepted by statute, a multiple-employer welfare arrangement may commence doing business in this state only after it receives its initial certificate of authority.

(c) The multiple-employer welfare arrangement shall appoint the commissioner of insurance as its registered agent for service of process, by filing same on the prescribed form.

§7.1906. Application for Final Certificate of Authority.

(a) A multiple-employer welfare arrangement which has received its initial certificate of authority must apply for a final certificate of authority no later than one year after the issuance of its initial certificate of authority. The multiple-employer welfare arrangement shall file an application on the prescribed form and furnish such information as may be required by the commissioner. The application shall include only those items described in paragraphs (1)-(4) of this subsection, as follow:

(1) the names and addresses of:

(A) the association or group of employers sponsoring the multiple-employer welfare arrangement,

(B) the members of the board of trustees or directors, as applicable, of the multiple-employer welfare arrangement,

(C) at least five employers, if the arrangement is not an association, which information shall be retained by the commissioner as confidential,

(2) evidence that the fidelity bond requirements have been met,

(3) copies of all plan documents and agreements with service providers, which shall be retained by the commissioner as confidential (Indicate on what pages the specific benefits are listed), and

(4) a funding report containing.

(A) a statement certified by the board of trustees or directors, as applicable, and an actuarial opinion that all applicable requirements of the Insurance Code, Article 3.95-8 have been met,

(B) an actuarial opinion which sets forth a description of the extent to which contributions or premium rates:

(i) are not excessive,

(ii) are not unfairly discriminatory; and

(iii) are adequate to provide for the payment of all obligations and the maintenance of required cash reserves and surplus of the multiple-employer welfare arrangement,

(C) a certified statement of the current value of the assets and liabilities accumulated by the multiple-employer welfare arrangement (unless the application for final certificate of authority is filed 90 days

or later following the close of the fiscal year for the multiple-employer welfare arrangement, in which case the financial statement shall be an audited statement), and a projection of the assets, liabilities, income and expenses of the multiple-employer welfare arrangement for the next 12-month period and that reflects that the MEWA has maintained adequate cash reserves; and

(D) a statement of the costs of coverage to be charged, including an itemization of amounts for administration, reserves, and other expenses associated with operation of the multiple-employer welfare arrangement.

(b) After examination, investigation and determination that all the requirements of the Insurance Code, Chapter 3, Subchapter I and these sections have been met, the commissioner shall issue a final certificate of authority to the multiple-employer welfare arrangement.

§7.1908. Required Filing Fees The commissioner shall collect, and the applicant affected shall pay to the commissioner, the following fees:

(1) Filing fee for filing an application for the initial certificate of authority-$5,000;

(2) Filing fee for final certificate of authority-$1,500;

(3) Filing fee for appointment of commissioner of insurance as the attorney for service of process-$50, and

(4) Annual Filing fee for filing audited financial statement and actuarial opinion-$500

§7.1910. Required Notice to Participants

(a) A multiple-employer welfare arrangement, in connection with an employee welfare benefit plan, shall provide to each participating employee or former employee covered by the plan the written notice containing, at a minimum, the items described in paragraphs (1)-(5) of this subsection, at the time the coverage of such participating employee or former employee becomes effective:

(1) that individuals covered by the plan are only partially insured,

(2) that in the event the plan or the multiple-employer welfare arrangement does not ultimately pay medical expenses that are eligible for payment under the plan for any reason, the participating employer or its participating employee covered by the plan may be liable for those expenses,

(3) that, if applicable, the plan does not participate in the guaranty fund; such disclosure being provided in the same notice format required of insurers and health maintenance organizations in §1.1001 of this title (relating to Disclosure of Guaranty Fund Non participation);

(4) the toll-free telephone number for the complaints section of the Texas Department of Insurance consumer services division; and

(5) that a copy of the summary plan description may be obtained from the plan administrator, employer, or trustee, as applicable.

(b) The notice shall also briefly explain the types of information in the summary plan description.

§7.1914. Duties and Compensation of Trustees, Officers or Directors.

(a) The trustees or directors of a multiple-employer welfare arrangement shall give the attention and exercise the vigilance, diligence, care, and skill that prudent persons use in like or similar circumstances. Trustees or directors shall be responsible for all operations of the multiple-employer welfare arrangement and shall take all necessary precautions to safeguard the assets of the multiple-employer welfare arrangement

(b) The board of trustees or directors shall select such officers as designated in the articles or bylaws or trust agreement and may appoint agents as deemed necessary for the transaction of the business of the multiple-employer welfare arrangement. All officers and agents shall respectively have such authority and perform such duties in the management of the property and affairs of the multiple-employer welfare arrangement as may be delegated by the board of trustees or directors Any officer or agent may be removed by the board of trustees or directors whenever in their judgment the business interests of the multiple-employer welfare arrangement will be served by the removal. The board of trustees or directors shall secure the fidelity of any or all such officers or agents who handle the funds of the multiple-employer welfare arrangement by bond or otherwise

(c) Trustees or directors shall serve without compensation from the multiple-employer welfare arrangement except for actual and necessary expenses. A multiple-employer welfare arrangement shall not pay any salary, compensation, or emolument to any officer of the multiple-employer welfare arrangement unless the payment is first authorized by a majority vote of the board of trustees or directors of the multiple-employer welfare arrangement

(d) An officer, employee, or agent of a multiple-employer welfare arrangement shall not be compensated unreasonably. The compensation of any officer or employee of a multiple-employer welfare arrangement shall not be calculated directly or indirectly as a percentage of money or premium collected. The compensation of any agent shall not exceed 5% of the money or premium collected.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 6, 1994.

