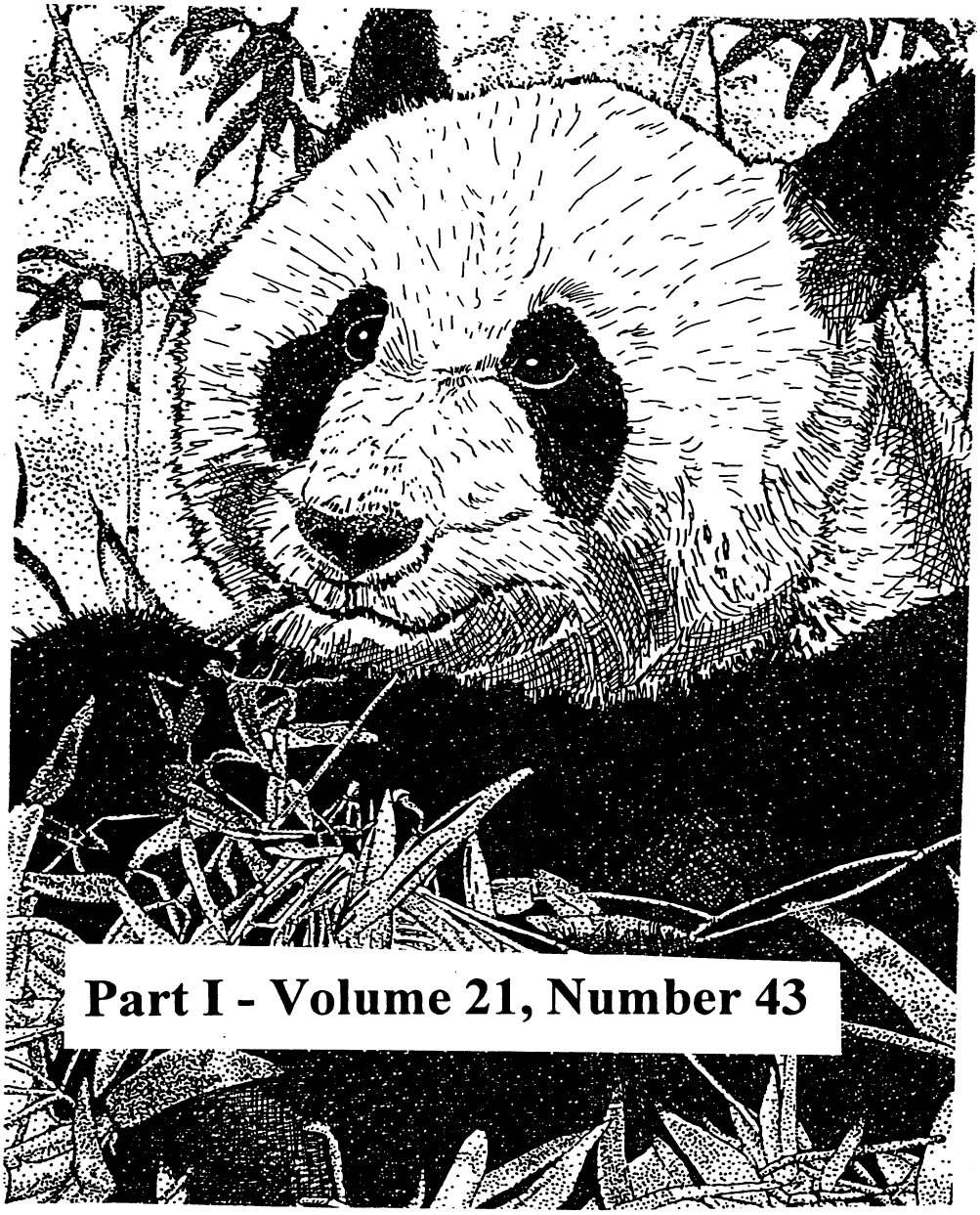
TEXAS REGISTER

olume 21 Number 43 June 11, 1996

Page 5205-5353



Part I - Volume 21, Number 43

This month's front cover artwork:

Artist: *Wendy Phan*

11th grade

Clear Creek High School, Clear Creek ISD

School children's artwork has decorated the blank filler pages of the *Texas Register* since 1987. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

Starting with the February 27, 1996 issue, we will display artwork on the cover of each *Texas Register*. The artwork featured on the front cover is chosen at random.

The artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*. The artwork does not add additional pages to each issue and does not increase the cost of the *Texas Register*.

For more information about the student art project, please call (800) 226-7199.

Texas Register, **ISSN 0362-4781,** is published twice weekly 100 times a year except February 23, March 15, November 8, December 3, and December 31, 1996. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: printed, one year $95, six month $75. Costs for diskette and online versions vary by number of users (see back cover for rates). Single copies of most issues for the current year are available at $7 per copy in printed or electronic format.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Second class postage is paid at Austin, Texas.

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

a section of the
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WITHDRAWN RULES

ADOPTED RULES

TEXAS ETHICS COMMISSION

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

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

TEXAS ETHICS COMMISSION

Advisory Opinion Requests

(AOR–368) Whether certain members of the Natural Law Party who filed applications under chapter 181 of the Election Code to be considered for nomination at a party convention were required to file personal financial statements under Government Code, §572.027(a) of the.

(AOR–369) The Ethics Commission has been asked to consider whether a retiring officeholder must have a campaign treasurer appointment on file in order to return political contributions to contributors.

Issued in Austin, Texas on June 3, 1996.

9607793
Tom Harrison
Executive Director
Texas Ethics Commission
Filed: June 4, 1996

EMERGENCY RULES

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

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

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 14. School Bus Transportation

Subchapter D. School Bus Lighting and Warning Device Equipment

37 TAC §14.51, §14.52

The Texas Department of Public Safety adopts on an emergency basis new §14.51, and new §14.52 concerning lighting and warning device equipment specifications for school buses. The new sections define terms commonly used in the profession and set the minimum standards for lighting and warning device equipment required on a school bus. The sections define the minimum lighting and warning device equipment standards a school bus must meet to transport students.

The adoption of these rules is necessary to implement Texas Civil Statutes, Article 6701d, §131(d), recodified as Texas Tansportation Code, §547.102. This statute authorizes the Texas Department of Public Safety to adopt standards and specifications that apply to lighting and warning device equipment required for a school bus in order to enable school administrators to establish and operate a safe and efficient school bus transportation system.

Pursuant to Texas Government Code, §2001.034, the department finds that state law creates an immediate necessity for adoption of these rules on fewer than 30 days notice based on the fact that Attorney General Opinion No. DM-378 authorizes the use of 15 passenger vans as school buses on routes if they meet the safety standards and licensure requirements for school buses. Currently, no rules exist requiring specific and uniform lighting or warning device equipment to be on a school bus. It is imperative that the department adopt emergency rules to guide the public on issues regarding the lighting and warning device equipment required for a school bus in order to make the school bus a highly identifiable vehicle on the road. This allows other drivers to recognize the school bus and stop, as required by statute, for a school bus loading or unloading students and provides for the safety of students on a street immediately before and after riding a school bus.

The new sections are adopted on an emergency basis pursuant to Texas Transportation Code, §547.102, which authorizes the Texas Department of Public Safety to adopt standards and specifications that apply to lighting and warning device equipment required for a school bus in order to enable school administrators to establish and operate a safe and efficient school bus transportation system.

§14.51. Definitions.

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

Bus -A motor vehicle used to transport persons and designed to accommodate more than 10 passengers, including the driver.

Commission -The General Services Commission of the State of Texas.

Department -The Texas Department of Public Safety.

Director -The director of the Texas Department of Public Safety.

Passenger car -A motor vehicle, other than a motorcycle, used to transport persons and designed to accommodate 10 or fewer passengers, including the driver.

School bus -A bus owned or leased by a school district or county transportation system, or a bus operated by a private contractor under contract with a school district or county transportation system to transport students, excluding a bus used in an urban area by a common carrier to transport students or a bus designed to accommodate more than 10 and less than 16 passengers (including the driver) which is used to transport students on school-related activities, that:

(A) on the date of manufacture, complied with the current requirements provided in the specifications handbook for Texas school buses as developed, adopted, and published under authority of Texas Civil Statutes, Article 6701d, §105(a) recodified as Texas Transportation Code, §547.701; or

(B) meets the statutory equipment requirements of a school bus in the Texas Transportation Code §547.607 and §547.701, including a fire extinguisher, convex mirror, and four alternately flashing red lights, and complies with the lighting and warning device equipment rules promulgated by the department as set forth in §14.52 of this title (relating to Lighting and Warning Device Equipment).

§14.52. Lighting and Warning Device Equipment.

This rule applies to all public schools and county transportation systems that own or lease school buses and those private contractors

that lease school buses or contract with a public school or county transportation system to transport students in school buses. At a minimum, a school bus:

(1) which is designed to accommodate 16 or more passengers, including the driver, shall maintain all lighting and warning device equipment requirements as set forth in the General Services Commission handbook, *Specifications*, which was current during the year of the school bus' manufacture; or

(2) which is used to transport students to or from school, not including school related activities, and is designed to accommodate more than 10 passengers and less than 16 passengers, including the driver, must meet the following requirements, in addition to all applicable federal and state statutes and regulations in effect on the date of manufacture:

(A) Lamps and Signals. Each bus shall be furnished with the lamps as listed in clauses (i) -(v) of this subparagraph. See School Bus Manufacturer's Institute (SBMI) Standard No. 001:

(i) Alternately Flashing Signal Lamps. Each school bus shall be equipped with four red warning signal lamps, working in an automatic non-sequential integrated system. The signal lamps shall conform to the design, installation, location, and operating requirements as stated in Paragraph S4.1.4. of the Federal Motor Vehicle Safety Standards (FMVSS) No. 108.

(I) Each school bus shall be equipped with a system of four red signal lamps designed to conform to the Society of Automotive Engineers (SAE) Standard J887, "School Bus Red Signal Lamps," July 1964.

(II) Red lamps shall be installed in accordance with SAE Standard J887, except that:

(-a-) The system shall be wired so that the red signal lamps automatically activate when the bus entrance door is opened.

(-b-) The lamps shall be wired independently and not wired through the ignition switch. This will allow removal of the ignition key without affecting operation of the alternately flashing four warning signal lamps.

(III) Band. Each red lamp shall have a minimum 3-inch black band around the lamp. The color of this band shall be black enamel (Color No. 17038, Black Enamel of Federal Standard 595a). If it is not possible to provide a 3-inch band around the lamps, the manufacturer will then provide a band as wide as possible. Any visor or hood used to shade the lights and improve visibility will not interfere with the intensity and photometric performance of the warning lights (see SBMI Standard No. 001).

(IV) Mounting. If exterior panels are cut to provide an opening for installation of flush-mounted signal lamps, the lamps must have a closed cell sponge flange gasket with a minimum thickness of 3/16-inch. The gasket shall be the full width of the flange on the lamp. Proper installation of the lamps shall be made in order to prevent seepage of moisture into the opening. Mounting of lamps for vehicles designed to transport more than 10 and less than 16 passengers (including the driver) shall be accomplished with lights or strobes securely mounted to the roof of the vehicle as widely spaced laterally as practicable which are sealed from water infiltration and do not interfere with the operation of any access door.

(V) Operating Instructions. Complete instructions for the detailed operation of the warning signal lamp system shall be furnished with each school bus.

(ii) Backup Lamps. The color, requirements, and mounting of backup lamps shall be in accordance with FMVSS No. 108, except two backup lamps are required by Texas specifications.

(iii) Interior, Stepwell and Service Door Lamps. A minimum of two interior dome lamps shall be installed to properly and adequately illuminate the entire aisle and emergency passageway. The stepwell or service door entrance shall be illuminated by a separate lamp activated by opening the service door. The stepwell or service door entrance lamp shall have a metal bezel.

(iv) Operating Units and Flashers. The operating units and flashers for turn signals and vehicular hazard warning signals shall meet the requirements of FMVSS No. 108.

(v) Turn Signal/Hazard Warning Lamps. The quantities, colors, requirements, and mountings of turn signal/hazard warning lamps shall be in accordance with FMVSS No. 108.

(B) Warning Devices Including Colors and Lettering. Each bus shall be equipped with:

(i) Triangular Warning Devices. Each school bus shall be equipped with three triangular warning devices meeting the requirements of FMVSS No. 125. The devices shall be packed three per metal or heavy duty plastic box, or they may be individually packed in metal or heavy duty plastic boxes with the three boxes contained within a carrier. Warning devices shall be securely mounted in the driver's compartment. Triangular warning devices furnished shall be approved by the Texas Department of Public Safety.

(ii) Color. A first quality black enamel (Color No. 17038 of Federal Standard No. 595a) or decals shall be used for lettering and trim. The properties of the black enamel shall be equal to those of the finish coat enamel. Pressure-sensitive tape or decals are acceptable for trim or lettering (e.g., EMERGENCY DOOR, EMERGENCY EXIT, SCHOOL NAME LETTERING, etc. signs) provided they are made from Faison R 200, 3M Series 180, or approved equal material. Exit signs and lettering shall be in compliance with FMVSS No. 217.

(iii) Body Exterior Color. The exterior of the complete bus except as provided herein, shall be finished in school bus yellow (Color No. 13432 of Federal Standard No. 595a). The bus shall have two horizontal contrast lines approximately four inches wide which simulate the rub rails of a standard bus. The color of the contrast lines shall be from a first quality black enamel (Color No. 17038 of Federal Standard No. 595a). The contrast lines shall be positioned just below the window line, and between eight and twelve inches above the lowest portion of the body panel. The hood may be coated with non-reflective school bus yellow paint. The school bus roof may be painted white. The white paint on the roof shall extend from the back of the front cap to the front of the rear cap and from a point on each side of the bus which is no lower than the top of the windows and no higher than the start of the roof curvature. The white paint shall be the same quality as the paint on the remainder of the school bus.

(iv) School Bus Lettering. The school bus bodies shall have the words "SCHOOL BUS" in neat, clearly defined block

letters on the front, rear, and on both sides of the bus body using decals or with black paint (Color No. 17038 of Federal Standard No. 595a). The letters shall be 6 inches high and shall have 3/4-inch wide strokes, respectively. The words "SCHOOL BUS" shall be at the same level on each side of the bus (i.e., same height above bottom of skirt).

(v) Emergency Exit Lettering. The emergency exits shall be marked "EMERGENCY DOOR" or "EMERGENCY EXIT" both on the outside and/or on the inside in compliance with FMVSS 217. All applicable requirements of FMVSS 217 relating to instructions, outlining, and markings shall be met.

(C) Accessories. Required on all buses:

(i) Backup Alarm. An automatic, audible backup warning alarm meeting the requirements of Type C, 97 db (A), SAE J994b (except for 12 volt system) shall be installed behind the rear axle.

(ii) Stop Arm. A school bus stop arm meeting SAE J1133 and the following requirements shall be provided:

(I) Design. The sign shall be octagon-shaped, constructed of zinc-coated steel or aluminum. It shall have a minimum 1/2-inch wide white border and the word "STOP" in white letters at least 6 inches high against a red background on both sides. The letters, border and background shall be of reflective materials meeting Department of Transportation (DOT), Federal Highway Administration (FHWA) FP-85. Double-faced red, alternately flashing lamps, one each at the top and bottom (visible from each side of the structure) shall be connected to, and flash with the required school bus red flashing signal lamp circuit when the arm is extended. The arm mechanism may be activated by air pressure, electricity, or by vacuum.

(II) Mounting. The stop arm shall be installed on the left side of the school bus near the front cowl section.

(D) Accessories. Optional accessories on buses include:

(i) Reflective Material. Buses equipped with reflective material shall meet the following requirements. The material shall be automotive engineering grade or better, shall meet the initial reflectance values in DOT FHWA FP-85 and shall retain at least 50% of those values for a minimum of six years. Reflective materials and markings shall be installed in the following locations:

(I) Front and/or rear bumper shall be marked diagonally 45 degrees down to centerline of pavement with 2-inch wide stripe of non-contrasting reflective material.

(II) Rear of bus body shall be marked with a strip of reflective National School Bus Yellow material no greater than 2 inches in width to be applied to the back of the bus, extending from the left lower corner of the "SCHOOL BUS" lettering, across to left side of the bus, then vertically down to the top of the bumper; across the bus on a line immediately above the bumper to the right side, then vertically up to a point even with the strip placement on the left side, and concluding with a horizontal strip terminating at the lower right corner of the "SCHOOL BUS" lettering.

(III) "SCHOOL BUS" signs shall be marked with reflective National School Bus Yellow material comprising background for lettering of the front and/or rear "SCHOOL BUS" signs.

(IV) Side of bus body shall be marked with reflective National School Bus Yellow Material at least 4 inches but not more than 8 inches in width, extending the length of the bus body and located (vertically) as close as practicable to the beltline.

(ii) Strobe Light. Buses equipped with a white flashing strobe light shall meet the following requirements:

(I) Design. The lamp shall have a single clear lens emitting light flashing 360 degrees around a vertical axis. The light source shall be a minimum of 50 candlepower and flash 80-120 times per minute. The base of the lamp shall be metal or approved equal and installed by a method which seals out dust and moisture. A manual switch is required for operation and a pilot light to indicate when the light is in operation shall be included. Wiring shall be installed inside the bus walls.

(II) Mounting. The strobe light shall be permanently installed near the centerline on the school bus roof and not more than one-third of the body length forward of the rear edge of the bus roof. It shall not extend above the roof more than 6 1/2 inches.

(iii) School Name Lettering. The school district name shall be provided in black letters on both sides of the bus near the beltline using decals or with black paint. Lettering shall be a minimum 4 inches high with a minimum 1/2 inch block strokes. Paint, if used, shall be equal in quality to that of the bus body paint; decals shall meet or exceed the requirements noted in subparagraph (B)(ii) of this section. The maximum number of characters in one line of the name is limited to 30.

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

Issued in Austin, Texas, on May 13, 1996.

TRD-9607560
James R. Wilson
Director
Texas Department of Public Safety
Effective date: May 30, 1996
Expiration date: September 28, 1996
For further information, please call: (512) 424-2890

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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 1. ADMINISTRATION

Part IV. Office of the Secretary State

Chapter 73. Statutory Documents

The Office of the Secretary of State proposes amendments to §73.2, concerning Labor Organizations, 73.11, concerning Session Laws, and 73.34, concerning Service of Process. The amendments are necessary due to changes in citations, phone numbers and other non-substantive matters.

Clark Kent Ervin, Assistant Secretary of State, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Ervin also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of adopting them will be more current information which is needed for the public to properly access agency information. There will be no effect on small businesses. The proposed rules will not impose any economic cost on individuals.

Comments on these proposed rules may be submitted to the Office of the Secretary of State, Mark McHargue, Staff Attorney, P.O. Box 12887, Austin, Texas 78711-2887.

Subchapter A. Labor Organizations

1 TAC §73.2

The amendment is proposed under authority of the Texas Labor Code Annotated §101.110.

The amendments are non-substantive and do not affect any statute.

§73.2. Application Form.

The application for an organizer's card shall be on a form to be provided by the Office of the Secretary of State. The Statutory Documents Section of the Office of the Secretary of State hereby adopts by reference the following form, "Application for Labor Organizer Card." All persons required to file an application shall use this form. Copies may be obtained by contacting the Office of the Secretary of State,[Statutory Filings Division,] Statutory Documents Section, P.O. Box 12887, Austin, Texas 78711-2887[, (512) 475-3061].

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 31, 1996.

TRD-9607639
Clark Kent Ervin
Assistant Secretary of State
Office of the Secretary of State
Earliest possible date of adoption: July 12, 1996
For Further information, please call: (512) 475-0775

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Subchapter B. Session Laws

1 TAC §73.11

The amendment is proposed under authority of the Texas Government Code Annotated §405.014(b).

The amendments are non-substantive and do not affect any statute.

§73.11. Publication of Session Laws.

The session laws following the conclusion of a regular and/or special session shall be published. These volumes may be obtained from the publisher. The name and address of the publisher may be obtained by contacting the Statutory Documents Section of the Office of the Secretary of State, P.O. Box 12887, Austin, Texas 78711-2887[, or calling (512) 475-3061].

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 31, 1996.

TRD-9607640
Clark Kent Ervin
Assistant Secretary of State
Office of the Secretary of State
Earliest possible date of adoption: July 12, 1996
For Further information, please call: (512) 475-0775

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Subchapter C. Laws

1 TAC §73.34

The amendments are proposed under authority of Texas Government Code Annotated §405.031. Texas Business Corporations Act , Articles 2.11, 8.10, 8.14, and 10.01, Texas Civil Practice and Rem Code, Annotated §17.044 and §17.045 Texas Revised Civil Statutes Annotated, Articles 1396-2.07, 1396-8.09, and 1396-8.13

The Amendments are non-substantive and do not affect any statutes.

§73.34. Fees.

The fee due the secretary of state for maintaining a record of service upon the secretary of state shall be as provided in the Texas Business Corporation Act, Article 10.01. The fee for issuing a certificate of service shall be as provided in **Texas Government Code Annotated §405.031** [Texas Civil Statutes, Article 3914)].

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 31, 1996.

TRD-9607641
Clark Kent Ervin
Assistant Secretary of State
Office of the Secretary of State
Earliest possible date of adoption: July 12, 1996
For Further information, please call: (512) 475-0775

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Part V. General Services Commission

Chapter 111. Executive Administration Division

Cost of Copies of Open Records

1 TAC §§111.61-111.70

The General Services Commission proposes the repeal of §§111.61-111.70, concerning cost of copies of open records, in order to propose new §§111.61 - 111.70, which implement pertinent provisions of the Government Code, Chapter 552 (the "Public Information Act") with respect to the cost of providing public information and the charges to recover costs.

Hadassah Schloss, Open Records Administrator, has determined that for the first five-year period there will be no fiscal impact on state government as a result of repealing these sections.

Ms. Schloss also has determined that for each year of the first five years the repeal is in effect, the public benefit will be derived from conformity of the proposed rules to the current Public Information Act. There is no anticipated economic cost to persons required to comply with the repeals as proposed. There will be no impact on small businesses.

Comments on the proposal for repeal may be submitted to David Ross Brown, Assistant General Counsel, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the Texas Register.

The repeals are proposed under the Government Code, Chapter 552, Subchapter F, §552.262, (the "Public Information Act"), which provides the General Services Commission with the authority to promulgate rules necessary to implement the sections.

The following statute is affected by these rules: Texas Government Code, Title 10, Subtitle D.

§111.61 General.

§111.62 Definitions.

§111.63 Suggested Charges for Providing Copies of Public Information.

§111.64 Temporary Increase in Charges for Public Information.

§111.65 Access to Information Where Copies Are Not Requested.

§111.66. Format for Copies of Public Information.

§111.67. Estimates and Waivers of Public Information Charges.

§111.68. Examples of Charges for Copies of Public Information.

§111.69. The General Services Commission Charge Schedule.

§111.70. Billing Form.

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 29, 1996.

TRD-9607495
David Ross Brown
Assistant General Counsel
General Services Commission
Earliest possible date of adoption: July 12, 1996
For further information, please call: (512) 463-3960

Cost of Copies of Public Information

1 TAC §§111.61-111.70

The General Services Commission proposes new §§ 111.61-111.70, concerning charges for public information. The new sections implement pertinent provisions of the Government Code, Chapter 552 (the "Public Information Act"), with respect to the cost of providing public information, and the charges that state agencies and other governmental bodies may set to recover costs. In particular, the proposed rules set forth: the charges for reproduction of public information in accordance with §§552.261 and 552.262; the procedures for governmental bodies to request exemptions from part or all of the General Services Commission's rules in compliance with §552.262; and the procedures for filing complaints regarding overcharges or overpayment for public information pursuant to §552.269.

Hadassah Schloss, Open Records Administrator, has concluded that, for the first five-year period, the proposed sections are in effect there may be positive fiscal implications for governmental bodies as a result of implementing or administering these sections. The exact amount of the fiscal impact is not subject to determination as governmental bodies, other than state agencies, have authority to set their own charge schedule up to 25% higher than the charges outlined in the commission's rules or to seek an exemption that would allow an alternative deviation from the commission's established charges.

Ms. Schloss has also determined that for each year of the first five years the sections are in effect the public benefit anticipated

will be clearer criteria for all governmental bodies in providing access to, and copies of public information. The adoption of reasonable exemption and complaint procedures should result in better service to the public and in fees that are not cost prohibitive. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposed rules my be submitted to David Ross Brown, Assistant General Counsel, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments 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 Government Code, Chapter 552, Subchapter F, §552.262, (the "Public Information Act"), which provides the General Services Commission with the authority to promulgate rules necessary to implement the sections.

The following statute is affected by these rules: Texas Government Code, Title 10, Subtitle D.

§111.61. General.

(a) The General Services Commission (the "Commission") must:

(1) Adopt rules for use by each governmental body in determining charges under Government Code, Chapter 552, Subchapter F, (the "Public Information Act ");

(2) Prescribe the methods for computing the charges for copies of public information in paper, electronic, and other kinds of media; and

(3) Establish costs for various components of charges for public information that shall be used by each governmental body in providing copies of public information.

(b) The cost of providing public information is not necessarily synonymous with the charges made for providing public information. Governmental bodies must use the charges established by these rules, unless:

(1) Other law provides for charges for specific kinds of public information;

(2) They are a governmental body other than a state agency, and their charges are within a 25 percent variance above the charges established by the Commission;

(3) They request and receive an exemption because their actual costs are higher; or

(4) They abide by §552.267 of the Public Information Act, which reads:

(A) A governmental body shall furnish a copy of public information without charge or at a reduced charge if the governmental body determines that waiver or reduction of the fee is in the public interest because furnishing the information primarily benefits the general public; or

(B) If the cost to the governmental body of processing the collection of a charge for a copy of public information will exceed the amount of the charge, the governmental body may waive the charge.

§111.62. Definitions.

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

Actual cost–The sum of all direct costs plus a proportional share of overhead or indirect costs. Actual cost should be determined in accordance with generally accepted methodologies. To determine actual costs, governmental bodies may utilize the cost methodology adopted by the Council on Competitive Government.

Client/Server System–A combination of two or more computers that serve a particular application through sharing processing, data storage, and end-user interface presentation. PC's located in a LAN environment containing file servers fall into this category as do applications running in an X-window environment where the server is a UNIX based system.

Commission–The General Services Commission Governmental Body–As defined by §552.003 of the Public Information Act, means:

(A) a board, commission, department, committee, institution, agency, or office that is within or is created by the executive or legislative branch of state government and that is directed by one or more elected or appointed members;

(B) a county commissioners court in the state;

(C) a municipal governing body in the state;

(D) a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;

(E) a school district board of trustees;

(F) a county board of school trustees;

(G) a county board of education;

(H) the governing board of a special district;

(I) the governing body of a nonprofit corporation organized under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes), that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under the Tax Code §11.30; and

(J) the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds; and

(K) does not include the judiciary.

Mainframe Computer–A computer located in a controlled environment and serving large applications and/or large numbers of users. These machines usually serve an entire organization or some group of organizations. These machines usually require an operating staff. IBM and UNISYS mainframes, and large Digital VAX 9000 and VAX Clusters fall into this category.

Midsize Computer–A computer smaller than a Mainframe Computer that is not necessarily located in a controlled environment. It usually serves a smaller organization or a sub-unit of an organization. IBM AS/400 and Digital VAX/VMS multi-user single-processor systems fall into this category.

Nonstandard copy–A copy of public information that is made available to a requestor in any format other than a standard paper

copy. Microfiche, microfilm, diskettes, magnetic tapes, CD-ROM, are examples of nonstandard copies. Paper copies larger than 8 1/2 x 14 inches (legal size) are also considered nonstandard copies.

Standalone PC–An IBM compatible PC, Macintosh or Power PC based computer system operated without a connection to a network.

Standard paper copy–A printed impression on one side of a piece of paper that measures up to 8 1/2 by 14 inches. Each side of a piece of paper on which an impression is made is counted as a single copy. A piece of paper that is printed on both sides is counted as two copies.

§111.63. Charges for Providing Copies of Public Information.

(a) General. The charges in this section to recover costs associated with providing copies of public information are based on estimated average costs to governmental bodies across the state. When actual costs are 25 percent higher than those used in these rules, governmental bodies other than agencies of the state, may request an exemption in accordance with §111.64 of this title (relating to.Requesting an Exemption).

(b) Copy charge.

(1) Standard paper copy. The charge for standard paper copies reproduced by means of an office machine copier or a computer printer is $.10 per page or part of a page. Each side that has a printed image is considered a page.

(2) Nonstandard copy. The charges for nonstandard copies are:

(A) diskette–$1.00;

(B) magnetic tape–$11.00 - $13.50 (depending on width - see Section 111.69);

(C) data cartridge–$17.50 - $35.00 (depending on series - see Section 111.69)

(D) tape cartridge–$38.00 - 45.00 (depending on memory) - see Section 111.69)

(E) VHS video cassette–$2.50;

(F) audio cassette–$1.00;

(G) oversize paper copy (e.g.: 11" x 17", greenbar, bluebar)–$.50;

(H) Mylar–$.85 - $1.35/linear ft. (depending on thickness - see Section 111.69);

(I) Blueprint/Blueline paper–$.20/linear ft. (all widths).

(3) Materials. The charges in this subsection are to cover the cost of materials onto which information is copied and do not reflect any additional charges that may be associated with a particular request.

(c) Personnel charge.

(1) The charge for personnel costs, other than programming personnel, incurred in processing a request for public information is $15.00 an hour, including fringe benefits. Where applicable, the personnel charge may include the actual time to locate, compile, and reproduce the requested information.

(2) A personnel charge shall not be billed in connection with complying with requests that are for 50 or fewer pages of paper records, unless the documents to be copied are located in:

(A) more than one building; or

(B) a remote storage facility.

(3) Personnel time shall not be recovered for any time spent by an attorney, legal assistant, or any other person who reviews the requested information:

(A) to determine whether the governmental body will raise any exceptions to disclosure of the requested information under Subchapter C of the Public Information Act; or

(B) to research or prepare a request for a ruling by the attorney general's office pursuant to the §552.301 of the Public Information Act.

(4) When confidential information is mixed with public information in the same page, personnel time may be recovered for time spent to obliterate, blackout, or otherwise obscure confidential information in order to release the public information.

(d) Programming personnel. If a particular request requires a programmer to enter data in order to execute an existing program or to create a new program so that requested information may be accessed and copied, the governmental body may charge for the programmer's time.

(1) The hourly charge for a programmer is $26.00 an hour, including fringe benefits. Only programming services shall be charged at this hourly rate. Any personnel time spent in performing services other than programming should be charged at the rate specified for personnel as described in subsection (c)(1) of this section.

(2) Governmental bodies that do not have in-house programming capabilities shall comply with requests in accordance with the §552.231 of the Public Information Act.

(e) Overhead charge.

(1) Whenever a personnel charge is applicable to a request, a governmental body may include in the charges direct and indirect costs, in addition to the personnel charge. This overhead charge would cover such costs as depreciation of capital assets, rent, maintenance and repair, utilities, and administrative overhead. If a governmental body chooses to recover such costs, a charge shall be made in accordance with the methodology described in paragraph (3) of this subsection. Although an exact calculation of costs will vary, the use of a standard charge will avoid complication in calculating such costs and will provide uniformity for charges made statewide.

(2) An overhead charge shall not be made for requests for copies of 50 pages or fewer of standard paper records.

(3) The overhead charge shall be computed at 20% of any charge made to cover personnel costs associated with a particular request. Example: if one hour of personnel (programming, other personnel or a combination of both) is used for a particular request, the formula would be as follows: $15.00 x .20 = $3.00; or $26.00 x .20 = $5.20; or $41.00 x .20 = $8.20

(f) Microfiche and microfilm charge.

(1) If a governmental body already has information that exists on microfilm and has microfilm copies available, the charge is the total of the costs of making the copy of the fiche or film. If the requestor prefers to have a copy of the fiche or film itself and the information on the fiche or film can be released in its entirety, the governmental body should make a copy of the fiche or film available and charge for the cost of having such a copy made. The Texas State Library And Archives Commission has the capacity to reproduce microfiche and microfilm for state agencies. Governmental bodies that do not have in-house capability to reproduce microfiche or microfilm, may charge the actual costs of having the reproduction made commercially.

(2) If a master copy of information in microform is maintained, the charge is $.10 per page for standard size paper, plus any applicable personnel charge for more than 50 copies.

(g) Remote document retrieval charge.

(1) Due to limited on-site capacity of storage of documents, it is frequently necessary to store information that is not in current use in remote storage locations. Every effort should be made by governmental bodies to store current records on-site. State agencies are encouraged to store inactive or non-current records with the Texas State Library And Archives Commission, which is equipped to provide such a service to state agencies free of charge. To the extent that the retrieval of documents results in a charge to comply with a request, it is permissible to recover costs of such services.

(2) If a governmental body has a contract with a commercial records storage company, whereby the private company charges a fee to locate, retrieve, deliver, and return to storage the needed record(s), no additional personnel charge shall be factored in for time spent locating documents.

(h) Computer resource charge.

(1) The computer resource charge is a utilization charge for computers based on the amortized cost of acquisition, lease, operation, and maintenance of computer resources, which might include, but is not limited to, some or all of the following: central processing units (CPUs), servers, disk drives, local area networks (LANs), printers, tape drives, other peripheral devices, communications devices, software, and system utilities.

(2) These computer resource charges are not intended to substitute for cost recovery methodologies or charges, made for purposes other than responding to public information requests.

(3) The charges in this subsection are averages based on a survey of governmental bodies with a broad range of computer capabilities. Each governmental body using this cost recovery charge, shall determine which category(ies) of computer system(s) used to fulfill the public information request most closely fits its existing system(s), and set its charge accordingly. Type of System-Rate Mainframe-$10.00 per minute Midsize-$1.50 per minute Client/Server-$2.20 per hour PC or LAN-$1.00 per hour

(4) The charge made to recover the computer utilization cost is the actual time the computer takes to execute a particular program times the applicable rate. The CPU charge is not meant to apply to programming or printing time; rather, it is solely to recover costs associated with the actual time required by the computer to execute a program. This time, called CPU time, can be read directly from the CPU clock, and most frequently will be a matter of seconds. If programming is required to comply with a particular request, the appropriate charge that may be recovered for programming time is set forth in subsection (d). No charge should be made for computer print-out time. Example: If a mainframe computer is used, and the processing time is 20 seconds, the charges would be as follows: $10.00 / 3 = $3.33; or $10.00/60 x 20 = $3.33

(5) A governmental body that does not have in-house computer capabilities shall comply with requests in accordance with §552.231 of the Public Information Act.

(i) Miscellaneous supplies. The actual cost of miscellaneous supplies, such as labels, boxes, and other supplies used to produce the requested information, may be added to the total charge for public information.

(j) Postal and shipping charges. Governmental bodies may add any related postal or shipping expenses which are necessary to transmit the reproduced information to the requesting party.

(k) Sales tax. Sales tax shall not be added on charges for public information.

(l) Update. The Commission shall reevaluate and update these charges as necessary.

§111.64. Requesting an Exemption.

(a) Pursuant to the §552.262(c) of the Public Information Act, a governmental body may request that it be exempt from part or all of these rules.

(b) State agencies must request an exemption if their charges to recover costs are higher than those established by these rules.

(c) Governmental bodies, other than agencies of the state, must request an exemption before seeking to recover costs that are more than 25 percent higher than the charges established by these rules.

(d) An exemption request must be made in writing, and must contain the following elements:

(1) A statement identifying the subsection(s) of these rules for which an exemption is sought;

(2) The reason(s) the exemption is requested;

(3) A copy of the proposed charges;

(4) The methodology and figures used to calculate/compute the proposed charges;

(5) Any supporting documentation, such as invoices, contracts, etc.; and

(6) The name, title, work address, and phone number of a contact person at the governmental body.

(e) The contact person shall provide sufficient information and answer in writing any questions necessary to process the request for exemption.

(f) If there is good cause to grant the exemption, because the request is duly documented, reasonable, and in accordance with generally accepted accounting principles, the exemption shall be granted. The name of the governmental body shall be added to a list to be published annually in the *Texas Register*.

(g) If the request is not duly documented and/or the charges are beyond cost recovery, the request for exemption shall be denied. The letter of denial shall:

(1) Explain the reason(s) the exemption cannot be granted; and

(2) Whenever possible, propose alternative charges.

(h) All determinations to grant or deny a request for exemption shall be completed promptly, but shall not exceed 90 days from receipt of the request by the Commission.

§111.65. Access to Information Where Copies Are Not Requested.

(a) Access to information in standard paper form. A governmental body shall not charge for making available for inspection information maintained in standard paper form. Charges are permitted only where the governmental body is asked to provide, for inspection, information that contains confidential information and public information. When such is the case, the governmental body may charge to make a copy of the page from which information must be edited. No other charges are allowed.

(b) Access to information in other than standard form. In response to requests for access, for purposes of inspection only, to information that is maintained in other than standard form, a governmental body may not charge the requesting party the cost of preparing and making available such information, unless complying with the request will require programming or manipulation of data. If programming or manipulation of data is needed to access the information, the governmental body shall inform the requestor before assembling the information, and shall provide the requestor with an estimate of charges.

§111.66. Format for Copies of Public Information.

(a) If a requesting party asks that information be provided on a diskette or other computer-compatible media, and the requested information is electronically stored, the governmental body shall provide the information on computer-compatible media.

(b) The extent to which a requestor can be accommodated will depend largely on the technological capability of the governmental body to which the request is made.

(c) A governmental body is not required to purchase any hardware, software or programming capabilities that it does not already possess to accommodate a particular kind of request.

(d) Provision of a copy of public information in the requested medium shall not violate the terms of any copyright agreement between the governmental body and a third party.

(e) If the governmental body does not have the required technological capabilities to comply with the request in the format preferred by the requestor, the governmental body shall proceed in accordance with §§552.228 and 552.231 of the Public Information Act.

(f) Manipulation of data applies only to information stored in electronic format.

§111.67. Estimates and Waivers of Public Information Charges.

(a) A party requesting copies of public information will not always be aware of the amount of time and cost that may be involved in complying with a particular request. Where a particular request will involve considerable time and resources to process, it is advisable that governmental bodies inform requestors of the anticipated completion date and potential resulting charges. When a governmental body charges for public information, a detailed statement of the charges should be made available to the requestor.

(b) A governmental body that cannot produce the public information for inspection and/or duplication within 10 calendar days after the date the information is requested, shall certify to that fact n writing, and set a date and hour within a reasonable time when the information will be available.

(c) A deposit or a bond may be required in the amount of the estimated charges if such charges exceed $100.

§111.68. Processing Complaints of Overcharges.

(a) Pursuant to the §552.269(a) of the Public Information Act, a requestor who believes he/she has been overcharged for a copy of public information may complain to the Commission.