TRD-9440488 D. J. Powers
Legal Counsel to the Commissioners
Texas Department of Insurance

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Proposal publication date: February 15, 1994

For further information, please call: (512) 463-6327

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Chapter 9. Title Insurance

Subchapter A. Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas

• 28 TAC §9.1

The Texas Department of Insurance adopts an amendment to §9 1, with changes to the proposed text as published in the February 22, 1994, issue of the *Texas Register* (19 TexReg 1317) The amendment concerns the adoption by reference of the Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas (the Basic Manual) The amendment includes the deletion of existing Procedural Rule P-28 and the simultaneous adoption of the proposed Procedural Rule P-28, with changes to the proposed procedural rule

The amendment of §9 1 will enable the department to recognize or administer continuing education programs in accordance with provisions of House Bill 1461, which added Article 21 01-2 to the Insurance Code Section 9. 1 adopts by reference Procedural Rule P-28 which establishes guidelines for continuing education courses as authorized by the Insurance Code, Article 9 58 Procedural Rule P-28 is necessary to implement changes to the Insurance Code occasioned by House Bill 1461, as enacted by the 73rd Legislature, which provides that administration of continuing education programs for agents by he department is discretionary House Bill 1461 makes participation in continuing education programs by agents voluntary, unless continuing education is otherwise required by statute or applicable law. Section 1 was changed to clarify the requirements of P-28. A new §2 was added to include definitions of terms used in the procedural rule. Changes were made to §3(c) to clarify the required number of continuing education hours Paragraph 6(2) was changed to clarify

that self-study courses need to be certified for credit to be obtained. Paragraph 7(3) was changed to reflect that a maximum of 8 hours credit will be recognized for a State Bar of Texas course. A new paragraph (4) was added to §7 to clarify the credit for accredited college or university courses Paragraph (5) of this section was changed regarding the issuance of a letter of certification by the provider to the instructor for partial credit for teaching part of a course. Paragraph (7) of this section was also changed to make it clear that an instructor will only get credit for teaching a course once during a three-month period Paragraph (8) of §7 was changed to include the course number or title on the license renewal form Section 8 was changed to clarify the renewal of multiple licenses Paragraph (7) of this section was changed to ensure that final examinations test the knowledge of the licensee, not merely a set number of questions based on the credit hours of the course Section 9(a) was changed to provide a deemer period for courses Section 11 was added to provide an appeals process for licensees and providers of continuing education courses Changes were made to §12(b) to clarify the documentation to be provided at the time of license renewal A new subsection (c) was added to §13 to allow for the correction of discrepancies after an audit or review of continuing education records

Adopted §9 1 will amend Procedural Rule P-28, which is adopted by reference Procedural Rule P-28, §1 of the Basic Manual, discusses the purpose and scope of the requirements for certification of continuing education courses for title agents Procedural Rule P-28, §2, includes definition of terms used in the rule Procedural Rule P-28, §3, discusses the applicability of the requirements Procedural Rule P-28, §4, discusses the exemption available from continuing education requirements Procedural Rule P-28, §5 and §6, discuss the course criteria and types of courses accepted for continuing education requirements Procedural Rule P-28, §7, establishes the method to determine the number of hours of credit for a course Procedural Rule P-28, §8, sets forth the requirements for successful completion of a course Procedural Rule P-28, §9 and §10, discuss certification of a course and obtaining of forms Procedural Rule P-28, §11, provides an appeals process for licensees and providers of continuing education courses Procedural Rule P-28, §§12, 13 and 14 discuss licensee compliance with continuing education requirements, audit of continuing education records, and failure to comply with the requirements

No comments were received regarding adoption of the rule Comments were received on proposed Procedural Rule P-28, which is adopted by reference in §9 1 A commenter proposed the addition of definitions, especially the term "provider", to the procedural rule The agency agrees and has added new §2, Definitions, with minor changes Comments were raised regarding prorating the number of hours required Language in response to these comments relating to Applicability of Requirements, §3, was added to clarify the required number of continuing education hours A commenter was concerned that agents may not realize that self-study courses must be certified for continuing education. Language was added in §6, Types of Courses, to assure that self-study courses must be certified for continuing education Comments were received about credit for teaching courses every 6 to 9 months and the preparation necessary. Language was added in §7, Hours of Credit, to clarify recognition of credit for teaching continuing education courses and reporting requirements for continuing education credits claimed by licensees Comments were received regarding the inclusion of the course number on the license renewal form. The agency agrees and has made the requested change A sentence was added to §8, Course Requirements for Successful Completion, based on comments, to confirm validity of certificates of completion for renewing multiple licenses if within the renewal period of each license Section 9, Course Certification, was modified in response to comments received to provide that courses submitted for certification can be deemed approved unless the Continuing Education Coordinator notifies the provider of disapproval within 30 days of filing A new §11, Appeals, was added based on comments to provide an appeals process for licensees and course providers Section 12, Licensee Compliance, was changed based on comments, to provide that copies of supporting completion certificates or a certified summary of completion certificates must accompany license renewals Concern was expressed that licensees and providers should be allowed to respond to discrepancies noted in an audit The agency agrees and language was added to §13, Audit of Continuing Education Records, to provide licensees or providers with an opportunity to correct discrepancies or submit new documentation if the validity or completeness of continuing education records are questioned