(b) The complaint must be in writing, and must:

(1) set forth the reason(s) the person believes the charges are excessive; and

(2) be received by the Commission within 10 working days after the person knows of the occurrence of the alleged overcharge.

(c) The Commission shall address written questions to the governmental body, regarding the methodology and figures used in the calculation of the charges which are the subject of the complaint.

(d) The governmental body shall respond in writing to the questions within 10 days from receipt of the questions.

(e) If the Commission determines that the governmental body overcharged for requested public information, the governmental body shall adjust its charges in accordance with the determination, and shall refund the difference between what was charged and what was determined to be appropriate charges.

(f) The Commission shall send a copy of the determination to the complainant and to the governmental body.

(g) Pursuant to §552.269(b) of the Public Information Act, a requestor who overpays because a governmental body refuses or fails to follow the charges established by the Commission, is entitled to recover three times the amount of the overcharge if the governmental body did not act in good faith in computing the charges.

(h) The Commission does not have the authority to determine whether or not a governmental body acted in good faith in computing charges.

§111.69. Examples of Charges for Copies of Public Information.

The following tables present a few examples of the calculations of charges for information:

(1) TABLE 1 (Fewer than 50 pages of paper records): $ .10 per copy x number of copies (standard-size paper copies); + Personnel charge (if applicable); + Overhead charge (if applicable); + Document retrieval charge (if applicable); + Postage and shipping (if applicable) = $ TOTAL CHARGE

(2) TABLE 2 (More than 50 pages of paper records or nonstandard copies): $ .10 per copy x number of copies (standard-size paper copies), or cost of nonstandard copy (e.g., diskette, oversized paper, etc.); + Personnel charge (if applicable); + Overhead charge (if applicable); + Document retrieval charge (if applicable); + Actual

cost of miscellaneous supplies (if applicable); + Postage and shipping (if applicable) = $ TOTAL CHARGE

(3) TABLE 3 (Information that Requires Programming or Manipulation of Data): Cost of copy (standard or nonstandard, whichever applies); + Personnel charge; Overhead charge; + Computer resource charge; + Programming time (if applicable); + Document retrieval charge (if applicable); + Actual cost of miscellaneous supplies (if applicable); + Postage and shipping (if applicable) = $ TOTAL CHARGE.

§111.70. The General Services Commission Charge Schedule.

The following is a summary of the charges for copies of public information that have been adopted by the Commission. Service Rendered – Charge:

(1) Standard paper copy – $.10 per page.

(2) Nonstandard-size copy:

(A) Diskette – $1.00 each;

(B) Magnetic tape:

(i) 4 mm. – $13.50 each;

(ii) 8 mm. – $12.00 each;

(iii) 9-track – $11.00 each;

(C) Data Cartridge:

(i) 2000 Series – $17.50 each;

(ii) 3000 Series – $20.00 each;

(iii) 6000 Series – $25.00 each;

(iv) 9000 Series – $35.00 each;

(v) 600A – $20.00 each;

(D) Tape Cartridge:

(i) 250 MB – $38.00 each;

(ii) 525 MB – $45.00 each;

(E) VHS video cassette – $2.50 each;

(F) Audio cassette – $1.00 each;

(G) Oversized Paper copy – $.50 each;

(H) Mylar (36", 42", and 48"):

(i) 3 mil. – $.85/linear foot;

(ii) 4 mil. – $1.10/linear foot;

(iii) 5 mil. – $1.35/linear foot.

(I) Blueline/blueprint paper (all widths) – $.20/linear foot;

(J) Other – Actual cost.

(3) Personnel charge:

(A) Programming personnel – $26.00 per hour;

(B) Other personnel – $15.00 per hour.

(4) Overhead charge – 20% of personnel charge;

(5) Microfiche or microfilm charge:

(A) Paper copy – $.10 per page;

(B) Fiche or film copy – Actual cost.

(6) Remote document retrieval charge – Actual cost.

(7) Computer resource charge:

(A) Mainframe – $10.00 per minute;

(B) Midsize – $1.50 per minute;

(C) Client/Server – $2.20 per hour;

(D) PC or LAN – $1.00 per hour.

(8) Miscellaneous supplies – Actual cost.

(9) Postage and shipping charge – Actual cost.

(10) Photographs – Actual cost.

(11) Other costs – Actual cost.

(12) Outsourced/Contracted Services – Actual cost.

(13) No Sales Tax – No Sales Tax shall be applied to copies of public information.

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

Issued in Austin, Texas, on May 29, 1996.

TRD-9607496
David Ross Brown
Assistant General Counsel
General Services Commission
Earliest possible date of adoption: July 12, 1996
For further information, please call: (512) 463-3960

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Chapter 117. Centralized Services Division

Mail and Messenger Services

1 TAC §117.31

The General Services Commission proposes an amendment to §117.31, concerning mail and messenger services. The proposed amendment will provide flexibility for the commission to continue metering mail for customer state agencies in the event of temporary deficits in postage meter accounts for individual state agencies.

Mr. Michael Powers, Director of Support Services, has determined that for the first five-year period the rule is in effect, they will have no associated administrative costs. There are no fiscal implications for state or local government.

Mr. Powers 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 this amendment will be a greater efficiency in processing mail for state agencies thus avoiding delays in needed mailing in the event of a temporary deficit in postage meter accounts maintained by the commission. There will be no effect on small businesses. 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 David Brown, Assistant General Counsel, General Services Commission, P.O. Box 13047, Capitol Station, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the **Texas Register**

The amendment is proposed under Texas Government Code, §2176 which provides the General Services Commission with authority to promulgate rules consistent with the Code.

The following code is affected by these rules: Government Code, §2176, et. seq.

§117.31. Mail and Messenger Services.

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

(e) The mail and messenger service may meter and presort first class mail for state agencies upon agreement of the state agency and the commission. Each state agency must agree to furnish funds to cover amounts of postage to be metered.

(1) No mail shall be metered for a state agency in excess of funds provided by the agency **, unless approved by the commission so as to avoid undue delays in processing mail. Any deficit in an agency's postage account shall be promptly reimbursed to the commission.**

(2) (No change.)

(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 29, 1996.

TRD-9607499
David Ross Brown
Assistant General Counsel
General Services Commission
Earliest possible date of adoption: July 12, 1996
For further information, please call: (512) 463-3960

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Chapter 125. Travel and Transportation Division

The General Services Commission proposes amendments to §§125.3, 125.41, 125.45, and 125.47, concerning the State Vehicle Fleet Management Program and, amendments to §§125.63, 125.67, and 125.69, regarding the Texas Alternative Fuels Program. The proposed amendments will delete obsolete language, update definitions, and delineate certain additional information to be reported by state agencies in support of the Vehicle Fleet Management System, should such information be available.

Mr. Michael Powers, Director of Support Services, has determined that for the first five-year period the rules are in effect, they will have no associated administrative costs. There are no fiscal implications for state or local government.

Mr. Powers 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 clearer understanding of the services provided by the Vehicle Fleet Management and Alternative Fuels Programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to David Brown, Assistant General Counsel, General Services Commission, P.O. Box 13047, Capitol Station, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the **Texas Register.**

Travel Management Services

1 TAC §125.3

The amendment is proposed under Texas Government Code, Title 10, Subtitle D, Chapter 2171, which provides the General Services Commission with authority to promulgate rules consistent with the Code.

The following code is affected by this amendment: Texas Government Code, Title 10, Subtitle D, Chapter 2171.

§125.3. Definitions.

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

Alternative fuel-Compressed natural gas, liquefied petroleum gas, electricity, or other alternative fuel specified in Texas **Natural Resource Conservation Commission** [Air Control Board] rules.

[Computerized analysis and retrieval system (CARS)-A subsystem of the vehicle reporting system which contains the summary information submitted from each agency's vehicle history system.] Fleet officer– The individual designated by each state agency who is responsible for the timely and accurate submission of all required information utilized by the vehicle [reporting] **fleet management** system.

[Reporting program manual (RPM)-A document prepared by the commission to assist state agencies in using the vehicle history system which provides detailed requirements and instructions.]

[Vehicle history system (VHS)-A subsystem of the vehicle reporting system which itemizes vehicle transactions that reflect any financial gain/loss or investment incurred by the state.]

[Vehicle information program (VIP)-A subsystem of the vehicle reporting system which summarizes all required vehicle identification, acquisition, and expense information.]

Vehicle **fleet management** [reporting] system -A computerized data retrieval system to assist each state agency in the management of its vehicle fleet.

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 29, 1996.

TRD-9607492
David Ross Brown
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Earliest possible date of adoption: July 12, 1996
For further information, please call: (512) 463-3960

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State Vehicle Fleet Management

1 TAC §§125.41, 125.45, 125.47

The amendments are proposed under Texas Government Code, Title 10, Subtitle D, Chapter 2171, which provides the General Services Commission with authority to promulgate rules consistent with the Code.

The following code is affected by these rules: Texas Government Code, Title 10, Subtitle D, Chapter 2171.

§125.41. Vehicle Fleet Management.

(a) The [travel and transportation division of the] commission administers the state vehicle fleet management program which consists of vehicle fleet maintenance services and a computerized vehicle **fleet management system** [reporting system].

(b) Vehicle fleet maintenance services are available to any state vehicle in Travis County [on a fee for service basis], including preventative maintenance and extensive mechanical work **, via contracts or service arrangement established by the commission** .

(c) The computerized vehicle **fleet management** [reporting] system **maintains information on vehicle inventories, maintenance and repair history, mileage, fuel usage, and expenses incurred.** [consists of the vehicle history system (VHS), the computerized analysis and retrieval system (CARS), and the vehicle information program (VIP).]

(d) Each agency will be able to access the fleet management system.

[(d) Total computerized vehicle reporting system implementation will occur in four phases, as follows:

[(1) Phase One, training operations, will occur on an agency-by-agency basis. Agencies will receive detailed instructions in the Reporting Program Manual (RPM). The RPM contains the following:

[(A) initial system training;

[(B) VHS data collection and retention instructions;

[(C) transmission or reporting requirements for CARS; and

[(D) VIP reporting capability.

[(2) Phase Two, data assembly operations, begins after Phase one. During Phase two, each agency must:

[(A) have established its VHS files, and

[(B) be prepared to capture and maintain, at the agency level, required VHS information, in accordance with the RPM.

[(3) Phase Three, basic system operations, begins after Phase two with all agencies automated to CARS through the commission's statewide automated data processing network.

[(4) Phase Four, totally automated system operations, will constitute a fully comprehensive fleet management system. Each agency will be able to access CARS and the VIP.]

(e) The commission will host a fleet management conference annually to consider:

(1) adjustments to the Vehicle **Fleet Management** [Reporting] System;

(2) current fleet management issues; and

(3) the promotion of fleet management expertise among state agencies.

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

*§125.45. Vehicle.**Fleet Management** [Reporting] **System***

(a) **The vehicle fleet management system is the responsibility of the commission's fleet manager. The commission maintains the main repository and database for all vehicle information submitted by each agency in accordance with this subsection.** [Information required by this subsection shall be submitted to the commission by March 30th and September 30th following the six month period in which the data was compiled.]

(1) Each agency fleet officer is responsible for establishing, maintaining, and submitting to the commission accurate **vehicle** [Vehicle history system (VHS)] information **using either the fleet management system software supplied at no cost by the commission, or an alternate system.**

(2) Information to be recorded in an agency's **fleet management system** [VHS file] includes, but **is** not limited to:

(A) acquisition date, vehicle make, model, type, class, year, **gross vehicle weight rating,** [G.V.W.] exempt license plate number, manufacturer**,** vehicle identification number, whether a **special purpose vehicle** [SPV], and whether a pool or assigned vehicle;

(B)- (D) (No change.)

(E) standard labor rate for any state agency operated repair facility; [and]

(F) downtime, transfer date, disposal date and any other information necessary to compute the average cost of operation, per month, of the various classes and types of vehicles **; and**

(G) vehicle location by city and county, if available .

(b) To [establish the vehicle reporting system and to] facilitate data collection, each state agency shall provide the commission with a copy of their agency vehicle operational handbook, within 100 days of the effective date of this subsection. Any changes or additions to an agency handbook shall be submitted to the fleet manager within 30 days of their effective date.

(c) **Agencies operating a fleet management system other than the vehicle fleet management system used by the commission shall provide the following additional information.** [A state agency which enters into a written contract or agreement for extensive mechanical work without utilizing the commission's contract negotiation service shall provide a copy of such contract or agreement to the commission.]

(1) The name and version of automation software utilized;

(2) Name of the company or programmer supporting the software;

(3) System database structure; and

(4) Other available information regarding the software if requested by the commission.

(d) Information required by this subsection shall be submitted to the commission by March 30th and September 30th each year following the six month period in which the data was compiled.

[(d) The computerized analysis and retrieval system (CARS) is the responsibility of the fleet manager. Maintained at the commission, this subsystem is the main repository and data base for all vehicle information submitted by each agency fleet officer.

[(1) During phase three, CARS will be automated through the commission's data processing network to receive basic summary data from agency VHS files.

[(2) During phase four, when the system is fully automated, CARS will allow each agency to automatically update certain fleet data, review the historical data collected on their vehicles, prepare and format that information in any manner they desire, and print special reports.]

(e) The [vehicle information program (VIP)] vehicle fleet management system maintained by the commission constitutes the primary instrument used to provide fleet management assistance, as follows.

[(1)] Twice each fiscal year, [during phase three,] information submitted from agency [VHS] files will be [extracted from CARS and] compiled into **the main repository and database.** [basic fleet operational status reports in the VIP. Phase three reports are limited to vehicle inventory listings, summary totals of operating expenses, and operational cost per mile data. In phase four, when the system is fully automated,] **Fleet** [fleet] management reports detailing [monthly activity,] operating trends, cost analysis, and special exception reports listing **agencies** [vehicles] with unusually high operating expenses will be generated [twice each fiscal year].

[(2) During phase three, if an agency believes unusual vehicle performance characteristics indicate a need, special reports may be generated based on current system capability.]

(f) The commission reserves the right to develop and approve the form, format, and composition of all data submitted **to** [from] the vehicle **fleet management** [history] system to assure system continuity.

§125.47. Vehicle Fleet Maintenance Services

(a) Vehicle fleet maintenance services, offered by the commission[, on a for service basis,] are optional for state agencies and include, but are not limited to:

(1)- (5) (No change.)

(6) services authorized in Senate Bill 740, Acts, 71st Legislature and provided at any of the centralized refueling stations and/or the regional conversion and repair facilities if established by the **commission** [Vehicle Fleet Section] .

(b) The services **may be used** [are initiated] at the convenience of the requesting state agency except that bulk fuel system credit cards will only be issued by the fleet manager upon written request.

(c) An agency may **only** terminate its **use of bulk fuel system credit card** [vehicle fleet maintenance] services in writing. On termination it must return any vehicle fleet management property in its possession.

(d) A state agency which enters into a written contract or agreement for extensive mechanical work without utilizing the commission's contract negotiation service shall provide a copy of such contract or agreement to the commission.

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 29, 1996.

TRD-9607493
David Ross Brown
Assistant General Counsel
General Services Commission
Earliest possible date of adoption: July 12, 1996
For further information, please call: (512) 463-3960

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Texas Alternative Fuels Program

1 TAC §§125.63, 125.67, 126.69

The amendments are proposed under Texas Government Code, Title 10, Subtitle D, Chapter 2171, which provides the General Services Commission with authority to promulgate rules consistent with the Code.

The following code is affected by these rules: Texas Government Code, Title 10, Subtitle D, Chapter 2171.

§125.63. Assistance to State Agencies and School Districts.

(a) (No Change.)

(b) The Vehicle Fleet Section provides informational materials regarding alternative fuels, presents state of the art data at fleet management conferences, provides state vehicle operational data, locates facilities to convert state vehicles to alternative fuels, helps identify vehicles that are appropriate for conversion, and provides technical assistance. [Depending upon workload, it converts state vehicles to alternative fuels and repairs such vehicles on a fee for service basis].

(c)-(d) (No Change.)

§125.67. Effect of Waiver.

A waiver issued under §125.65 of this title (relating to Reduction and/or Waiver of Required Fleet Percentages) shall be kept on file by the **commission** [Travel and Transportation Division] for two years from date of issuance. A valid, current waiver on file for a state agency shall be deemed sufficient basis for a waiver of the purchasing restrictions for state agencies which are set forth in §113.25 of this title (relating to Purchase of Passenger Vehicles). [A valid, current waiver on file for a school district may be referenced by the Purchasing Division prior to processing a school bus requisition for the school district, in addition to the waiver process set forth in §113.23 of this title (relating to Purchase of School Buses).]

§125.69. Alternative Fuel Usage.

Pursuant to Government Code §2171.103, the Commission shall take all steps necessary to encourage the use of alternative fuels.

(1) Each state vehicle equipped from the manufacturer or modified by a conversion facility to be capable of operating on an alternative fuel shall operate exclusively on the alternative fuel except in cases:

(A)-(D) (No change.)

(E) when operating exclusively on an alternative fuel is contrary to the vehicle manufacturer's or alternative fuel conversion equipment vendor's recommendations.

(2) (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 29, 1996.

TRD-9607494
David Ross Brown
Assistant General Counsel
General Services Commission
Earliest possible date of adoption: July 12, 1996
For further information, please call: (512) 463-3960

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TITLE 10. COMMUNITY DEVELOPMENT

Part I. Texas Department of Housing and Community Affairs

Chapter 53. HOME Investment Partnership Program

10 TAC §53.51, §53.62

The Texas Department of Housing and Community Affairs (Department) HOME Investment Partnerships (HOME) Program is proposing to amend §53.51 concerning definitions and §53.62(c)(3) concerning program administration of funds available under federal and state laws and regulations for the HOME Program. The amendments will further define and clarify a term used in the program and will expand the Department's ability to redistribute deobligated funds more efficiently.

Daisy Stiner, Director of Housing Programs, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Stiner also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to enhance the Department's ability to provide affordable housing throughout the State of Texas. There will be a beneficial effect in increasing the number of jobs available for small businesses in construction-related fields. The Department is unable to determine whether the administration of these rules will have any fiscal implications on persons required to comply with the rules as proposed.

Comments on the proposed amendments may be submitted to Joe B. Mann, HOME Program Manager, P. O. Box 13941, Austin, Texas, 78711-3941, within 30 days of the date of this publication.

The amendments are proposed under Title II of the Cranston-Gonzales National Affordable Housing Act of 1990 (42 United States Code §§12701-12839), and 24 Code of Federal Regulations, Part 92.

The amendment is pursuant to the authority at Texas Government Code, Chapter 2306; Acts of the 73rd Legislative Regular Session, SB 45, Chapter 141, p. 292, effective May 16, 1993; and Act of the 73rd Legislative Regular Session, SB 1356, Chapter 725, p. 2838, effective September 1, 1993.

§53.51. Definitions.

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

Demonstration Fund - A reserve fund for use alone or in combination and coordination with other programs administered by the Department. This Fund will be available for out of cycle applications, innovative programs brought to the Department for consideration and emergency programs. Additionally, this fund may be used with other programs administered by the Department as outlined in the Consolidated Plan, such as the Down Payment Assistance Program, the Contract for Deed Program, the Weatherization Assistance Program and the Low Income Housing Tax Credit Program, as approved by the Board.

§53.62. Program Administration.

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

(c) Deobligation.

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

(3) The Department, with approval of the Board, may elect to reassign funds to the next funding cycle for award to new applicants or reallocate deobligated funds to any of the following:

(A)-(C) (No change.)

(D) With Board approval, reallocated funds may be awarded to any other eligible applicant or recipient to administer any activity of the HOME Program.

(4) (No change.)

(d) (No change.)

(e) (No change.)

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

Issued in Austin, Texas, on June 2, 1996.

TRD-9607673
Larry Paul Manley
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: July 12, 1996
For further information, please call: (512) 475-3916

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TITLE 16. ECONOMIC REGULATION

Part IX. Texas Lottery Commission

Chapter 402. Bingo Regulation and Tax

Subchapter

16 TAC 402.541

The Texas Lottery Commission proposes an amendment to §402.541, relating to definitions. The proposed amendments delete language relating to the definitions of bingo premises, location and place. Specifically, the language requiring that only one bingo premise shall be under a common roof or over a common foundation is deleted from the definitions of bingo premises, location and place. In addition, the proposed amendments would delete the grandfathering provisions of said definitions.

Richard Sookiasian, Budget Analyst, has determined that, for each year of the first five-years that the rule will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Richard Sookiasian, Budget Analyst, also has determined that, for each year of the first five years that the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be clarification of confusing terminology. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Ridgely C. Bennett, Staff Attorney, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630.

The amendment is proposed under Texas Revised Civil Statutes, Article 179d, §16(a) and (d), which authorize the Texas Lottery Commission to adopt rules for the enforcement and administration of the Bingo Enabling Act and Texas Government Code, §467.102, which authorizes the Texas Lottery Commission to adopt rules for the enforcement and administration of Texas Government Code, Chapter 467 and the laws under the Commission's jurisdiction.

Texas Civil Statutes, Article 179d is affected by this section.

§402.541. Definitions.

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

Bingo premises-The area subject to the direct control of, and actual use by, a licensed authorized organization for the purpose of conducting a game of bingo. [Only one bingo premise shall be under a common roof or over a common foundation. The enactment of this definition shall not affect bingo premises in existence under a common roof before March 30, 1996.]

Location-The area subject to the direct control of, and actual use by, a licensed authorized organization for the purpose of conducting a game of bingo. [Only one location shall be under a common roof or over a common foundation. The enactment of this definition shall not affect locations in existence under a common roof before March 30, 1996.]

Place-The area subject to the direct control of, and actual use by, a licensed authorized organization for the purpose of conducting a game of bingo. [Only one place shall be under a common roof or over a common foundation. The enactment of this definition shall not affect places in existence under a common roof before March 30, 1996.]

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 29, 1996.

TRD-9607472
Ridely C. Bennett
Staff Attorney
Texas Lottery Commission
Earliest possible date of adoption: July 12, 1996
For further information, please call: (512) 371-4935

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TITLE 19. EDUCATION

Part II. Texas Education Agency

Chapter 111. Mathematics

Subchapter C. Grades 9-12

19 TAC §§111.31-111.34

The Texas Education Agency (TEA) proposes new §§111.31-111.34, concerning mathematics. The new sections establish the essential knowledge and skills for three high school mathematics courses: Algebra I, Algebra II, and Geometry. The sections shall be implemented beginning September 1, 1998, and at that time shall supersede §75.63(e)-(g) (relating to Mathematics).

Felipe Alanis, deputy commissioner for programs and instruction, has determined that for the first five-year period the sections are in effect there will be fiscal implications as a result of enforcing or administering the sections. There will be no effect on state government or small businesses.

To implement the new essential knowledge and skills for mathematics, local governments (school districts) will need to revise existing district curricula and provide professional development for teachers to be aware of, and understand how to teach, the new curriculum. Schools have an economical professional development option developed through the statewide mathematics staff development program (TEXTEAM). The effect on school districts cannot be accurately determined at this time because individual teachers will need different amounts of training to implement the essential knowledge and skills.

Mr. Alanis and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the essential knowledge and skills will help enable students to be successful in postsecondary study and work. 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 Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed sections submitted under

the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §28.002, which directs the State Board of Education to adopt rules identifying the essential knowledge and skills of each subject of the foundation curriculum.

The new sections implement the Texas Education Code, §28.002.

§111.31. Implementation of Texas Essential Knowledge and Skills for Mathematics, Grades 9-12.

The provisions of this subchapter shall be implemented beginning September 1, 1998, and at that time, shall supersede §75.63(e)-(g) of this title (relating to Mathematics).

§111.32. Algebra I.

(a) Basic understandings.

(1) Foundation concepts for high school mathematics. As presented in Grades K-8, the basic understandings of number, operation, and quantitative reasoning; patterns, relationships, and algebraic thinking; geometry; measurement; and probability and statistics are essential foundations for all work in high school mathematics. Students will continue to build on this foundation as they expand their understanding through other mathematical experiences.

(2) Algebraic thinking and symbolic reasoning. Symbolic reasoning is the essence of algebra; symbols provide powerful ways to represent mathematical situations and to express generalizations. Students use symbols in a variety of ways to study relationships among quantities.

(3) Function concepts. Functions represent the systematic dependence of one quantity on another. Students use functions to represent and model problem situations and to analyze and interpret relationships.

(4) Relationship between equations and functions. Equations arise as a way of asking and answering questions involving functional relationships. Students work in many situations to set up equations and use a variety of methods to solve these equations.

(5) Tools for algebraic thinking. Techniques for working with representations of functions and equations are essential in understanding underlying relationships. Students continually use concrete, algorithmic, graphical, and technological tools and model mathematical situations with a variety of representations to solve meaningful problems.

(6) Underlying mathematical processes. Many processes underlie all content areas in mathematics. As they do mathematics, students continually use problem-solving, language and communication, connections within and outside mathematics, and reasoning, as well as multiple representations, applications and modeling, and justification and proof.

(b) Foundations for functions: knowledge and skills and performance descriptions.

(1) The student understands that a function represents a dependence of one quantity on another and can be described in a variety of ways. Following are performance descriptions.

(A) The student describes independent and dependent quantities in functional relationships.

(B) The student gathers and records data, or uses data sets, to determine functional (systematic) relationships between quantities.

(C) The student describes functional relationships for given problem situations and writes equations or inequalities to answer questions arising from the situations.

(D) The student represents relationships among quantities using concrete models, tables, graphs, diagrams, verbal descriptions, and algebraic representations.

(E) The student interprets and makes inferences from functional relationships.

(2) The student understands the properties and attributes of functions. Following are performance descriptions.

(A) The student identifies and sketches the general forms of linear ($y = x$) and quadratic ($y = x^2$) parent functions.

(B) For a variety of situations, the student identifies the mathematical domains and ranges and determines reasonable domain and range values for given situations.

(C) The student interprets situations in terms of given graphs or creates situations that fit given graphs.

(D) In solving problems, the student collects data and records results, organizes the information, makes scatterplots, interprets the results, and proceeds to model, predict, and make decisions and critical judgments.

(3) The student understands algebra as the mathematics of generalization and recognizes the power of symbols to represent situations. Following is a performance description. Given situations, the student looks for patterns and represents generalizations algebraically.

(4) The student understands the importance of the skills required to manipulate symbols in order to solve problems and develops the necessary algebraic skills required to simplify algebraic expressions and solve equations and inequalities in problem situations. Following are performance descriptions.

(A) The student simplifies polynomial expressions, transforms and solves equations, and factors as necessary in problem situations.

(B) The student uses the commutative, associative, and distributive properties to simplify algebraic expressions.

(c) Linear functions: knowledge and skills and performance descriptions.

(1) The student understands that linear functions can be represented in different ways and translates among their various representations. Following are performance descriptions.

(A) The student determines whether or not given situations can be represented by linear functions.

(B) The student determines the domain and range values for which linear functions make sense for given situations.

(C) The student translates among algebraic, tabular, graphical, or verbal descriptions of linear functions.

(2) The student understands the meaning of the slope and intercepts of linear functions and interprets and describes the effects of changes in parameters of linear functions in real-world and mathematical situations. Following are performance descriptions.

(A) The student develops the concept of slope as rate of change and determines slopes from graphs, tables, and algebraic representations.

(B) The student relates direct variation to linear functions and solves problems involving proportional change.

(C) The student determines the intercepts of linear functions from graphs, tables, and algebraic representations.

(D) The student interprets the meaning of slope and intercepts in situations using data, symbolic representations, or graphs.

(E) The student graphs and writes equations of lines given characteristics such as two points, a point and a slope, or a slope and y-intercept.

(F) The student investigates, describes, and predicts the effects of changes in m and b on the graph of $y = mx + b$.

(G) The student interprets and predicts the effects of changing slope and y-intercept in applied situations.

(3) The student formulates equations and inequalities based on linear functions, uses a variety of methods to solve them, and analyzes the solutions in terms of the situation. Following are performance descriptions.

(A) The student analyzes situations involving linear functions and formulates linear equations or inequalities to solve problems.

(B) The student investigates methods for solving linear equations and inequalities using concrete models, graphs, and the properties of equality and solves the equations and inequalities using a method of the student's choice.

(C) For given contexts, the student interprets and determines the reasonableness of solutions to linear equations and inequalities.

(4) The student formulates systems of linear equations from problem situations, uses a variety of methods to solve them, and analyzes the solutions in terms of the situation. Following are performance descriptions.

(A) The student analyzes situations and formulates systems of linear equations to solve problems.

(B) The student investigates solving systems of linear equations using concrete models, graphs, tables, and algebraic methods and solves the system using a method of the student's choice.

(C) For given contexts, the student interprets and determines the reasonableness of solutions to systems of linear equations.

(d) Quadratic and other nonlinear functions: knowledge and skills and performance descriptions.

(1) The student understands that the graphs of quadratic functions are affected by the parameters of the function and can interpret and describe the effects of changes in the parameters of quadratic functions. Following are performance descriptions.

(A) The student determines the domain and range values for which quadratic functions make sense for given situations.

(B) The student investigates, describes, and predicts the effects of changes in a on the graph of $y = ax^2$.

(C) The student investigates, describes, and predicts the effects of changes in c on the graph of $y = x^2 + c$.

(D) For problem situations, the student analyzes graphs of quadratic functions and draws conclusions.

(2) The student understands there is more than one way to solve a quadratic equation and explores different methods to solve quadratic equations. Following is a performance description. The student explores and investigates methods for solving quadratic equations, such as using concrete models, making tables, interpreting graphs, and using algebraic methods.

(3) The student understands there are situations modeled by functions that are neither linear nor quadratic and explores the situations. Following are performance descriptions.

(A) The student uses patterns to generate the laws of exponents.

(B) The student explores and investigates situations involving inverse variation using a variety of methods, such as using concrete models, making tables, interpreting graphs, or using algebraic methods.

(C) The student explores and investigates situations involving exponential growth and decay using a variety of methods, such as using concrete models, making tables, interpreting graphs, or using algebraic methods.

§111.33. Algebra II.

(a) Basic understandings

(1) Foundation concepts for high school mathematics. As presented in Grades K-8, the basic understandings of number, operation, and quantitative reasoning; patterns, relationships, and algebraic thinking; geometry; measurement; and probability and statistics are essential foundations for all work in high school mathematics. Students continue to build on this foundation as they expand their understanding through other mathematical experiences.

(2) Algebraic thinking and symbolic reasoning. Symbolic reasoning is the essence of algebra; symbols provide powerful ways to represent mathematical situations and to express generalizations. Students study algebraic concepts and the relationships among them to better understand the structure of algebra.

(3) Functions, equations, and their relationship. The study of functions, equations, and their relationship is central to all of mathematics. Students perceive functions and equations as means for analyzing and understanding a broad variety of relationships and as a useful tool for expressing generalizations.

(4) Relationship between algebra and geometry. Equations and functions are algebraic tools that can be used to represent geometric curves and figures; similarly, geometric figures can illustrate algebraic relationships. Students perceive the connections between algebra and geometry and use the tools of one to help solve problems in the other.

(5) Tools for algebraic thinking. Techniques for working with representations of functions and equations are essential in understanding underlying relationships. Students continually use concrete, algorithmic, graphical, and technological tools and model mathematical situations with a variety of representations to solve meaningful problems.

(6) Underlying mathematical processes. Many processes underlie all content areas in mathematics. As they do mathematics, students continually use problem-solving, language and communication, connections within and outside mathematics, and reasoning, as well as multiple representations, applications and modeling, and justification and proof.

(b) Foundations: knowledge and skills and performance descriptions.

(1) The student understands properties and attributes of functions and applies functions to problem situations. Following are performance descriptions.

(A) For a variety of situations, the student identifies the mathematical domains and ranges and determines reasonable domain and range values for given situations.

(B) In solving problems, the student collects data and records results, organizes the data, makes scatterplots, fits the curves to the appropriate parent function, interprets the results, and proceeds to model, predict, and make decisions and critical judgments.

(2) The student understands the importance of the skills required to manipulate symbols in order to solve problems and develops the necessary algebraic skills required to simplify algebraic expressions and solve equations and inequalities in problem situations. Following are performance descriptions.

(A) The student uses tools including matrices, factoring, and properties of exponents to simplify expressions and transform and solve equations.

(B) The student explores the complex number system.

(3) The student formulates systems of equations and inequalities from problem situations, uses a variety of methods to solve them, and analyzes the solutions in terms of the situations. Following are performance descriptions.

(A) The student analyzes situations and formulates systems of equations or inequalities in two or more unknowns to solve problems.

(B) The student investigates solving systems of equations or inequalities using graphs, tables, matrices, and algebraic methods.

(C) The student solves systems of equations or inequalities using a method of the student's choice.

(D) For given contexts, the student interprets and determines the reasonableness of solutions to systems of equations or inequalities.

(c) Algebra and geometry: knowledge and skills and performance descriptions.

(1) The student connects algebraic and geometric representations of functions. Following are performance descriptions.

(A) The student identifies and sketches graphs of parent functions, including linear ($y = x$), quadratic ($y = x^2$), radical ($y = \sqrt{x}$), inverse ($y = 1/x$), exponential ($y = ax$), and logarithmic ($y = \log_a x$) parent functions.

(B) The student extends parent functions with parameters such as m in $y = mx$ and explores parameter changes on the graph of parent functions.

(C) The student recognizes inverse relationships between various functions.

(2) The student explores, describes, and applies conic sections. Following are performance descriptions.

(A) The student uses planar slices of cones or locus definitions to describe conic sections.

(B) The student explores the graphs of equations of conic sections in order to discover patterns, make generalizations, and classify conics.

(C) In order to sketch graphs of conic sections, the student relates simple parameter changes in the equation to corresponding changes in the graph.

(D) The student explores the symmetries of graphs of conic sections.

(E) The student identifies the conic section from a given equation.

(d) Quadratic and radical functions: knowledge and skills and performance descriptions.

(1) The student understands that quadratic functions can be represented in different ways and translates among their various representations. Following are performance descriptions.

(A) For given contexts, the student determines the reasonable domain and range values of quadratic functions, as well as interprets and determines the reasonableness of solutions to quadratic equations and inequalities.

(B) The student relates representations of quadratic functions, such as algebraic, tabular, graphical, and verbal descriptions.

(C) The student determines a quadratic function from its roots or a graph.

(2) The student interprets and describes the effects of changes in the parameters of quadratic functions in applied and mathematical situations. Following are performance descriptions.

(A) The student uses characteristics of the quadratic parent function to sketch the related graphs and connects between the $y = ax^2 + bx + c$ and the $y = a(x - h)^2 + k$ symbolic representations of quadratic functions.

(B) The student uses the parent function to investigate, describe, and predict the effects of changes in a, h, and k on the graphs of $y = a(x - h)^2 + k$ form of a function in applied and purely mathematical situations.

(3) The student formulates equations and inequalities based on quadratic functions, uses a variety of methods to solve them, and analyzes the solutions in terms of the situation. Following are performance descriptions.

(A) The student analyzes situations involving quadratic functions and formulates quadratic equations or inequalities to solve problems.

(B) The student develops the method of completing the square.

(C) The student analyzes and interprets the solutions of quadratic equations using discriminants and solves quadratic equations using the quadratic formula.

(D) The student compares and translates between algebraic and graphical solutions of quadratic equations.

(E) The student solves quadratic equations and inequalities using methods of the student's choice.

(4) The student formulates equations and inequalities based on radical functions, uses a variety of methods to solve them, and analyzes the solutions in terms of the situation. Following are performance descriptions.

(A) The student uses the parent function to investigate, describe, and predict the effects of parameter changes on the graphs of radical functions and describes limitations on the domains and ranges.

(B) The student relates representations of radical functions, such as algebraic, tabular, graphical, and verbal descriptions.

(C) For given contexts, the student determines the reasonable domain and range values of radical functions, as well as interprets and determines the reasonableness of solutions to radical equations and inequalities.

(D) The student investigates solving radical equations and inequalities using graphs, tables, and algebraic methods.

(E) The student analyzes situations modeled by radical functions, formulates equations or inequalities, and solves problems using methods of the student's choice.

(F) The student expresses inverses of quadratic functions using radical functions.

(e) Rational functions: knowledge and skills and performance descriptions. The student formulates equations and inequalities based on rational functions, uses a variety of methods to solve them, and analyzes the solutions in terms of the situation. Following are performance descriptions.

(1) The student uses quotients to describe the graphs of rational functions, describes limitations on the domains and ranges, and examines asymptotic behavior.

(2) The student analyzes various representations of rational functions with respect to problem situations.

(3) For given contexts, the student determines the reasonable domain and range values of rational functions, as well as interprets and determines the reasonableness of solutions to rational equations and inequalities.

(4) The student investigates solving rational equations and inequalities using graphs, tables, and algebraic methods.

(5) The student analyzes situations modeled by rational functions, formulates equations or inequalities composed of linear or quadratic functions, and solves problems using methods of the student's choice.

(6) The student uses direct and inverse variation functions as models to make predictions in problem situations.

(f) Exponential and logarithmic functions: knowledge and skills and performance descriptions. The student formulates equations and inequalities based on exponential and logarithmic functions, uses a variety of methods to solve them, and analyzes the solutions in terms of the situation. Following are performance descriptions.

(1) The student develops the definition of logarithms by exploring and describing the relationship between exponential functions and their inverses.

(2) The student uses the parent functions to investigate, describe, and predict the effects of parameter changes on the graphs of exponential and logarithmic functions, describes limitations on the domains and ranges, and examines asymptotic behavior.

(3) For given contexts, the student determines the reasonable domain and range values of exponential and logarithmic functions, as well as interprets and determines the reasonableness of solutions to exponential and logarithmic equations and inequalities.

(4) The student investigates solving exponential and logarithmic equations and inequalities using graphs, tables, and algebraic methods.

(5) The student analyzes situations modeled by exponential functions, formulates equations or inequalities, and solves problems using methods of the student's choice.

§111.34. Geometry.

(a) Basic understandings.

(1) Foundation concepts for high school mathematics. As presented in Grades K-8, the basic understandings of number, operation, and quantitative reasoning; patterns, relationships, and algebraic thinking; geometry; measurement; and probability and statistics are essential foundations for all work in high school mathematics. Students continue to build on this foundation as they expand their understanding through other mathematical experiences.

(2) Geometric thinking and spatial reasoning. Spatial reasoning is the essence of geometry; shapes and figures provide powerful ways to represent mathematical situations and to express generalizations about space and spatial relationships. Students use geometric thinking to understand mathematical concepts and the relationships among them.

(3) Geometric figures and their properties. Geometry consists of the study of geometric figures of zero, one, two, and three dimensions and the relationships among them. Students study properties and relationships having to do with size, shape, location, direction, and orientation of these figures.

(4) The relationship between geometry and other mathematics. Geometry can be used to model and represent many mathematical and real-world situations. Students perceive the connection between geometry and the real and mathematical worlds and use geometric ideas, relationships, and properties to solve problems.

(5) Tools for geometric thinking. Techniques for working with spatial figures and their properties are essential in understanding underlying relationships. Students continually use concrete, pictorial,

algebraic, coordinate, and technological tools to solve meaningful problems by representing figures, transforming figures, analyzing relationships, and proving and justifying things about them.

(6) Underlying mathematical processes. Many processes underlie all content areas in mathematics. As they do mathematics, students continually use problem-solving, language and communication, connections within and outside mathematics, and reasoning, as well as multiple representations, applications and modeling, and justification and proof.

(b) Geometric patterns: knowledge and skills and performance descriptions. The student identifies, analyzes, and describes patterns that emerge from two- and three-dimensional geometric figures. Following are performance descriptions.

(1) The student uses numeric and geometric patterns to make generalizations about geometric properties, including properties of polygons, ratios in similar figures and solids, and angle relationships in polygons and circles.

(2) The student uses properties of transformations and their compositions to make connections between mathematics and the real world in applications such as tessellations or fractals.

(3) The student investigates and applies patterns from right triangles to solve problems, including special right triangles (45-45-90 and 30-60-90) and triangles whose sides are Pythagorean triples.

(c) Dimensionality and the geometry of location: knowledge and skills and performance descriptions.

(1) The student understands the relationship between three-dimensional objects and related two- dimensional representations and uses these representations to solve problems. Following are performance descriptions.

(A) The student visualizes, describes, and draws cross sections and other slices of three- dimensional objects.

(B) The student uses nets to represent and construct three-dimensional objects.

(C) The student uses top, front, side, and corner views of three-dimensional objects to create accurate and complete representations and solve problems.

(2) The student understands that coordinate systems provide convenient and efficient ways of representing geometric figures. Following are performance descriptions.

(A) The student uses one- and two-dimensional coordinate systems to represent points, lines, line segments, and figures.

(B) The student uses slopes and equations of lines to investigate geometric relationships, including parallel lines, perpendicular lines, and special segments of triangles and other polygons.

(C) The student develops formulas including distance and midpoint.

(d) Congruence and the geometry of size: knowledge and skills and performance descriptions.

(1) The student extends measurement concepts to find area, perimeter, and volume in problem situations. Following are performance descriptions.

(A) The student finds areas of nonstandard figures and regular polygons.

(B) The student finds areas of sectors and arc lengths of circles using proportional reasoning.

(C) The student develops and extends the Pythagorean Theorem.

(D) The student finds volumes of prisms, pyramids, spheres, cones, and cylinders in problem situations.

(2) The student analyzes properties and describes relationships in geometric figures. Following are performance descriptions.

(A) Based on explorations, the student makes conjectures and concretely justifies conclusions about the properties of parallel and perpendicular lines.

(B) Based on explorations, the student makes conjectures and concretely justifies conclusions about the properties and attributes of polygons and their component parts.

(C) Based on explorations, the student makes conjectures and concretely justifies conclusions about the properties and attributes of circles and the lines that intersect them.

(D) The student explores the characteristics of three-dimensional figures and their component parts.

(3) The student understands the concept of congruence and applies congruence to justify properties of figures and solve problems. Following are performance descriptions.

(A) The student uses congruence transformations to explore and justify properties of geometric figures.

(B) The student justifies and applies triangle congruence relationships.

(e) Similarity and the geometry of shape: knowledge and skills and performance descriptions. The student understands the concepts of similarity and applies similarity to justify properties of figures and solve problems. Following are performance descriptions.

(1) The student uses similarity properties and transformations to explore and justify conjectures about geometric figures.

(2) The student uses ratios to solve problems, including finding corresponding measures in sets of similar figures and generating Pythagorean triples.

(3) In a variety of ways, the student explores, develops, applies, and justifies triangle similarity relationships, including right triangle and trigonometric ratios.

(4) The student describes and applies the effect on perimeter, area, and volume when length, width, or height of a three-dimensional solid is changed and applies this idea in solving problems.

(f) Geometric structure: knowledge and skills and performance descriptions.

(1) The student understands the structure of, and relationships within, an axiomatic system. Following are performance descriptions.

(A) The student develops an awareness of the structure of a mathematical system, connecting definitions, postulates, logical reasoning, and theorems.

(B) The student explores the historical development of geometric systems and recognizes that mathematics is developed by individuals for a variety of purposes.

(C) The student compares and contrasts the structures and implications of Euclidean and non- Euclidean geometries.

(2) The student analyzes geometric relationships in order to make and verify conjectures. Following are performance descriptions.

(A) The student uses constructions to explore attributes of geometric figures and to make conjectures about geometric relationships.

(B) The student makes and verifies conjectures about angles, lines, polygons, circles, and three-dimensional figures, choosing from a variety of approaches such as coordinate, transformational, or axiomatic.

(3) The student understands the importance of justification and logical reasoning in mathematics. Following are performance descriptions.

(A) The student tests the validity of conditional statements and their converses.

(B) The student constructs and communicates convincing arguments to justify statements about geometric figures and their properties.

(C) The student demonstrates what it means to prove mathematically that statements are true.

(D) The student uses inductive or deductive reasoning to determine the validity of conditional statements using formal proof or other appropriate methods.

(4) The student uses a variety of representations to describe geometric relationships and solve problems. Following is a performance description. The student selects an appropriate representation (concrete, pictorial, graphical, verbal, or symbolic) in order to solve problems.

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 June 3, 1996.

TRD-9607671
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Earliest possible date of adoption: July 12, 1996
For further information, please call: (512) 463-9701

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Chapter 149. Education Personnel Development

Subchapter B. Inservice Education

19 TAC §149.21

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

The Texas Education Agency (TEA) proposes the repeal of §149.21, concerning inservice education. The section establishes definitions, requirements, and procedures related to staff development. Senate Bill 1, 74th Texas Legislature, 1995, transferred authority for the information contained in this section from the State Board of Education to the commissioner of education. The repeal is necessary to comply with Senate Bill 1.

Geoffrey Fletcher, associate commissioner for curriculum and assessment, 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 or small businesses as a result of enforcing or administering the repeal.

Mr. Fletcher and Criss Cloudt, associate commissioner for policy planning and research, have 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 compliance with Senate Bill 1. 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 Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed repeal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The repeal is proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified TEA rules.

The repeal implements the Texas Education Code, §7.102.

§149.21. General Requirements for Staff Development.

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 June 3, 1996.

TRD-9607669
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Earliest possible date of adoption: July 12, 1996
For further information, please call: (512) 463-9701

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Chapter 149. Education Personnel Development

Subchapter B. Inservice Education

19 TAC §149.21

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Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed repeal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

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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 June 3, 1996.

TRD-9607669
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Earliest possible date of adoption: July 12, 1996
For further information, please call: (512) 463-9701

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TITLE 22. EXAMINING BOARDS

Part III. Texas Board of Chiropractic Examiners

Chapter 73. Licenses and Renewals

22 TAC §73.2

The Texas Board of Chiropractic Examiners proposes an amendment to §73.2, regarding Renewal of License. Section 73.2, in part, prohibits renewal of a license issued by the board if a licensee is in default of a loan guaranteed by the Texas Guaranteed Student Loan Corporation or a repayment agreement with the corporation. This prohibition is required by the Education Code, §57.491.

The board proposes this amendment to add a new subsection (b) which sets out more fully the requirements under the Education Code, §57.491 and provides procedures for complying with that statute. Subsection (b), as proposed clarifies the board's duty under the Education Code, §57.491 and the conditions which must be met in order to renew licenses of certain licensees who have been found in default by the corporation, establishes procedures for requesting a hearing before the board takes action under the section and for reinstating a license that was denied renewal, and explains the effect of nonrenewal under this rule on the ability to practice chiropractic. The board has also made non-substantive format changes to the section for consistency and grammar.

Patte B. Kent, Executive Director, has determined that for the first five-year period the section as amended is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section as amended.

Ms. Kent has also determined that for each year of the first five years the section as amended is in effect, the public benefit anticipated as a result of enforcing the section as amended will be that more student loans carried by licensees will be timely paid to the corporation. The described benefit is the same for the current section as amended. There will be no effect on small businesses, or anticipated economic cost to persons who are required to comply with the section as amended.

Comments may be submitted to Patte B. Kent, Executive Director, Texas Board of Chiropractic Examiners, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701.

The amendment is proposed under Texas Civil Statutes, Article 4512b, §4a, which authorizes the board to adopt rules necessary for performance of its duties and to regulate the practice of chiropractic and the Education Code, §57.491 (j) which authorizes the board to adopt rules implementing the state's license nonrenewal policy in connection with the student loan program.

The following are the statutes, articles or codes affected by the proposed amendment: §73.2 – Texas Civil Statutes, Article 4512b, §4a, Education Code §57.491 (j).

§§73.2. Renewal of License.

(a) Unexpired License

(1) **The license** [License] renewal fee shall be paid on or before the date published on the license renewal form provided by the **board** [Board]. [No licensee who is in default on repayment of a Texas guaranteed student loan shall be renewed unless:

[(A) the renewal is the first renewal following the Board's notification that the licensee is in default; or

[(B) the licensee presents to the Board proof that the licensee has entered into a repayment agreement on the defaulted loan or that the licensee is not in default. A licensee is entitled to a hearing prior to non-renewal under this section.]

(2) License renewal fee shall be paid by cashier's check or money order made payable to the Texas Board of Chiropractic Examiners

(b) Licensees in default of student loan or repayment agreement

(1) The board shall not renew a license of a licensee who is in default of a loan guaranteed by the Texas Guaranteed Student Loan Corporation or a repayment agreement with the corporation except as provided in paragraphs (2) and (3) of this subsection.

(2) For a licensee in default of a loan, the board shall renew the license if:

(A) the renewal is the first renewal following notice to the board that the licensee is in default; or

(B) The licensee presents to the board a certificate issued by the corporation certifying that:

(i) the licensee has entered into a repayment agreement on the defaulted loan; or

(ii) the licensee is not in default on a loan guaranteed by the corporation.

(3) For a licensee who is in default of a repayment agreement, the board shall renew the license if the licensee presents to the board a certificate issued by the corporation certifying that:

(A) The licensee has entered into another repayment agreement on the defaulted loan; or

(B) the licensee is not in default on a loan guaranteed by the corporation or on a repayment agreement.

(4) This subsection does not prohibit the board from issuing an initial license to a person who is in default of a loan or repayment agreement but is otherwise qualified for licensure. However, the board shall not renew the license of such a licensee, if at the time of renewal, the licensee is in default of a loan or repayment agreement except as provided in paragraphs (2)(B) or (3) of this subsection.

(5) The board shall notify a licensee of the nonrenewal of a license under this subsection and of the opportunity for a hearing under paragraph (7) of this subsection prior to or at the time the annual renewal application is sent.

(6) A license which is not renewed under this subsection is considered expired. The licensee cannot practice chiropractic until such time that he or she complies with this subsection. Subsection (c) of this section applies to licenses expired under this subsection.

(7) Upon written request for a hearing by a licensee, the board shall set the matter for hearing before the State Office of Administrative Hearing in accordance with §75.9(d) of this title (relating to Complaint Procedures). A licensee shall file a request for a hearing with the board within 30 days from the date of receipt of the notice required by paragraph (5) of this subsection.

(c) [(b)] Expired License

(1) If a license is not renewed on or before January 1 of each year, it becomes expired.

(2) If a person's license has been expired for 90 days or less, the person may renew the license by paying to the board the required renewal fee and a late fee of $60.

(3) If a person's license has been expired for longer than 90 days but less than one year, the person may renew the license by paying to the board all unpaid renewal fees, and a late fee of $120.

(4) If a person's license has been expired for one year or longer, the person may not renew the license but may obtain a new license by submitting to reexamination and complying with the current requirements and procedures for obtaining an initial license.

(5) The annual renewal application will be deemed to be the written notice of the impending license expiration forwarded to the person at the person's last known address according to the records of the board.

(d)[(c)] Mandatory Continuing Education for Renewal of License

(1) The board may not issue a renewal license to a licensee who has not complied with the mandatory continuing education requirements, unless an exemption provided by Rule 73.3 is applicable.

(2) If a licensee has not fulfilled the required continuing education requirements within the calendar year preceding the license renewal date, the license shall expire. To renew that expired license, the licensee may obtain and provide the board with certified attendance records that the licensee has, since the expiration of the license, completed sufficient hours of approved continuing education courses to satisfy any defiecency in the previous year. Education obtained for renewal of an expired license cannot be applied toward renewal of license for the following year.

(3) The licensee cannot practice chiropractic until such as education is obtained and the expired license has been renewed.

(4) The licensee must pay to the board the license renewal fee plus late fees as applicable under subsection (b)(1)(2) and (3) of this title.

(5) The Executive Director or the Board's designee shall determine if all requirements for renewal of license have been fulfilled, and will notify the licensee when the practice of chiropractic can resume.

(6) To practice chiropractic with an expired license shall constitute the practice of chiropractic without a license.

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 31, 1996.

TRD-9607596
Patte B. Kent
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: July 12, 1996
For further information, please call: (512) 305-6700

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Chapter 76. Investigations

22 TAC §76.3

The Texas Board of Chiropractic Examiners proposes an amendment to §76.3 regarding Request for Information and Records from Practitioners. Section 76.3(a) requires licensees to furnish records or a narrative of the records upon the written consent of a patient or patient's representative and sets out requirements governing the release of such records.

The board proposed this amendment to subsection (a) to set out more fully the statutory requirements and conditions that must be met in requesting records under this section. The subsection as proposed sets out the statutory provisions for chiropractors to charge a reasonable fee and to comply with requests within a reasonable time, provides for advance payment under certain circumstances and written notification to the patient stating the reasons for denial of a request. The subsection as proposed deletes provisions relating to requests by the board. To the extent that the current section may imply that the board, in the course of its duties, is restricted to obtaining patient records only with the written consent of the patient, the section is misleading. State law does not require the board to obtain patient records solely in this manner.

Patte B. Kent, Executive Director, has determined that for the first five-year period the section as amended is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section as amended.

Ms. Kent has also determined that for each year of the first five years the section as amended is in effect, the public benefit anticipated as a result of enforcing the section as amended will be that patients and chiropractors will have a written procedure governing requests for patient records, ensuring that requests are properly processed with the consent of the patient and chiropractor. While the section as proposed adds new provisions relating to the requesting process, these provisions are found also in Texas Civil Statutes, Article 4512b, §1b(j), §1b(k) and are applicable under the current section. The described benefit is the same for the current section as amended. There will be no effect on small businesses, or anticipated economic cost to persons who are required to comply with the section as amended.

Comments may be submitted to Patte B. Kent, Executive Director, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701.

The amendment is proposed under Texas Civil Statutes, Article 4512b, §4a, which authorizes the board to adopt rules necessary for performance of its duties and to regulate the practice of chiropractic and Texas Civil Statutes, Article 4512b, §§1b(j), 1b(k), which authorizes release of patient records under certain requirements and conditions.

The following are the statutes, articles or codes affected by the proposed amendment: §76.3 – Texas Civil Statutes, Article 4512b, §§1b(j), 1b(k), 4a.

§§76.3 Request for Information and Records from Practitioners.

(a) Request for chiropractic records. Upon request, a licensee shall furnish copies of chiropractic records or a summary or narrative of the records pursuant to a written consent for the release of the information or records. The requested information or record shall not be released if the licensee determines that access to the information would be harmful to the physical, mental, or emotional health of the patient. The licensee may delete from the requested records confidential information about another person who has not consented to release. For purposes of this subsection, "chiropractic records" means any records pertaining to the history, diagnosis, treatment or prognosis of the patient including records of other health care practitioners contained in the records of the licensee to whom a request for release of records has been made. "Patient" means any person who consults or is seen by a licensee for the purposes of receiving chiropractic care.

(b) Written consent.

(1) The written consent required by subsection (a) of this section shall be signed by:

(A) the patient;

(B) the patients' personal representative if the patient is deceased;

(C) a parent or legal guardian if the patient is a minor;

(D) a legal guardian if the patient has been adjudicated incompetent to manage his or her personal affairs; or

(E) an attorney ad litem for the patient as authorized by law, including the Health and Safety Code, Title 7, Family Code, Chapter 11 or the Probate Code, Chapter 5.

(2) The written consent shall contain the specific information or chiropractic records to be released under the consent; the reasons or purposes for the release; and the person to whom the information is to be released.

(3) The patient, or other person authorized to consent, has the right to withdraw the consent to the release of any information. Withdrawal of consent does not affect any information disclosed prior to the written notice of the withdrawal. Any person who received information made confidential by Texas Civil Statutes, Article 4612b may disclose the information to others only to the extent consistent with the authorized purposes for which consent to release information was obtained.

(c) Reasonable time. A copy of chiropractic records or a summary or narrative of the records requested under subsection (a) of this section shall be furnished by the licensee within reasonable time after the date of the request.

(d) Denial of request. If the licensee denies the request under subsection (a) of this section for a copy of chiropractic records or a summary or narrative of the records, either in whole or in part, the licensee shall furnish the patient a written statement, signed and dated, stating the reason for the denial. Chiropractic records requested pursuant to subsection (a) of this section may not be withheld based on a past due account for care or treatment previously rendered to the patient.

(e) Fee for records. The licensee may charge a reasonable fee for furnishing the information requested under subsection (a) of this section, which shall be paid by the patient or someone on the patient's behalf. A licensee may require payment in advance except from a practitioner or health care provider, including a chiropractor licensed by any other state, territory, or insular possession of the United States or any state or province of Canada if requested for purposes of emergency or acute medical care. In the event payment is not received, within ten calendar days from notification of the

charge, the licensee shall notify the requesting party in writing of the need for payment.

(f) Subpoena not required. A subpoena shall not be required for the release of chiropractic records requested pursuant to subsection (a) of this section.

[(a) Chiropractic records. A licensee shall furnish copies of chiropractic records, or a summary or narrative of the records, or the original records if the board provides the licensee with a medical record release form signed by the patient, or a parent or legal guardian if the patient is a minor, or a legal guardian if the patient has been adjudicated incompetent to manage his personal affairs, or an attorney ad litem appointed for the patient, as authorized by the Texas Mental Health Code (Article 5547-1 et seq., Vernon's Texas Civil Statutes); the Mentally Retarded Persons Act of 1977 (Article 5547-300, Vernon's Texas Civil Statutes); section 9, Chapter 411, Acts of the 53rd Legislature, Regular Session, 1953 (Article 5561c, Vernon's Texas Civil Statutes); section 2, Chapter 543, Acts of the 61st Legislature, Regular Session, 1969 (Article 5561c-1, Vernon's Texas Civil Statutes); Chapter 5, Texas Probate Code; and Chapter 11, Family Code; or a personal representative if the patient is deceased, provided that the written consent specifies the following:

[(1) the information or chiropractic records to be covered by the release;

[(2) the reasons or purposes for the release; and

[(3) the person to whom the information is to be released.[The patient, or other person authorized to consent, has the right to withdraw his consent to the release of any information. Withdrawal of consent does not affect any information disclosed prior to the written notice of the withdrawal.[Any person who received information made confidential by this Act may disclose the information to others only to the extent consistent with the authorized purposes for which consent to release information was obtained. These records shall be furnished to the board within two weeks of the date of the board's request.]

(g)[(b)] Renewal of licenses. A licensee shall furnish a written explanation of his or her answer to any question asked on the application for license renewal, if requested by the board. This explanation shall include all details as the board may request and shall be furnished within two weeks of the date of the board's request.

[(c)] Impaired practitioners.

(1) The board shall require a licensee to submit to a mental and/or physical examination by the appropriate health care provider designated by the board if the board has probable cause to believe that the licensee is impaired. An impaired practitioner is considered to be one who is unable to practice chiropractic with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material; or as a result of any mental or physical condition.

(2) Probable cause may include, but is not limited to, any one of the following:

(A) sworn statements from two people, willing to testify before the board, that a certain licensee is impaired;

(B) evidence that a licensee left a treatment program for alcohol or chemical dependency before completion of that program;

(C) evidence that a licensee is guilty of intemperate use of drugs or alcohol;

(D) evidence of repeated arrests of a licensee for intoxication;

(E) evidence of recurring temporary commitments to a mental institution of a licensee; or

(F) chiropractic records showing that licensee has an illness or condition which results in the inability to function properly in his or her practice.

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 31, 1996.

TRD-9607597
Patte B. Kent
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: July 12, 1996
For further information, please call: (512) 305-6700

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Part XVII. Texas State Board of Plumbing Examiners

Chapter 361. Administration

General

22 TAC §361.27

The Texas State Board of Plumbing Examiners, proposes new §361.27. This section specifies the process for entry of appearance, failure to enter an appearance, and failure to appear at a hearing on a contested case.

Ernest Pereyra, Chief Fiscal Officer, Texas State Board of Plumbing Examiners, has determined that for the first five-year period the rule is in effect there will be no effect to state or local government as a result of enforcing the rule.

Mr. Pereyra also has determined that for each year of the first five years the rule is in effect the public benefit will be a reduction in the expenditure of public funds due to the elimination of wasted public resources by having the orderly and efficient disposition of contested cases. The rule will also provide uniform and predictable outcomes in instances where respondents fail to enter an appearance or attend a hearing. There will be no effect on small businesses. There is no economic cost to the persons having to comply with this new rule.

Comments may be submitted to Ernest Pereyra, Chief Fiscal Officer, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200.

The new rule, §361.27, is proposed under and effects Texas Revised Civil Statutes Annotated Article 6243-101, §5(a), 8A, and 9 (Vernon 1996).

§361.27. Rules of Practice and Procedure

(a) Entry of Appearance: Continuance

(1) When a contested case has been instituted, the respondent or the representative of the respondent shall enter an appearance within 20 days of the date on which the notice of hearing is provided to the respondent.

(2) For the purposes of this section, a contested case shall mean any action that is referred by the Texas State Board of Plumbing Examiners to the State Office of Administrative Hearings.

(3) For purposes of this section, an entry of appearance shall mean the filing of a written answer or other responsive pleading with the State Office of Administrative Hearings.

(4) For purposes of this section, notice of hearing is provided to a respondent on the date of deposit in the United States mail of a certified letter containing a notice of hearing in accordance with provisions of the Administrative Procedure Act.

(5) The failure of a party to timely enter an appearance as provided in this section shall entitle the Texas State Board of Plumbing Examiners if requested to a continuance at the time of the hearing in the contested case for such a reasonable period of time as determined by the Administrative Law Judge, but not for a period of less than 20 days.

(6) The notice of hearing provided to a licensee for a contested case as defined in this section shall include the following language in capital letters in bold face type: FAILURE TO ENTER AN APPEARANCE BY FILING IN WRITING AN ANSWER OR OTHER RESPONSIBLE PLEADING TO THE ALLEGATIONS CONTAINED IN THE COMPLAINT WITHIN 20 DAYS OF THE DATE THIS NOTICE WAS MAILED SHALL ENTITLE THE STATE BOARD OF PLUMBING EXAMINERS TO A CONTINUANCE IF REQUESTED AT THE TIME OF THE HEARING FOR A TIME PERIOD SET BY THE ADMINISTRATIVE LAW JUDGE, BUT NOT LESS THAN 20 DAYS.

(b) Failure to Attend Hearing: Default Judgment

(1) If a respondent fails to appear in person or by legal representative on the day and at the time set for hearing in a contested case regardless of whether an appearance has been entered, the Administrative Law Judge, upon motion by the petitioner, shall enter a default judgement in the matter adverse to the respondent who has failed to attend the hearing.

(2) For purposes of this section, default judgment shall mean the issuance of a proposal for decision against the respondent in which the factual allegations against the respondent contained in the Complaint shall be admitted as prima facie evidence, and deemed admitted as true, without any requirement for additional proof to be submitted by the petitioner.

(3) Any default judgment granted under this section will be entered on the basis of the factual allegations contained in the Complaint, and upon the proof of proper notice to the defaulting party opponent. Such notice also shall include the following language in capital letters in bold face type: FAILURE TO APPEAR AT THE HEARING WILL RESULT IN THE ALLEGATIONS AGAINST YOU SET OUT IN THE COMPLAINT BEING ADMITTED AS TRUE.

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 17, 1996.

TRD-9607674
Ernest Pereyra
Chief Fiscal Officer
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: July 12, 1996
For further information, please call: (512) 458-2145

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22 TAC §361.28

The Texas State Board of Plumbing Examiners, proposes new §361.28. This section defines the guidelines for review of forms which contain a response of yes in the felony and misdemeanor box by the Chief Examiner for the examination application and the Chief Field Representative for the license renewal form. The new rule will allow individuals convicted of a first time misdemeanor driving while intoxicated or possession of drugs to be approved by the Chief Examiner to take the requested examination and the Chief Field Representative to renew their license.

Ernest Pereyra, Chief Fiscal Officer, Texas State Board of Plumbing Examiners, has determined that for the first five-year period the rule is in effect there will be no effect to state or local government as a result of enforcing the rule.

Mr. Pereyra also has determined that for each year of the first five years the rule is in effect the public benefit will be a reduction in the expenditure of public funds due to the elimination of wasted public resources by having an efficient evaluation of examination applications and license renewals by limiting those cases forwarded to the Texas State Board of Plumbing Examiner's Enforcement Committee. There will be no effect on small businesses. There is no economic cost to the persons having to comply with this new rule.

Comments may be submitted to Ernest Pereyra, Chief Fiscal Officer, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200.

The new rule, §361.28, is proposed under and effects Texas Revised Civil Statutes Annotated Article 6243-101, §5(a), 8, 8A, and 9 (Vernon 1996).

§361.28. Preliminary Criminal Reviews.

(a) The Chief Examiner will review applications for examination which contain a response of yes in the felony and misdemeanor box of the form to determine if the individual should be allowed to take the examination. The Chief Examiner, based upon his review, may allow individuals convicted of first time misdemeanor driving while intoxicated or possession of drugs to take the examination. Any individual not approved by or outside of the authority of the Chief Examiner will be reviewed by the Texas State Board of Plumbing Examiner's Enforcement Committee.

(b) The Chief Field Representative will review all license renewal forms which contain a response of yes in the felony and misdemeanor box of the form to determine if the individual should be allowed to renew their license. The Chief Field Representative, based upon his review, may allow individuals convicted of first time

misdemeanor driving while intoxicated or possession of drugs to renew their license. Any individual not approved by or outside of the authority of the Chief Field Representative will be reviewed by the Texas State Board of Plumbing Examiner's Enforcement 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 17, 1996.

TRD-9607675
Ernest Pereyra
Chief Fiscal Officer
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: July 12, 1996
For further information, please call: (512) 458-2145

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Chapter 365. Licensing

22 TAC §365.10

The Texas State Board of Plumbing Examiners, proposes an amendment to §365.10. This section defines the how to apply for a license or endorsement after revocation. This amendment is being proposed to clarify that the individual's application must be approved by the board after a revocation.

Ernest Pereyra, Chief Fiscal Officer, Texas State Board of Plumbing Examiners, has determined that for the first five-year period the rule is in effect there will be no effect to state or local government as a result of enforcing the rule.

Mr. Pereyra also has determined that for each year of the first five years the rule is in effect the public benefit will be a clearer understanding of the procedures that an applicant must follow after revocation of his license. There will be no effect on small businesses. There is no anticipated change in the economic cost to persons who are required to comply with the rule.

Comments may be submitted to Ernest Pereyra, Chief Fiscal Officer, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200.

The amendment to §365.10 is proposed under and effects Texas Revised Civil Statutes Annotated Article 6243-101, §5(a) and 9 (Vernon 1995).

§365.10. Application for License or Endorsement after Revocation.

Any individual whose license or endorsement has been revoked may apply **to the Board** for a new license or endorsement after a waiting period of at least one year from the date of revocation [. The] **the** [board shall require] **enforcement committee shall be delegated the authority of making the initial review of a previously revoked license. If the committee decides to deny the application for a new license, it shall proceed in the same manner it would if presented any other application it believes should be denied. If the committee makes a decision to approve the applicant's request, it must none the less be presented for approval before the board members, at a regularly scheduled Board meeting to approve the applicant's request, if approved, then** the applicant is to follow the same licensing procedures required of a first-time licensee.

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 17, 1996.

TRD-9607676
Ernest Pereyra
Chief Fiscal Officer
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: July 12, 1996
For further information, please call: (512) 458-2145

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22 TAC §365.14

The Texas State Board of Plumbing Examiners, proposes an amendment to §365.14. This section specifies the process by which providers apply to offer continuing education to plumbers. The amendment changes the legal cite for Central Education Agency certification requirements and allows for more than four providers of continuing education.

Ernest Pereyra, Chief Fiscal Officer, Texas State Board of Plumbing Examiners, has determined that for the first five-year period the rule is in effect there will be no effect to state or local government as a result of enforcing the rule.

Mr. Pereyra also has determined that for each year of the first five years the rule is in effect the change in public benefit will be clearer understanding of the rules relating to providers of continuing education and allow for more than four providers of continuing education which will provide more educational opportunities to plumbers taking continuing education. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule.

Comments may be submitted to Ernest Pereyra, Chief Fiscal Officer, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200.

The amendment to §365.14 is proposed under and effects Texas Revised Civil Statutes Annotated Article 6243-101, §5(a) and 12B (Vernon 1995).

§365.14. Continuing Education Programs.

(a) Any provider wishing to offer continuing education in plumbing must make application at least 60 days prior to the March board meeting each year. The 60-day deadline will become effective September 1, 1995. The board shall approve [no more than four] **the** providers annually. All providers will submit to the board a list of instructors and instructors' credentials for board approval. The board will approve a course and textbook each year as well as a course outline and establish the required minimum hours. The providers shall meet the certification requirements of the Central Education Agency or be exempted from the Central Education Agency certification requirements under Texas Education Code, Chapter **1**32, **1**32.**002**(a), (Texas Proprietary School Act) or be approved by the United States Department of Labor-Bureau of Apprenticeship Training Schools and/or Programs. **No exemptions will be permitted under (7) of the Education Code.**

(b)-(e) (no change.)

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

Issued in Austin, Texas on May 17, 1996.

TRD-9607677
Ernest Pereyra
Chief Fiscal Officer
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: July 12, 1996
For further information, please call: (512) 458-2145

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Chapter 367. Enforcement

22 TAC §367.7

The Texas State Board of Plumbing Examiners, proposes an amendment to §367.7. The amendment makes it clear that performance of nonexempt plumbing work by an unsupervised and unlicensed plumber or falsely advertising that you are licensed plumber is a Class C misdemeanor. This amendment is necessary to ensure that the public is aware of the consequences of performing nonexempt plumbing work without a licensed plumber or falsely advertising that you are a licensed plumber.

Ernest Pereyra, Chief Fiscal Officer, Texas State Board of Plumbing Examiners, has determined that for the first five-year period the rule is in effect there will be no effect to state or local government as a result of enforcing the rule.

Mr. Pereyra also has determined that for each year of the first five years the rule is in effect the public benefit will be a better understanding of the impact of our rules on unlicensed individuals performing nonexempt plumbing work without the supervision of a licensed plumber.

Comments may be submitted to Ernest Pereyra, Chief Fiscal Officer, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200.

The adoption of §367.7 is proposed under and effects Texas Revised Civil Statutes Annotated Article 6243-101, §5(a), 8A, and 8B (Vernon 1996).

§367.7. Violations of Standards and Practices.

(a) The board may take disciplinary actions as specified in chapter 365 of this part (relating to Licensing) in the event of any violation of any of these requirements.

(b) A person commits a Class C misdemeanor by knowingly and wilfully:

(1) Violating the act or the rules adopted under it;

(2) Performing nonexempt plumbing work without holding a valid license or endorsement issued through the board; [and]

(3) Employing an unlicensed individual to perform activities that by law require the skills and supervision of a licensed plumber[.] **without providing for that unlicensed individual's supervision as specified by 367.3 of this title (relating to requirement for plumbing companies).**

(4)Proclaiming through advertising or by producing another's plumbing license or license number or by other means claiming that a person is a licensed plumber when in fact that person is not a plumber licensed by the board or that a plumbing company has secured the services of a master plumber as specified in §367.3 of this title, when in fact that company has not.

(c) (no change.)

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

Issued in Austin, Texas on May 17, 1996.

TRD-9607678
Ernest Pereyra
Chief Fiscal Officer
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: July 12, 1996
For further information, please call: (512) 458-2145

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 7. Corporate and Financial Regulation

Subchapter A. Examination and Financial Analysis

28 TAC §7.18

The Texas Department of Insurance proposes an amendment to §7.18 concerning the Accounting Practices and Procedures manuals published by the National Association of Insurance Commissioners (NAIC). The amendment is proposed to modify the Accounting Practices and Procedures manuals currently adopted by rule, and to provide notice and opportunity for hearing to insurers and other interested parties of certain changes in statutory accounting standards. The amendment updates the adoption by reference of the NAIC's Accounting Practices and Procedures Manual for Life, Accident and Health Insurance Companies through January, 1996 from October, 1994 and the NAIC's Accounting Practices and Procedures Manual for Property and Casualty Companies through October, 1995 from October, 1994. These manuals are used by the department in the regulation of the financial condition of insurers that do business in Texas. The NAIC's Accounting Practices and Procedures Manual for Health Maintenance Organizations (June, 1991) has not been changed since its adoption by reference on July 13, 1995. A summary of the changes is available from the Financial Monitoring Activity of the Texas Department of Insurance. The department has filed with the Office of the Secretary of State , Texas Register Division, copies of the documents proposed for adoption by reference. Other copies are available for inspection in the Financial Monitoring Activity of the Texas Department of Insurance, William P. Hobby State Office Building, 333 Guadalupe, Tower 3, Austin, Texas.

Since the adoption by reference of the NAIC's Accounting Practices and Procedures Manual for Life, Accident and Health Insurance Companies effective July 13, 1995, the NAIC made substantive revisions or additions to the manual concerning the accounting treatment of "Dollar Repurchase Agreements," "Re-

verse Mortgages," "State Guarantee Association Promissory Notes," and "Reinsurance." Since the adoption by reference of the NAIC's Accounting Practices and Procedures Manual for Property and Casualty Companies effective July 13, 1995, the NAIC made substantive revisions or additions to the manual concerning "Dollar Repurchase Agreements," "Reverse Mortgages," "Loss Adjustment Expenses," "Unearned Premium - single or fixed premium policies with coverage periods in excess of 13 months," "Loss Adjustment Expenses Incurred," and "Reinsurance." The proposed amendment provides notice and opportunity for a hearing to interested parties of the changes to the manuals as required by Texas Insurance Code, Article 1.27.

Jose Montemayor, associate commissioner for the financial program, has determined that there will not be fiscal implications as a result of enforcing or administering the amended section for state or local government or small businesses for the first five-year period the amended section will be in effect. The National Association of Insurance Commissioners Accounting Procedures and Practices manuals provide a standard for the department to follow in assuring uniform accounting by insurers doing business in Texas. The manuals provide a standard for the information summarized in the Annual Statement and other financial statements filed with the department. Also, the department follows these standards in evaluating the financial condition of insurers and evaluating applications by insurers under the Holding Company Act.

Mr. Montemayor also has determined that, for each year of the first five years this section is in effect, the public benefits anticipated as a result of enforcing this section will be more efficient administrative regulation of insurers and the methods insurers use in preparing financial statements. Additionally, the amendment will assure that an insurer's statutory financial statements accurately reflect its financial condition. Accurate financial reporting will minimize the impact of an insurer's insolvency to this state's guaranty funds. The anticipated economic cost of compliance will vary depending on the volume and complexity of an insurer's operations.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposed section in the Texas Register to Alicia M. Fechtel, General Counsel and Chief Clerk, Mail Code, 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Jose Montemayor, Associate Commissioner-Financial Program, Mail Code 305-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Request for a public hearing on the proposed amendment should be submitted separately to the Office of the Chief Clerk.

The section is proposed under the Insurance Code, Articles 1.03A, 1.27, 1.32, 3.10, 5.75-1, 21.39, and 21.49-1. The Insurance Code, 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 1.27 provides that the department may not require an insurer to comply with any standard adopted by the National Association of Insurance Commissioners unless the application of the standard is expressly authorized by the commissioner. Such authority exists, in this case, as established by the other statutes cited herein. Article 1.32 authorizes the commissioner to fix standards for evaluating the financial condition of an insurer. Articles 3.10 and 5.75-1 authorize the commissioner to adopt rules relating to accounting and financial statement requirements of reinsurance agreements between insurers. Article 21.28-A authorizes the commissioner to adopt rules concerning the rehabilitation of insurers. Article 21.39 authorizes the commissioner to adopt each current formula for establishing reserves recommended by the NAIC. Article 21.49-1 authorizes the commissioner to adopt rules to carry out the provisions of the Insurance Holding Company System Regulatory Act.

The following are the articles of the Texas Insurance Code that are affected by this section: Articles 1.03A, 1.15, 1.27, 1.32, 2.10-3, 2.10-4, 3.39-1, 3.39-2, 6.01, 3.10, 5.75-1, 21.28-A, 21.39, and 21.49-1.

§7.18. National Association of Insurance Commissioners Accounting Practices and Procedures Manuals.

(a) (No change.)

(b) The commissioner adopts by reference the NAIC Accounting Practices and Procedures manuals as the accounting standard for the department when examining financial reports and for conducting statutory examinations and rehabilitations of insurers licensed in Texas, except where otherwise provided by law or where the commissioner has adopted rules which provide otherwise. Specifically, these manuals are the NAIC *Accounting Practices and Procedures Manual for Life, Accident and Health Insurance Companies* (**January, 1996** [October, 1994]), the NAIC *Accounting Practices and Procedures Manual for Property and Casualty Companies* (October, **1995** [1994]), and the NAIC *Accounting Practices and Procedures Manual for Health Maintenance Organizations* (June, 1991). Whenever any NAIC Accounting Practices and Procedures manual is referred to by statute or rule, it shall mean the particular NAIC Accounting Practices and Procedures manual (as specified in this subsection by name and publication date) for the **type** [line] of insurance regulated by the statute or rule in question.

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

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

Issued in Austin, Texas, on June 3, 1996.

9607684
Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance
Proposed date of adoption: July 12, 1996.
For further information, please call: (512) 463-6327

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Subchapter F. Reinsurance

28 TAC §7.611

The Texas Department of Insurance proposes an amendment to §7.18 concerning the Accounting Practices and Procedures manuals published by the National Association of Insurance Commissioners (NAIC). The amendment is proposed to modify the Accounting Practices and Procedures manuals currently adopted by rule, and to provide notice and opportunity for

hearing to insurers and other interested parties of certain changes in statutory accounting standards. The amendment updates the adoption by reference of the NAIC's Accounting Practices and Procedures Manual for Life, Accident and Health Insurance Companies through January, 1996 from October, 1994 and the NAIC's Accounting Practices and Procedures Manual for Property and Casualty Companies through October, 1995 from October, 1994. These manuals are used by the department in the regulation of the financial condition of insurers that do business in Texas. The NAIC's Accounting Practices and Procedures Manual for Health Maintenance Organizations (June, 1991) has not been changed since its adoption by reference on July 13, 1995. A summary of the changes is available from the Financial Monitoring Activity of the Texas Department of Insurance. The department has filed with the Office of the Secretary of State , Texas Register Division, copies of the documents proposed for adoption by reference. Other copies are available for inspection in the Financial Monitoring Activity of the Texas Department of Insurance, William P. Hobby State Office Building, 333 Guadalupe, Tower 3, Austin, Texas.