Commenting in favor of adoption was Texas Land Title Association There were no comments against adoption of the rule

The amendment is adopted under the Insurance Code, Articles 9 5, 21 01-2, 1 03A, and 1 04, and the Government Code, §2001 04 et seq The Insurance Code, Article 9 58, authorizes the State Board of Insurance to adopt a procedure to verify that title agents and escrow agents are participating in continuing education programs Article 21 01-2, §4 provides that the department may recognize or administer continuing education programs for agents affected by the Article Article 1 02 of the Insurance Code, as amended by the 73rd Texas Legislature in House Bill 1461, provides that a reference in the Insurance Code or another insurance law to the State Board of Insurance means the Commissioner of Insurance or the Department, as consistent with the respective powers and duties of the Commissioner and the Department under Article 1 02 Section 1 23 of House Bill 1461, as enacted by the 73rd Texas Legislature, provides that as of September 1, 1993, the Commissioner of Insurance shall assume authority over any area of activity of the Department not subject to the authority of the State Board of Insurance Section 1 2 provides that on September 1, 1993, the Board shall relinquish authority over all areas of activity of the Department except the promulgation and approval of rates and policy forms and endorsements and hearings, proceedings, and rules related to these activities, such authority shall be exercised by the Board until no later than September 1, 1994 New Article 1 03A, as enacted in House Bill 1461, provides that the Commissioner of Insurance may adopt rules and regulations which must be for general and uniform application for the conduct and execution of the duties and functions of the Department only as authorized by statue New Article 1.04C, as enacted in House Bill 1461, requires the commissioner of Insurance to develop and implement policies that provide the public with a reasonable opportunity to appear before the commissioner and to speak on any issue under the commissioner's jurisdiction The Government Code, §2001 004 et seq (Administrative Procedure Act) authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and prescribe the manner for adoption of rules by a state administrative agency

§9 1 Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas The Texas Department of Insurance adopts by reference the Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas as amended, effective April 30, 1994 The document is published by and is available from Hart Forms and Services, 11500 Metric Boulevard, Austin, Texas 78758, and is available from and on file at the Texas Department of Insurance, Title Insurance Section, Mail Code 104-1C, 333 Guadalupe Street, Austin, Texas 78701-1998

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on May 6, 1994

TRD-9440487 D J Powers
Legal Counsel to the Commissioner
Texas Department of Insurance

Effective date May 27, 1994

Proposal publication date February 22, 1994

For further information, please call (512) 463-6327

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Chapter 19. Agent's Licensing

Subchapter K. Continuing Education Requirements

• 28 TAC §§19.1001-19.1011

The Texas Department of Insurance adopts the repeal of §§19 1001-19 1011, without changes to the proposed text as published in the February 25, 1994 issue of the *Texas Register* (19 TexReg 1366)

The repeal of §§19 1001-19 1011 will enable the Department to recognize or administer continuing education programs in accordance with provisions of H B 1461, which added Article 21.01-2 to the Insurance Code H B 1461 was passed by the 73rd Legislature, Regular Session, and provides tha administration of continuing education programs for agents by the Department is discretionary H.B. 1461 also makes participation in continuing education programs by agents voluntary, unless continuing education is otherwise required by statute or applicable law The repeal of this subchapter is necessary to enable the Commissioner to simultaneously adopt a new subchapter which replaces the repealed sections with other provisions concerning guidelines for continuing education courses

The repeal of §§19.1001-19.1011 and the simultaneous adoption of a new subchapter will result in a streamlined, less cumbersome and less bureaucratic system of approving continuing education courses