Since the adoption by reference of the NAIC's Accounting Practices and Procedures Manual for Life, Accident and Health Insurance Companies effective July 13, 1995, the NAIC made substantive revisions or additions to the manual concerning the accounting treatment of "Dollar Repurchase Agreements," "Reverse Mortgages," "State Guarantee Association Promissory Notes," and "Reinsurance." Since the adoption by reference of the NAIC's Accounting Practices and Procedures Manual for Property and Casualty Companies effective July 13, 1995, the NAIC made substantive revisions or additions to the manual concerning "Dollar Repurchase Agreements," "Reverse Mortgages," "Loss Adjustment Expenses," "Unearned Premium - single or fixed premium policies with coverage periods in excess of 13 months," "Loss Adjustment Expenses Incurred," and "Reinsurance." The proposed amendment provides notice and opportunity for a hearing to interested parties of the changes to the manuals as required by Texas Insurance Code, Article 1.27.

Jose Montemayor, associate commissioner for the financial program, has determined that there will not be fiscal implications as a result of enforcing or administering the amended section for state or local government or small businesses for the first five-year period the amended section will be in effect. The National Association of Insurance Commissioners Accounting Procedures and Practices manuals provide a standard for the department to follow in assuring uniform accounting by insurers doing business in Texas. The manuals provide a standard for the information summarized in the Annual Statement and other financial statements filed with the department. Also, the department follows these standards in evaluating the financial condition of insurers and evaluating applications by insurers under the Holding Company Act.

Mr. Montemayor also has determined that, for each year of the first five years this section is in effect, the public benefits anticipated as a result of enforcing this section will be more efficient administrative regulation of insurers and the methods insurers use in preparing financial statements. Additionally, the amendment will assure that an insurer's statutory financial statements accurately reflect its financial condition. Accurate financial reporting will minimize the impact of an insurer's insolvency to this state's guaranty funds. The anticipated economic cost of compliance will vary depending on the volume and complexity of an insurer's operations.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposed section in the Texas Register to Alicia M. Fechtel, General Counsel and Chief Clerk, Mail Code, 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Jose Montemayor, Associate Commissioner-Financial Program, Mail Code 305-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Request for a public hearing on the proposed amendment should be submitted separately to the Office of the Chief Clerk.

The section is proposed under the Insurance Code, Articles 1.03A, 1.27, 1.32, 3.10, 5.75-1, 21.39, and 21.49-1. The Insurance Code, 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 1.27 provides that the department may not require an insurer to comply with any standard adopted by the National Association of Insurance Commissioners unless the application of the standard is expressly authorized by the commissioner. Such authority exists, in this case, as established by the other statutes cited herein. Article 1.32 authorizes the commissioner to fix standards for evaluating the financial condition of an insurer. Articles 3.10 and 5.75-1 authorize the commissioner to adopt rules relating to accounting and financial statement requirements of reinsurance agreements between insurers. Article 21.28-A authorizes the commissioner to adopt rules concerning the rehabilitation of insurers. Article 21.39 authorizes the commissioner to adopt each current formula for establishing reserves recommended by the NAIC. Article 21.49-1 authorizes the commissioner to adopt rules to carry out the provisions of the Insurance Holding Company System Regulatory Act.

The following are the articles of the Texas Insurance Code that are affected by this section: Articles 1.03A, 1.15, 1.27, 1.32, 2.10-3, 2.10-4, 3.39-1, 3.39-2, 6.01, 3.10, 5.75-1, 21.28-A, 21.39, and 21.49-1.

§§7.18. National Association of Insurance Commissioners Accounting Practices and Procedures Manuals.

(a) (No change.)

(b) The commissioner adopts by reference the NAIC Accounting Practices and Procedures manuals as the accounting standard for the department when examining financial reports and for conducting statutory examinations and rehabilitations of insurers licensed in Texas, except where otherwise provided by law or where the commissioner has adopted rules which provide otherwise. Specifically, these manuals are the NAIC *Accounting Practices and Procedures Manual for Life, Accident and Health Insurance Companies* (**January, 1996** [October, 1994]), the NAIC *Accounting Practices and Procedures Manual for Property and Casualty Companies* (October, **1995** [1994]), and the NAIC *Accounting Practices and Procedures Manual for Health Maintenance Organizations* (June, 1991). Whenever any NAIC Accounting Practices and Procedures manual is referred to by statute or rule, it shall mean the particular NAIC Accounting Practices and Procedures manual (as specified in this subsection by

name and publication date) for the **type** [line] of insurance regulated by the statute or rule in question.

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

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

Issued in Austin, Texas, on June 3, 1996.

9607683
Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance
Proposed date of adoption: July 12, 1996.
For further information, please call: (512) 463-6327

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part X. Texas Water Development Board

Chapter 363. Financial Assistance Programs

The Texas Water Development Board (the board) proposes amendments to §363.33 concerning Interest Rates for Loans and Purchase of Board's Interest in State Participation Projects and §363.502 concerning Definition of Terms. The amendment to §363.33 will reduce the interest rate for SRF variable rate loans resulting from the Board's cost savings on extension of its Standby Bond Purchase Agreement. The amendments to §363.502 will remove definitions no longer used in the subchapter.

Pamela Ansboury, the Director of Finance, has determined that for each year of the first five years the sections are in effect there will be fiscal implications as a result of enforcing or administering the sections. Effect on State government is an estimated reduction in cost of $5,833 for 1996, and $35,000 for each of the years 1997, 1998, and 1999. Effects on local government as a result of enforcing or administering the sections is an estimated reduction in cost of $2,500 in each of the years 1997, 1998, and 1999. The savings to State government will pass on to the local government in future years after 2000.

Ms. Ansboury also has determined that for each year of the first five years that the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to provide cost savings to users of the Board's SRF variable rate loans. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Comments on the amendments will be accepted for 30 days following publication and may be submitted to Kevin Ward, Development Fund Manager, (512) 463-8221 or Suzanne Schwartz, General Counsel, (512) 463-7891, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231.

Subchapter A. General Provisions

Formal Action by the Board

31 TAC §363.33

The amendments are proposed under the authority of the Texas Water Code, 6.101, 16.342, and 15.605 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, including the SRF Program.

Chapter 15, Subchapter J is the statutory provision affected by the proposed amendments.

§363.33. Interest Rates for Loans and Purchase of Board's Interest in State Participation Projects.

(a)-(b) no change.

(c) Interest Rates for Loans from the State Water Pollution Control Revolving Fund.

(1) (no change.)

(2) The interest rate for SRF variable rate loans under this chapter will be set at a rate equal to the actual interest cost paid by the board on its outstanding variable rate debt plus **31.5** [36.5] basis points. Variable rate loans are required to be converted to long-term fixed rate loans within 90 days of project completion unless an extension is approved in writing by the Development Fund Manager. Borrowers may request to convert to a long-term fixed rate at any time, upon notification to the Development Fund Manager and submittal of a resolution requesting such conversion. The fixed lending rate will be calculated under the procedures and requirements of subsection (a)(1) of this section and paragraph (1) of this subsection.

(3) (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 31, 1996.

TRD-9607637
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: July 18, 1996
For further information, please call: (512) 463-7981

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Subchapter E. Economically Distressed Areas Program

Economically Distressed Areas

31 TAC 363.502

The amendments are proposed under the authority of the Texas Water Code, 6.101, 16.342, and 15.605 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, including the SRF Program.

Chapter 15, Subchapter J is the statutory provision affected by the proposed amendments.

§363.502. Definitions of Terms.

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

[Affected county–Is defined as either of the following:]

[(A) a county that has a per capita income that averaged 25% below the state average for the most recent three consecutive years for which United States Bureau of Economic Analysis statistics are available and an unemployment rate that averaged 25% above the state average for the most recent three consecutive years for which Texas Employment Commission statistics are available and is on a list calculated annually and maintained by the executive administrator of the Texas Water Development Board; or]

[(B) a county that is adjacent to an international border.]

[Economically distressed area–An area in which water supply or sewer services are inadequate to meet minimal needs of residential users, in which financial resources are inadequate to provide water supply or sewer services that will satisfy those needs, and in which 80% of the dwellings to be served by financial assistance under the Texas Water Code, Chapter 17, Subchapter K, were occupied on June 1, 1989.]

[Minimal needs–Minimal water supply needs and minimal sewer service needs.]

[Minimal sewer service needs–Wastewater facilities that treat wastewater without a nuisance or public health problem.]

[Minimal water supply needs–Water supply which meets the water quality and quantity standards for a community water system as established by the Texas Department of Health.]

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 31, 1996.

TRD-9607637
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: July 18, 1996
For further information, please call: (512) 463-7981

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Subchapter E. Economically Distressed Areas Program

Economically Distressed Areas

31 TAC 363.502

The amendments are proposed under the authority of the Texas Water Code, 6.101, 16.342, and 15.605 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, including the SRF Program.

Chapter 15, Subchapter J is the statutory provision affected by the proposed amendments.

§363.502. Definitions of Terms.

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

[Affected county–Is defined as either of the following:]

[(A) a county that has a per capita income that averaged 25% below the state average for the most recent three consecutive years for which United States Bureau of Economic Analysis statistics are available and an unemployment rate that averaged 25% above the state average for the most recent three consecutive years for which Texas Employment Commission statistics are available and is on a list calculated annually and maintained by the executive administrator of the Texas Water Development Board; or]

[(B) a county that is adjacent to an international border.]

[Economically distressed area–An area in which water supply or sewer services are inadequate to meet minimal needs of residential users, in which financial resources are inadequate to provide water supply or sewer services that will satisfy those needs, and in which 80% of the dwellings to be served by financial assistance under the Texas Water Code, Chapter 17, Subchapter K, were occupied on June 1, 1989.]

[Minimal needs–Minimal water supply needs and minimal sewer service needs.]

[Minimal sewer service needs–Wastewater facilities that treat wastewater without a nuisance or public health problem.]

[Minimal water supply needs–Water supply which meets the water quality and quantity standards for a community water system as established by the Texas Department of Health.]

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 31, 1996.

TRD-9607637
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: July 18, 1996
For further information, please call: (512) 463-7981

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter B. Natural Gas Production Tax

34 TAC §3.21

The Comptroller of Public Accounts proposes an amendment to §3.21, concerning an exemption or tax reduction for high-cost natural gas. This section is being amended pursuant to House Bill 398, 74th Legislature, 1995, and to clarify changes made by House Bill 2723, 73rd Legislature, 1993, which call for a temporary exemption or tax reduction from the natural gas production tax for gas produced from a high-cost gas well.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

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

The amendment implements the Tax Code, §201.057.

*§3.21. Exemption **or Tax Reduction** for High-Cost Natural Gas.*

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

(1) Commission-The Railroad Commission of Texas.

(2) Recompletion-The performance of work within an existing wellbore for the purpose of drilling to a deeper producing formation or plugging back to a more shallow producing formation.

(3) High-cost gas-

(A) High-cost natural gas as described by Natural Gas Policy Act of 1978, §107, as that section exists on January 1, 1989, without regard to whether that section is in effect or whether a determination has been made that the gas is high-cost natural gas for purposes of that Act; or

(B) All gas produced from oil wells or gas wells within a Commission approved co-production project.

(4) Commission approved co-production project - A reservoir development project in which the Commission has recognized that water withdrawals from an oil or gas reservoir in excess of specified minimum volumes will result in recovery of additional oil and/or gas from the reservoir that would not be produced by conventional production methods and where operators of wells completed in the reservoir have begun to implement Commission requirements to withdraw such volumes of water and dispose of such water outside the subject reservoir. Reservoirs potentially eligible for this designation shall be limited to those reservoirs in which oil and/or gas has been bypassed by water encroachment caused by production from the reservoir and such bypassed oil and/or gas may be produced as a result of reservoir-wide high-volume water withdrawals of natural formation water.

(5) Date of first production- or purposes of the reduced tax rate available for high-cost natural gas wells spudded or completed after August 31, 1996, shall mean the first day of the month following the earlier of the month of the deliverability test as reported on the appropriate Commission form or the production month as indicated on the first production report filed showing a gas disposition code other than 'lease or field fuel use' or "vented or flared."

(6) Consecutive months-Months in consecutive order, regardless of whether or not a well produces oil or gas during any or all such months.

(7) Amount of tax reduction for a well - The product of the full tax rate times the ratio of drilling and completion costs for the well to twice the median drilling and completion costs for high-costs wells for which an application for the exemption or tax reduction was made during the previous state fiscal year. Drilling and completion costs for a recompletion shall only include current and contemporaneous costs associated with the recompletion.

(8) Reduced tax rate-The tax rate obtained when the amount of tax reduction is subtracted from the full tax rate, except that the effective rate of the tax shall never be less than zero.

(b) [(a)] **Producers.** Producers producing gas[, and/]or gas products extracted from the gas[,] from a gas completion certified by the [Texas Railroad] Commission as qualifying for **the high-cost gas** tax exemption**or reduced tax rate or from an oil or gas well within a Commission approved co-production project** may file with the comptroller an application for tax exemption **or the reduced tax rate**. **Except as provided by subsection (k) of this section, tax must be paid on gas and gas products at the full rate until the date the comptroller approves the application.**

(c) [(b)] **Condensate.** Condensate, as defined under the Tax Code, §201.001(2), produced with the high-cost gas is not exempt from the tax.

(d) [(c)] **Gas produced.** Gas produced along with oil is not exempt from the tax **unless the gas is from an oil well within a Commission approved co-production project.**

(e) [(d)] **Application form.** The operator shall make application on forms prescribed by the comptroller[,] for the exemption **or tax reduction** on gas produced and sold or used by the operator or by any other interest owner in the property. **The operator shall provide a copy of the approved application to any interest owner taking gas in-kind.** The operator shall also be responsible for advising the comptroller whenever the status of an exemption **or tax reduction** changes.

(f) [(e)] **Application supporting documents.** The application for exemption **or reduced tax rate** shall include:

(1) a copy of the [Texas Railroad] Commission [Form F-1, Supplemental Application and/or] High-cost Gas State Severance Tax Exemption Certificate Application;

(2) a copy of the letter of tax exemption certificate issued by the [Texas Railroad] Commission;

(3) the [effective] date [of the exemption granted by] the [Texas Railroad] Commission **approves the exemption or reduced tax rate;** [and]

(4) the date of first production; **(5)**[(4)] a statement as to whether or not tax has been paid on the gas for periods after the effective date of the exemption, and the name of the party paying the tax; **and**

(6) a report of drilling and completion costs incurred for each well on a form and in the detail as determined by the comptroller.

(g) Application due date. The application for exemption or tax reduction must be filed with the comptroller the later of the 180th day after the date of first production or the 45th day after the date of approval by the Commission. For wells spudded or completed and producing prior to September 1, 1995, and qualifying for the exemption created by the Tax Code, §201.057(b), application for the exemption must be made within 180 days of September 1, 1995. An application for exemption created by the Tax Code, §201.057(a)(2)(B) may not be filed before January 1, 1990, or after December 31, 1998.

(h) [(f)] **Time limitation for refunds.** When an application for exemption **or reduced tax rate** has been approved by the comptroller, a producer **or purchaser** may file amended reports to recover the tax paid by the producer **or purchaser** on the high-cost gas for periods after the [effective] date of **first production** [exemption] and prior to the comptroller's approval of exemption. In order to obtain a refund, the amended reports must be filed within one year after the date the comptroller approves the application for exemption **or reduced tax rate**.

(i) [(g)] **Notification to non-producers.** Producers obtaining an approval for exemption from the comptroller shall furnish to any first purchaser required to report a purchase of high-cost gas a copy of the comptroller's approval. Any first purchaser paying tax on high-cost gas for periods after the [effective] date of **first production** [exemption] and prior to the comptroller's approval of exemption shall file amended reports to recover the tax paid. In order to obtain a refund, the amended reports must be filed within one year after the date the comptroller **approves** [approved] the application for exemption **or reduced tax rate**.

(j) [(h)] **Reporting requirements.** Producers and purchasers **must use the following designations when reporting gas that qualifies for the temporary exemption or tax reduction**[reporting high-cost gas after the comptroller approves the exemption shall designate the gas as being exempt from tax by reporting lease type "6," which shall mean "Approved High-Cost Gas Well Gas." The exempt high-cost gas shall be reported separately from the non-exempt production, if any, on the same lease].

(1) Producers and purchasers reporting high-cost gas from a well spudded or completed before September 1, 1996, shall, after the comptroller approves the exemption, designate the gas as being exempt from tax by reporting lease type "6," which shall mean "Approved High-Cost Gas Well Gas-Temporary Exemption."

(2) Producers and purchasers reporting high-cost gas from a well spudded or completed on or after September 1, 1996, shall, after the comptroller approves the reduced tax rate, designate the gas as being exempt from tax by reporting lease type "5," which shall mean "Approved High-Cost Gas Well Gas-Reduced Tax Rate."

(3) Producers and purchasers reporting high-cost gas from an oil or gas well as defined by subsection (a)(3)(B) of this section shall, after the comptroller approves the exemption, designate the gas as being exempt from tax by reporting lease type "8," which shall mean High-Cost Gas Exemption-Co-Production Project.

(4) Gas qualifying for the temporary exemption, the reduced tax rate or the exemption for gas from a co-production project must be reported separately from any non-exempt production, if any, on the same lease.

(5) Producers or purchasers reporting exempt gas and non-exempt gas through the use of a commingling permit issued by the Commission must allocate the gas production between exempt and non-exempt gas by use of a method approved by the comptroller.

(6) Except as provided by subsection (j)(5) of this section, producers or purchasers reporting exempt gas or non-exempt gas must report the gas by using as a part of the comptroller's lease identification number the completion number assigned by the Commission.

(k) Reduced tax rate. Tax must be paid at the full rate on all gas as defined in subsection (a)(2)(A) of this section for wells spudded or completed between September 1, 1996, and August 31, 1997. On or after September 1, 1997, the party paying the tax at the full rate may apply to the comptroller for a refund of tax equal to the difference between the tax paid at the full rate and the tax that would be due if calculated at the reduced tax rate as defined in subsection (a)(7) of this section.

(l) Limitation of tax reduction. Once the comptroller approves an application for the reduced tax rate, tax will be due at the reduced tax rate for the first 120 consecutive months beginning with the date of first production or until the cumulative value of the tax reduction equals 50% of the drilling and completion costs incurred for the well, whichever occurs first. The operator shall provide to any interest owner taking gas in-kind the amount of tax reduction calculated according to subsection (a)(7) of this section.

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

Issued in Austin, Texas, on May 31, 1996.

TRD-9607575
Martin Cherry
Chief, General Law
Comptroller of Public Accounts
Earliest possible date of adoption: July 12, 1996
For further information, please call: (512) 463–4062

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Subchapter V. Franchise Tax

34 TAC §3.544

The Comptroller of Public Accounts proposes an amendment to §3.544, concerning reports and payments. The reasons for amending the rule are as follows: the term "beginning date" was revised in accordance with Senate Bill 644, 74th Legislature, 1995. The current rate of interest has been revised to show changes made by the legislature to interest rates charged taxpayers. Amendments have also been made to reflect agency policy concerning accounting year ending dates, revisions to other section references, the filing of amended reports as a result of Internal Revenue Service audits, and the payment of jeopardy determinations. A new subsection has been added

concerning the public information report, in accordance with Senate Bill 644, 74th Legislature, 1995.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government beyond that anticipated in the legislation's fiscal note.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in clarifying comptroller rules related to franchise tax reports and payments. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

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

The amendment implements Tax Code, §§171.001, et. seq.

§3.544. Reports and Payments.

(a) Reports and due dates.

(1) **Each** [Except as provided in subsection (f) of this section, each] domestic and foreign corporation subject to the franchise tax levied by the Tax Code, §171.001, must file an initial franchise tax report, and thereafter an annual franchise tax report, and at the same time must pay the franchise tax and any applicable penalties and interest due by the corporation. It is the responsibility of a receiver to file franchise tax reports and pay the franchise tax of a corporation in receivership. A debtor in possession or the appointed trustee or receiver of a corporation in reorganization or arrangement proceedings under the Bankruptcy Act is responsible for filing franchise tax reports and paying the franchise tax prior to confirming and consummating the plan of reorganization or arrangement.

(A) "Beginning date" means:

(i) for a [Texas] corporation **chartered in this state, the date on which the corporation's charter takes effect** [,the charter date]; and

(ii) for a foreign corporation, the earlier of **the date on which**:

(I) the **corporation's** certificate of authority **takes effect** [date]; or

(II) [the date] the corporation begins doing business in **this state** [Texas].

(B) Both the initial report and payment of the tax due, if any, are due no later than 89 days after the first anniversary date of the beginning date. The initial franchise tax report and payment are for the privilege periods beginning on the beginning date and ending on December 31 following the first anniversary of the beginning date. For example, if a Texas corporation is chartered on June 1, 1992, the payment due with the initial report will be for the privilege periods from June 1, 1992-December 31, 1993. In addition, when the first anniversary occurs during the period from October 4 through December 31, there must also be computed and paid with the initial report an additional year's tax for the privilege period beginning on January 1 following the first anniversary and ending on the following December 31. For example, if a Texas corporation is chartered on November 1, 1992, the payment due with the initial report will be for the **privilege** [tax] periods from November 1, 1992-December 31, 1994. The taxable capital component of the tax computed on the initial report is based on the financial condition as of the last accounting period ending date that is at least six months after the beginning date and at least 60 days before the original due date. If there is no such ending date, then the initial report is based on the financial condition on the last day of the calendar month nearest to the end of the corporation's first year of business. The earned surplus component of the tax computed on the initial report is based on the business done during the period beginning on the beginning date and ending on the last accounting period ending date for federal income tax purposes that is at least 60 days before the original due date of the initial report, or, if there is no such ending date, then ending on the day that is the last day of the calendar month nearest to the end of the corporation's first year of business.

(C) The annual franchise tax report must be filed and the tax paid no later than May 15 of each year. The annual tax is paid for the privilege period of the calendar year in which the report is due. The taxable capital component of the tax computed on an annual report is based on the financial condition as of the last day of the last accounting period ending in the calendar year before the calendar year in which the tax is originally due. **If there is no accounting period ending in the previous calendar year, then the taxable capital component should be based on the financial condition as of December 31 of the previous calendar year.** The earned surplus component of the tax computed on an annual report is based on the business done during the period beginning with the day after the last date upon which the earned surplus component was based on a previous report, and ending with **the** [its] last accounting period ending date for federal income tax purposes ending in the calendar year before the calendar year in which the report is originally due. For the 1992 annual report, the earned surplus component is based on the business done during the period beginning with the day after the date upon which the previous report was based, and ending with **the** [its] last accounting period ending date for federal income tax purposes ending in 1991. **A corporation which uses a 52-53 week accounting year end and has an accounting year ending the first four days of January of the year in which the annual report is originally due may use the preceding December 31 as the date through which taxable earned surplus is computed.**

(D) See §3.565 of this title (relating to Survivors of Mergers) for special rules concerning corporations which are survivors of mergers.

(E) See §3.545 of this title (relating to Extensions [for Annual Reports]) for extensions of time to file an annual report.

(F) See §3.567 of this title (relating to Additional Tax on Earned Surplus) for information concerning the additional tax imposed by the Tax Code, §171.0011.

(G) See §3.572 of this title (relating to 1992 Transition) for **transitional information concerning tax rates and privilege periods as a result of certain legislative changes** [special rules

concerning mergers, reorganizations, and transfers of assets occurring after August 13, 1991, and before January 1, 1992].

(2) The postmark date (or meter-mark if there is no postmark) on the envelope in which the report or payment is received determines the date of filing.

(3) An information report must be filed, even if no tax is due. A corporation must file an initial report as the information report for the privilege periods covered by an initial report. A corporation must file an annual report as an information report for a regular annual privilege period not covered by an initial report.

(b) Penalty and interest.

(1) The Tax Code, §171.362, imposes a 5.0% penalty on the amount of franchise tax due by a corporation which fails to report or pay the tax when due. If any part of the tax is not reported or paid within 30 days after the due date, an additional 5.0% penalty is imposed on the amount of tax unpaid. There is a minimum penalty of $1.00. Delinquent taxes accrue interest beginning 60 days after the due date. For example, if payment is made on the 61st day after the due date, one day's interest is due. Simple interest accrues at an annual rate of 6.0% through March 31, 1980; at an annual rate of 7.0% from April 1, 1980-December 31, 1981; and, beginning January 1, 1982, at 10% per annum, for taxes due before September 1, 1991. For taxes due on or after September 1, 1991, **simple interest accrues at an annual rate of 12% [the yearly interest rate] on all delinquent taxes [is 12%, compounded monthly].**

(2) When a corporation is issued an audit assessment or other underpayment notice based on a deficiency, penalties under the Tax Code, §171.362, and interest are applied as of the date that the underpaid tax was originally due, including any extensions, not from the date of the deficiency determination or date the deficiency determination is final.

(3) A deficiency determination is final 30 days after the date on which the service of the notice of the determination is completed. Service by mail is complete when the notice is deposited with the United States Postal Service.

(A) The amount of a determination is due and payable 10 days after it becomes final. If the amount of the determination is not paid within 10 days after the day it became final, a penalty under the Tax Code, §111.0081, of 10% of the tax assessed will be added. For example, if a deficiency determination is made in the amount of $1,000 tax, **(plus the initial penalty and interest), but the total amount of the deficiency is not paid until** [$100 penalty and $15 interest (assume interest accrues $1.00 per day), then on] the 41st day after the deficiency notice is served, **$1,200 plus interest** [$1,256] would be due (i.e., $1,000 tax, $100 initial penalty for not paying when originally due, $100 penalty for not paying deficiency determination within 10 days after it became final, **plus interest accrued to the date of payment at the applicable statutory rate** [and $56 interest]).

(B) A petition for redetermination must be filed within 30 days after the date on which the service of the notice of determination is completed, or the redetermination is barred.

(C) A decision of the comptroller on a petition for redetermination becomes final 20 days after service on the petitioner of the notice of the decision. The amount of a determination is due and payable 20 days after a comptroller's decision is final. If the amount of the determination is not paid within 20 days after the day the decision becomes final, a penalty under the Tax Code, §111.0081 of 10% of the tax assessed will be added. Using the previous example, on the 41st day after service of the comptroller's decision, **$1,200 plus interest** [$1,251] would be due (i.e., $1,000 tax, $100 initial penalty, $100 additional penalty and **the applicable accrued** [$51] interest).

(4) A jeopardy determination is final 20 days after the date on which the service of the notice is completed unless a petition for redetermination is filed before the determination becomes final. Service by mail is complete when the notice is deposited with the United States Postal Service. The amount of the determination is due and payable immediately. If the amount determined is not paid within 20 days from the date of service, a penalty, under the Tax Code, §111.022, of 10% of the amount of tax and interest assessed will be added.

(5) If the comptroller determines that a corporation exercised reasonable diligence to comply with the statutory filing or payment requirements, the comptroller may waive penalties or interest for the late filing of a report or for a late payment. The corporation requesting waiver must furnish a detailed description of the circumstances which caused the late filing or late payment and the diligence exercised by the corporation in attempting to comply with the statutory requirements. **See §3.5 of this title (relating to Waiver of Penalty or Interest) for additional information.**

(c) Consolidated reporting. A consolidated or combined report, reflecting the financial data of a parent corporation and its subsidiaries or the financial data of other separate corporations as though they were a single economic entity, is not allowed.

(d) Amended reports.

In filing an amended report, the corporation must type or print on the report, immediately above the corporation name, the phrase "Amended Report." The report should be forwarded with a cover letter of explanation, with enclosures necessary to support the amendment. Applicable penalties and interest must be reported and paid on any additional amount of tax shown to be due on the amended report. (1) A corporation may file an amended report for the purpose of correcting a mathematical or other error in a report or for the purpose of supporting a claim for refund. [Applicable penalties and interest must be reported and paid on any additional amount of tax shown to be due on the amended report. In filing an amended report, the corporation must type or print on the report, immediately above the corporation name, the phrase "Amended Report." The report should be forwarded with a cover letter of explanation, with enclosures necessary to support the amendment.]

(2) A corporation which has been audited by the Internal Revenue Service must file an amended franchise tax report within 120 days after the Revenue Agent's Report (RAR) is finalized, if the RAR results in changes to amounts reported for franchise tax purposes. An RAR is considered to be finalized when all administrative appeals with the Internal Revenue Service have been exhausted or forgone.

(e) Comptroller. During the course of an audit or other examination of a corporation's franchise tax account, the comptroller may examine financial statements, working papers, registers, memoranda, contracts, corporate minutes, and any other business papers used in connection with its accounting system. In connection with

his examination, the comptroller may also examine any of the corporation's officers or employees under oath.

(f) Jeopardy determination. **Beginning with reports originally due on or after May 15, 1996, the payment of** [If] a jeopardy determination **,**[is] issued to a corporation for an estimated tax liability [on an annual reporting period, payment of the estimated liability, plus applicable penalty and interest,] shall **not** satisfy the reporting requirements set forth in the Tax Code, **Chapter 171, Subchapter E** [§171.202].

(g) Rate. An annual tax rate of $6.70 per $1,000 of net taxable capital and an annual minimum tax of $150 applies to May 1, 1988-April 30, 1990, of any tax period.

(h) Public information report. Each corporation on which the franchise tax is imposed must file a public information report as described in Tax Code, §171.203.

(1) A public information report is due at the same time each initial and annual report is due.

(2) Beginning with reports originally due on or after January 1, 1996, an officer or director of the corporation must sign the public information report under a certification that:

(A) all information contained in the report is true and correct to the best of the officer's knowledge; and

(B) a copy of the report has been mailed to each person named in the report who is an officer or director and who is not employed by the corporation or a related (at least 10% ownership) corporation on the date the report is filed.

(3) Failure to sign or file a public information report shall result in the forfeiture of corporate privileges as provided by Tax Code, §171.251. If the corporate privileges are forfeited, each officer or director of the corporation may be liable for each debt of the corporation that is created or incurred in Texas after the date on which the report is due and before the corporate privileges are revived, as provided by Tax Code, §171.255.

(4) The provisions of paragraph (3) of this subsection concerning forfeiture of corporate privileges do not apply to a banking corporation or a savings and loan association, as defined in Tax Code, §171.001.

(i) [(h)] Effective date. This section applies to reports originally due on or after January 1, 1992, unless otherwise specified.

This agency 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 30, 1996.

TRD-9607569
Martin E. Cherry
Chief, General Law Section
Comptroller of Public Accounts
Earliest possible date of adoption: July 12, 1996
For further information, please call: (512) 463-4028

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 14. School Bus Transportation

The Texas Department of Public Safety proposes new §§14.1, 14.2, 14.11 - 14.14, and 14.31 - 14.36, concerning minimum eligibility requirements a person must meet to be employed as a school bus driver. These new sections set forth minimum school bus driver employment eligibility requirements, school bus driver training program requirements, and definitions of terms commonly used in the profession.

The proposals are necessary to implement the provisions of Senate Bill 1, 74th Legislature, 1995, which amended Texas Education Code, §34.007 and §22.084 and amended Texas Civil Statutes, Article 6687b, §5(a), recodified as Texas Transportation Code, §521.022. These statutes require the Texas Department of Public Safety to adopt rules and procedures necessary for determining school bus driver employment eligibility and school bus driver training program requirements. These rules set forth procedures for determining school bus driver employment eligibility requirements, medical examination requirements, and the appeals process regarding medical disqualification of a school bus driver, minimum driving record qualifications, and school bus driver training program requirements.

Tom Haas, Chief of Finance, has determined that for the first five-year period the sections are in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the sections.

Mr. Haas also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the training and employment of eligible school bus drivers. There are no anticipated economic costs to small or large businesses.

The anticipated economic cost to persons who wish to be trained and employed as school bus drivers or training instructors will be the commercial driver's license fee of $40 for a four year license.

Comments on the proposal may be submitted to John C. West, Jr., Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512)424-2890.

Subchapter A. General Provisions

37 TAC 14.1, §14.2

The new sections are proposed pursuant to Texas Civil Statutes, Article 6687b, §5(a), recodified as Texas Transportation Code, §521.022, which require the Texas Department of Public Safety to adopt rules and procedures necessary for determining school bus driver employment eligibility and school bus driver training program requirements.

Texas Civil Statutes, Article 6687b, §5(a) and Texas Transportation Code, §521.022 are affected by this proposal.

§14.1. Appendix.

The following figures apply to Chapter 14 School Bus Transportation:

(1) Medical Examination Report for School Bus Drivers; Figure 1: 37 TAC §14.1(1)

(2) Request for Special Consideration of Medical Disqualification as a School Bus Driver;
Figure 2: 37 TAC §14.1(2)

(3) School Bus Drivers' Driving Record Evaluation;
Figure 3: 37 TAC §14.1(3)

(4) Instructor's Certificate for School Bus Driver Training in Texas;
Figure 4: 37 TAC §14.1(4)

(5) School Bus Driver Training Verification;
Figure 5: 37 TAC §14.1(5)

(6) Texas School Bus Driver Training Certificate Example; and
Figure 6: 37 TAC §14.1(6)

(7) Application for School Bus Driver Enrollment Certificate.
Figure 7: 37 TAC §14.1(7)

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

Commission -The General Services Commission of the State of Texas.

Department -The Texas Department of Public Safety.

Director -The director of the Texas Department of Public Safety.

Enrollment certificate -A valid provisional certificate issued by a training agency under the authority of the director indicating a person has enrolled in the School Bus Driver Training Program as described in the *Program Guide for School Bus Drivers in Texas* and meets the requirements designated therein.

Medical Advisory Board - The Medical Advisory Board of the Texas Department of Health.

Physician -A person licensed to practice medicine by the Texas State Board of Medical Examiners or the correlating state authority designated by statute to license, regulate, and discipline physicians in another state of the United States of America.

Practicing medicine - A person practicing medicine who:

(A) shall publicly profess to be a physician or surgeon and shall diagnose, treat, or offer to treat any disease or disorder, mental or physical, or any physical deformity or injury by any system or method or to effect cures thereof; or

(B) shall diagnose, treat, or offer to treat any disease or disorder, mental or physical, or any physical deformity or injury by any system or method or to effect cures thereof and charge therefor, directly or indirectly, money or other compensation.

School bus -A bus owned or leased by a school district or county transportation system, or a bus operated by a private contractor under contract with a school district or county transportation system to transport students, excluding a bus used in an urban area by a common carrier to transport students or a bus designed to accommodate more than 10 and less than 16 passengers (including the driver) which is used to transport students on school-related activities, that:

(A) on the date of manufacture, complied with the current requirements provided in the specifications handbook for Texas school buses as developed, adopted, and published under authority of Texas Civil Statute, Article 6701d, §105(a), recodified as Texas Transportation Code, §547.701; or

(B) currently meets the statutory equipment requirements of a school bus found in the Texas Transportation Code, §547.607 and §547.701, including a fire extinguisher, convex mirror and four alternately flashing red lights, and complies with the lighting and warning device equipment rules promulgated by the department as set forth in Subchapter D, §14.52 of this title (relating to standards).

Training agency -The twenty Regional Education Service Centers in the state of Texas approved by the department to teach the school bus driver training program.

Training certificate -A document issued under the authority of the director to a person indicating successful completion of the School Bus Driver Training Program approved by the department.

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 13, 1996.

TRD-9607564
James R. Wilson
Director
Texas Department of Public Safety
Earliest possible date of adoption: July 12, 1996
For further information, please call: (512) 424-2890

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Subchapter B. School Bus Driver Eligibility and Application Procedures

37 TAC §§14.11-14.14

The new sections are proposed pursuant to Texas Civil Statutes, Article 6687b, §5(a), re-codified as Texas Transportation Code, §521.022 which require the Texas Department of Public Safety to adopt rules and procedures necessary for determining school bus driver employment eligibility and school bus driver training program requirements.

Texas Civil Statutes, Article 6687b, §5(a) and Texas Transportation Code, §521.022 are affected by this proposal.

§14.11. School Bus Driver Employment Qualifications.

At a minimum, to become employed and maintain employment status as a school bus driver transporting students, a person must meet the following requirements:

(1) be at least 18 years of age;

(2) possess a valid driver's license designating a class appropriate (with applicable endorsement, if commercial driver's license) for the gross vehicle weight rating and manufacturer's designed passenger capacity of vehicle to be operated;

(3) meet the medical requirements as specified in §14.12 of this title (relating to Medical Qualifications);

(4) maintain an acceptable driving record meeting the minimum standards established under §14.14 of this title (relating to Minimum Driving Record Qualifications);

(5) have an acceptable criminal history record (secured from any law enforcement agency) reviewed in accordance with the provisions of current state statute (see Texas Education Code § 22.084); and

(6) possess a valid Texas School Bus Driver Training Certificate indicating successful completion of the Texas School Bus Driver Training Program or a valid Enrollment Certificate as specified in Subchapter C, §14.34 of this title (relating to School Bus Driver Certification) and Subchapter C, §14.35 of this title (relating to Enrollment Certificates).

§14.12. Medical Qualifications..

(a) Annual Physical Examination. Each school bus driver shall undergo and successfully complete an annual physical examination. The results of the examination shall be noted on the Texas Department of Public Safety form,*Medical Examination Report for School Bus Drivers* , which lists those physical and mental conditions for which the examining physician is directed to disqualify an applicant according to Figure 1: §14.1(1) of this title (relating to Appendix).

(b) Physical qualifications. A person is physically qualified to drive a school bus if that person:

(1) has no loss of a foot, a leg, a hand, or an arm;

(2) has no impairment in the use of a hand, an arm, a foot, a leg or any other structural defect or other limitation which is likely to interfere with his/her ability to control and safely operate a motor vehicle;

(3) has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control;

(4) has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure;

(5) has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with his/her ability to drive a motor vehicle safely;

(6) has no current clinical diagnosis of high blood pressure likely to interfere with his/her ability to operate a motor vehicle safely;

(7) has no established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, neuromuscular or vascular disease which interferes with his/her ability to control and operate a motor vehicle safely;

(8) has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a motor vehicle;

(9) has no mental, nervous, organic, or functional disease or psychiatric disorder likely to interfere with his/her ability to operate a motor vehicle safely;

(10) has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70 in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber;

(11) first perceive a forced whispered voice in the better ear at not less than five feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5-1951. (This requirement does not apply to an otherwise qualified person with a hearing disability to be employed as a bus driver for vehicles used to transport hearing impaired students or persons.);

(12) does not use a Schedule 1 drug or other substance, an amphetamine, a narcotic, or any other habit-forming drug; and

(13) has no current clinical diagnosis of alcoholism.

(c) Physical Exam. Instructions for performing and recording physical examinations:

(1) The examining physician should review these instructions before performing the physical examination. Answer each question yes or no where appropriate. The examining physician should be aware of the rigorous physical demands and mental and emotional responsibilities placed on the driver of a commercial motor vehicle. In the interest of public safety, the examining physician is required to certify that the driver does not have any physical, mental, or organic defect of such a nature as to affect the driver's ability to safely operate a commercial motor vehicle. The physician must date and sign his/her findings upon completion of the examination and furnish the original to the motor carrier employer.

(2) The medical examination shall be performed by a doctor of medicine or osteopathy currently licensed to practice medicine by the Texas Board of Medical Examiners or the correlating state authority designated by statute to license, regulate, and discipline physicians in another state of the United States. A licensed ophthalmologist or optometrist may perform only that portion of examinations pertaining to visual acuity, field of vision, and ability to recognize colors.

(3) The purpose of this medical examination is to detect the presence of physical, mental, or organic defects of such a character and extent as to affect the applicant's ability to operate a motor vehicle safely. History of certain defects may be cause for rejection, or indicate the need for making certain laboratory tests, or a further and more stringent examination. Defects may be recorded which do not, because of their character or degree, indicate that certification of physical fitness should be denied. However, these defects should be discussed with the applicant and he/she should be advised to take the necessary steps to ensure correction, particularly of those which if neglected, might lead to a condition likely to affect his/her ability to drive safely. The examination should be made carefully and at least as completely as detailed in subparagraphs (A) - (S) of this paragraph.

(A) General appearance and development. Note marked overweight. Note any posture defect, perceptible limp, tremor, or other defects that might be caused by alcoholism, thyroid intoxication, or other illness. Both State and Federal Motor Carrier

Safety Regulations provide that no driver shall use a narcotic or other habit-forming drug.

(B) Head-Eyes. When other than the Snellen chart is used, the results of such test must be expressed in values comparable to the standard Snellen test. If the applicant wears corrective lenses, these should be worn while the applicant's visual acuity is being tested. If appropriate, indicate on the *Medical Examiner's Certificate* by checking the box, "Qualified only when wearing corrective lenses." In testing distance vision, use 20 feet as normal. Record all vision as a fraction with 20 feet as the numerator and the smallest type read at 20 feet as the denominator. Note ptosis, discharge, visual fields, ocular muscle imbalance, color blindness, corneal scar, exophthalmos, or strabismus, uncorrected by corrective lenses. Monocular drivers are not qualified to operate commercial motor vehicles under existing State of Texas Motor Carrier Safety Regulations, unless granted a waiver. If the driver habitually wears contact lenses or intends to do so while driving, there should be sufficient evidence to indicate that he/she has good tolerance and is well adapted to their use. The use of contact lenses should be noted on the record.

(C) Ears. Note evidence of mastoid or middle ear disease, discharge, symptoms of aural vertigo, or Meniere's Syndrome. When recording hearing, record distance from patient at which a forced whispered voice can first be heard. If audiometer is used to test hearing, record decibel loss at 500 Hz, 1,000 Hz, and 2,000 Hz.

(D) Throat. Note evidence of disease, irremediable deformities of the throat likely to interfere with eating or breathing, or any laryngeal condition which could interfere with the safe operation of a motor vehicle.

(E) Thorax-heart. Stethoscopic examination is required. Note murmurs and arrhythmias and any past or present history of cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, enlarged heart, or congestive heart failures. Electrocardiogram is required when findings so indicate.

(F) Blood pressure. Record with either a spring or mercury column type of sphygmomanometer. If the blood pressure is consistently above 160/90 mm. Hg., further tests may be necessary to determine whether the driver is qualified to operate a motor vehicle.

(G) Lungs. If any lung disease is detected, state whether active or arrested. If arrested, give your opinion as to how long it has been quiescent.

(H) Gastrointestinal system. Note any diseases.

(I) Abdomen. Note wounds, injuries, scars, or weakness of muscles of abdominal walls sufficient to interfere with normal function. Any hernia should be noted if present. State how long and if adequately contained by a truss.

(J) Abnormal masses. If present, note location, if tender, and whether or not the applicant knows how long they have been present. If the diagnosis suggests that the condition might interfere with the control and safe operation of a motor vehicle, more stringent tests must be made before the applicant can be certified.

(K) Tenderness. When noted, state where most pronounced and the suspected cause. If the diagnosis suggests that the condition might interfere with the control and safe operation of a motor vehicle, more stringent tests must be made before the applicant can be certified.

(L) Genito-urinary. Urinalysis is required. Acute infections of the genito-urinary tract, as defined by local and state public health laws, indications from urinalysis of uncontrolled diabetes, symptomatic albumin-urea in the urine or other findings indicative of health conditions likely to interfere with the control and safe operation of a motor vehicle, will disqualify an applicant. An examination for scars and urethral discharge is required only when findings so indicate.

(M) Neurological. If positive Rhomberg is reported, indicate degrees of impairment. Pupillary reflexes should be reported for both light and accommodation. Knee jerks are to be reported absent only when not obtainable upon reinforcement and as increased when the foot is actually lifted from the floor following a light blow on the patella, sensory vibratory and positional abnormalities should be noted.

(N) Extremities. Carefully examine upper and lower extremities. Record the loss or impairment of a leg, foot, toe, arm, hand, or fingers. Note any and all deformities, the presence of atrophy, semiparalysis or paralysis, or varicose veins. If a hand or finger deformity exists, determine whether sufficient grasp is present to enable the driver to secure and maintain a grip on the steering wheel. If a leg deformity exists, determine whether sufficient mobility and strength exist to enable the driver to operate pedals properly. Particular attention should be given to and a record should be made of any impairment or structural defect which may interfere with the driver's ability to operate a motor vehicle safely.

(O) Spine. Note deformities, limitation of motion, or any history of pain, injuries, or diseases, past or presently experienced in the cervical or lumbar spine region. If findings so dictate, radiological and other examinations should be used to diagnose congenital or acquired defects; or spondylolitis and scoliosis.

(P) Recto-genital studies. Diseases or conditions causing discomfort should be evaluated carefully to determine the extent to which the condition might be handicapping while lifting, pulling, or during periods of prolonged driving that might be necessary as part of the driver's duties.

(Q) Laboratory and other special findings. Urinalysis is required, as well as such other tests as the medical history findings upon physical examination may indicate are necessary. A serological test is required if the applicant has a history of luetic infection or present physical findings indicate the possibility of latent syphilis. Other tests as deemed advisable may be ordered by the examining physician.

(R) Diabetes. If insulin is necessary to control a diabetic condition, the driver is not qualified to operate a motor vehicle. If mild diabetes is noted at the time of examination and it is stabilized by use of a hypoglycemic drug and diet that can be obtained while the driver is on duty, it should not be considered disqualifying. However, the driver must remain under adequate medical supervision.

(S) Controlled Substances Testing. If a test for controlled substances is performed as part of the medical examination, the physician is to check the box next to the statement, "controlled substances test performed." If a controlled substances test is performed under the requirements of 49 Code of Federal Regulations (CFR) Part 40 and 49 CFR Part 382, then the physician must also check the box next to the statement, "in accordance with 49 CFR Part 40 and 49 CFR Part 382" and must obtain information that the results

of such test were negative prior to certifying that the driver is otherwise medically qualified. If a controlled substance test is performed but not in accordance with 49 CFR Part 40 and 49 CFR Part 382, the physician must also check the box next to the statement, "not in accordance with 49 CFR Part 40 and 49 CFR Part 382" and ensure that the results of the test were negative prior to certifying that the driver is otherwise medically qualified.

§14.13. Request for Special Consideration.

Any person disqualified on the basis of the medical examination may request special consideration from the director, or designee, for a waiver of medical disqualification in accordance with the following procedure:

(1) The form, *Texas Medical Advisory Board Release Authorization for School Bus Drivers*, must be properly completed and signed by both the person applying for the waiver (applicant) and each examining physician that provides medical records and/or a medical opinion referring to the applicant, and must accompany each request for special consideration. Figure 2: §14.1(2) of this title (relating to Appendix).

(2) In requesting special consideration, the applicant must submit in writing to the director or designee clear and convincing evidence supporting that his or her functions are not impaired to such an extent as to reduce the applicant's physical and mental capabilities to safely operate a school bus or endanger the safety and welfare of school children. The director or designee may require the applicant to submit additional supporting evidence or other related information.

(3) The following documents must be delivered to the department for each waiver request:

(A) *Request for Special Consideration* ;

(B) *Medical Examination Report for School Bus Drivers*;

(C) *Texas Medical Advisory Board Release Authorization* - provide one copy for each physician that submits a medical opinion and/or medical records referring to the applicant;

(D) Letter from the prospective employer; and

(E) Letter(s) containing medical opinion(s) and/or medical records from any examining physicians that applicant requests the Medical Advisory Board to review.

(4) The director or designee shall forward the *Request for Special Consideration*, along with all submitted supporting evidence/documentation submitted by the applicant, to the Medical Advisory Board, Texas Department of Health, for official review and recommendation/opinion.

(5) Following receipt of the recommendation of the Medical Advisory Board, the director or designee shall review the findings and recommendation and may grant or deny the applicant's request for special consideration. In no event will the director or designee grant a request for special consideration in the absence of a report or statement from a qualified physician (licensed doctor of medicine or osteopathy) indicating that the applicant is clearly able to adequately perform the functions required of a school bus driver.

(6) The department may impose appropriate restrictions on the license of the applicant as authorized in Texas Transportation Code, §521.221.

§14.14. Minimum Driving Record Qualifications.

(a) The following standards have been established by the department as minimum requirements to be met by each person seeking to become employed or to remain employed as a school bus driver to drive any motor vehicle while in use as a school bus for the transportation of students:

(1) the driver's license record of each school bus driver shall be evaluated at least annually by the employer or designated person. Schools may request a "Type 3" driver history from the department. Penalty points shall be assessed for those entries which appear in the accompanying tables of traffic law violations and accident involvements according to the School Bus Driver's Driving Record Evaluation, Figure 3: §14.1(3) of this title (relating to Appendix). Any person who has accumulated ten or more penalty points shall be considered ineligible to transport students until such time as he/she may become qualified; and

(2) an applicant for employment as a commercial motor vehicle driver must disclose to the employer any violations of motor vehicle laws or ordinances (other than violations involving only parking) of which the applicant was convicted or forfeited bond or collateral during the three years preceding the date the application is submitted and any serious traffic violations of which the applicant was convicted during the ten years preceding the date the application is submitted, as well as any suspension, revocation, or cancellation of any driving privilege that resulted from the conviction. For verification purposes, it is strongly recommended that driving records be secured for all new applicants that have held an out-of-state driver's license within the past seven years. These records should include all convictions which would result in mandatory suspension of a driver's license in Texas according to Table IV and Table V of Figure 3: §14.1(3) of this title.

(b) In determining a person's eligibility to drive a school bus, the following standards shall apply in assessing penalty points for convictions of traffic law violations and accident involvements appearing on his/her current driving record:

(1) convictions for violations included in Table I, Figure 3 §14.1(3) of this title, shall be assessed one penalty point for each occurrence if the date of the violation is within three years of the date of the driving record evaluation;

(2) accident involvements included in Table II, Figure 3: §14.1(3) of this title, shall be assessed two penalty points if the date of occurrence is within three years of the date of the driving record evaluation. Persons disqualified because of penalty points assessed for accident involvement shall be notified of their right to a review;

(3) convictions for violations included in Table III, Figure 3: §14.1(3) of this title, shall be assessed three penalty points for each occurrence if the date of the violation is within three years of the date of the driving record evaluation;

(4) convictions for violations included in Table IV, Figure 3: §14.1(3) of this title, shall be assessed ten penalty points for each occurrence if the date of the violation is within seven years of the date of the driving record evaluation; and

(5) convictions for violations included in Table V, Figure 3: §14.1(3) of this title, shall be assessed ten penalty points for each occurrence if the date of the violation is within five years of the date of the driving record evaluation.

(c) The assessment of penalty points is not required for any entry which does not appear in the alphabetized table listings. However, any entry which is deemed comparable to one appearing in these tables should be assessed an equivalent number of penalty points.

(d) Appeal procedure for assessment of points due to accident involvement. Two points should automatically be assessed for an accident involvement occurring within three years of the date of the driver record evaluation which appears on the driver history record. Applicants assessed two points for accident involvements appearing on their driving record may request a review by the person designated by the employer to determine if they were a cause of the accident(s). The applicant must identify the specific accident involvement(s) to be reviewed. Request a copy of the accident report(s) on the approved form,*Request for Copy of Peace Officer's Accident Report* (ST-90). Mail the form to Accident Records Bureau, Texas Department of Public Safety at the address listed on the form. The requested reports will be provided on a priority basis without charge. The designated person shall review information pertinent to the accident(s), which should include the *Texas Peace Officer's Accident Report* (ST-3). In examining this report, consideration of such items as Charges Filed, Investigator's Narrative of What Happened, Diagram, and Factors/ Conditions Contributing to the Accident should assist in making a determination as to whether or not the assessment of penalty points is appropriate. If the designated person reviews the accident report and any other pertinent information and determines that the applicant was not a cause of the accident(s), no penalty points shall be assessed. If the designated person determines that the applicant was a cause of the accident(s), two penalty points shall be assessed for each accident. The decision of the employer is final.

(e) Appeal procedure for administrative disqualification.

(1) Ten penalty points should automatically be assessed for any of the code entries listed in Table V, Figure 3: §14.1(3) of this title, that appear on the driver's license record of a school bus driver. Any persons disqualified from driving a school bus on the basis of penalty points assessed from an Administrative License Revocation (ALR) suspension or disqualification appearing on their driver's license record and who has properly filed an appeal, may request the points be withdrawn pending appeal of the ALR judge's decision.

(2) The school bus driver must provide to the employer or designated person a file-stamped copy of the appeal filed with the State Office of Administrative Hearings and Texas Department of Public Safety. Once the designated person has confirmed that an appeal has been properly filed, the penalty points assessed for an ALR suspension or disqualification shall be removed from the applicant's driving record pending the final decision of the appeal if:

(A) the applicant's driver's license has not been suspended as a result of any alcohol-related or drug-related enforcement contact (as defined in the Texas Transportation Code, §524.001) during the five years preceding the date of the person's arrest; and

(B) the person has not been convicted during the ten years preceding the date of the person's arrest of an offense under:

(i) Texas Civil Statutes, Article 6701l-1, as that law existed before September 1, 1994;

(ii) Texas Penal Code, §19.05(a)(2), as that law existed before September 1, 1994;

(iii) Texas Penal Code, §49.04; or

(iv) Texas Penal Code, §49.07 or §49.08, if the offense involved the operation of a motor vehicle.

(3) A withdrawal of the penalty points under this table is effective for not more than ninety days after the date the appeal petition is filed. On the expiration of the ninetieth day, the person designated by the employer shall assess ten penalty points. An extension of the ninety-day period or additional time shall not be allowed.

(4) If, in the final decision of the court, the driver's license is not suspended/disqualified, no penalty points shall be assessed. If, in the final decision of the court, the driver's license is suspended or disqualified, ten penalty points shall be assessed for each suspension or disqualification arising from a separate arrest.

(5) Credit for concurrent suspension arising from same alcohol-related incident. If a criminal conviction occurs that arises out of the same arrest as the ALR suspension/disqualification, the penalty points shall be assessed for the Table IV criminal conviction only. Any disqualification time already served under the Table V disqualification will be credited to the Table IV disqualification time period. The total disqualification period arising out of the same arrest shall not be longer than seven years.

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 13, 1996.

TRD-9607563
James R. Wilson
Director
Texas Department of Public Safety
Earliest possible date of adoption: July 12, 1996
For further information, please call: (512) 424-2890

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Subchapter C. School Bus Driver Training Program

37 TAC §§14.31-14.36

The new sections are proposed pursuant to Texas Civil Statutes, Article 6687b, §5(a), re-codified as Texas Transportation Code, §521.022, which require the Texas Department of Public Safety to adopt rules and procedures necessary for determining school bus driver employment eligibility and school bus driver training program requirements.

Texas Civil Statutes, Article 6687b, §5(a) and Texas Transportation Code, §521.022 are affected by this proposal.

§14.31. Administrative Procedure.
The school bus driver training program shall be provided in accordance with the following requirements:

(1) the school bus driver training program shall be administered by the 20 regional education service centers authorized by the director or designee;

(2) the department shall have primary responsibility for program monitoring and regulation, and for providing technical assistance to the coordinating agents in the state;

(3) program standards for providing school bus driver training shall include the following:

(A) the basic/initial training course shall consist of a minimum of twenty clock-hours of instruction;

(B) the refresher/renewal training course shall consist of a minimum of eight clock-hours of instruction;

(C) individual class sessions shall be limited in duration to a maximum of four hours of instruction on a workday and eight hours of instruction on a non workday. Rest breaks of no more than ten minutes are permitted between each consecutive hour of instruction;

(D) enrollment for individual classes shall be limited to a maximum of 35 trainees per certified instructor without prior approval from the Texas Department of Public Safety. A minimum of one certified instructor shall be in attendance during any class session;

(E) when scheduling and registering for classes, priority shall be given to those persons holding an "enrollment certificate." Those persons not affiliated with a public school district may register for classes only on a "space available," and "first come, first served" basis; and

(F) reasonable accommodations may be requested for persons with certain disabilities who attend training classes and need auxiliary aids or services, such as an interpreter for the deaf or hearing impaired. Such requests should be directed to the appropriate training agency at least two business days prior to the start of course instruction so that appropriate arrangements can be made.

§14.32. Curriculum.

The curriculum for school bus driver training will be developed by the department and approved by the director, or designee.

(1) The 24 basic training course shall include instruction in each of the ten units comprising the current *Course Guide for School Bus Driver Training in Texas* adopted by the department. It is highly recommended that at least six hours of each course be devoted to relevant and appropriate laboratory activities, and that each unit be taught in accordance with the following class time allocations:

(A) Introduction -.5 hour

(B) The School Bus Driver's Image - 1.5 hours

(C) Preventive Maintenance 3.0 hours

(D) Traffic Regulations and Driving Procedures 1.5 hours

(E) Defensive Driving 3.0 hours

(F) Safety and Emergency Procedures 3.0 hours

(G) First Aid 1.5 hours

(H) Procedures for Loading and Unloading Students 3.0 hours

(I) The Special Education/Handicapped Child 1.5 hours

(J) Awareness of the Effects of Alcohol and Other Drugs 1.5 hours

(2) The eight-hour refresher training course shall include instruction relative to refresher course training material developed by Texas Engineering Extension Service Transportation Training Division of the Texas A & M; University System, (TEEX) and approved by the department or Units V, VI, VII, VIII, and X of the current *Course Guide for School Bus Driver Training in Texas*. If teaching Units V, VI, VII, VIII, and X, it is highly recommended that at least one hour of instruction be allocated to each of these five units, with any remaining or additional time devoted to other relevant and appropriate topics or activities.

(3) It is recommended that a comprehensive pre-test and post-test regarding course content be administered to each trainee, with a minimum score of 70% required for satisfactory completion of both the 24 basic course and the eight-hour refresher course.

§14.33. Instructor Certification.

(a) To be eligible for instructor certification, an applicant must possess at least one of the following prerequisites:

(1) a valid "Texas Teacher Certificate";

(2) a minimum of two years of administrative or supervisory experience in school transportation; or

(3) a minimum of two years of work experience or study in driver training, traffic safety education, or a related field.

(b) In addition to the prerequisite(s) in subsection (a) of this section, an applicant may qualify for instructor certification only after meeting all of the following requirements:

(1) complete a 24 basic training course;

(2) serve as a student instructor for a 24 certification course while practice teaching under the direct supervision of a currently certified instructor; and

(3) receive official approval from the sponsoring training agency.

(c) Upon satisfactory completion of all requirements, the training agency shall issue a qualified applicant an "Instructor's Certificate for School Bus Driver Training in Texas," Figure 4: §14.1(4) of this title (relating to Appendix), and properly submit the necessary verification information to the Texas Department of Public Safety, Figure 5: §14.1(5) of this title.

(d) Except as approved by the training agency, each instructor must teach a minimum of one basic or refresher certification course each year in order to maintain current instructor certification status.

§14.34. School Bus Driver Certification.

(a) To obtain full initial driver certification, a person must satisfactorily complete a twenty-hour basic training course. The training agency shall issue a "Texas School Bus Driver Training Certificate," Figure 6: §14.1(6) of this title (relating to Appendix), in a timely manner, and submit the necessary verification information to the Texas Department of Public Safety, Figure 5: §14.1(5) of this title.

(b) Driver certification will remain valid for a period of three calendar years as indicated by the expiration date on the certificate. However, certification may be revoked or suspended for the conviction of certain criminal offenses as provided by state law.

(c) State law requires that every driver transporting students in a school bus must have in their possession a valid certificate stating that they have completed, or are enrolled in, an approved school bus driver training course.

(d) Any school bus driver whose certification has expired shall not operate a school bus for the transportation of students until such time as they become recertified or obtain an enrollment certificate. The following rules shall apply to certification renewals:

(1) To avoid a lapse in certification, an eight-hour refresher course must be completed prior to expiration. The eight-hour refresher course should be completed during the six-month (180-day) period immediately preceding certification expiration. If the required training is completed within this preferred time interval, certification will then be renewed for a period of three calendar years from the upcoming expiration date indicated on the current certificate.

(2) If the eight-hour refresher course is completed more than 180 days prior to certification expiration, certification will then be renewed for a period of three calendar years from the actual date of course completion.

(3) During the 12-month interval immediately following certification expiration, an eight-hour refresher course may be completed for certification renewal. Certification will then be renewed for a period of three calendar years from the actual date of course completion. Failure to satisfactorily complete the eight-hour refresher course during this time frame will require completion of the 24 training course in order to become recertified. During this time period, a person shall not drive a school bus unless he has received an enrollment certificate. Issuance of an enrollment certificate during this dormant time interval will require the successful completion of the twenty-hour basic training course in order to reinstate full certification status.

(e) Regardless of the reason, any course instruction missed must be completed by arrangement with the training agency. Except as approved by the training agency, all course requirements for certification must be completed within the 180-day period immediately following the start of instruction, otherwise no credit will be given for any class sessions previously attended. The entire course must be completed prior to awarding certification.

§14.35. Enrollment Certificates.

(a) A training agency may grant a qualified applicant temporary and provisional certification status in the form of an "Enrollment Certificate" upon receipt of a completed application, Figure 7: §14.1(7) of this title (relating to Appendix) from the requesting employer stating that this person has fulfilled all of the following eligibility requirements:

(1) at least 18 years of age;

(2) possess a valid driver's license designating a class appropriate (with applicable endorsements if commercial driver's license) for the gross vehicle weight rating and manufacturer's designed passenger capacity of motor vehicle to be operated;

(3) an acceptable driving record (secured from the Texas Department of Public Safety) determined in accordance with the current "School Bus Driver's Driving Record Evaluation", Figure 3: 37 TAC §14.1(3);

(4) an acceptable criminal history record (secured from any law enforcement agency) reviewed in accordance with the provisions of current state statute (see Texas Education Code, §22.084);

(5) an acceptable physical and mental examination evaluated in accordance with all qualifications and standards specified on the current form, *Medical Examination Report for School Bus Drivers* ; and preemployment/pre-duty drug testing (evaluated in accordance with current federal law); and

(6) an acceptable level of knowledge and skill regarding the safe operation of school buses (it is the employer's inherent responsibility to ensure that the driver understands the contents of Units IV, V, VI, VIII and X of the current *Course Guide for School Bus Driver Training* in Texas).

(b) In addition to the prerequisites listed in subsection (a) of this section, the following rules shall apply to the issuance of all enrollment certificates:

(1) recipients must register for the first available twenty hour basic certification course as determined by the training agency. Except as approved by the training agency, failure to satisfactorily complete the course as scheduled shall result in revocation of the certificate, and a consecutive enrollment certificate shall not be reissued;

(2) all enrollment certificates shall be dated to expire no later than the end of the school year for which they are issued. It is highly recommended that they be dated to expire within a reasonable period of time following the conclusion of the first available certification course. Except as approved by the training agency, a minimum of five years must elapse between the issuance of consecutive enrollment certificates;

(3) the training agency may charge a reasonable fee for the issuance of an enrollment certificate, not to exceed the actual cost for processing; and

(4) an enrollment certificate shall be the standard school bus driver training certificate so designated by the words, "Enrollment Certificate" stamped or printed diagonally across the face of the training certificate.

(5) the training agency shall submit, in a timely manner, the necessary verification information to the Texas Department of Public Safety, Figure 5: §14.1(5) of this title.

§14.36. Maximum Training Fee.

The maximum allowable fee per trainee for both the 24 basic course and the eight-hour refresher course shall be determined annually by the Commissioner of Education. However, the actual fee charged for each of these courses shall not exceed the training agency's reported cost per trainee for the preceding fiscal year, or the projected cost for the current year if such a cost can be justified and any resulting overcharge is rebated accordingly.

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 13, 1996.

TRD-9607562
James R. Wilson
Director
Texas Department of Public Safety
Earliest possible date of adoption: July 12, 1996

For further information, please call: (512) 424-2890

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Subchapter D. School Bus Lighting and Warning Device Equipment

37 TAC §14.51, §15.42

(Editor's Note: The Texas Department of Public Safety proposed for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue .)

The Texas Department of Public Safety proposes new §14.51 and §14.52, concerning lighting and warning device equipment specifications for school buses. New §14.51 defines terms commonly used in the profession. New §14.52 defines the minimum lighting and warning device equipment standards a school bus must meet to transport students. Identical emergency action has been simultaneously filed.

The new sections are necessary to implement the provisions of Senate Bill 1, 74th Legislature, 1995; to be codified as Texas Civil Statutes, Article 6701d, §131(d), recodified as Texas Transportation Code, §547.102. This statute authorizes the Texas Department of Public Safety to adopt standards and specifications that apply to lighting and warning device equipment required for a school bus in order to enable school administrators to establish and operate a safe and efficient school bus transportation system.

Tom Haas, Chief of Finance, has determined that for the first five-year period the sections are in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the sections.

Mr. Haas also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing these sections will be uniform minimum lighting and warning device equipment standards and clear identification of a school bus used on a route. There may be a fiscal impact on small and large businesses. The department anticipates that both manufacturers and paint and body shops will derive some economic benefit from the outfitting of vehicles to meet the specification requirements.

The economic cost to schools and companies required to comply with the specifications is approximately $850 to $1,250 per vehicle.

Comments on the proposal may be submitted to John C. West, Jr., Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512)424-2890.

The new sections are proposed pursuant to Texas Transportation Code, §547.102, which authorizes the Texas Department of Public Safety to adopt standards and specifications that apply to lighting and warning device equipment required for a school bus in order to enable school administrators to establish and operate a safe and efficient school bus transportation system.

Texas Transportation Code, §547.102 is affected by this proposal.

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

Issued in Austin, Texas, on May 13, 1996.

TRD-9607561
James R. Wilson
Director
Texas Department of Public Safety
Earliest possible date of adoption: July 12, 1996
For further information, please call: (512) 424-2890

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 48. Community Care for Aged and Disabled

In-Home and Family Support Program

40 TAC §48.2707

The Texas Department of Human Services (DHS) proposes an amendment to §48.2707, concerning program restrictions, in its Community Care for Aged and Disabled (CCAD) chapter. The purpose of the amendment is to eliminate the In-Home and Family Support Program (IH/FSP) requirement that a program supervisor approve exceptions to the six-month time frame for return of receipts. This requirement is being deleted as a streamlining measure, allowing case activity to remain at the worker level when receipt time frames are exceeded.

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

Mr. Raiford 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 processing of IH/FSP cases. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Debbie Berliner at (512) 438-3199 in DHS's Client Eligibility section. Written comments on the proposal may be submitted to Supervisor, Rules Unit, Media and Policy Services-296, Texas Department of Human Services E-205, 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 35, which provides the department with the authority to administer public and support services for persons with disabilities programs.

The amendment implements the Human Resources Code, §§22.001-22.030 and §§35.001-35.012.

§48.2707. Program Restrictions.

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

(c) The applicant must agree to submit receipts for service subsidy funds, and the copayment amount, if any, at intervals designated by the Texas Department of Human Services during the 12-month certification period. A one-time submittal of receipts is required for the capital expenditure grant. If the applicant fails to furnish the required receipts, he is denied eligibility and **may be required to make** [faces possible] restitution **for amounts for which there are no receipts** . The receipts that are returned to verify how the program funds were spent must be approved allowable purchases and must not be dated prior to the date the individual was certified as eligible for the IH/FSP. Receipts are due within six months from date of approved certification. The caseworker may accept valid receipts for allowable services that were delivered or purchased during the six-month period immediately preceding a client's current subsidy period, if the receipts were not applied to previous receipt reconciliation and the client was certified for the IH/FSP during the prior six-month period. [Any exception to the six-month time frame requires supervisory approval.] The receipts must:

(1)-(6) (No change.)

(d)-(h) (No change.)

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

Issued in Austin, Texas, on May 30, 1996.

TRD-9607527
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: August 15, 1996
For further information, please call: (512) 438-3765

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TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 3. Finance Division

43 TAC §3.3

(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 §3.3 concerning county participation trust and suspension fund number 927. This section is no longer necessary due to the contemporaneous proposed adoption of the re-enacted subject matter in Chapter 15, Transportation Planning and Programming, as new §§15.52-15.56 concerning federal, state and local participation, in an amended form.

Robert L. Wilson, Director of Design Division, has determined that for the first five-year period the repeal is in effect, there will be no effect to state or local government as a result of enforcing or administering the section.

Mr. Wilson has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeal.

Mr. Wilson 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 expeditious development of mutually beneficial and priority projects by maximizing the available local and state funds. 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.

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed repeal. The public hearing will be held at 10:00 a.m. on Monday, June 24, 1996, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 9:30 a.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and 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 request 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 plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2383, (512)463-8588 at least two work days prior to the meeting so that appropriate arrangements can be made.

Written comments on the proposal may be submitted to Robert L. Wilson, Director, Design Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on Monday, July 15, 1996.

The repeal is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

The repeal does not affect other statutes, articles, or codes.

§3.3. County Participation Trust and Suspense Fund Number 927.

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

Issued in Austin, Texas, on May 31, 1996.

TRD-9607620
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: July 12, 1996
For further information, please call: (512) 463-8630

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Chapter 15. Transportation Planning and Programming

The Texas Department of Transportation proposes amendments to §§15.50-15.51 and new §§15.52-15.56 concerning federal, state and local participation. These amended and new sections are necessary to update and clarify the applicable rules to carry out the provisions of state and federal laws and regulations pertaining to funding of construction projects and to update and clarify participation ratios of governmental units in the development of construction projects to be used as the basis of agreement between the department and the local government.

Section 15.50 is amended to describe federal, state, and local responsibilities for cost participation in highway improvement projects.

Section 15.51 is amended to supplement and clarify definitions.

New §15.52 specifies the requirement of an agreement between the department and the local government when the local government is responsible for providing funds for a proposed project.

New §15.53 defines the responsibilities of local governments for preliminary engineering and construction engineering expenses associated with the development of construction projects and establishes the amount of the state, local, and federal participation in preliminary and construction engineering expenses.

New §15.54 describes the conditions under which state, federal, and local financing of transportation project construction costs are to be shared in a construction project and establishes the amount of the state, local, and federal participation in construction expenses; specifies that the local government shall be responsible for the total cost of work included which is ineligible for federal or state participation; specifies the requirement of an agreement with the local government outlining construction responsibilities; establishes the criteria for the department to provide for sidewalk construction on the designated state highway system; establishes the criteria for construction of frontage roads and the construction costs responsibilities; and describes the responsibilities of the department and local government in the construction of a drainage system within the state highway right-of-way and their respective costs responsibilities.

New §15.55 specifies the federal, state and local cost participation ratios for the various types of projects in the form of a chart.

New §15.56 describes the method by which a local government can finance a project on the state highway system and request reimbursement.

Robert L. Wilson, Director of Design Division, has determined that for the first five-year period the new and amended sections are in effect, there will be no effect to state or local government as a result of enforcing or administering the new and amended sections.

Mr. Wilson has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new sections.

Mr. Wilson also has determined that for each year of the first five years the amended and new sections are in effect, the public benefit anticipated as a result of enforcing the new and amended sections will be a more expeditious development of mutually beneficial and priority projects by maximizing the available local and state funds. There will be no effect on small businesses and there is no anticipated economic cost to persons who are required to comply with the amended and new sections as proposed.

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 10:00 a.m. on Monday, June 24, 1996, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 9:30 a.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and 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 request 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 room if ordered to do so by the presiding officer. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2383, (512) 464-8588 at least two work days prior to the meeting so that appropriate arrangements can be made.

Written comments on the proposal may be submitted to Robert L. Wilson, Director, Design Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-

2483. The deadline for receipt of comments will be 5:00 p.m. on Monday, July 15, 1996.

Federal, State, and Local Participation

43 TAC §15.50, §15.51

The amended and new sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

The amended and new sections do not affect other statutes, articles, or codes.

§15.50. Purpose.

This undesignated head describes federal, state, and local responsibilities for cost participation in **highway improvement projects** [the construction of the state highway system].

§15.51. Definitions.

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

Commission-The Texas Transportation Commission.

Construction engineering cost/expenses-Engineering or project administration costs and expenses **incurred, including indirect costs and expenses identified by the department's cost accounting system, on a highway improvement** [identified with a construction] project after contract **award** [letting].

Construction cost-**All direct and indirect costs identified by the department's cost accounting system to a highway improvement project, other than for right-of-way acquisition, preliminary engineering, and construction engineering** [Costs associated with the work required to construct a project in accordance with approved plans and specifications, including the furnishing of all labor, materials, equipment, and other incidentals necessary for the successful completion of the project, and the carrying out of all duties and obligations imposed by the plans and specifications].

Department-The Texas Department of Transportation.

Farm and Ranch to Market (FM/RM) System Route-A system of roads designated by the commission under **Transportation Code, §201.104** [Texas Civil Statutes, Articles 6665, 6670, and 6673c].

Federal funds-**Financial assistance provided by the federal government for highway improvement projects** [Monies provided from federal agencies as match financing for expenditure on state and local transportation projects developed and approved in accordance with federal law and regulations].

Highway improvement project -A project which provides for the design, construction, improvement, or enhancement of a public road, including bridges, culverts, or other necessary structures related to public roads, either on or off the state highway system.

Local [unit of] government -Any county, city, [or] other political subdivision of this state**, or special district** that has the authority to finance **a highway improvement project** [the construction, maintenance, or operation of a segment of the state highway system].

Local **participation** [funds] -**Financial assistance** [Monies] provided by **a** local [units of] government to participate in costs associated with **highway improvement projects** [project development].

Matching funds/participation ratio-Those portions of funds required or chargeable for the contribution toward a **highway improvement** project's cost by a government entity.

New construction (I)-Activities authorized for the completion of the [originally] designated Interstate Highway System.

Off-State Highway System Bridge Program-A federally mandated program by which federal funds are made available [on a discretionary basis] to replace or rehabilitate bridges under the jurisdiction of a local government and not on the state highway system, administered in accordance with criteria set forth under federal law and regulations and state law, safety standards, design standards, and construction standards.

Off-state highway system routes-Those routes not designated on the state highway system which are the responsibility of local **governments** [units of governments].

Off-State Highway System Safety Program-A federally mandated program by which federal funds are made available [to local units of government] for safety improvements **to facilities under the jurisdiction of a local government and not on the state highway system, administered** in accordance with criteria set forth under federal law and regulations.

On-State Highway System Bridge Program-A federally mandated program by which federal funds are made available [on a discretionary basis] to replace or rehabilitate [the state's] bridges **on the state highway system** in accordance with criteria set forth under federal law and regulations.

On-State Highway System Safety Program- A federally mandated program by which federal funds are made available [to states] for safety improvements **on the state highway system** in accordance with criteria set forth under federal law and regulations.

Preliminary engineering cost/expenses- **Costs and** [Those engineering or project administration costs or] expenses **incurred, including indirect costs and expenses identified by the department's cost accounting system, on a highway improvement project before contract award** [identified prior to the construction of a project].

Reconstruction-The primary activities involving the rebuilding of a segment of [the state] highway [system] along **the** existing **route** [routes] as well as those associated with the acquisition of rights of way where necessary to upgrade to current standards.

Rehabilitation-The primary activities to restore, or re-establish in good condition, a segment of [the state] highway [system] (not including the construction of additional travel lanes, other than high occupancy vehicle lanes or auxiliary lanes).

Right of way costs-**All direct and indirect costs identified by the department's cost accounting system for the acquisition** [Costs attributable to the purchase] of land or an interest in land **necessary for the development of a highway improvement project** (including access rights to abutting properties and usually including eligible utility relocation/adjustment costs).

Right of way procurement-That process identified with the acquisition of real property, access rights, mineral rights, and easements permitted in accordance with state law for the construction of approved **highway improvement** projects.

State funds-**Money** [Those monies] received by the **department** [state], other than federal funds **or local participation**, to be

expended for **highway** [the] improvement **projects** [of the state highway system].

State highway system-The system of highways in the state included in a comprehensive plan prepared by the department's executive director under the direction and with the approval of the commission in accordance with **Transportation Code. §201.103** [Texas Civil Statutes, Article 6674b].

State Park Road Program-A [state] program by which state funds are utilized to construct roads to **or within** public **facilities** [parks] administered by the Texas Parks and Wildlife Department or other qualified state agencies.

Surface Transportation Program (STP)-A federal-aid program where states may obligate federal [match] funds to projects related to certain public roads, in accordance with the criteria established in federal law and regulations.

United States (US) System Route-Those routes designated on the state highway system as U.S. highways **and eligible** [subject to eligibility] for federal-aid funds as set forth in federal law and regulations.

Urban Streets Program-A state program of projects **, designated by the commission,** on certain urban streets developed and constructed in accordance with state law and safety, design, and construction standards.

Utility relocation/adjustment costs-Costs of work related to the adjustment, relocation, and removal of utility facilities [on a segment of the state highway system] accomplished in accordance with §21.21 of this title (relating to State Participation in Relocation, Adjustment, and/or Removal) and **§§21.31 et seq.** [§§21.31-21.55] of this title (relating to Utility Accommodation).

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

Issued in Austin, Texas, on May 31, 1996.