No comments were received regarding adoption of the repeals

The repeals are adopted under the Insurance Code, Articles 21 07-1, 21.14, 21 01-2 , 1 03A and 1 04C, and the Government Code, §2001 004, et seq Articles 21 07-1 and 21 14 authorize the State Board of Insurance to adopt a procedure for certifying continuing education programs for agents Article 21 01-2, §4 provides that the Department may recognize or administer continuing education programs for agents affected by this Article Article 1 02 of the Insurance Code, as amended by the 73rd Texas Legislature in House Bill 1461, provides that a reference in the Insurance Code or another insurance law to the State Board of Insurance means the Commissioner of Insurance or the Department, as consistent with the respective powers and duties of the Commissioner and the Department under Article 1 02 Section 1 23 of House Bill 1461, as enacted by the 73rd Texas Legislature, provides that as of September 1, 1993, the Commissioner of Insurance shall assume authority over any area of activity of the Department not subject to the authority of the State Board of Insurance Section 1 23 provides that on September 1, 1993, the Board shall relinquish authority over all areas of activity of the Department except the promulgation and approval of rates and policy forms and endorsements and hearings, proceedings, and rules related to these activities; such authority shall be exercised by the Board until no later than September 1, 1994. New Article 1.03A, as enacted in House Bill 1461, provides that the Commissioner of Insurance may adopt rules and regulations which must be for general and uniform application, for the conduct and execution of the duties and functions of the Department only as authorized by statute. New Article 1 04C, as enacted in House Bill 1461, requires the Commissioner of Insurance to develop and implement policies that provide the public with a reasonable opportunity to appear before the Commissioner and to speak on any issue under the Commissioner's jurisdiction. The Government Code, §2001 004, et seq. (Administrative Procedure Act) authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and prescribe the manner for adoption of rules by a state administrative agency

§19 1001. Purpose and Scope.

§19 1002 Definitions.

§19.1003 Applicability of Requirement

§19 1004. Continuing Education Requirements

§19 1005. Failure to Comply.

§19 1006 Approved Courses of Study

§19 1007 Licensee's Responsibility for Record Keeping.

§19 1008 Records and Audit

§19 1009 Texas Continuing Education Advisory Council

§19 1010 Distribution of Rules and Attachments

§19 1011 Forms Adopted by Reference

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on May 6, 1994

TRD-9440489 D J Powers
Legal Counsel to the Commissioner
Texas Department of Insurance

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Proposal publication date February 25, 1994

For further information, please call (512) 463-6327

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Subchapter K. Agent's and Adjuster's Guidelines for Minimum Standards for Continuing Education Courses

- **28 TAC §§19.1001-19.1013**

The Texas Department of Insurance adopts new §§19 1001-19 1013, relating to guidelines for minimum standards for continuing education courses for agents and adjusters Sections 19 1003, 19 1005-19 1009, 19 1011 and 19 1012 are adopted with changes to the proposed text as published in the February 25, 1994 issue of the *Texas Register* (19 TexReg 1367). Sections 19.1001, 19.1002, 19 1004, 19 1010, and 19.1013 are adopted without changes and will not be republished.

The new sections implement new Article 21.01-2 of the Insurance Code, as enacted by the 73rd Legislature in House Bill 1461, which makes it discretionary for the Texas Department of Insurance to administer continuing education programs for agents The Texas Department of Insurance is simultaneously repealing §§19 1001-19.1011, concerning continuing education requirements. Notification appears elsewhere in this issue of the *Texas Register* of the adoption of the repeal. Changes were made to subsection (d) of §19.1003 to clarify that the credit hours required are prorated based on the renewal date of the license Subsection (a) of §19. 1005 was changed based on comments to clarify that the sections also apply to adjusters A new subsection (g) was added to this section to permit courses on management of the licensee's insurance business which have a demonstrable impact on customer service. The following subsections were renumbered accordingly Paragraph (1) of §19.1007 was revised based on comments to permit a 10-minute break for each 2 hours of actual instruction time Paragraph (5) was changed to clarify how a person who taught a portion of a course can get credit for those hours taught Section 19.1008(b)(7) was changed, based on comments, to reflect that the final examination should be a comprehensive testing of the licensee's knowledge of the course material and not a set number of questions based on length of the course. Subsection (c) of this section was amended to allow providers to develop their own forms for certificates of completion and sets forth the minimum information that the form should contain. Subsection (e) of §19.1009 was added to permit course providers to limit enrollment in their courses to certain licensees. Subsection (b) of §19 1011 was changed to reflect that licensees are to maintain evidence of continuing education even though the licensee will not be filing the evidence of completion with the Department Subsection (c) of this section was amended to permit any course provider, not just a college dean, to certify to partial credit for instructors not teaching an entire course The records to be maintained by the providers was changed in §19.1012(b) to include final examinations. A new subsection (c) was added to §19.1012 to permit the correction of discrepancies noted.

The repeal of §§19.1001-19.1011 and the simultaneous adoption of the new sections will result in a streamlined, less cumbersome and less bureaucratic system of certifying continuing education courses. The adopted sections set forth definitions, specify the number of hours of continuing education required for the licensing period, establish course criteria, exemptions from the continuing education requirements, and compliance with the requirements

Summary of Comments and Agency's Response Commenters felt that language in §19 1005(a) applied only to insurance agents. The agency agrees, and language has been

added to include adjusters. A commenter expressed concern that §19.1005(i)(5) would prevent providers from offering in-house courses which would be applicable to continuing education requirements. New §19. 1009(e) addresses this concern by giving providers the option of restricting enrollment for courses offered. Commenters objected to omission in §19. 1005(f) of credit for courses on "management of the licensee's insurance business," and retention of the list of management subjects which are not eligible for approval. The agency agrees and has made the requested change in new subsection (g). Commenters felt that use of the word "and" at the end of §19.1005(f) means that all areas referenced in paragraphs (1)-(5) must be included in the content of each course, and suggested using "or" instead of "and." The agency agrees and has made the requested change. Several commenters objected in §19.1007(1) to the use of a 60-minute hour, claiming this placed an undue burden on licensees, and recommending a 50- or 55-minute hour. The agency disagrees with allowing credit for a 50-minute hour, but has changed the subsection to permit a break not to exceed more than 10 minutes per two hours of actual instruction time. It is important that licensees only receive credit for the part of the course attended. To receive one hour of credit, a course should consist of one hour of instruction. A course can still be appropriately structured for breaks for the licensees and logistical needs. One commenter stated opposition to imposing a written examination where attendance satisfies the requirement of completion. The commenter misunderstood §19.1008(b), which clearly states that providers shall use a written examination for "classroom courses that do not use attendance as the means of completion." In addition, the examination is given to evaluate the licensee's competency, not to measure the effectiveness of a course. These are two separate areas. Commenters had concerns regarding the number of questions on final examinations in §19.1008(b)7), and felt that a quantitative exam would not necessarily be a quality exam. The agency agrees, and has changedthe rule to require a comprehensive exam which will thoroughly test the licensee's knowledge of the content of the course without regard to a specific number of questions One commenter suggested that the department review all exam formats to determine if they are acceptable for continuing education The agency disagrees. The agency wants providers to adequately test the knowledge of the licensees and feels it is incumbent upon the provider to develop an appropriate examination without the agency telling the provider if the examination is acceptable One commenter requested that providers be allowed to provide their own completion certificates. The agency agrees and has changed §19.1008(c) set forth the minimum information to be provided to the department. One commenter raised a concern that under §19.1011(a) agents and employees of competitors could attend any provider's courses The agency agrees and has added new §19.1009(e) which gives providers the option of restricting course enrollment or making it open to the public Another commenter felt that language in §19 1011(a) was confusing regarding "their type of license" According to the commenter, many adjusters are licensed in one or two lines of insurance and seminars usually contain a broad spectrum of subjects, thereby making it difficult to separate out portions of a seminar for credit He believes that a burden would be placed on the department to approve specific areas for partial credit and monitor reporting of partial credit Another commenter wanted language added to this subsection to allow licensees to choose any approved course without regard to the kind of license held under Article 21 07-4 The agency disagrees The commenter misunderstood this subsection This is not referring to a separate type of license One commenter supported and one objected to the proposed §19 1011(b) provision no longer requiring agents and adjusters to submit evidence of continuing education at the end of each license renewal period The provision has been changed to require agents and adjusters to submit evidence of compliance with continuing education upon request by the department

Commenting in favor of adoption were Texas Association of Insurance Agents, Texas Association of Life Underwriters, Texas Independent Insurance Adjusters Association, American Educational Institute, Inc , Houston Claims Association, Inc , Tieken Claim Service, Inc , Hammerman and Gainer, State Farm Insurance Companies, and Funeral Directors Life Insurance Companys Pictorial did not express a position for or against There were no comments against adoption of the rules

These sections are adopted under the Insurance Code, Articles 21 01-2, 21 07-1, 21 07-3, 21.07-4, 21 14, 1 03A and 1 04C and Texas Government Code §§2001 004, et seq The Insurance Code, Articles 21 07-1, §3A, 21 07-3, §6A, 21 07-4, §7A and 21 14, §5b and §5(d) authorize the Department to adopt a procedure for establishing guidelines for continuing education programs for agents and adjusters Article 1 02 of the Insurance Code, as amended by the 73rd Texas Legislature in House Bill 1461, provides that a reference in the Insurance Code or another insurance law to the State Board of Insurance means the Commissioner of Insurance or the Department, as consistent with the respective powers and duties of the Commissioner and the Department under Article 1 02. Section 1.23 of House Bill 1461, as enacted by the 73rd Texas Legislature, provides that as of September 1, 1993, the Commissioner of Insurance shall assume authority over any area of activity of the Department not subject to the authority of the State Board of Insurance. Section 1.23 provides that on September 1, 1993, the Board shall relinquish authority over all areas of activity of the Department except the promulgation and approval of rates and policy forms and endorsements and hearings, proceedings, and rules related to these activities, such authority shall be exercised by the Board until no later than September 1, 1994. New Article 1 03A, as enacted in House Bill 1461, provides that the Commissioner of Insurance may adopt rules and regulations which must be for general and uniform application, for the conduct and execution of the duties and functions of the Department only as authorized by statute New Article 1 04C, as enacted in House Bill 1461, requires the Commissioner of Insurance to develop and implement policies that provide the public with a reasonable opportunity to appear before the Commissioner and to speak on any issue under the Commissioner's jurisdiction The Government Code, §§2001 004, et seq (Administrative Procedure Act) authorize and require each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and prescribe the manner for adoption of rules by a state administrative agency

§19 1003 Applicability of Requirements.