TRD-9607622
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: July 12, 1996
For further information, please call: (512) 463-8630

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43 TAC 15.52-15.54

(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 §§15.52-15.54, concerning federal, state and local participation. These sections are no longer necessary due to the contemporaneous proposed adoption of the re-enacted subject matter in Chapter 15, Transportation Planning and Programming, as new §§15.52-15.56 concerning federal, state and local participation, in an amended form.

Robert L. Wilson, Director of Design Division, has determined that for the first five-year period the repeals are in effect, there will be no effect to state or local government as a result of enforcing or administering the repeals.

Mr. Wilson has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeals.

Mr. Wilson 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 expeditious development of mutually beneficial and priority projects by maximizing the available local and state funds. 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.

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed repeal. The public hearing will be held at 10:00 a.m. on Monday, June 24, 1996, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 9:30 a.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member where possible. Comments on the proposed text should included appropriate citations to sections, subsections, paragraphs, etc., for proper reference. Any suggestions or request 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 plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas, 78701-2383, (512) 463-8588 at least two work days prior to the meeting so that appropriate arrangements can be made.

Written comments on the proposal may be submitted to Robert L. Wilson, Director, Design Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on Monday, July 15, 1996.

The repeals are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

The repeals do not affect other statutes, articles, or codes.

§15.52. Preliminary and Construction Engineering Expenses.
§15.53. Construction.
§15.54. Construction Cost Participation.

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

Issued in Austin, Texas, on May 31, 1996.

TRD-9607625
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: July 12, 1996
For further information, please call: (512) 463-8630

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43 TAC 15.52-15.56

The Texas Department of Transportation proposes amendments to §§15.50-15.51 The amended and new sections are proposed under Transportation and new §§15.52-15.56 concerning federal, state and local participation. These amended and new sections are necessary to update and clarify the applicable rules to carry out the provisions of state and federal laws and regulations pertaining to funding of construction projects and to update and clarify participation ratios of governmental units in the development of construction projects to be used as the basis of agreement between the department and the local government.

Section 15.50 is amended to describe federal, state, and local responsibilities for cost participation in highway improvement projects.

Section 15.51 is amended to supplement and clarify definitions.

New §15.52 specifies the requirement of an agreement between the department and the local government when the local government is responsible for providing funds for a proposed project.

New §15.53 defines the responsibilities of local governments for preliminary engineering and construction engineering expenses associated with the development of construction projects and establishes the amount of the state, local, and federal participation in preliminary and construction engineering expenses.

New §15.54 describes the conditions under which state, federal, and local financing of transportation project construction costs are to be shared in a construction project and establishes the amount of the state, local, and federal participation in construction expenses; specifies that the local government shall be responsible for the total cost of work included which is ineligible for federal or state participation; specifies the requirement of an agreement with the local government outlining construction responsibilities; establishes the criteria for the department to provide for sidewalk construction on the designated state highway system; establishes the criteria for construction of frontage roads and the construction costs responsibilities; and describes the responsibilities of the department and local government in the construction of a drainage system within the state highway right-of-way and their respective costs responsibilities.

New §15.55 specifies the federal, state and local cost participation ratios for the various types of projects in the form of a chart.

New §15.56 describes the method by which a local government can finance a project on the state highway system and request reimbursement.

Robert L. Wilson, Director of Design Division, has determined that for the first five-year period the new and amended sections are in effect, there will be no effect to state or local government as a result of enforcing or administering the new and amended sections.

Mr. Wilson has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new sections.

Mr. Wilson also has determined that for each year of the first five years the amended and new sections are in effect, the public benefit anticipated as a result of enforcing the new and amended sections will be a more expeditious development of mutually beneficial and priority projects by maximizing the available local and state funds. There will be no effect on small businesses and there is no anticipated economic cost to persons who are required to comply with the amended and new sections as proposed.

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 10:00 a.m. on Monday, June 24, 1996, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 9:30 a.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and 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 request 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 room if ordered to do so by the presiding officer. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2383, (512) 464-8588 at least two work days prior to the meeting so that appropriate arrangements can be made.

Written comments on the proposal may be submitted to Robert L. Wilson, Director, Design Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on Monday, July 15, 1996.

The amended and new sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

The amended and new sections do not affect other statutes, articles, or codes.

§15.52. Agreements.

When a local government is responsible for providing financial assistance for a highway improvement project, the department and the local government shall enter into an agreement before any work is performed. The agreement will include, but not be limited to, the following provisions of this section.

(1) Right of entry. If the local government is the owner of the project site, it shall permit the department or its authorized representative access to occupy the site to perform all activities required to execute the work.

(2) Right of way and/or utility relocation/adjustments. The local government will provide all necessary right of way and utility relocation/adjustments, whether publicly or privately owned, in accordance with §15.55 of this title (relating to Construction Cost Participation). Existing utilities will be relocated and/or adjusted with respect to location and type of installation in accordance with the requirements of the department as specified in §21.21 of this title (relating to State Participation in Relocation, Adjustment, and/or Removal) and §§21.31 et seq. of this title (relating to Utility Accommodation).

(3) Funding arrangement. The agreement will specify the type of funding share arrangement agreed upon by the department and the local government.

(A) Standard. The local government is responsible for all, or a specified percentage as shown in Appendix A of §15.55 of this title (relating to Construction Cost Participation), of the direct and indirect costs incurred by the department for preliminary engineering, construction engineering, and construction, as well as the cost for any work included which is ineligible for federal or state participation.

(B) Alternate. A fixed price funding arrangement may be used if requested by the local government and approved by the executive director, deputy executive director, or assistant executive director of the department.

(i) Definition. Under this arrangement, a local government is responsible for a firm fixed price which is a lump sum price not subject to adjustment except:

(I) in the event of changed site conditions;

(II) if work requested by the local government is ineligible for federal participation; or

(III) as mutually agreed upon by the department and the local government.

(ii) Conditions. The department may enter into a firm fixed price agreement only:

(I) for projects that include state participation, as shown in Appendix A of §15.55 of this title (relating to Construction Cost Participation);

(II) if incremental payments are not requested; and

(III) if the fixed price is based on the estimated cost for the work for which the funds are received.

(iii) Approval. In approving a request for an alternate funding arrangement, the executive director, deputy executive director, or assistant executive director of the department will consider:

(I) requests by the local government to include work which is ineligible for federal or state participation;

(II) need for expeditious project completion;

(III) type of work proposed and the ability to accurately estimate its cost; and

(IV) any other considerations relating to the benefit of the state, the traveling public, and the operations of the department.

(4) Interest. The department will not pay interest on funds provided by the local government. Funds provided by the local government will be deposited into, and retained in, the state treasury.

(5) Amendments. In the case of significantly changed site conditions or other mutually agreed upon changes in the scope of work authorized in the agreement, the department and the local government will amend the funding agreement, setting forth the reason for the change and establishing the revised participation to be provided by the local government.

(6) Payment provision. The agreement will establish the conditions for payment by the local government, including, but not limited to, the method of payment and the time of payment.

(A) Standard. Following execution of the agreement, the local government will pay, as a minimum, its funding share for the estimated cost of preliminary engineering for the project. Prior to the department's scheduled date for contract letting, the local government will remit to the department an amount equal to the remainder of the local government's funding share for the project.

(i) When the standard funding arrangement is used, if it is found that the amount received is insufficient to pay the local government's funding share, then the department shall notify the local government which shall transmit the required amount to the department. After the project is completed the final cost will be determined by the department, based on its standard accounting procedures, and any excess funds paid by the local government shall be returned.

(ii) When a fixed price funding arrangement is used, the lump sum price is not subject to adjustment except as provided for in paragraph (3)(B) of this section (relating to Agreements).

(B) Alternate. Incremental payments may be made if requested by the local government and approved by the executive director, deputy executive director, or assistant executive director of

the department. If it is found that the amount received is insufficient to pay the local government's funding share, then the department shall notify the local government which shall transmit the required amount to the department. After the project is completed, the final cost will be determined by the department based on its standard accounting procedures, and any excess funds paid by the local government shall be returned.

(i) Conditions. The department may approve incremental payments only if:

(I) the incremental payments sought are based on the estimated cost for the work for which the funds are received; and

(II) the local government does not have a delinquent obligation to the department, as defined in §5.10 of this title (relating to Collection of Debts).

(ii) Approval. In approving a request for incremental payments, the executive director, deputy executive director, or assistant executive director of the department will consider:

(I) ability of the local government to pay its funding share prior to the department's scheduled date for contract letting, such ability to be based upon population level, bonded indebtedness, tax base, and tax rate;

(II) past payment performance;

(III) need for expeditious project completion; and

(IV) any other considerations relating to the benefit of the state, the traveling public, and the operations of the department.

(7) Termination. If the local government withdraws from the project after the agreement is executed, it shall be responsible for all direct and indirect project costs incurred by the department for the items of work in which the local government is participating.

(8) Responsibilities of the parties. The agreement shall identify the responsibilities of each party, including, but not limited to, preparing or providing construction plans, advertising for bids, awarding a construction contract, and construction supervision. The local government must acknowledge that while not an agent, servant, nor employee of the state, it is responsible for its own acts and deeds and for those of its agents or employees during the performance of the work authorized in the contract.

§15.53. Preliminary and Construction Engineering Expenses.

(a) Purpose. This section defines the responsibility of local governments for preliminary engineering and construction engineering expenses associated with the development of highway improvement projects.

(b) Funding. Preliminary and construction engineering expenses may be funded by the commission at the entire expense of the department, with local participation, and/or with federal participation, as shown in Appendix A of §15.55 of this title (relating to Construction Cost Participation), and in accordance with criteria set forth by federal law and regulations.

§15.54. Construction.

(a) Purpose. This section describes the conditions under which state, federal, and local financing of construction costs are to be shared.

(b) Funding. Construction costs may be funded by the commission at the entire expense of the department, with local participation, and/or with federal participation, as described in §15.55 of this title (relating to Construction Cost Participation), and in accordance with criteria set forth by federal law and regulations. The local government shall also be responsible for the total cost of any work included which is ineligible for federal or state participation as specified in §15.52 of this title (relating to Agreements).

(c) Sidewalks. The department will also provide for sidewalk construction, accomplished in accordance with the requirements of the Americans with Disabilities Act and other applicable state and federal laws, on the designated state highway system routes:

(1) when replacing an existing sidewalk;

(2) where highway construction severs an existing sidewalk system (the state will make connections within highway right of way to restore sidewalk system continuity); or

(3) where pedestrian traffic is causing or is expected to cause a safety conflict.

(d) Control of Access on Freeway Mainlanes.

(1) For facilities with full control of access, such as interstate highways or freeways developed by commission designation pursuant to Transportation Code, Chapter 203, access to the main travel lanes is fully controlled through designation, purchase of access rights, or provision of frontage roads.

(2) The department will include frontage roads in the planning stage of highways with full access control when:

(A) it is necessary to unlandlock the remainder of a parcel of land which has a value equal to or nearly equal to the cost of the frontage road;

(B) the appraised damages, resulting from the absence of frontage roads at the time of planning, would exceed the cost of the frontage roads; or

(C) it is necessary to restore circulation of local traffic due to local roads or streets being severed or seriously impaired by the construction of the controlled access highway, and an economic analysis shows the benefits derived more than offset the costs of constructing and maintaining the frontage roads.

(3) In those instances where requests for additional frontage roads are received during or subsequent to the planning stage or after the freeway has been constructed, they may be considered and placed in order of priority of highway needs.

(A) When right of way and utility adjustment costs are shared with a local government on a standard participation basis applicable to the highway designation, the department may assume 100% responsibility for additional frontage road construction as follows:

(i) on relatively short sections of frontage roads where through lane traffic is experiencing high accident rates due to local access and where such construction can be expected to substantially improve safety; or

(ii) in heavily traveled urban corridors where gaps occur in the existing frontage systems, and closing these frontage road gaps will restore system continuity and provide a cost-effective method of enhancing traffic operations in the corridor.

(B) The department may assist a requesting local government in the construction of additional frontage roads as follows:

(i) where a usable section of frontage road that will be of benefit to the traveling public is to be developed (usable section being defined as an addition or extension from a cross road separation to cross road separation or connecting to a public roadway or major traffic generator);

(ii) where such frontage road construction is judged to not adversely impact existing traffic operations or safety;

(iii) where the department is responsible for design and construction of the added frontage roads; and

(iv) except as provided in subparagraph (E) of this paragraph, when the requesting local government furnishes 100% of needed right of way and utility adjustment costs and 50% of the cost of construction, including preliminary and construction engineering.

(C) The department may approve additional frontage road construction, which is 100% funded by the requesting local government, as follows:

(i) if the frontage road construction primarily provides new or improved access to abutting property and does not necessarily provide a usable section as defined in subparagraph (B)(i) of this paragraph (This type of additions would provide limited benefits to the general traveling public.); and

(ii) except as provided in subparagraph (E) of this paragraph, where the department is responsible for design and construction and the requesting local government is responsible for 100% construction, right of way, and utility adjustment costs including preliminary and construction engineering.

(D) Where right of way costs are 100% the responsibility of the requesting local government, relocation assistance benefits will also be 100% the responsibility of the local government and must be accomplished in compliance with department policies and procedures.

(E) The department may waive any one or more of the cost conditions stated in subparagraphs (B)(iv) and (C)(ii) of this paragraph, provided that the waiver is first approved by written order of the commission. In approving a waiver, the commission will base its decision on consideration of the population level, bonded indebtedness, tax base, and tax rate of the local government involved.

(4) For additional frontage roads requested subsequent to the planning stage or after the freeway has been constructed, control of access as originally conceived for the facility may be modified to allow access to the proposed frontage road only to the extent as may be permitted by safety considerations and in keeping with department policies and procedures. The sale or disposal of access rights shall be accomplished in accordance with §§21.101-21.104 of this title (relating to Disposal of Real Estate Interests).

(5) Access driveway facilities shall be for securing access to abutting property. Costs and provision thereof shall be in accordance with the criteria and responsibilities established in §§11.50-11.53 of this title (relating to Access Driveways to State Highways).

(e) Drainage Construction Costs.

(1) In general, it shall be the duty and responsibility of the department to construct, at its expense, a drainage system within state highway right of way, including outfalls, to accommodate the storm water which originates within and reaches state highway right of way from naturally contributing drainage areas.

(2) Where a drainage channel, man-made, natural, or a combination of both, is in existence prior to the acquisition of highway right of way, including right of way for widening the highway, it shall be the duty and responsibility of the state to provide for the construction of the necessary structures and/or channels to adjust or relocate the existing drainage channel in such a manner that the operation of the drainage channel will not be injured. The construction expense required shall be considered a construction item. The acquisition of any land required to accomplish this work shall be considered a right of way item.

(3) Where an existing highway crosses an existing drainage channel, and a political unit or subdivision with statutory responsibility for drainage develops a drainage channel to improve its operation, both upstream and downstream from the highway, and after the state establishes that the drainage plan is logical and beneficial to the state highway system, and there is no storm water being diverted to the highway location from an area which, prior to the drainage plan, did not contribute to the channel upstream of the highway, and after construction on the drainage channel has begun or there is sufficient evidence to insure that the drainage plan will be implemented, the department, at its expense, shall adjust the structure and/or channels within the existing highway right of way as necessary to accommodate the approved drainage plan.

(4) Where a state highway is in existence, and there is a desire of others to cross the existing highway at a place where there is not an existing crossing for drainage, then those desiring to cross the highway must provide for the entire cost of the construction and maintenance of the facility which will serve their purpose while at the same time adequately serving the highway traffic. The design, construction, operation, and maintenance procedures for the facility within state highway right of way must be acceptable to the department.

(5) In the event the local government involved expresses a desire to join the department in the drainage system in order to divert drainage into the system, the local government shall pay for the entire cost of collecting and carrying the diverted water to the state's system and shall contribute its proportional share of the cost of the system and outfall based on the cubic feet per second of additional water diverted to it when compared to the total cubic feet per second of water to be carried by the system. The local government requesting the drainage diversion shall indemnify the state against or otherwise acknowledge its responsibility for damages or claims for damages resulting from such diversion.

(f) Continuous and safety lighting systems and traffic signals. For the installation, maintenance, and operation of continuous and safety lighting systems and traffic signals, the local government shall be responsible for providing matching funds as shown in Appendix A of §15.55 of this title (relating to Construction Cost Participation). Such installation, maintenance, and operation shall

be accomplished in accordance with §25.5 of this title (relating to Installation, Operation, and Maintenance of Traffic Signals) and §25.11 of this title (relating to Continuous and Safety Lighting Systems).

§15.55. Construction Cost Participation.

The following Appendix A to this section establishes federal, state, and local cost participation ratios for highway improvement projects, subject to the availability of funds to the department.
See Figure 1: 43 TAC §15.55.

§15.56. Local Financing of Highway Improvement Projects on the State Highway System.

(a) Purpose. Transportation Code, Section 222.051 authorizes a local government to finance the construction of an approved project for the state highway system. This section prescribes the conditions under which a local government may finance the construction of a project, and the conditions under which the commission may approve reimbursement of the local government's contribution.

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

(1) Approved highway improvement project-A highway improvement project on the state highway system identified in the statewide transportation plan or a regional transportation plan.

(2) Construction costs - Costs associated with preliminary engineering, construction engineering, construction, right-of-way acquisition, and all other costs directly or indirectly related to the approved highway improvement project.

(c) Request. A local government may request approval from the commission to fund the construction cost of an approved highway improvement project by submitting a request to the deputy executive director for transportation planning and development. The request shall state whether the local government desires reimbursement of its contribution, subject to the considerations outlined in subsection (e) of this section.

(d) Project approval.

(1) Considerations. In approving a request to finance a project, the commission will consider:

(A) statewide transportation needs;

(B) regional economic impact;

(C) North American Free Trade Agreement implications;

(D) local government needs;

(E) environmental impact and any requirements for environmental mitigation; and

(F) any other considerations relating to the benefit to the state, the traveling public, and the operations of the department.

(2) Agreement and conditions.

(A) If the commission approves a project under subsection (d) of this section, the local government and the department will enter into an agreement as specified in Section 15.52 of this title (relating to Agreements).

(B) All aspects of the project will be carried out in compliance with applicable federal and state laws and regulations.

(C) The project shall be designed in accordance with the latest department policies, procedures, standards, and guidelines. All plans, specifications, and estimates shall be approved by the department prior to advertisement for bids on the project.

(e) Reimbursement approval.

(1) Considerations. If requested by the local government and if funds are available, the commission may reimburse the local government for all or a portion of its contributions to a project approved under this section. In approving reimbursement, the commission will consider:

(A) statewide transportation needs;

(B) needs of the local government;

(C) economic benefit to the state; and

(D) any other considerations relating to the benefit to the state, the traveling public, and the operations of the department.

(2) Agreement. If approved for reimbursement under this subsection, the department will enter into an agreement with the local government as specified in §15.52 of this title (relating to Agreements).

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

Issued in Austin, Texas, on May 31, 1996.

TRD-9607623
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: July 12, 1996
For further information, please call: (512) 463-8630

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Chapter 28. Oversize and Overweight Vehicles and Loads

Subchapter B. General Permits

43 TAC §28.13

The Texas Department of Transportation proposes amendments to §28.13, concerning time permits. The amended section is necessary to ensure the department's proper administration of the laws concerning the issuance of time permits for the movement of overwidth and overlength loads, and the movement of overlength vehicles.

Transportation Code, Chapter 623, authorizes the department to carry out the provisions of those laws governing the issuance of oversize and overweight permits.

The Texas Motor Transportation Association submitted a petition for rulemaking to the department on April 16, 1996. This petition requested that: §28.13(a)(2)(G) be amended to allow vehicles permitted with time permits to travel in eight adjoining districts rather than seven adjoining districts; §28.13 (b)(1), (b)(4), and (b)(5) be amended to provide for the transport of any

allowable load on vehicles permitted with an overwidth time permit, rather than specifying that the load on permitted vehicles must consist of specific types of loads; and §28.13 (b)(1), (b)(2), and (b)(6) to allow an overwidth trailer to be permitted for unrestricted movement within the districts authorized on the permit when moving empty, or when moving with a load that is less than the maximum width of 13 feet.

The department reviewed the first and second suggestions for amendments and agrees that these proposed amendments would decrease unnecessary burdens on the motor carrier industry and decrease unnecessary costs which are passed on to the customer.

Therefore, §28.13 is amended to: allow vehicles permitted with time permits to travel in eight adjoining districts; provide for the transport of any allowable load on vehicles permitted with an overwidth time permit; require permitees to be responsible for obtaining information regarding load restrictions, highway construction or maintenance areas, and weather restrictions prior to movement of the permitted load; and require that permitted loads shall not be moved during hazardous weather conditions.

In addition to the specific suggested amendments the partment is replacing the references to Texas Civil Statutes with the appropriate Transportation Code citations, which were recodified by Senate Bill 971, 74th Legislature, 1995.

As to the third request, the department has determined that to allow unrestricted movement when moving empty or when moving with a load that is less than the maximum width of 13 feet would not improve the safety for other highway users.

Lawrance R. Smith, Director of Motor Carrier Division, has determined that for the first five-year period the section is in effect there will be no effect to state or local government as a result of enforcing the section. Any fiscal implications of a decline in single trip permit sales will be offset by additional sales of time permits and by increased industry compliance with permit requirements.

Mr. Smith has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

Mr. Smith has also determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing the section as proposed will be a decrease in the burdens placed upon the motor carrier industry and the public. The proposed amendments will allow motor carriers to use their employees and equipment resources more efficiently, which will result in decreased transportation costs for the industry and, potentially, for their customers. In addition, the proposed amendments will reduce the number of permits required by motor carriers meeting time permit requirements, which will better allow the department to serve other customer's needs. This may increase industry compliance with statutory permit requirements.

The anticipated effect on small businesses and persons required to comply with these requirements will be to reduce the unnecessary economic cost the current rules place upon motor carriers and allow them to use their employees and equipment more efficiently.

Pursuant to the Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed amendments. The public hearing will be held at 9:00 a.m. on June 26, 1996, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and 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 request 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 plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director of the Public Information Office, at 125 E. 11th St., Austin, Texas 78701-2483, (512) 463-8588 at least two working days prior to the meeting so that appropriate arrangements can be made.

Written comments on the proposal may be submitted to Lawrence R. Smith, Director, Motor Carrier Division, Texas Department of Transportation, 125 E. 11th St., Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on July 16, 1996.

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Transportation Code, Chapter 623, which authorizes the department to carry out the provisions of those laws governing the issuance of oversize and overweight permits.

No statutes, articles, or codes are affected by these proposed amendments.

§§28.13. Time Permits [Issued under Texas Civil Statutes, Article 6701a, Article 6701d-11, §3, and Article 6701d-14].

(a) General Conditions. **Time permits issued under Transportation Code, Chapter 623, and this section shall be governed by the requirements of §28.11(b)(1) and (3) of this title (relating to Permit Issuance Requirements and Procedures). The following conditions apply to time permits issued for overwidth or overlength loads, or overlength vehicles, under this section.**

[(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.]

[(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.]

(1) [(A)] **Fees.** 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.

(2) [(B)] **Validity of Permit.Time permits are valid for a period of** [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.

(3)[(C)] **Weight/height limits.** The permitted vehicle may not exceed the weight or height limits set forth by **Transportation Code, Chapter 621, Subchapters B and C** [Texas Civil Statutes, Article 6701d-11, §3 and §5].

(4)[(D)] **Registration requirements for permitted vehicles.** The permitted vehicle must be registered in accordance with **Transportation Code, Chapter 502** [Texas Civil Statutes, Article 6675a-2 or Article 6675a-16], for maximum weight for the vehicle or vehicle combination as set forth by **Transportation Code, §502.151**[Texas Civil Statutes, Article 6701d-11, §5]. **Time permits will not be issued to a vehicle or vehicle combination that is registered with temporary registration.**

(5)[(E)] **Vehicle indicated on permit.** 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.

(6)[(F)] **Periods of movement.Permitted vehicles may only be moved** [Movement will be] during daylight hours [only].

(7) [(G)] **Permit routes.** The permit route will be limited to **eight** [seven] adjoining districts, unless a specific route with an exact origin and destination is requested by the permit applicant **. In cases where a specific route with an exact origin and destination is requested**, [then] the route may include more than **eight** [seven] districts.

(8) Travel restrictions.

(A) [(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.

(B) The permitted load must not be moved during hazardous weather conditions, as described in §28.11 of this title (relating to Permit Issuance Requirements and Procedures).

(C) The permittee is responsible for obtaining information regarding load restrictions, highway construction or maintenance areas, and weather restrictions from the department.

(9) [(I)] **Availability.** A time permit is available to all applicants and is not restricted to any class of operators.

(10) Transfer of time permits. **Time permits are non-transferrable between permittees or vehicles.**

(b)Overwidth loads. [(1)] An overwidth time permit may be issued for the movement of **any non-divisible load or overwidth trailer, with the following conditions** [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].

(1) Width requirements. A time permit will not be issued for a vehicle with a width exceeding 13 feet.

(2) **Weight, height, and length requirements**. 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 **Transportation Code, Chapter 621, Subchapters B and C** [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**; or**

(D) a gross weight exceeding the registered gross weight of the vehicle hauling the 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.]

(3) [(6)] **Movement of overwidth trailers.** 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**, subject to the following conditions**.

(1) [(2)] **Length requirements.** The maximum overall length for the permitted vehicle may not exceed 110 feet.

(2) [(3)] **Weight, height and width requirements.** The permitted vehicle may not exceed legal weight, height, or width according to **Transportation Code, Chapter 621, Subchapters B and C** [Texas Civil Statutes, Article 6701d-11, §3 and §5].

(A) The maximum length for a single permitted vehicle may not exceed 75 feet.

(B) 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 department's Motor Carrier Division, based on a route and traffic study.

(C) 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 department's Motor Carrier Division based on a route and traffic study.

(D) 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 department's Motor Carrier Division, based on a route and traffic study.

(3) [(4)] **Emergency movement.** 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 **Transportation Code, §623.077** [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 **Transportation Code, Chapter 502** [Texas Civil Statutes, Article 6675a-2 or Article 6675a-16], for maximum weight for the vehicle or vehicle combination as set forth by **Transportation Code, Chapter 621** [Texas Civil Statutes, Article 6675a-1 or Article 6675a-16].

(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 **department's Motor Carrier Division** [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 **department's Motor Carrier Division** [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 **department's Motor Carrier Division** [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 **department's Motor Carrier Division** [CPO] based on a route and traffic study.

(2) Power line poles. An annual permit will be issued under **Transportation Code, Chapter 622, Subchapter E** [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 **Transportation Code, Chapter 621** [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 **Transportation Code, Chapter 502** [Texas Civil Statutes, Article 6675a-1 or Article 6675a-16], for maximum weight as set forth by **Transportation Code, Chapter 621** [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 **Transportation Code, §621.017** [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 **Transportation Code, Chapter 621** [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 **Transportation Code, Chapter 502** [Texas Civil Statutes, Article 6675a-1 or Article 6675a-16], for maximum weight as set forth by **Transportation Code, Chapter 621** [Texas Civil Statutes, Article 6701d-11, §5].

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

Issued in Austin, Texas, on May 31, 1996.

TRD-9607624
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: July 12, 1996
For further information, please call: (512) 463-8630

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WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register.***

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 52. Emergency Response Services

Contracting for Emergency Response Services

40 TAC 52.201

The Texas Department of Human Services (DHS) has withdrawn from consideration the proposed amendment to §52.201, concerning general contracting requirements, in its Emergency Response Services chapter. The text of the proposed amendment appeared in the April 16, 1996, issue of the *Texas Register* (21 TexReg 3339). The effective date of the withdrawal is May 30, 1996.

Issued in Austin, Texas, on May 30, 1996.

TRD-9607537
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: May 30, 1996
Proposal publication date: April 16, 1996
For further information, please call: (512) 438-3765

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Chapter 96. Certification of Long-Term Care Facilities

40 TAC 96.6

The Texas Department of Human Services has withdrawn from consideration the proposed amendment to §96.6, concerning Informal Administrative Review Process for Intermediate Care Facilities for the Mentally Retarded, in its Certification of Long Term Care Facilities chapter. The text of the proposed repeal appeared in the February 13, 1996, issue of the *Texas Register* (21 TexReg 1086).

The effective date of the withdrawal is immediately on filing.

Issued in Austin, Texas, on May 30, 1996.

TRD-9607557
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: May 30, 1996
Proposal publication date: February 13, 1996
For further information, please call: (512) 438-3765

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 1. ADMINISTRATION

Part 1. General Services Commission

Chapter 123. Facilities Planning and Construction

Building Construction Administration

1 TAC §23.15

The General Services commission adopts an amendment to §123.15, concerning selection of architects/engineers for professional services with changes to the proposed text that was published in the March 19, 1996, issue of the **Texas Register** (21 TexReg 2083).

The amendment to §123.15 is adopted to conform to the Texas Government Code, Title 10, Subtitle D, §2166.202, and establishes an executive selection committee to provide for executive oversight and involvement in the selection of architect/engineers while assuring that technical qualifications are duly evaluated and considered.

Subsections(a),(b), and (c), the term "design professionals" has been changed back to the existing term "architect/engineer" that originally appeared in this section. The term "architect/engineer" was found to be a more precise term to describe the services concerned.

The third sentence of §123.15(c)(9), new language has been added and now reads: "Should the commission be unable to reach an agreement with the architect/engineer scored the highest by the executive selection committee, the commission will terminate negotiations with that architect/engineer and attempt to negotiate an agreement with the architect/engineer scored the next highest by the executive selection committee." The change clarifies the procedure to be followed in negotiating with architect/engineers.

The amendment to §123.15 change the statutory citation in §123.15(a) to the proper cite under the Texas Government Code, and establish an executive selection committee to select architect/engineers for construction projects.

Four comments were received that addressed the following issues:

One commenter objected to the composition of the Executive Selection Committee in §123.15(c)(2), asserting that its members might not have the technical competence to perform their functions. The commission disagrees with this comment. The Executive Selection Committee's review focuses on criteria other than those requiring a technical background to evaluate.

One commenter objected to the list of factors in §123.15(c)(3) to be used in establishing criteria for technical evaluation of architect/engineers. The commission disagrees with this comment. The commission finds that the factors to be used in establishing criteria for technical evaluation are appropriate. The criteria are not changed by the proposed amendments.

One commenter objected to the provision in §123.15(c)(5) providing that the initial list of architect/engineers to be considered will be drawn from sources including architect/engineers who have applied for HUB certification. The commission disagrees with this comment and finds that the proposed amendment will provide for a larger pool from which to select qualified architect/engineers.

One commenter objected to the requirement in §123.15(c)(4) that a list of "ten firms" be selected for preliminary technical review and recommended a range of from five to 15 firms. The commission disagrees with this comment. The rule as proposed allows for a larger number of firms to be included in the initial selection, and the commission finds that ten is the minimum number of firms desirable for initial selection. Further, the rule as proposed allows for a smaller number of architect/engineers to be selected for technical review upon a finding that a project is of limited scope.

One commenter objected to the executive selection committee scoring procedures in §123.15(c)(12)(A). The commenter recommended that this criterion be changed to focus on the volume of HUB participation and not the number of HUB subconsultants. The commission disagrees with this comment. The commission finds that the number of HUB subconsultants is a significant evaluation factor, as distinguished from the volume of HUB participation. Further, the number of HUB subconsultants is one factor, but not the only factor that may be used in evaluating an architect/engineer's commitment to HUB participation.

One commenter recommended that all firms proposing to meet established HUB goals should be given the maximum evaluation possible under this criterion set forth in §123.15(c)(12). The commission disagrees with this comment. The commission finds that commitment to HUB participation beyond a threshold minimum is a valid criterion for consideration in evaluating qualified architect/engineers.

One commenter objected to the criterion set forth in §123.15(c)(12)(B), volume of work previously awarded, stating that such criterion was not consistent with the Professional Services Procurement Act. The commission disagrees with the comment. The commission procures architect/engineer services under the Texas Government Code Ann. §2166.202 (Vernon 1996) and not the Professional Services Procurement Act. Further, the criterion in question was included in the rule before the proposed amendment and is not substantively changed by the amendments.

Two commenters objected to the selection of fifty percent of the initial interviewees from the HUB list, asserting that this requirement violated the Professional Services Procurement Act. The commission disagrees with the comment. The commission procures architect/engineer services under the Texas Government Code Annotated §2166.202 (Vernon 1996), and not the Professional Services Procurement Act. Further, the section to which the commenter objects is not changed substantively by the amendments.

One commenter objected to the substitution of "design professional" for "architect/engineer," stating that the substituted term was less precise. The commission agrees with this comment and amends the proposed published §123.15 to use the existing term "architect/engineer".

One commenter recommended that the rule state explicitly that the Executive Selection Committee formally conclude negotiations with one firm before beginning negotiations with another and stated that such procedure is mandated by the Professional Services Procurement Act. The commission disagrees with the statement that this procedure is subject to the Professional Services Procurement Act, but agrees with the recommendation. Section 123.15(c)(9) has been revised accordingly.

One commenter objected to §123.15(c)(1) through (c)(4), stating that its composition vested full control over the selection of architect/engineers in the executive director. The commission disagrees with this comment. As stated in §123.15(8), the Executive Selection Committee will score only those firms that have been referred to it by the Preliminary Technical Review Committee as provided for in §123.15(7).

One commenter objected to the criterion in §123.15(c)(12) "commitment to HUB participation" in the criteria to be used by the Executive Selection Committee. In addition, the commenter objected to the evaluation of architect/engineers as exceeding, meeting, or not meeting this criterion. The commenter asserted that this criterion and the evaluation of it were too vague. The commission disagrees with this comment and finds that this criterion is sufficiently specific for use in evaluations. The criterion in question "commitment to HUB participation," is followed immediately by the example, "including the number of HUBs the architect/engineer proposes to use."

One commenter objected to §123.15(c)(11) stating that the criteria set forth therein for preliminary technical review of architect/engineers were inadequate for evaluation. The commission disagrees with this comment. The commission finds that similar criteria have been used under the existing rule for such evaluation.

No comments were received in favor of the amendment. Comments received against adoption of the amendment are as follows: Swiki Anderson and Associates, Inc.; Consulting Engineers Council of Texas; Texas Society of Architects; and one comment from an individual.

The amendment is adopted under the Texas Government Code, Title 10, Subtitle D, Chapter 2166, which provides the General Services Commission with the authority to promulgate rules consistent with the Code.

§123.15. Selection of Architect/Engineer for Professional Services.

(a) Selection of an architect/engineer for professional services shall be in accordance with Texas Government Code, Title 10, Subtitle D, §2166.202.

(b) If a using agency chooses to recommend an architect/engineer for a project, the recommendation should accompany the project request.

(c) The following procedures shall be used for the architect/engineer selection.

(1) A preliminary technical review committee will be formed consisting of at least three commission staff architects or engineers who are knowledgeable about the nature, scope, and location of the project.

(2) An executive selection committee will be formed consisting of the executive director, a member of the preliminary technical review committee, and a representative from the Office of Executive Administration.

(3) The commission recognizes that professional services required for each project will differ. Criteria developed from the project description will be used by the preliminary technical review committee to formulate the list of architect/engineers for preliminary evaluation. Such criteria include, but are not necessarily limited to, considerations such as project type, size, complexity, the ability and capacity of the architect/engineer for timeliness, skill, creative ability, technical and professional knowledge, and history of previous work on comparable construction projects. The project description will provide a basis for the list of minimum qualifications that a prospective architect/engineer should possess in order to provide professional services on the project.

(4) The preliminary technical review committee with the approval of the executive director, will where possible, compile a list of ten firms that meet or exceed the minimum qualifications for further consideration. At least 50% of the selected firms will be drawn from the historically underutilized businesses (HUBs) Architects/Engineers directory maintained by the facilities construction division unless a notation, approved by the commission HUB certification office, explains circumstances resulting in less than 50% HUBs being listed for further consideration. It is recognized by the commission that ten firms is an optimum number of firms that could effectively be considered without causing undue administrative delay in the project. More than ten firms may actually meet the minimum requirements established for the project, but no additional firms will be considered unless the preliminary technical review committee decides it can do so without undue administrative delay in the project.

(A) Upon determination by the commission that a project for repair, rehabilitation, or renovation is of limited scope for

professional services, the commission may consider a lesser number of architect/engineer firms for selection consideration.

(B) Selection of an architect/engineer firm for providing emergency services will be made following a determination by the executive director that project warrants professional services, and that professional services are required in an urgent time frame which does not permit normal selection committee procedures to occur.

(5) The list will be drawn from a file of architect/engineer firms that have expressed an interest in work supervised by the commission by having responded to a standard questionnaire or by submitting adequate data on experience and capability in other formats, or by having submitted an application for HUB certification.

(6) Firms selected for consideration will be notified and given a brief description of the project and those interested in further consideration will be scheduled for an interview with the preliminary technical review committee. Individuals or firms shall be allowed a 30-day response time period for preparation and submission of information which presents specific project experiences and qualifications to the preliminary technical selection committee except in the event of an emergency as provided in the Texas Government Code, §2166.203(b) .

(7) Each firm interviewed by the preliminary technical review committee will be evaluated for technical qualifications according to the criteria set forth in subsection (c)(11). The preliminary technical review committee will evaluate each interviewed architect/engineer as exceeding, meeting, or not meeting technical qualifications for the project. The preliminary technical review committee will refer all architect/engineers meeting or exceeding technical qualifications to the executive selection committee together with its findings regarding such architect/engineers. In addition, the preliminary technical review committee will report to the executive selection committee its findings concerning any architect/engineer evaluated as not meeting technical qualifications.

(8) The executive selection committee will score the architect/engineers referred to it by the preliminary technical review committee according to the criteria set forth in subsection (c)(12). In the case of identical scores for those architect/engineers scored the highest, additional qualifications of the firms will be scored until ties are resolved.

(9) The commission will attempt to negotiate an agreement with the architect/engineer scored the highest by the executive selection committee. Negotiations by the commission will be under the direction of the executive director. Should the commission be unable to reach an agreement with the architect/engineer scored the highest by the executive selection committee, the commission will terminate negotiations with that architect/engineer and attempt to negotiate an agreement with the architect/engineer scored the next highest by the executive selection committee. Should the commission be unable to reach an agreement with such firm, a similar procedure will be followed until an agreement is reached or until the executive selection committee requests that the preliminary technical review committee produce another pool of qualified architect/engineers for the project, or until the commission decides to terminate selection proceedings for the project.

(10) After an architect/engineer selection is completed, the firms interviewed but not selected will be advised of the selection.

(11) Items of consideration in making the initial evaluation by the preliminary technical review committee will include, but not necessarily be limited to, the following:

(A) architect/engineer's experience with projects similar in character and or scope for which the architect/engineer is being considered;

(B) compatibility between the number and qualifications of employees of the architect/engineer firm and size and complexity of the project;

(C) quality of previous work done for the commission;

(D) current professional service work load and capability of the architect/engineer to perform the work in the required timeframe;

(E) experience with control of budget and schedule;

(F) registration status of persons engaged in the practice of professional architectural or engineering services ; and

(G) qualifications of the architect/engineer team, including subconsultants and HUBs.