(a) Agents licensed under the Insurance Code, Articles 21 07-1, 21 07-3, and 21.14 shall complete 30 hours of continuing education within each reporting period, unless otherwise exempt

(b) An agent licensed under the Insurance Code, Articles 21.07-1 and 21 14 may elect to satisfy the continuing education requirements of either article and shall not be required to complete more than 30 hours within each reporting period

(c) Adjusters licensed under the Insurance Code, Article 21 07-4 shall complete 30 hours of continuing education within each reporting period Four of the 30 hours must be in consumer protection courses

(d) Agents and adjusters holding a license subject to continuing education which is prorated to coincide with the renewal of another license shall complete continuing education on a prorated schedule The credit hours required shall be based upon the licensing period from the issue date of the license to the prorated renewal date of the license as follows

LICENSE PERIOD	REQUIRED HOURS
Less than 12 months	0
12 months but less than 24 months	15
24 months	30

(e) An agent holding only a temporary local recording agent license under Article 21.14 shall be required to complete only 15 hours of continuing education after receiving the permanent local recording agent license. After the first renewal, the local recording agent is subject to the full 30 hours continuing education requirement.

§19.1005. Course Criteria.

(a) The purpose of continuing education is to increase the licensee's professional competence through the offering of the most recent product, coverage, and insurance law information which can be used to assist the consumer in making informed decisions regarding their insurance needs, and the handling, evaluating and settling of claims once a claim has been presented. The method to achieve this purpose is through quality continuing education courses.

(b) The course shall have a stated purpose that reflects a broad goal or the overall intent of the course.

(c) The course shall have specific written learning objectives which support the achievement of the purpose statement of the course. The learning objectives are the desired outcomes for the learning process and identify the knowledge, skills, or attitudes the licensee is expected to obtain.

(d) The course shall have a method of evaluation to measure how effectively the course meets its objectives.

(e) Persons conducting a course should be knowledgeable and well versed on the topic(s) and able to conduct/instruct a class and provide appropriate feedback on questions.

(f) The course content shall be designed to enhance the knowledge and understanding of one or more of the following: insurance principles and coverages, applicable laws, rules and regulations, recent and prospective changes in coverages, law and the duties and responsibilities of the licensee, consumer protection, and insurance ethics. The course content for consumer protection shall include:

(1) Article 21.21, Insurance Code;

(2) The Unauthorized Insurers False Advertising Process Act, (Insurance Code, Article 21.21-1);

(3) The Unfair Claim Settlement Practices Act (Insurance Code, Article 21.21-2);

(4) The Deceptive Trade Practices-Consumer Protection Act (Business and Commerce Code, Chapter 17, Subchapter E);

(5) analogous laws as specified by the department.

(g) The course content may also include courses on management of the licensee's insurance business. These courses on management shall include those subjects specific to the business of insurance agency management and shall have a demonstrable impact on the customer service provided by the agency.

(h) Each course shall be reviewed every two years by the provider and updated to remain relevant to the professional development of a licensee.

(i) A course that contains the course content set forth in paragraphs (1)-(5) of this subsection shall not be considered applicable to continuing education requirements for insurance agents and adjusters:

(1) courses teaching general accounting, speed reading or other general business skills or computer use, or computer software application use;

(2) courses in motivation, goal-setting, time management, communication or sales and marketing skills;

(3) courses used for pre-licensing training or qualifying examination preparation;

(4) meetings held in conjunction with the regular business of the licensee; or

(5) training relating to the marketing practices of a specific company.

§19.1006. Types of Courses. Continuing education courses shall consist of four types as described in paragraphs (1)-(4) of this section:

(1) Classroom courses may include lectures, seminars, audio, video and computer-based instruction, and teleconferences that take place in a classroom setting or a monitored environment that allows question and answer or discussion periods.

(2) Self-study courses may include textbook, audio, video, computer-based instruction, or any combination of these in an independent-study setting with some measurement of completion of the objective of the course.

(3) Any insurance course that is part of a degree curriculum of an accredited college or university so long as the course content clearly indicates a direct link to the business of insurance and/or claims processing.

(4) National designation certification programs which are insurance related.

§19.1007. Hours of Credit. Credit hours for continuing education courses are determined by the methods set forth in paragraphs (1)-(7) of this section:

(1) Credit for classroom courses is determined by the number of minutes of actual instruction time divided by 60. Actual instruction time is considered the amount of time devoted to the actual instruction/reading of the topic, and does not include breaks that exceed more than 10 minutes per two hours of actual instruction time, lunch or dinner, introductions of speakers, instructions, etc. No more than 15 credit hours shall be recognized for any one course.

(2) Credit for college and university insurance courses is determined by successful completion. The number of hours of credit for college and university insurance courses is dependent on the number of classroom semester contact hours, which shall be no more than 15 credit hours per course.

(3) Credit for national designation certification programs (examinations) is determined by successfully passing the examination which shall be worth a maximum of 15 credit hours.

(4) Credit for independent self-study courses is calculated by using a total of 2,600 words as equal to one credit hour. Total words of a text divided by 2,600 words will equal the course credit hours. No more than 15 hours shall be recognized for any one course.

(5) Credit for agents and/or adjusters who teach a qualified continuing education course or a portion of a course is determined by the number of hours of course instruction or by the number of hours assigned to the full course whichever is applicable. The provider of the course is responsible for issuing a letter of certification reflecting the number of credit hours the individual taught.

(6) Credit for any course will not be issued for less than the number of hours the course was assigned except to an instructor teaching a portion of the course and who does not attend the full course.

(7) Credit for teaching or completing the same continuing education course more than once within the same reporting period shall not be granted for compliance with the continuing education requirement.

§19.1008. Course Requirements for Successful Completion.

(a) Providers shall use attendance rosters or an assessment measurement to certify completion of a classroom continuing education course. Attendance of at least 90% of the course is required to complete the course when using attendance rosters A means to ensure that the licensee attended the full or at least 90% of the course shall be established.

(b) Providers shall use a written examination to evaluate the licensee's competency and the effectiveness of self-study continuing education courses and classroom courses that do not use attendance as the means of completion. The written examination shall meet the criteria set forth in paragraphs (1)-(7) of this subsection:

(1) Final examination questions shall not be the same or substantially the same questions the licensee previously encountered in the course materials or review exams.

(2) Security measures shall be in place to maintain the integrity of the examination and ensure that the enrolled licensee is the individual who took the examination.

(3) Answers to the examination shall not be given to the licensees at any time before, during or after the course.

(4) Examinations shall be graded by an authorized staff member

(5) Licensees shall be allowed to retake an examination if a 70% passing score is not achieved. The retest shall consist of an alternate examination consisting of different questions from the original examination.

(6) Final examinations shall consist of three exams which are distributed alternatively to enrollees of the course and are revised/updated every two years by the provider consistent with the course update/revision.

(7) The final examination shall be a comprehensive examination of the course and thoroughly test the licensee's knowledge of the content of the course

(c) Providers shall issue certificates of completion to licensees who successfully complete a certified course. The certificate must be issued in a manner which will ensure that the person receiving the certificate is the licensee who took the course, must be issued within a reasonable period of time, and completed to reflect the date the licensee took the course/examination The certificate of completion shall contain, at a minimum, the following information provider name and number, course name, TDI course number, number of hours, date of course completion, location of class or name of company grading examination, TDI identification number of licensee completing course, signature of person authorized to sign certificates and the date signed, and a certification by the licensee of completion of the course and the date signed.

§19.1009. Course Certification

(a) A course is not certified unless

(1) the provider has in good faith filed with the Department a certification form, obtained from the Department, which certifies that the course meets the requirements of this subchapter, and

(2) the Department has not determined, after notice and hearing, that the course does not meet the requirements of this subchapter

(b) Programs offering national designation certification programs (examinations) must certify each examination part with the Department using a certification form obtained from the Department prior to offering the examination for credit

(c) Providers shall certify within 150 days from the effective date of this subchapter on a form obtained from the Department that each course offered for continuing education credit meets the requirements of this subchapter

(d) Providers shall notify the Department when a course is discontinued or no longer active, and when there is a change in the provider's name, address or telephone number in order for the Department to maintain an up-to-date registry of courses and to prepare and make a list of courses available to the public upon request.

(e) The provider shall at their option indicate whether the course is to be open to all licensees or will restrict enrollment to licensees of their choice By choosing the restricted enrollment, the course will not be included on lists of courses available to the public.

§19.1011 Licensee Compliance

(a) Licensees may choose courses from any of the courses certified with the Department approved for their type of license to meet the continuing education compliance requirements with the exception of a licensee holding a license under the Insurance Code, Article 21 07-1 and Article 21 14 who may take courses applicable to either license type for the 30 hours of continuing education compliance requirements

(b) Agents and adjusters shall provide evidence of completion of continuing education upon request of the Department. Each licensee shall maintain evidence of each course completed for the current and next preceding renewal period which generally consists of a minimum of four years for the purpose of audit

(c) Types of evidence for compliance may include a certificate of completion from a provider, a college transcript, a passing grade report from a national designation program, or a letter from the program sponsor's representative stating the number of hours the licensee taught

§19.1012 Audit of Continuing Education Records

(a) All continuing education records and evidence of continuing education of licensees maintained for the period required are subject to review by the Department at any time Accuracy of a licensee's records is subject to verification at any time

(b) All continuing education records, rosters, and course materials, including final examinations, of providers must be maintained for at least four years and are subject to review by the Department at any time.

(c) If continuing education records are audited or reviewed and the validity or completeness of same are questioned, the licensee or provider shall have 30 days from the date of notice of discrepancies to correct discrepancies or submit new documentation.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on May 6, 1994

TRD-9440490 D J. Powers
Legal Counsel to the Commissioner
Texas Department of Insurance

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Proposal publication date. Febrary 25, 1994

For further information, please call (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 101. General Rules

• 30 TAC §101.1

The Texas Natural Resource Conservation Commission (TNRCC) adopts an amendment to §101.1, concerning Definitions, with changes to the proposed text as published in the December 24, 1993, issue of the *Texas Register* (18 TexReg 9890) The amendment to §101.1 adds definitions for alcohol, bakery oven, clear coat, clear sealers, final repair coat, opaque ground coats and enamels, polyester resin materials, polyester resin operation, semitransparent spray stains and toners, semitransparent wiping and glazing stains, shellacs, topcoat, varnishes, and wash coat. The amendment to §101 1 also revises the definition of surface coating processes to include wood parts and products coating, and deletes the definition of marine terminal to avoid conflict with the definition of marine terminal included in §115 10 of this title (relating to Definitions)

Public hearings were held January 24, 1994, in Houston; January 26, 1994, in El Paso, and January 27, 1994, in Irving The comment period closed on February 25, 1994.