(12) The executive selection committee will score the architect/engineers referred to it by the preliminary technical review committee. Criteria used by the executive selection committee will include:

(A) Commitment to HUB participation, including the number of HUBs the architect/engineer proposes to use.

(B) Volume of work previously awarded to the architect/engineer by the commission. In the interest of giving as many eligible and qualified firms as possible a fair chance to obtain commission work, prior work for the commission may be the basis for awarding to a different architect/engineer.

(C) Ability of the architect/engineer to perform work under the project in the time required. Such determination will be based on criteria including:

(i) work load and capacity,

(ii) cooperation with the commission on prior work, and

(iii) performance history under prior agreements with other clients of the architect/engineer.

(D) Technical qualifications as provided by the preliminary technical review committee.

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

Issued in Austin, Texas, on May 29, 1996.

TRD-9607491
David Ross Brown
Assistant General Counsel
General Services Commission
Effective date: July 20, 1996

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TITLE 16. ECONOMIC REGULATION

Part IX. Texas Lottery Commission

Chapter 402. Bingo Regulation and Tax

16 TAC §402.571

The Texas Lottery Commission adopts new §402.571, relating to system service providers, without changes to the proposed text published in the April 12, 1996, issue of the *Texas Register* (21 TexReg 3108).

The new section implements statutory changes and establishes standards for persons wanting to be licensed as a system service provider and provide automated bingo services to be licensed authorized organizations as set out in Texas Civil Statutes, Article 179d, §2 and §13a.

No comments were received regarding adoption of the new section.

The new section is adopted under of Texas Civil Statutes, Article 179d, §16(a) and (d), and under Texas Government Code, §467.102, which provides the Texas Lottery Commission with the authority to adopt rules for the enforcement and administration of the Bingo Enabling Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 29, 1996.

TRD-9607500
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: June 19, 1996
Proposal publication date: April 12, 1996
For further information, please call: (512) 323–3791

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 114. Control of Air Pollution From Motor Vehicles

The Texas Natural Resource Conservation Commission (commission) adopts the repeal of §114.3, concerning Inspection Requirements, and §114.4, concerning Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers; and new §114.3, concerning Vehicle Emissions Inspection Requirements; §114.4, concerning Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers; §114.6, concerning Waivers and Extensions for Inspection Requirements; and §114.7, concerning Inspection and Maintenance Fees. Sections 114.3, 114.4, 114.6, and 114.7 are adopted with changes to the proposed text as published in the March 26, 1996, issue of the *Texas Register* (21 TexReg 2451). A revised mobile source control strategy which specifies the administrative, technical, and enforcement provisions of the Inspection/Maintenance (I/M) program is also adopted.

The rule amendments and mobile source control strategy modifications are adopted as a revision to the State Implementation Plan (SIP) for the control of ozone in the Houston/Galveston, Beaumont/Port Arthur, Dallas/Fort Worth (DFW), and El Paso nonattainment areas. This action is the result of Senate Bill (SB) 178 and the Governor's Executive Order which directs the commission to design and develop a new plan for vehicle emissions testing to satisfy Federal Clean Air Act (FCAA) requirements. These revisions to the SIP are also in response to the National Highway System Designation Act of 1995 (NHSDA) signed into law on November 28, 1995.

New §114.3, concerning Vehicle Emissions Inspection Requirements, establishes the primary program requirements of the Texas Motorist's Choice Program (TMCP) for vehicle emissions testing. This section defines terms for implementation of the program, the affected vehicle population, and the dates for program startup. Definitions include: adjusted annually, basic program area, core program area, emissions tune-up, enhanced program area, first safety inspection certificate, loaded mode I/M test, motorist, on-road test, out-of-cycle test, primarily operated, program area, retest, revised Texas I/M SIP, and uncommon part.

Section 114.3 also establishes control requirements for motorists and certain federal employees. The affected vehicles are required to comply with the air pollution emissions control related requirements included in the annual vehicle safety inspection administered by the Texas Department of Public Safety (DPS), the vehicle emissions inspection and maintenance requirements contained in the revised Texas I/M SIP, and the on-road emissions test requirements. A motorist whose vehicle has failed the emissions test requirement must have emissions-related repairs performed prior to receiving a vehicle safety inspection certificate. Waiver provisions and time extensions are provided for the control requirements.

Section 114.3 prohibits persons, organizations, businesses, or other entities from activities related to the misrepresentation, misuse, or mishandling of vehicle emissions testing documents or certifications. This section establishes the certification requirements for inspection stations and the requirements for repair technicians allowed in the program.

New §114.4, concerning Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers, establishes application, certification, maintenance, and service requirements for manufacturers or distributors of vehicle testing equipment seeking approval of an exhaust gas analyzer or analyzer system for use in the Texas I/M program. This section also requires applicants to comply with all special provisions and conditions in the notice of approval and notifies applicants of enforcement consequences for misrepresentation or compliance failure.

New §114.6, concerning Waivers and Extensions for Vehicle Emissions Inspection Requirements, establishes two types of waivers and two types of time extensions, along with the associated qualification criteria. The Minimum Expenditure Waiver allows a motorist to forgo compliance with the control requirements after certain minimum expenditure levels are reached. The Individual Vehicle Waiver allows a motorist to forgo compliance with the control requirements after the motorist has taken reasonable measures to comply with the

requirements of the vehicle emissions I/M program and the Director of DPS determines that such waiver shall have a minimal impact on air quality. The Minimum Expenditure and Individual Vehicle waivers are allowed once per test cycle. The Low Income Time Extension allows a motorist to forgo the control requirements due to financial considerations. A motorist must pass an emissions test prior to receiving another Low Income Time Extension. The Parts Availability Time Extension, allowed once per test cycle, provides a grace period for those vehicles which need repair parts that are temporarily unavailable.

New §114.7, concerning Inspection and Maintenance Fees, establishes fee schedules for the different counties which must be paid for the emissions inspection of a vehicle at an inspection station. This section instructs stations on how to charge for vehicle emissions inspections resulting from on-road testing.

In addition to the rule changes, the revisions to the SIP clarify the new program elements such as applicability changes; state resources for the program; the new program performance standard; emissions testing network type; emissions testing; affected vehicle populations; strategies for quality control and quality assurance; projection of waiver rates; enforcement actions related to vehicles and service providers; data collection, analysis, and reporting; inspector training, licensing, and certification; public information strategies; plans for improving repair effectiveness; on-road vehicle emissions testing; and the implementation schedule. The revised SIP excludes the Beaumont/ Port Arthur ozone nonattainment area from the I/M program requirements. The I/M program for Dallas and Tarrant counties being proposed exceeds the United States Environmental Protection Agency's (EPA) low enhanced performance standard for these counties. The I/M programs for Harris and El Paso counties meet the low enhanced performance standard specified for these areas.

A total of 58 persons provided testimony, either through the public hearing or written comments. Texas Automobile Dealers Association (TADA); Greater Houston Partnership; Harris County Pollution Control Department (HCPCD); Houston-Galveston Area Council-Regional Air Quality Planning Council (RAQPC); Metropolitan Transit Authority (METRO); Tarrant Coalition for Environmental Awareness (TCEA); Texas State Inspectors Association (TSIA); EPA Region 6 (EPA); People's Action Coalition (PAC); an elected official and eight individuals generally supported the proposed revisions, however, some commenters suggested improvements. League of Women Voters of Texas (LWV-TX); League of Women Voters of Houston (LWV-H); Citizens' Environmental Coalition (CEC); Commissioners Court of Harris County; El Paso City-County Health and Environmental District; El Paso Metropolitan Planning Organization (El Paso MPO); Greater Dallas Chamber; and 5 individuals suggested improvements to the proposed revision. Most of the suggestions related to the inclusion of all counties in the designated ozone nonattainment areas and of all older vehicles and diesel engine vehicles operating in the affected counties. Automotive Service Association (ASA); Environmental Defense Fund (EDF); Bickerstaff; Heath; Smiley; Pollan; Kever & McDaniel L.L.P. (Bickerstaff) ; FINA Inc. (FINA); Lone Star Chapter of the Sierra Club (Sierra Club); Tejas Testing Technology 1 and 2 (Tejas); and 12 of citizens were against the proposed revisions. The Tax Assessor-Collectors Association of Texas (TACAT) commented that the enforcement of the I/M program should be the sole responsibility of the DPS. An elected official commented on the adequate use of funds in addressing air quality problems. A citizen requested that the commission include in its considerations the impact of the I/M program on low-income individuals. The Texas Vehicle Club Council (TVCC) requested clarification on the exclusion of antique vehicles from the I/M program. Several individuals commented that the notice for the public hearings was inadequate.

PROGRAM EQUIPMENT. TADA expressed concern that certified equipment might not be available in time to meet the state's time line.

The commission and the DPS are working closely with manufacturers that have expressed a desire to participate in the TMCP to make sure approved equipment is available. The phasing of the start dates in DFW and in Houston will assist manufacturers in ensuring that enough certified equipment is available.

An individual commented that the gas cap integrity test is not equal to a test where pressure is held in the line for a leak check. This testing method is not based on the best science or testing method.

A study conducted by the State of California revealed that the majority of the failures indicated by the pressure test were due to an improper sealing by the tank gas cap. The gas cap integrity test procedure is a more convenient, less intrusive, highly effective method for determining if the gas cap is providing an appropriate seal on the vehicles gas tank. The commission will continue to monitor and evaluate the effectiveness of the gas cap integrity test as the program matures. The results will be shared with EPA during the evaluation phase to determine if any adjustments are necessary.

One commenter stated that hoses, gas tank, and other components need to be checked and requested an explanation of "reliable engineering practices" and "good engineering practices".

"Hoses" and "other components" are terms which are too generic for the purposes of listing systems to be inspected. Oftentimes, such "hoses" and "other components" are just a part of the individual systems to be inspected. The commission does agree that the gas cap (but not "tank") must require inspection and is now specifically listed. The term "reliable engineering practices" is used to address the accuracy of remote sensing screenings. In lieu of actually stating the equipment specifications, use of the term "reliable engineering practices" commits the state to a responsible application of remote sensing technology. The term "good engineering practices" is used to describe acceptable industry standards in relation to the calibration and maintenance of vehicle exhaust gas analyzers. The full scope of calibration and maintenance requirements is too large for inclusion in this section of the SIP. For further information see Appendix G, Specifications For Preconditioned Two-Speed Idle Vehicle Gas Analyzer Systems for Use in the Texas Motorist's Choice Vehicle Emissions Testing Program," dated April 26, 1996, of the revised Texas I/M SIP.

TSIA commented that regardless of manufacturer's assurance, they do not believe enough equipment can be produced by

them by the October 1 "second phase" implementation date. TSIA suggested the implementation date for new equipment be January 1997 to avoid a problem with equipment supply.

Equipment manufacturers have committed to an implementation time line of October 31, 1996 and have already begun production or development of hardware and software to meet this date. A pilot program will also be implemented before October 31, to ensure that communication software is functioning properly. The SIP has been modified to reflect the October 31 date.

TSIA recommended that the first phase of the new program beginning in July, 1996 include only the data link pilot program as outlined in the revised SIP.

The first phase of the new program will include, at a minimum, the electronic transmission of data, as well as, changes in year models to be tested, cut points, and the emissions testing fee. The first phase will also include the addition of all vehicle weight classes.

TSIA and one commenter recommended that the initial pilot program should be conducted at a limited number of volunteer testing stations in the DFW area, to allow debugging of the system.

Commission rules have been amended to allow an initial pilot program to be conducted at testing stations utilizing each type of analyzer. Once pilot testing of the equipment has been successfully completed, equipment at the remaining stations will be upgraded.

EPA commented that the steady state idle test "procedures" should reference and be conducted according to Appendix B of the Federal I/M rule and steady state idle test equipment "specifications" should reference Appendix D of the Federal I/M rule.

The commission concurs, and has changed the language in the SIP to reflect that the steady state idle test "procedures" reference, and are conducted, according to Appendix B of the Federal I/M rule and steady state idle test equipment "specifications" reference Appendix D of the Federal I/M rule.

EPA commented that a reference should be made to following future Acceleration Simulation Mode (ASM) test procedures acceptable to EPA and the state.

The commission concurs, and has changed the language in the SIP narrative to add "and procedures" after "ASM test equipment specifications".

EPA commented that language should be added that alternative calibration and maintenance procedures should receive EPA approval.

The commission concurs, and has included language in the SIP that alternative calibration and maintenance procedures should receive EPA approval.

EPA commented that the SIP should read "emissions control systems" instead of "emission control systems".

The commission concurs, and has changed the language in the SIP to read "emissions" rather than "emission".

Two individuals commented that the technology that will be used in the TMCP is not new, the technology has been in place for 20 years. The state needs to use 1996 technology.

Although the basic technology is not new, the TMCP has incorporated many elements into the equipment specifications that will enhance the program as a whole. For instance, the TX96 analyzer will incorporate a telecommunications element that will allow for centralized collection of all emissions testing data and provide an option to access the most updated repair information available. The equipment also includes a gas cap integrity test. The equipment can be upgraded to include On-Board Diagnostics or other equipment.

An individual commented that the Two-Speed Idle testing technology now proposed by the commission is not comparable to the IM240 testing technology used in the previous centralized program, because the two technologies measure pollutants differently.

The commission acknowledges that the IM240 and BAR90 (two-speed idle) analyzers measure pollutants differently. The IM240 measures vehicle emissions in terms of grams per mile, while the BAR90 measures pollutants in terms of parts per million. Despite the difference, however, the BAR90 has a proven record of validity and the EPA has approved its use in a number of I/M programs nationwide.

METRO acknowledged that METRO will need to upgrade their present emissions testing equipment to accommodate the TX96 specifications. METRO will coordinate with the commission to ensure that equipment used is consistent with the state's requirements for emissions testing.

The commission will provide assistance, such as lists of certified equipment and points of contact for manufacturers, to ensure that all emissions testing equipment is consistent with the state's requirements for emissions testing.

TSIA, ASA, and one individual commented that the phone companies could not complete installations of "dedicated" phone lines in 1200 stations by May 1, 1996.

Inspection stations were required to notify their local telephone service by May 1, 1996, to install a phone line for the modem to guarantee a station to be on-line for the July 1, 1996 program start date in the DFW area. The commission has confirmed Southwestern Bell and GTE can provide service to those who request a new phone line installation in 5 to 7 days. However, stations that delay requesting the telephone line may be brought on-line after July 1, 1996, which may delay their certification to perform emissions inspections.

TSIA is concerned that one manufacturer, which has 80% of the market, will not be able to bring a phone modem update online by June 1.

Automotive Diagnostics (AD) has approximately 80% of the market, and has committed to the state that they will meet the July 1, 1996 implementation date. In order to address this concern, §114.4 and the SIP have been changed to allow a phase-in of software and hardware through July 31, 1996.

TSIA commented that a definition of a "dedicated phone line" is needed.

The telephone line must be a stand-alone line that will be designated for each specific analyzer. The line cannot operate through a switchboard or trunking system (dialing a designated number) to obtain an "outside" line. There can be no interruptions of the phone line during the testing sequence.

TSIA commented that phone companies charge up to $100 to install lines to the exterior of a building, and additional costs could be incurred to install individual jacks inside.

Southwestern Bell and GTE have quoted prices of $61-$75 for line installation depending on the telephone carrier. If an additional telephone jack is required there will be a one time fee for the telephone jack and installation charge .

An individual commented that, from the April 1, 1996, date of the DPS "dedicated phone line notification letter", it is obvious that GTE and Southwestern Bell were not aware of the number of phone line installations that were required in a short time frame.

The local telephone companies were contacted prior to the April 1, 1996, letter regarding their time requirements for phone line installations. Both companies said that a one month notification was sufficient.

HCPCD and one individual commented regarding the economic viability of small businesses that perform safety inspections, since they must purchase at least $15,000 or more worth of equipment. Safety inspections will have little or no value without the emissions testing component.

All new businesses that wish to perform safety inspections will be required to offer emissions testing. Businesses currently performing safety inspections will not be required to purchase emissions testing equipment. These stations will still be able to offer safety inspections to those vehicles that do not require an emissions test (ie; diesel vehicles, vehicles twenty-five years old and older, new vehicles, motorcycles). DPS will evaluate the impact of "safety-only" stations for the public and at a later date will determine whether safety-only stations should be permanently allowed in the inspection program. Whether or not to participate in the inspection program will be an individual business decision.

TSIA commented that they would like an opportunity to review the updated specifications and anticipated cost structure.

The final copy of the "Specifications For Preconditioned Two-Speed Vehicle Exhaust Gas Analyzer System For Use In The Texas Motorist's Choice Vehicle Emissions Testing Program," dated April 26, 1996, has been provided to this commenter and others that have expressed an interest in the specifications.

Sun Electric and AD, the manufacturers of 98% of the current vehicle emissions testing equipment in the DFW area, have stated the cost to upgrade existing analyzers to meet the new specifications will be $4200 to $6000. Alltest has not provided an upgrade cost. Each manufacturer will offer financial and business agreements to owners of the analyzers. Environmental Systems Products, Inc. (ESP), will offer a new analyzer for approximately $13,000 that meets the specifications.

TSIA and one individual commented that if the economics of the TMCP do not work for operators, they will not participate.

Each of the approximate 1200 station owners or businesses must make a decision on whether the increase in fee will justify the capital outlay investment needed to upgrade the equipment to meet EPA requirements to continue offering this service to the public.

One individual commented that the state indicated that the cost of emissions testing equipment would be approximately $15,000. The commenter believes the cost will be between $15,000 and $30,000.

One equipment manufacturer, ESP, has indicated the cost of new emissions testing equipment will be approximately $13,000. Other manufacturers have not provided costs for the new testing equipment.

TSIA commented that equipment company representatives have told TSIA members that the more stations that participate in the TMCP and share the cost of research and development, the lower the cost will be to each operator.

The commission agrees that economies of scale will result in lower cost to all participants. The state has also been told that the greater the number of station operators that plan to participate, the greater the savings to all.

TSIA, ASA, and an individual commented that they would like to be able to take advantage of off-the-shelf technologies that are available now that may be at a lower cost rather than being pushed to participate in a piecemeal program that's doomed to fail in the near future.

The state is required to combine the emissions test and the safety program which requires the use of a data link system, thus necessitating the use of a modem. Technologies which exist "off-the-shelf" do not incorporate such technology and, therefore, cannot be used in the TMCP. The Utah software has been mentioned by TSIA as a software package that should be utilized in Texas. EPA has rejected some attempts by Utah to claim additional credit, due to insufficient data. The commission developed the current specifications to address EPA's concerns.

An individual expressed concern over those station owners that may be penalized for early entrance into the emissions testing market by paying higher costs for new technology that will decrease in price as more equipment saturates the market.

Private companies are free to market and sell exhaust gas analyzers which meet the specifications established by the commission. Based on competition, prices for these analyzers should be reasonable and fair. As with any market-driven economy, prices may fluctuate either up or down over time depending upon supply and demand. It is the responsibility of the buyer at any given point in time to determine if an investment in an analyzer is worth the cost.

An individual commented the state needs to improve some of the testing methodologies that are being used by stations and address the repair issues as well.

The TMCP has improved testing methodologies by utilizing the real-time data from the data link system. This system will also assist with repair issues by allowing technicians to view a reliable, up to date emissions testing and repair record for the vehicle in question.

An individual commented that they received incorrect information at the time the BAR90 equipment was purchased for the DFW program, and that it is not feasible to pay the money to upgrade their equipment to continue to participate in the emissions testing program.

To obtain the necessary reductions in air pollution as required by the FCAA Amendments, the state must provide a more stringent program in the DFW area than was required in 1990. Additional model years of vehicles, additional weight classifications, real-time data transmission, gas cap integrity tests and additional extensive data collection is needed. Enhancements, such as a barcode scanner, were made optional to keep the cost of the upgrade to a minimum. Each station will need to evaluate the equipment costs and make a business decision based on individual circumstances.

TSIA stated that the bottom line of all of this is a net decrease in revenue to testing stations.

Stations participating in the TMCP will be retaining more income per test than currently collected. This additional income can be used to offset the expenses of equipment upgrades.

An individual commented that if the state paid Tejas $8.3 million not to work, the state should spend $9 million for equipment upgrades for inspection station owners.

All state financial expenditures first require legislative authority. The funds referred to were a loan to Tejas which was approved through legislative authority. Provision of any amount of state funds to station owners would require legislative authority.

An individual commented that if the state changes their guarantees on a written contract, the same type of thing could happen to people who enter into an unwritten contract with the state.

An emissions testing program is required by federal law and has been authorized to be implemented through Texas state law. The program is subject to change based on changes that could occur in the federal and/or state laws which authorize the current program. As with all business decisions, the purchase of an exhaust gas analyzer is a financial risk.

COMPLIANCE RATE. EDF commented that it will be difficult for the I/M program to achieve a 96% compliance rate.

Vast improvements in the data collection and analysis system will enable the state to more accurately monitor vehicles that are registered in the area, but fail to be inspected in the area. Denial of re-registration of these vehicles would improve the compliance rate. The public information program will also encourage motorists to perform routine maintenance by pointing out the monetary benefits of car maintenance.

Tejas commented that in order to get the compliance rate projected, the TMCP will require registration denial or a prerequisite to re-registration. In 1992, the compliance rate was 63%.

The commission recognizes legislative authority is needed to deny registration renewal to vehicles that have not complied with I/M program requirements. Additionally, the commission recently commissioned a study of safety certificate compliance in the program area. This study concluded that the safety certificate compliance rate was approximately 95%. The commission believes that the proposed program will generate the expected 96% compliance rate based on numerous enforcement enhancements.

VEHICLE RECALL. TADA commented that clarification of the recall process was needed since notices are issued by vehicle manufacturers, not emissions inspection stations.

The Texas Data Link System (TDLS) will be updated on a routine basis with vehicle emissions related recall identification information received from EPA or it's contractor. At the time of the initial inspection, if a vehicle is found to have failed to respond to a recall, the vehicle must be repaired to comply with the recall notice prior to receiving an emissions test. The rule language has been changed to clarify recall procedures.

EMISSIONS TESTING FEE. TADA commented that the difference in fees could invite unscrupulous operators into the testing business. A single fee, set by the state, would be more credible than the multiple fee structure which is proposed.

The commission concurs, and has established one fee for annual testing and one fee for biennial testing. Section 114.7 has been revised to reflect the following fees: $13 for all annual emissions inspections and $26 for all biennial emissions inspections.

TSIA and a commenter recommended a minimum charge of $23.50 be mandated for the test.

An emission test fee of $13 is combined with the safety inspection fee of $10.50 making a total fee of $23.50. The commission rules have been modified to reflect a standard emissions testing fee for all facility types.

TSIA and four individuals commented that test-and-repair stations with mandated pricing will not be able to compete with test-only facilities that can set their inspection fees per market conditions.

The Texas I/M Rule has been modified to reflect a standard fee for emissions testing, regardless of facility type.

TSIA and two individuals commented that it appears that 75% or more of the price increase to the public will be absorbed by state bureaucracies. This leaves approximately 6% increase to the inspection station and they must spend $8,000 and up for new equipment and/or updates.

The emissions test fee will increase from $8.75 to $13, with $1.75 of the $13 (or 13.5%) attributed to the state for oversight of the program. The station owner will keep the remaining test fee of $11.25 less the cost of the modem transaction (approximately $.88) for each vehicle tested. When a loaded mode, biennial test becomes available, the fee will be $26. The state will collect $1.75 of that fee for oversight of the program and the station owner will keep the remainder, less the cost of the modem transaction (approximately $.88). Equipment for the annual two-speed idle test may be upgraded for a price of $4,200 - $6,000 depending on the manufacturer and new equipment may be obtained for approximately $13,000.

Tejas commented that the Texas SIP states that $1.75 per inspection will be collected and used jointly by the commission and the DPS to monitor the TMCP. California presently spends about $7.00 per test to monitor its program, and with the new

decentralized program that they're putting forward, they plan to increase that amount.

The state feels that $1.75 is sufficient to fund the necessary oversight program for the I/M programs in its three non-attainment areas. California's operating costs are higher than those of Texas due to its greater number of areas operating under an I/M program.

One individual commented that the new I/M program is supposed to be a cheaper and more consumer friendly program. The fee is now higher and vehicles have to be tested more often.

The centralized testing facilities used by the I/M program which operated briefly in January, 1995, were designed to test large numbers of vehicles. Like an assembly line type of production, this created large economies of scale which reduced the cost of an individual test. SB 178 required a redesign of the I/M program. The TMCP provides more facilities which can inspect vehicles, however, each of these facilities conduct fewer tests than a centralized program facility would have. Also, the TMCP incorporates the added expense of the TDLS, along with the additional oversight costs associated with the auditing of the large number of stations in a decentralized program. Consequently, each individual emissions inspection costs more.

An annual test is one option of the TMCP. SB 178 directed the commission and the DPS to offer emissions inspections in conjunction with the annual vehicle safety inspection. The program was developed to allow individuals the options of getting the emissions test each year in conjunction with the safety inspection, or, of having a biennial emissions test that would alleviate the need for an emissions test the following year.

PROGRAM RESOURCES. RAQPC commented that six additional full time equivalent employees (FTEs) might not be adequate to successfully achieve the overt and covert auditing requirements of quality assurance in three separate metropolitan areas. The commenter asked for a review of the FTE definition.

The I/M SIP establishes only minimum FTE requirements for overt and covert auditing. The DPS will assign at least 10 FTE employees to conduct covert audits and assign at least 35 employees to conduct overt audits, thus exceeding the SIP commitments. At least 50% of the assigned overt auditors' time will be spent in emissions related overt audits, representing at least 17 FTE overt auditors. The DPS believes there is an adequate number of employees planned to respond to the oversight of the emissions program.

The FTE definition relates mainly to FTEs employed by inspection facilities. However, an FTE is based on a 40 hour week, 52 weeks per year wherever it is mentioned within the SIP.

The Sierra Club, Tejas, and two individuals are concerned that the commission and DPS do not have enough enforcement personnel.

The SIP establishes only minimum FTE personnel for program oversight. The DPS will be adding 43 additional FTEs to respond to the additional emissions oversight responsibilities. The DPS currently employs 47 FTEs in the four county emissions testing areas. These FTEs will supervise both the vehicle safety inspection and emissions testing programs. These 90 DPS FTEs and 12 commission FTEs will be responsible for the design, implementation and evaluation of the I/M program.

The Sierra Club and one individual commented that car repair owners, mechanics, and citizens have indicated that it's not a question of whether there will be fraud and abuse in the proposed program, but how much will the commission try to investigate and remedy this fraud.

While the commission does not believe that fraud or abuse will be significant, the revised I/M SIP addresses this possibility. The SIP commits the DPS and the commission to implement a comprehensive set of quality assurance and quality control measures. These measures are described in Sections 8 and 9 in the SIP. The measures include: equipment calibration maintenance procedures, document security, and audit procedures. Taken together, these measures will prevent a great deal of fraud and abuse while allowing easy detection of any actual attempts. Those motorists or testing inspectors found abusing the program will be subject to a variety of possible penalties up to, and including, criminal prosecution.

An individual commented that the commission, not the DPS, should be primarily responsible for the program and that additional full time employees are necessary.

DPS administers the safety inspection program. Since the emissions testing program will be a part of the safety program, it is more cost effective for DPS to administer the program. It ultimately will result in less confusion for station owners and operators and the motoring public. Minimum employee figures for DPS are included in the SIP.

An individual is concerned about the division of the I/M program between three agencies, the commission, DPS, and the Texas Department of Transportation (TxDOT) and suggested the commission, as the environmental agency, should be in charge of this environmental program.

Each agency involved in the I/M program has expertise and capabilities that can be used to ensure the I/M program, as a whole, operates more efficiently. The agencies have taken care to divide program responsibilities so that there will be little overlap in duties. The DPS, for example, has law enforcement capabilities and experience with safety inspections to enforce program compliance and implement the program. The commission, as the state's air quality agency, can research and adopt environmental standards for the program, as well as, interface with EPA. TxDOT will supply expertise in vehicle registration.

VEHICLE COVERAGE. The Sierra Club, FINA, the Greater Dallas Chamber, and one individual commented that excluding 1968-1971 model year vehicles is not a good idea because many of the worst emitters on the road are contained in this group.

Older vehicles were designed to meet less stringent standards. However, in Harris county for example, this group comprises a very small percentage (1.4%) of vehicles on the road. Statistically, these vehicles are driven less. Consequently, these vehicles make a minimal contribution to the air quality problem. Vehicles that are twenty-five years old or older could be registered as antique. SB 178 excludes antique vehicles from the program. Computer modeling confirms that the

commission can meet all federal requirements without including these vehicles in the TMCP.

An individual commented that if one type of vehicle has to be tested, why not all of the moving vehicles. This should include all on road and off road vehicles, old, antique, classic, fast or slow moving.

SB 178 excludes from testing antique motor vehicles, classic motor vehicles, slow moving vehicles required to display a slow moving vehicle emblem, and circus vehicles.

TVCC commented that the exclusion of antique vehicles is not actually mentioned in the SIP and requested that the SIP be amended to address this concern.

A vehicle twenty-five years old or older may be considered antique. SB 178 excludes antique vehicles from participation in the emissions inspection program. The commission has included language in the SIP to clarify that antique vehicles are not subject to emissions testing.

TVCC has a concern about when vehicles are required to be tested. His assumption is: the program starts on January 1, 1997, vehicles with model years from 1973 to 1997 will be tested and, in 1998, vehicles with model years from 1974 to 1998 will be tested, thus 1973 vehicles will be excluded.

The program is designed with a "rolling" 24 year window with the most recent 24 model years being subject to the I/M program. Mandatory inspections, however, will not begin until a vehicle's second anniversary. Consequently, vehicles from two through 24 model years old are required to undergo mandatory periodic testing. Vehicles less than two model years old will be required to pass an emissions test only if they are identified by a remote sensing scan as a gross polluter. This option was selected due to the small amount of vehicles that are on the road after 25 years and a large percentage of these vehicles being classified as classics and/or antiques, which are not subject to emissions testing. For a program beginning on January 1, 1997, the 24 year "rolling window" means that vehicles beginning with model year 1973 through 1995 will be subject to scheduled testing. On January 1, 1998, model years 1974 through 1996 will be tested. The "rolling 24 year" is obtained by subtracting 24 from the current year. Older vehicles will be excluded.

Two individuals commented that requiring testing and repair of "clunkers", or "near clunkers" may impact economically disadvantaged motorists.

A waiver provision allows up to 3.0% of the applicable population to maintain a waiver after a set limit is spent on repairing the vehicle. In addition, a low-income time extension is available for motorists that cannot afford repairs on vehicles that fail the emissions test. The test fee was developed to give station owners a return on investment and to recover the costs of state oversight.

An individual commented that all cars should not be tested when less than 20% of the vehicles actually cause most of the pollution.

Although data indicates that less than 20% of vehicles cause most of the air pollution, a state cannot identify which cars are contributing to air pollution problems without having the emissions from each vehicle tested. Remote sensing can be used to identify vehicles that excessively pollute; the commission is currently reviewing strategies to implement an effective remote sensing program.

EPA commented that the SIP should address the state's plans for testing vehicles with engine switches.

The commission has included language in the SIP that addresses the state's plans for testing vehicles with engine switches.

The Sierra Club and three individuals commented that §114.3(a)(10) which allows a vehicle used less than 60 continuous days to take advantage of a cut-off provision for meeting program requirements, and questions how DPS will prove the person drove 60 days and not 59 days.

EPA's rules do not require vehicles on a federal installation located in an I/M program area to participate in the I/M program as long as such visits do not exceed 60 calendar days per year. The TMCP should not be more stringent for Texas citizens registered in an I/M program area. The rule has been changed to add a presumption that cars are primarily operated in the county in which they are registered.

The Sierra Club and two individuals commented that §114.3(c)(3) has some potential for abuse and the commission needs a way to verify the truthfulness of the self checks.

Federal agencies are required by federal law to participate in local I/M programs. The commission does not believe that federal agencies will seek to avoid compliance with Texas I/M requirements. These facilities are subject to routine audits.

FINA, the Greater Dallas Chamber, El Paso City-County Health District, and one individual commented that "primarily operated" needed to be defined.

The term "primarily operated" is defined in §114.3(a)(10) to refer to a vehicle operated for more than 60 continuous days per year in an I/M program county, with the added presumption that a vehicle is primarily operated in the county in which it is registered.

FINA commented that §114.7(c) addressed vehicles registered outside the core program area. Vehicles registered inside the core program area would also be impacted by out-of-cycle testing.

Under the current design of the TMCP, vehicles registered in the core program areas would be subject to out-of-cycle inspections under the following conditions: 1) a remote sensing scan identifying them as "gross" polluters 2) they are at least six model years old, or older, and ownership is transferred to a person who is not a family member, or 3) they are at least six model years old, or older, and ownership is transferred (with certain exceptions).

Vehicles registered inside the core program area that are required to take an out-of-cycle test, as a result of failing a remote sensing test, will not be required to pay for the emissions inspection. The oversight fee will allow DPS to reimburse stations for tests for vehicles registered in the core program area.

The El Paso MPO, FINA, the Greater Dallas Chamber, and nine individuals commented on the possibility of testing diesel vehicles.

The primary pollutants being addressed for the air quality problem in this program are carbon monoxide (CO) and volatile organic compounds (VOC), yet diesels tend to be rather low for CO and VOC, but high for particulate matter and nitrogen oxides (NO_x). However, the I/M SIP revision states that diesel-powered vehicles may be added to the testing program at a later date.

Diesel vehicles make up a small percentage of the vehicle population. However, due to less standardization in diesel vehicles, technology needs more development before diesel opacity testing is initiated. In addition, EPA is working on a policy for testing diesel vehicles. The commission does not want to establish rules in potential conflict with EPA's policy. When EPA's policy is final, the commission expects to add diesel powered vehicles.

FINA, the Greater Dallas Chamber, and one individual stated that motorcycles should be added so that maximum emissions reductions can be achieved.

Because of their low contribution to the mobile emission inventory, it is not cost-effective at this time to include the test and repair of motorcycles. The costs associated with testing and repair for motorcycles result in minimal emissions reduction benefits.

An individual commented that Dallas and Tarrant Counties are responsible for 100% of the pollution in the communities but only represent 60% of the traffic passing through; you should test all vehicles.

Data provided by the 1990 Census indicates that less than 16% of the 2.8 million vehicles potentially operating in Dallas and Tarrant Counties on a given day originate outside of those two counties. Vehicles from Denton and Collin Counties are subject to remote sensing scans.

An individual commented that the state needs to inspect all vehicles that are not required to have state safety inspection certificates.

Vehicles that are not required to have a state safety inspection are an insignificant percentage of the entire vehicle fleet. Vehicles exempted from state safety inspection requirements include farm vehicles and other vehicles rarely driven on public roadways. These vehicles are not large contributors to the air pollution problem in the nonattainment areas. Although exempted from state safety inspections, EPA requires federal vehicles primarily operated in a core I/M program county to participate in the emissions testing program. Additionally, §114.3(c)(3) has been changed to clarify that governmental and quasi-governmental vehicles outside the normal inspection requirements are still required to meet I/M SIP requirements.

An individual commented that the quality of vehicles is increasing and that the vehicle population, as a whole, is getting younger. Therefore, there is less need for an I/M program.

The average age of a vehicle on the road today is approximately seven years. The number of vehicles on the road is increasing and these vehicles are being driven further. This factor tends to offset improvements in vehicle emissions technology. However, the commission does agree that as the technology to make vehicles cleaner becomes available, the I/M program requirements should reflect that reality.

WAIVERS. The Sierra Club and two individuals commented that the commission, not the DPS, should have the authority to grant waivers.

Executive Order GWB 96-1 directs the commission to establish, by rule, criteria for the issuance of waivers. The DPS, with the responsibility of implementing the emissions testing program, will issue the waivers meeting the commission's criteria.

The Sierra Club and one individual commented that the waiver rate needs to be kept under 1.0% because in Houston that means more than 20,500 cars will pollute, the rate should be kept at 0.5% or lower.

The commission has committed to limit the waiver to no more than 3.0% in each program area. If the waiver rate goes above that level, then the commission has specified a number of options in the I/M SIP that it will exercise to bring the actual rate back within acceptable limits. A waiver rate of no more than 3.0% is sufficient to enable the commission to meet applicable federal program requirements. The commission will monitor waiver rates in all core program areas.

The Sierra Club and two individuals commented that they were against the number of waivers, stating that only one waiver should ever be given to a car in its lifetime and the waiver should be provided only for those persons that are economically disadvantaged. They oppose allowing a person to use work done on the car 60 days ahead of time to qualify for the waiver. The commenters oppose the low waiver fee ($150) for Harris County in 1996 due to the fact that the program will not even be in effect in 1996 in Harris County. The commenters stated that the "to the extent practical" statement is a loophole and should be removed. Also, clarification is needed for the terms "every reasonable effort" and "unreasonable".

The TMCP includes two waiver options: the minimum expenditure waiver and the individual vehicle waiver. The minimum expenditure waiver is available to those who have made repairs to their vehicle within the established criteria (to include repairs made within sixty days of an inspection) and met the dollar limits established by EPA. The individual vehicle waiver is for those who cannot meet emissions standards despite every reasonable effort by the motorist. A waiver rate of no more than 3.0% is planned for each nonattainment area.

The Low Income Time Extension is available for those who can demonstrate a financial inability to either afford adequate repairs or to meet the applicable minimum expenditure waiver amount. This extension is available for only one test cycle and may not be issued to the same vehicle two test cycles in a row. The rule requires the vehicle to meet emissions standards for at least one test cycle before another extension can be issued.

Waivers are a way to ensure that motorists making every "good faith" effort to comply with I/M program requirements do not incur excessive repair costs and/or are not excessively inconvenienced. The commission concurs with the comments concerning the 1996 waiver rate for Harris and El Paso Counties and has removed that statement from the SIP and rule.

The "to the extent practical" phrase refers to ensuring that repairs which are difficult to verify are actually performed. For example, rebuilding a carburetor is a legitimate repair for some vehicles which may be necessary to ensure optimum air/fuel control. However, beyond looking at a repair receipt and seeing that the carburetor has a clean appearance, verifying that the carburetor has actually been rebuilt would require full disassembly and thus, is impractical.

The terms "every reasonable effort" and "unreasonable" cannot be explicitly defined for every situation simply because individual vehicle waivers are handled on a case-by-case basis. For example, a motorist operating a vehicle that burns excessive amounts of oil due to overly worn valves and/or piston rings would not be considered to be making "every reasonable effort".

Three commenters were against any extension of a waiver for more than one test cycle. They were concerned about a vehicle not receiving a test for up to 12 months for a parts availability waiver, which would essentially be the next test cycle.