Ten commenters submitted testimony on §101.1, concerning Definitions. Crown Cabinet Corporation (Crown), Dow Chemical Company (Dow); Gemini Coatings (Gemini), Independent Liquid Terminals Association (ILTA); Jones Blair Company (JBC), Republic Industries (Republic); Ribelin Sales, Incorporated (Ribelin); Texwood Industries, Incorporated (Texwood), and Trinity Coatings Company (Trinjty) generally supported the definitions but suggested changes or clarifications, while Texas Chemical Council and Texas Mid-Continent Oil and Gas Association (TCC) generally opposed the proposed definitions.

TCC stated that definitions which are specific to Chapter 115 should be eliminated from §101.1.

Until 1989, Chapter 115 contained no definitions, and all definitions applicable to Chapter 115 were included in §101 1 On December 8, 1989, the appropriate definitions from §101 1 were added to Chapter 115, while these same definitions were also retained in §101.1. These definitions were added to §115.10 for the convenience of the reader. In general, any proposed changes to one set of definitions are accompanied by a proposal to change the same definitions in the other set of definitions This prevents the confusion which would occur if there were two different definitions for the same term.

Crown, Gemini, JBC, Republic, Ribelin, Texwood, and Trinity commented on the proposed definitions concerning surface coating of wood parts and products. Trinity suggested definitions for each of their recommended coating terms Crown, Republic, Ribelin, and Texwood supported Trinity's recommendations, with Texwood recommending a minor change to "transparent wiping and glazing stains"

The TNRCC added the recommended coating definitions (clear coat, clear sealers, final repair coat, opaque ground coats and enamels, semitransparent spray stains and toners, semitransparent wiping and glazing stains, topcoat, and wash coat) and deleted the coating definitions for lacquers, sanding sealers, and stains

The amendment is adopted under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382 017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA

§101 1. Definitions Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Commission, the terms used by the Commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise

Alcohol (used in offset lithographic printing)-For the purposes of complying with §§115 442, 115.443, 115.445, 115.446, and 115. 449 of this title (relating to Offset Lithographic Printing), an alcohol is any of the hydroxyl containing organic compounds with a molecular weight equal to or less than 74 12, (which includes methanol, ethanol, propanol, and butanol).

Bakery oven-An oven for baking bread or any other yeast- leavened products

Clear coat (used in wood parts and products coating)-A coating which lacks opacity or which is transparent and uses the undercoat as a reflectant base or undertone color

Clear sealers (used in wood parts and products coating) -Liquids applied over stains, toners, and other coatings to protect these coatings from marring during handling and to limit absorption of succeeding coatings

Final repair coat (used in wood parts and products coating) -Liquids applied to correct imperfections or damage to the topcoat

Opaque ground coats and enamels (used in wood parts and products coating)-Colored, opaque liquids applied to wood or wood composition substrates which completely hide the color of the substrate in a single coat.

Polyester resin materials-Unsaturated polyester resins, such as isophthalic, orthophthalic, halogenated, bisphenol A, vinyl ester, or furan resins; cross-linking agents, catalysts, gel coats; inhibitors, accelerators; promoters; and any other material containing volatile organic compounds used in polyester resin operations.

Polyester resin operation-A facility which fabricates or reworks products by mixing, pouring, hand laying-up, impregnating, injecting, forming, winding, spraying, laminating, molding, curing, resin transfer, and/or pultrusion by using unsaturated polyester resin materials with fiberglass, fillers, or any other reinforcement materials.

Semitransparent spray stains and toners (used in wood parts and products coating)-Colored liquids applied to wood to change or enhance the surface without concealing the surface, including but not limited to, toners and nongrain-raising stains

Semitransparent wiping and glazing stains (used in wood parts and products coating)-Colored liquids applied to wood that require multiple wiping steps to enhance the grain character and to partially fill the porous surface of the wood

Shellacs (used in wood parts and products coating)-Clear or pigmented coatings formulated solely with the resinous secretions of the lac beetle (laccifer lacca), thinned with alcohol, and formulated to dry by evaporation without a chemical reaction.

Surface coating processes-Operations which utilize a coating application system

(A)-(L) (No change.)

(M) Wood parts and products coating-The coating of wood parts and products, excluding factory surface coating of flat wood paneling

Topcoat (used in wood parts and products coating)-A clear liquid which provides the final protective and aesthetic properties to wood finishes

Varnishes (used in wood parts and products coating) -Clear wood finishes formulated with various resins to dry by chemical reaction on exposure to air

Wash coat (used in wood parts and products coating)-A low-solids clear liquid applied over semitransparent stains and toners to protect the color coats and to set the fibers for subsequent sanding or to separate spray stains from wiping stains to enhance color depth

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 4, 1994.

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