Waivers are a way to ensure that motorists making every "good faith" effort to comply with I/M program requirements do not incur excessive repair costs and/or are not excessively inconvenienced. Waivers are not extended beyond one test cycle. Vehicle owner's must meet all requirements, and reapply the following year to receive a new waiver for that test cycle.

A parts availability time extension will only be granted for more than 90 days if it can be documented that it will actually take that long to acquire the part.

Vehicles that have received a Low Income Time Extension must pass an emissions test before they will be eligible to reapply for another Low Income Time Extension.

An individual was against "allowing any vehicle, low income or not, to have more than one waiver in its lifetime."

The Low Income Time Extension is designed to provide low income motorists the time they need to obtain expensive repairs. By prohibiting a vehicle from receiving two consecutive time extensions, the commission prohibits motorists from using this extension to delay repairs indefinitely. Allowing more than one extension in the life of a vehicle enables a vehicle's new owner to legitimately apply for a new extension if the vehicle has changed owners. A vehicle's owner may also legitimately apply for a new extension if the vehicle must have a different emissions repair made several years later. For example, if a motorist qualifies for an extension when the vehicle is nine years old, the motorist could qualify again if the vehicle needs more repairs done when it is eleven years old, assuming they passed an emissions inspection in between.

One commenter suggested that the $75 waiver amount for pre-1981 vehicles in basic areas was too low because these are the higher emitting vehicles which need to be removed from the road as soon as possible.

The $75 waiver amount for basic program areas is established by EPA's I/M Program Final Rule and should cover the cost of a majority of basic emissions repairs such as tune-ups and oil changes.

RAQPC commented that allowing a low income time extension waiver to be repeated for a vehicle defeats the air pollution reduction performance standard requirements of low enhanced I/M programs.

EPA's I/M Flexibility Amendments 40 CFR Part 51 removed the requirement that hardship exemptions not be granted more than once per vehicle lifetime. Although the low income time extension may be granted to a vehicle more than once, the vehicle will not be eligible for consecutive extensions. The vehicle must pass a vehicle emissions test before the vehicle will be eligible for an additional Low Income Time Extension.

An individual stated that the individual waiver must be removed as it is a huge loophole preventing cars from being repaired or removed from the road.

To be responsive to the needs of a small portion of motorists, individual vehicle waivers were designed to meet the case-by-case exceptions that may arise. While the final authority will rest with DPS, on a case-by-case basis, vehicles that may be eligible would include: a vehicle for which a necessary part is no longer available (and this could be demonstrated); or a vehicle originally purchased outside the U.S. which was not designed to meet the emissions requirements for its model year of registration. In each situation, the burden of proof and the proper demonstration of a "good faith" effort will be required of the motorist.

FINA, the Greater Dallas Chamber, and one individual stated that it should be mandatory that a smoking vehicle would not be eligible for a waiver.

As currently designed, a vehicle may receive a waiver if it meets specific criteria. Problems exist with equitable enforcement of not allowing "smoking" vehicles to receive waivers, since all vehicles burn oil to some extent. Waiver denial based on a visual test of the quantity of smoke is inadequate with some forms of emissions testing.

An individual was opposed to the "or longer" statement under the parts availability waiver on page 44 of the SIP "which means up to one year for an extension which means you have a fourth type of waiver."

The parts availability time extension is only granted for a temporary period of time and is dependent on the demonstrated amount of time that it will take to receive the part. A parts availability time extension will only be granted for more than 90 days if it can be documented that it will actually take that long to acquire the part.

PUBLIC INFORMATION. LWV-TX commented that TMCP does not address personal responsibility and states that vehicle owners should contribute to pollution prevention and clean-up. In addition, a representative of the Sierra Club and two individuals commented that a major concern is the failure to address the costs of air pollution and the need to address this in the public awareness plan.

As part of the SIP, the commission and DPS have committed to undertake a public information campaign. Section 18 of the SIP outlines a comprehensive public information campaign which specifically addresses issues such as the significance of the air

quality problem, the roles of motor vehicles in the air quality problem, and the benefits of an emissions inspection program.

HCPCD and RAQPC commented regarding concerns that the commission's Public Awareness Plan (Section 18 of SIP) contains the necessary elements, but needs an aggressive and exuberant commitment from the commission to implement. Additionally, delaying program start-up until June 1997 will allow more time for public information.

The commission and the DPS are committed through the SIP to implementing an aggressive public information and education campaign. Some elements of the TMCP require legislation, such as test-on-resale, re-registration denial, and certain enforcement mechanisms of remote sensing. Therefore, these elements cannot be implemented until September 1997. This will give ample time for public education and acceptance of these program elements.

The El Paso MPO commented that a thorough public information campaign with easily understood guidance will be critical to El Paso motorists' acceptance and compliance with this program, and encouraged consumer information in both English and Spanish be made available at all inspection stations to fully explain motorists' rights, responsibilities, and waiver/extension privileges, including the rules and provisions for repair costs under the low-income time extension.

The state commits to a public information campaign in the program areas as necessary to allow for sufficient program start-up and as outlined by the I/M SIP. The DPS has taken the suggestion of consumer information being supplied in both English and Spanish under advisement.

RAQPC requested their involvement with the TMCP public information efforts of DPS and the commission, particularly regarding the public awareness plan and their own on-going efforts in the Houston area.

The SIP requires the commission and DPS to implement public awareness plans that specifically addresses eight subject areas. Specifically, the commission will initiate public education campaigns to address the significance of the air quality problem and the roles of motor vehicles in the air quality problem. Council of governments in each test area will be brought in for assistance with these campaigns.

Thirteen individuals commented that notification of public hearings needs to be improved.

Public notice was posted in the *Texas Register* and in local daily newspapers in the legal announcement sections. In addition, Media Relations telefaxed press releases on these particular public hearings to all media outlets in each area.

An individual commented that when he arrived at the scheduled time (obtained from the area newspaper) for the public hearing, the meeting seemed to have already started.

The commission satisfied all legal requirements for public notification of hearings and also notified the local news media. The I/M program customarily holds an informal question and answer period prior to these public hearings, which assists in the understanding of the proposal.

HCPCD and the El Paso MPO commented that the federal and state government will not inform the public how much improvement in air quality is to be obtained from the I/M program.

Detailed computer modeling is expected to be completed in June, 1996, which will predict the emissions reduction credits for I/M programs. Those numbers will be included in the 15% SIP. The TMCP will undergo an 18 month evaluation period, beginning at program implementation. The evaluation results will be made public.

One individual commented that people have a responsibility to maintain their cars; and the vehicle emissions test is really a safety test because the pollution emitted from vehicles has the potential to harm family, ourselves and other people.

The TMCP will be implemented as part of the safety inspection and is designed to assist in the reduction of air pollution from vehicle emissions. Vehicles that fail a vehicle emissions inspection will be required to be repaired and retested or qualify for a waiver.

An individual commented that the commission should have resisted changing direction and forcibly worked at educating the public, Governor, and our legislators. The commenter also stated this whole fiasco is undoubtedly going to cost Texans millions of dollars, while at the same time costing some people their lives and health.

SB 178, passed by the 74th Texas Legislature, repealed the commission's legal authority to implement a centralized I/M program using an IM240 type emissions test. The TMCP was designed to comply with a FCAA Amendments to implement vehicle emissions testing programs.

An individual commented that, in the design of the TMCP, goals of convenience, emission reduction, and environmental concerns were lost due to the bureaucracy and legislative process; a program has been developed that is designed to hamper public participation.

Since the passage of SB 178 in May 1995, the commission has made every effort to solicit participation from members of the public in the development of the TMCP. The staff of the agency has regularly met with various interested parties that have wished to express their concerns and provide input. In July 1995, representatives from the agency visited DFW, El Paso, and Houston to meet with stakeholders on three different I/M program scenarios. The TMCP was the scenario that was not only most favored by members of the public, but which also was able to address the many conflicting concerns surrounding the implementation of a revised I/M program. In developing consensus, it is not possible to satisfy every individual's desires, but it is the goal to develop a plan that is acceptable to most people.

REMOTE SENSING. An individual expressed concern that DPS "plans to utilize remote sensing technology." The commenter felt that only 15% of the commuting vehicles being tested by a remote sensor was inappropriate because these vehicles would be coming from counties not subject to an I/M program. The commenter stated that a maximum fine of $200 for not receiving an emissions test (after remote sensor identification) was inappropriate. In addition, the commenter stated that the

state should address vehicles that are not repaired immediately after high-emitter identification (through the remote sensor).

Beginning in September 1997, remote sensing will be used to identify a significant portion of high-emitting vehicles commuting into Dallas, Tarrant, and Harris Counties. However, of all the commuting vehicles identified, only those registered in the program area will be subject to a more thorough follow-up emissions test. Historical data from I/M programs and studies indicate that approximately 15% to 20% of all the vehicles on the road are responsible for the bulk of the excess emissions. Therefore, a target of 15% of the commuting vehicle population was used for projection purposes. It is felt at this time that a maximum fine of $200 per occurrence will be enough to provide sufficient incentive for most motorists to have vehicles receive an emissions test after remote sensor identification. After remote sensor identification, owners of high-emitting vehicles will need sufficient time, approximately 30 days, to obtain an emissions test and, if necessary, another 30 days for repairs.

An elected official commented that remote sensing is an excellent testing methodology, however, technology may improve in the future.

This summer (1996), the commission will conduct an extensive evaluation of remote sensing data from each of the three I/M program areas in Texas. This study will address the reliability of the technology and how it can best be used to improve air quality in Texas. If the state legislature grants legal authority for the desired enforcement of remote sensing, then the commission and the DPS will use the results of this study to implement the technology in the most cost effective and unobtrusive manner possible.

An individual stated that the term "traffic may be subject" was not strong enough. The commenter indicated that a vehicle should simply be tested if it fails the remote sensor.

The term "may be subject" is used because not all vehicles are subject to the I/M program.

LWV-TX commented that the unproven technology of a pilot remote sensing program directed at a sample of 10% of drivers is not an effective substitute for vehicle-by-vehicle inspection.

The TMCP included remote sensing of vehicles as an additional measure to ensure gross polluters are adhering to program requirements. The goal of remote sensing is to screen 10% of the entire vehicle population of all program areas, with an additional focus on the surrounding counties.

HCPCD and three individuals commented that remote sensing numbers are insignificant in Harris County. More non-Harris County commuters should be targeted and captured.

The TMCP included remote sensing of vehicles registered in Harris county as an additional measure to ensure gross polluters are complying with program requirements. The goal of remote sensing is to screen 10% of the entire vehicle population of the eight county area, targeting commuting traffic from the surrounding counties. Testing equipment will be placed to capture the greatest percentage of commuting vehicles.

RAQPC commented that residents out of Harris County whose vehicles are identified as gross emitters by remote sensing are required to pay for the loaded test mode test if their vehicle fails the test.

Motorist's residing in Harris county are required to pay for an emissions test on an annual or biennial basis. Gross emitters from outlying program counties that commute into Harris county on a regular basis are contributing to Harris county's air pollution problem and should help offset the program costs. These vehicles are required to pay for the test only if they fail the test. These vehicles may have the emissions test performed at any emissions testing facility, and they are not required to have a loaded test.

FINA, and one individual commented that given the short time frame that the DFW area has to get into attainment, the remote sensing program should be initiated earlier.

Neither the commission nor the DPS currently have the statutory authority desired to enforce remote sensing. Both agencies must acquire such authority from the Texas Legislature, which will not meet until January 1997.

Tejas commented that remote sensing must utilize single lanes of traffic and identify 150,000 vehicles pulled from the vehicle population that is not registered in Dallas and Tarrant counties. Tejas stated that the state will be going out on a limb to let Denton and Collin counties off the hook.

The commission believes remote sensing will adequately capture the emissions characteristic of commuting vehicles thus covering the difference in the consolidated metropolitan statistical area (CMSA) population and the population of the 2-county urban area included in the I/M Program.

Tejas commented that, by not testing vehicles in Denton or Collin county, the state is in catch-up mode before the TMCP begins.

By utilizing remote sensing to characterize emissions from vehicles in Denton and Collin counties, the state will be accounting for the vehicle emissions that the federal law requires it to test.

FINA commented that the granting of authority by the legislature should precede the formal rulemaking for remote sensing.

The commission and the DPS commit to facilitate legislation to enforce remote sensing. If the Texas Legislature does not grant this authority, then the commission will explore options that will allow Texas to satisfy all federal requirements, such as expanding the core program areas.

An individual commented that the commission should scrap vehicle testing and use remote sensing only.

Emissions testing of all vehicles in the core program areas is required by the FCAA Amendments and is necessary to meet the mandated pollution reduction requirements of the FCAA Amendments. Remote sensing will used to complete the coverage requirements of the FCAA Amendments by targeting commuting vehicles from the core area's surrounding counties. Remote sensing only checks exhaust emissions. Emissions from evaporation of gasoline due to a leaking gas cap will be identified by the vehicle's scheduled emissions test.

TEST-ON-RESALE. HCPCD, METRO, and three individuals commented that the test-on-resale inspections are troublesome.

Vehicles that are inspected annually should not be required to undergo an additional inspection. This requirement could turn otherwise supportive citizens against the program. Used car dealers should be required to have the vehicle's emissions tested prior to resale for consumer protection.

The test-on-resale element of the TMCP was added to protect consumers. All vehicles between six and twenty-four years old must pass an emissions test or receive a waiver within sixty days of sale. Although this element does not affect dealer-to-dealer sales, dealers are required to provide a valid emissions test or a waiver when the vehicle is sold to a consumer. Vehicle sales to family members are not included in this requirement.

RAQPC commented that the requirement for an emissions test within 60 days of resale should be extended to 90 days or some longer period. This off-cycle test may really not be needed if the vehicle passed the regular cycle emissions test, particularly if it passed a loaded mode test.

The test-on-resale element of the TMCP provides additional consumer protection. The test-on-resale element allows a total of 120 days for the seller's vehicle to pass an emissions test or receive a waiver. Any vehicle which has passed the emissions test as part of a regular inspection cycle within 60 days of resale need not have an additional test.

An individual commented that an advantage of the TMCP is that it would serve as a consumer protection measure against the "rising number of used cars on the road or as we know them today program cars."

The commission agrees that the test-on-resale component of the TMCP will protect consumers when they purchase a used vehicle six model years or older. Program cars, however, are typically vehicles that are one or two years old. Auto dealerships use them for demonstration models or company cars provided to sales staff or executives. Additionally, program cars may include vehicles that are used by rental car companies for a time and then sold to the public. Because they tend to be newer used vehicles, they would not be subject to a mandatory emissions inspection upon resale.

The El Paso City-County Health and Environmental District recommends the test-on-resale element be included in the El Paso program.

The proposed TMCP for the El Paso area meets the required reductions without incorporating the test-on-resale component. In addition, with El Paso's proximity to the Mexico border, it was anticipated that test-on-resale could provide additional incentive to take cars for sale across the border. Motorists are encouraged to have vehicles tested before resale.

FINA and an individual commented that the granting of authority for the test-on-resale component by the legislature should precede the formal rulemaking.

At this time, the commission has not included rules requiring "test-on-resale". In the revised Texas I/M SIP, the commission commits to facilitate the necessary legislation to require "test-on-resale".

Neither the commission nor the DPS currently have the statutory authority necessary to mandate test-on-resale immediately. Both agencies must acquire permission from the Texas Legislature, which will not meet until January 1997.

PROGRAM START-UP. HCPCD commented that the timing for implementation should be delayed until June 1997 to allow the Texas Legislature to convene, be briefed and lend support to the program.

The commission must begin the TMCP as soon as possible to ensure that federally required pollution reductions are achieved. Although the basic program will begin in January 1997 in the Harris County area, some elements of the program require legislation. These elements will not begin until the Texas Legislature has adopted any required legislation.

METRO commented that the Harris County implementation schedule in the proposed SIP is ambitious. It is doubtful that testing stations will choose to invest in needed equipment or licensing until final rules are adopted in mid August 1996. The expectation that testing stations will be in place and certified with licensed inspectors within a four month period allows for little schedule slippage. METRO recommends that provisions for delays in implementation or a phase in period be considered.

Some current safety inspection station owners in Harris County have indicated a desire to participate in the TMCP. The commission and DPS anticipate an adequate number of stations will be available for program implementation on January 1, 1997.

REPAIR PROGRAM. Three individuals commented that repair technicians should be "Certified" rather than "Recognized". Quality certification is needed as well as quality technicians to repair vehicles.

The criteria set forth for certification in the previous program are similar to those in effect for recognition in the TMCP. Repair technicians are required to obtain certification in the following four areas offered by the Automotive Service Excellence (ASE): Engine Repair (Test A1), Electrical Systems (Test A6), Engine Performance (Test A8), and beginning January 1, 1998, Advanced Engine Performance Specialist (Test L1). DPS will initiate a program to "Recognize" the repair technicians that are in compliance with all rules and regulations.

An individual commented that the state requires repairs to be completed by technicians that are ASE qualified. There are a lot of good technicians that are not ASE certified, but are excellent mechanics.

The commission does not require emissions-related repairs to be completed by a recognized repair technician. A motorist has the additional options of completing the repairs himself or herself, or using a technician that is not ASE qualified. However, if the motorist wants the labor expense to count toward a waiver, than the repairs must be performed by a recognized repair technician.

An individual commented that requiring ASE technicians will drive a lot of the smaller businesses out of the inspection and repair business. There will be an increase in the wages for the mechanics and the small businesses can not handle this cost increase.

The I/M SIP does not require vehicle repairs to be made by ASE technicians. ASE technicians are required only if the motorist

wants to apply labor costs to a waiver. The decision to enter the test-and-repair inspection program and employee wages are individual business decisions that each small business will have to make.

An individual commented that most repair technicians are honest. However, mechanics can make mistakes due to the complexity of vehicles on the road today. These mistakes can result in expensive, unnecessary repair work.

The TMCP includes many elements designed to assist in the reduction of unnecessary repair work and help in alleviating mistakes. These elements include: optional on-line access to repair information from the centralized database system, the recognized repair technician program, reporting of industry performance statistics, and a covert and overt auditing system.

The El Paso MPO commented that the commission and/or the DPS should provide extensive information to repair shops in El Paso County to inform them of the requirements for certification as a Recognized Emissions Repair Technician.

DPS will initiate a program to "Recognize" the repair technicians that are in compliance with all rules and regulations. DPS is currently completing public information plans to notify repair facilities of program requirements.

An individual stated that programs were needed to make low-interest loans accessible to people so they could get rid of polluting vehicles.

At the current time, legislative authority is not available to utilize state funds nor is regulatory authority available to provide low interest loans to motorists. Local areas are encouraged to address this need. The commission will continue to study this and other options that offer innovative and effective ways to improve air quality.

An elected official stated in order to achieve clean air, money should be spent repairing vehicles, not creating bureaucracy.

The commission concurs and has adopted a program that is cost-effective and convenient to the motorists. Participating emissions inspection stations will be required to utilize a data link that will provide vehicle information prior to each emissions inspection. The vehicle information will shorten test time, by alleviating the need to manually enter existing vehicle information.

An individual stressed the need for funds to assist with repair technician training for repair facilities without adequate financial resources.

DPS is currently surveying the training needs of the repair community and resources available within the community to respond to these needs. DPS will provide assistance to ensure adequate training is available.

The Sierra Club recommended that the DPS, the commission or TxDOT check with owners of vehicles that needed major repairs to see if the owner felt the repairs were necessary. For example, repair sites could be required to keep removed parts for thirty days to allow for a follow up inspection by the commission, DPS, or TxDOT.

The TMCP includes DPS oversight of recognized repair facilities. Repair information is stored on a centralized database, and repair effectiveness statistics are generated at least annually, and lists the repair success rate for each facility. Any anomalies will be forwarded to DPS for investigation.

An individual commented that it is likely that the excess emissions from high emitters are VOCs, not NO_x. Houston has a NO_x problem with its high ratio of VOC to NO_x; therefore, testing to identify "clunkers" may not really help reduce ozone even under ordinary atmospheric conditions.

In terms of ozone formation, both the amounts of VOC and NO_x and the ratio of these amounts are important factors. As both VOC and NO_x are necessary for the formation of ozone, it will be beneficial to address reducible amounts of "human-generated" VOC and NO_x. As part of the emissions testing program, the exhaust gas recirculation system (EGR) will be checked; malfunctioning EGR systems are common vehicle NO_x problems. In addition, any tailpipe emissions test for any number of pollutants merely identifies a problem vehicle. Testing for NO_x can be quite expensive because a dynamometer is required to properly "load" the vehicle. Provided that the vehicle is properly repaired, NO_x will be reduced on some vehicles even though NO_x was not specifically tested. Other than the EGR system, excess NO_x emissions can occur from improperly adjusted ignition timing and/or a faulty catalytic converter. Current data does not indicate a NO_x problem in the Houston area. The area has received a waiver from the FCAA requirements for NO_x reductions.

An individual commented that a few specific maintenance problems are large contributors to high emission cars.

As part of the TMCP, an eight-point anti-tampering check will be performed by the inspector which will include a check for presence and functionality of the EGR system, the evaporative emission control system, the gas cap, the positive crankcase valve (PCV) system, the thermostatic air cleaner, and the air injection system for all model year vehicles. The catalytic converter will also be checked for model year vehicles 1981 and newer. As mentioned in the comment, the fuel metering systems for carbureted vehicles and oxygen sensors for fuel-injected vehicles are engine components that, if malfunctioning, should be easily identified and repaired by the certified technicians participating in the program. Nonetheless, each vehicle must be treated on a case-by-case basis as it would not be practical and cost effective to perform the same repairs on all vehicles.

PROGRAM CONVENIENCE. RAQPC expressed concern that the minimum of eight hours a day, five days a week for the operation of the vehicle inspection stations was not sufficient to provide adequate consumer convenience. Some portion of the minimum hours of operation should be on week-ends or at night to enhance consumer convenience.

The TMCP does not specifically require evening or weekend hours within the minimum hours of operation. However, this program is a decentralized program and will include the participation of an estimated 500 stations initially in Harris county, approximately 1,200 stations in Dallas and Tarrant counties, and 150 stations in El Paso county. It is expected that many station owners will offer their customers the added convenience of weekend and/or evening hours.

RAQPC commented that the requirement for re-inspections to be made within 15 days in order to be done at no additional cost was not realistic. He was not sure that consumers will get their emissions repairs done and have the vehicle re-tested within 15 days.

Many of the facilities offering vehicle emissions inspections will also offer repairs. Utilizing this service should ensure that repairs will be made in a timely manner. However, motorists still have the option of taking the vehicle to another repair shop or opting to perform the repairs. The current programs in El Paso, Dallas, and Tarrant counties have not reported any significant problems specific to this requirement.

TSIA believes many test-and-repair stations will adopt a "wait and see" position regarding participation in the Motorist's Choice program.

The DPS indicates that, as of May 2, 1996, over 50% of the safety inspection facilities in Dallas and Tarrant Counties have requested phone lines necessary to participate in the TMCP. The DPS and the commission believe that there will be adequate facilities participating to provide a high level of convenient emissions inspection stations.

The Greater Dallas Chamber recommended that companies should be permitted to conduct on site emissions testing of their fleets.

The DPS will allow companies to self test their fleets if they comply with all applicable program requirements for facilities and inspectors regarding certification, testing procedures, and specified equipment.

PROGRAM NETWORK. LWV-TX supports the test-only option of the TMCP because it is an opportunity to reduce fraud that can easily occur at test-and-repair sites. In addition, a representative of the Sierra Club and an individual commented that under §114.3(a)(16), they were opposed to test-and-repair facilities. Studies have shown conclusively that decentralized programs have greater amounts of fraud than centralized programs.

The TMCP contains aggressive enforcement measures such as covert and overt audits to minimize fraud. Information on every inspection is transmitted to a central database at the completion of the inspection. If there is a discrepancy or anomaly, the DPS has immediate access to the inspection information to conduct an investigation.

An individual stated that the commission "must junk this entire proposal and start over" with the enhanced IM240 test and make it more consumer friendly by adding more inspection lanes. A representative from the Sierra Club also voiced concern that the I/M program is in worse shape than it was two years ago.

A centralized emissions testing program utilizing IM240 inspection technology was implemented in Texas in January of 1995. Soon after implementation, it was suspended and subsequently canceled by SB 178. SB 178 specifically prohibits the use of any "emissions testing technology or procedure that is more stringent than a technology or procedure" used in a Texas I/M program county prior to January 1, 1994.

TCEA commented that the I/M program seems to be influenced more by political reasons than by health-science.

The TMCP complies with the FCAA Amendments requirement that states implement a program to reduce motor vehicle emissions that contribute to ozone formation. The federal ozone standard is health and science based.

TSIA and two commenters recommend abolishment of the "test-only" and "test-and-repair" classification being proposed.

The classifications of "test-only" and "test-and-repair" have been removed from the rules. The rule language being deleted removes the mandates requiring differences in test fees or requiring vehicles to go to specific facilities for tests. The passage of the NHSDA of 1995 makes the distinction obsolete. A cornerstone of the TMCP is choice and convenience. The SIP continues to contain language in the "Network Type" that outlines the convenience to motorists to allow the choice of either high volume test-only facilities or test-and-repair facilities that offer a wide range of services. Both types of facilities will be able to offer either an annual, two-speed idle test or a biennial, loaded-mode test.

EPA commented that for audits of stations that conduct both testing and repairs, EPA's definition of "test-only" contained in 40 CFR §51.353 should be used for compliance with EPA's covert auditing requirements.

Additional language has been included to ensure that the SIP is in compliance with EPA's requirement that each facility that conducts both tests and repairs be subject to one covert vehicle visit per station per year. The covert audit will include the purchase of repairs and retesting, if the vehicle initially failed the tailpipe emissions test.

The El Paso MPO expressed concern that the program provides for an annual test at decentralized test-and-repair facilities or test-only facilities, or biennial tests at facilities with more advanced equipment, yet, El Paso will only have the annual test at test-and-repair stations.

Adding a biennial element would require additional expenditures by businesses, but only a marginal change in emissions reduction credits. The commission believes that annual emissions testing in El Paso is the most cost-effective vehicle emissions testing program. Inspection businesses in El Paso will be notified when the commission proposes to adopt ASM specifications, if interest is shown in offering a biennial test in El Paso, the I/M SIP could be amended to allow this option.

FUTURE TECHNOLOGY. TSIA and an individual recommended that the SIP should be amended to plan for future technology.

The commission will continue to evaluate technological advances in emissions testing to ensure the best possible testing methodologies and equipment are considered in future program development.

TSIA and an individual commenter recommended that the state implement a pilot program allowing the state to negotiate with EPA for additional time to allow new technologies and products be developed to ease economic burdens on both equipment manufacturers and people that buy the equipment.

The TMCP incorporates the technology required of an approvable I/M program. I/M program start dates can not be based on technological development, as technology will continue to evolve over time. However, the commission will continue to evaluate technological advances in emissions testing to ensure the best possible testing methodologies and equipment are considered in future program development. Programs must be implemented in a timely manner to achieve air quality benefits. EPA commented that the SIP should include a statement that the program will update emission test equipment to accommodate new technology vehicles and changes to the program as necessary.

The commission has included language in the SIP that the program will update emissions test equipment to accommodate new technology vehicles and changes to the program as necessary.

An individual commented that the SIP should be developed so that it has removable pages and could be changed easily. The state should not enter into contracts without allowing for the addition of different forms of technology on the automobile, in the fuel, in other areas that would improve air quality. The SIP must be flexible and allow for pilot programs of new technology.

The commission has striven for flexibility in its design of the TMCP. Federal law, however, requires that the commission make certain minimum commitments according to a legally required timetable. It is necessary for the commission to implement a testing program in the immediate future. The commission believes that the BAR90 technology chosen represents a reasonable choice at this time. The commission may revise the TMCP at a later date as new technology becomes available and is proven effective. Revisions to the SIP must adhere to the same public notice, hearing, and comment requirements that apply to commission rules. There is a minimum length of time associated with any change to the SIP.

An individual commented that with recent technological developments and requirements for on-board diagnostics in new vehicles, the I/M program is redundant.

The commission agrees that on-board diagnostic (OBD) devices will allow for the convenient monitoring of vehicle emissions. Vehicles with these devices would still need to visit a testing facility and have on-board data analyzed. This process would, however, likely be a great deal more convenient than current testing methods. Unfortunately, most vehicles on the road today do not have such devices and these vehicles will continue to operate for a number of years. Some experts predict vehicles without OBD will be on the road for 15 years. Thus, the need for more traditional I/M programs continues. As this important technology continues to develop, the commission will continue to work with its partners in government and industry to best ascertain how this technology should be utilized and implemented.

An individual commented that testing methodologies for mass emissions exist and are affordable.

The commission agrees that testing methodologies for mass emissions testing exist. These technologies include (from highest to lowest cost) the Federal Test Procedure, IM240, and RG240/IG240. Currently, repair-grade mass emissions test equipment is available from a few manufacturers. However, specifications for inspection-grade mass emissions test equipment (IG240) are not currently available; thus, it is difficult to predict the final cost of such equipment for an inspection station owner. In addition to an analyzer, mass emissions testing equipment requires a dynamometer, a constant volume sampler, and other miscellaneous items such as special software, gas bottles, etc. Based on currently available information, a complete IG240 package could cost anywhere from $50,000-75,000. The commission does not feel that this is an "affordable" amount for most of the current safety inspection station operators.

An individual commented that most of the emissions from relatively new cars occur on start up and the catalyst in the converter is cold. After warm up the emissions are very low. Testing of recent model cars would have little payout because so few are likely to be major contributors to emissions and in the future cars with pre-warmed catalyst would result in an emissions testing program being less effective.

The TMCP is designed to test vehicles on a 24-model year rolling window in order to characterize emissions from that portion of the fleet which does not have the newer emissions control technology. Even though newer vehicles are both more reliable and equipped with superior technology, they also become high emitters when not maintained properly. Therefore, emissions testing or verification of some sort can still identify excess emitters.

STATE COMPLIANCE. An individual requested that the word "must" replace the word "may" in a sentence describing station penalties.

Each complaint against an inspection station should be handled on a case-by-case basis so an assessment can be made of the facts specific to that situation. The word "may" as opposed to "must" is used because a penalty is not always the appropriate course of action for all complaints.

An individual commented that we are going to have a problem with fraud, that anyone can pay $20 to $50 and get a state inspection sticker. The enforcement of this program needs to be beefed up to handle the fraud and abuse currently in the system.

Regular auditing, both covert and overt, of the testing facilities will be conducted by the DPS. Citizens are encouraged to contact their local DPS office to report information regarding fraudulent activities.

TCEA commented that the TMCP should have continual surveillance and strengthening measures should be added as quickly as possible according to state-of-the-art technology and according to needs indicated by health-science.

The TMCP will have an aggressive oversight program operated by the DPS to conduct overt and covert audits. In addition to the audits, the TDLS will be used to flag any irregularities in testing such as an exceptional amount of vehicles "passing" or "failing" an emissions test. The commission will continue to evaluate technological advances in emissions testing to ensure the best possible testing methodologies and equipment are considered in future program development.

EPA commented that a penalty schedule for enforcement against contractors, stations, and inspectors has not been developed.

Applicable emissions penalty ranges are established by state law and adjudication and sentencing are accomplished through the judicial system by criminal or administrative judges. Current language in the SIP commits the commission to develop the penalty schedule. The penalty schedule is currently under development and will be submitted to the EPA as soon as it is finalized.

An individual commented that the SIP states that the DPS "may" perform random audits. The commission must also conduct covert audits to ensure more of these important enforcement checks are done.

DPS has enforcement responsibilities and has committed to conduct EPA required covert audits and overt audits.

EPA commented that for covert audit purposes, the vehicle operator needs to have access to the test area to observe the entire inspection.

Individual stations have liability concerns that prohibit customers from being in the work area, but the customer/auditor may observe from a distance.

An individual commented that there is not a way to conduct covert audits on fleets which do their own I/M program testing.

DPS is developing the methods for conducting audits of fleets which do their own I/M program testing. For example, the DPS may use remote sensing technology to conduct random audits of fleets to ensure testing integrity.

EPA commented that the inspector suspension process should include provisions that effectively bar the individual from any direct or indirect involvement in the inspection operation.

The Texas Transportation Code and DPS rules include provisions that bar an individual from direct involvement in the inspection operation.

EPA commented that mandatory training should be required for inspector incompetence.

The DPS is authorized to require mandatory training in case of inspector incompetence.

EPA commented that the final SIP submission should include a Texas State Attorney General opinion in the case of state constitutional impediments to immediate suspension authority or a commitment to get additional needed authority to immediately suspend inspectors for violations that directly affect emission reduction benefits.

The commission has requested an opinion from the Attorney General regarding state constitutional impediments to immediate suspension authority. The Attorney General has 180 days to respond to the request. The opinion will be submitted to the EPA as soon as it is available. If needed, the DPS commits to seek additional authority to immediately suspend inspectors for violations that directly affect emissions reduction benefits.

EPA commented that any state interagency agreements and memorandum of understanding established for the implementation of the requirements of the I/M SIP should be included in the finalized submittal.

The commission commits to submit to the EPA any state interagency agreements and memorandum of understanding established for the implementation of the requirements of the I/M SIP upon availability.

An individual commented that the state intentionally wrote a weak SIP leaving out such items as public education, technician training, a modified waiver program in which point source could alleviate the burden on the poor and the research outreach program.

The TMCP offers greater convenience to the motorist, while still meeting the federal requirements for an I/M program. The I/M SIP amendment provides for an aggressive public education campaign and technician training. It also includes a revised waiver program that offers a Low Income Time Extension that can be granted more than once in the lifetime of the vehicle. This extension will help to alleviate the burden of vehicle repair costs to low income motorists.

The emissions trading program at the commission includes an option that would allow stationary sources to receive emissions reduction credits by providing financial support for repair or scrappage of gross polluting vehicles belonging to low income motorists. The commission will continue to study this and other options that offer innovative and effective ways to improve air quality.

An individual commented that recent reports indicate that EPA may be considering revising the ozone standard from 120 ppb for four hours in three years to 70 to 90 ppb over eight hours.

This comment is beyond the scope of this rule.

MOTORIST COMPLIANCE. TACAT is concerned that registration-based denial would be excessively expensive if done through the Registration and Title System and not at all workable if done from a hard copy print-out.

The proposed re-registration denial system will be very different from the system used in the discontinued IM240 program. The new system will not require a citizen to verify either their residence or show proof of emissions inspection unless a computer comparison of emissions inspection and registration records indicates the vehicle has not complied with state law. The commission believes that this would involve no more than 2.0% of subject vehicles in nonattainment areas (38,000 in Harris County; 6,900 in El Paso County; and 43,000 in Dallas and Tarrant Counties). This is very different from the registration denial enforcement previously used. A list of noncomplying vehicles can easily be made available to County Tax Assessor-Collectors and their agents on a monthly basis. Also, TxDOT can "flag" renewal notices sent to noncomplying vehicles.

TACAT stated that enforcement of this program needs to be the sole responsibility of the DPS through vehicle inspection. The highly effective compliance of state inspection would not be enhanced significantly by registration denial.

The commission recently had a safety certificate compliance study conducted in the Dallas and Tarrant nonattainment counties. This study concluded that the safety certificate

compliance rate was 95%. The proposed enforcement process will encourage compliance and increase the effectiveness of sticker based enforcement, and will generate the proposed 96% compliance rate. The TMCP's compliance enforcement element is the least invasive and impacts the fewest people. TACAT stated that motor vehicle title clerks are not law enforcement officers and should not be placed in the position of trying to enforce this law. It will cause terrible public relations problems for the county tax offices and will cost too much money to make it effective through the Registration and Title System.

Denying re-registration for noncompliance of emissions testing requirements will be similar to the current practice of title clerks denying re-registration to motorists who cannot provide proof of liability insurance.

Two individuals commented that the projected 96% compliance rate would not be good for Houston because that would result in 81,955 vehicles being out of compliance. The commenter stated that the health of many citizens would be endangered as a result of this additional air pollution. Also, a representative from the Sierra Club commented that the compliance rate should be 99% or higher.

The 96% compliance rate is based on historical compliance rates in other states which have had I/M programs. As with the vehicle population in general, the 4% projected to not comply will consist of a mix of both low and high emitters.

EPA stated the SIP should include a discussion on the timing of the enforcement process; commit that subsequent compliance deadlines for vehicles in this process will be based upon the date of scheduled compliance not actual compliance; explain the registration and testing database comparison computer system; and commit to compile and report monthly summaries and statistics on each stage of this process. The SIP should also commit to track the number and percentage that are initially identified as requiring testings but are junked, sold out of the I/M area or are never tested for some other reason.

The TMCP is complying with 40 CFR Part 51 §51.361 Motorists Compliance Enforcement through Sticker Based Enforcement. The commission commits in the SIP to meet all requirements of this section along with enhancing compliance by implementing components of computer matching. Since the program is not basing compliance on computer matching, the commission does not commit to meeting EPA rule requirements for computer matching. This position will be clarified through further discussion with EPA.

EPA commented that the SIP should include a commitment that quality control written procedures will be consistence with the quality assurance and quality control requirements of the motorists compliance oversight portion of the I/M rule.

The commission has included language in the SIP committing that quality control written procedures referenced will be consistent with the I/M rule requirements for motorists compliance oversight.

LEGAL AUTHORITY. Bickerstaff commented that SB 178 is unconstitutional, therefore, the commission may not rely on SB 178 as a basis for the SIP revisions.

At this time, the commission is not aware of any court decision that declares SB 178 unconstitutional in its entirety. The commission must obey all state and federal laws currently in force.

Bickerstaff commented that the proposed revisions do not comply with the applicable requirements of the Clean Air Act and federal regulations implementing it.

Before the revised Texas I/M SIP was presented to the commission for action, it was reviewed by the commission's legal staff and found to be in compliance with the FCAA Amendments and the federal regulations which implement this law. Additionally, EPA comments gave no preliminary indication that the program, as designed, could not comply with federal law and regulations.

Bickerstaff commented that the proposed revisions would violate the state's commitment in the existing I/M SIP and an automatic bankruptcy stay.

SB 178, passed by the 74th Texas Legislature, repealed the commission's legal authority to implement a centralized I/M program using IM240-type emissions test. The NHSDA provided opportunities that allow states to modify their SIP no later that March 27, 1995. This action allowed the commission to revise the I/M SIP. The proposed revisions to the I/M SIP would not violate the automatic bankruptcy stay. Commencement or continuation of actions and proceedings by governmental units to enforce police or regulatory powers is excepted from the automatic stay by 11 U.S.C.A. §362(b)(4) (West 1993). The proposed revisions are clearly an exercise of regulatory power by the commission and are, therefore, excluded from the bounds of an automatic bankruptcy stay.

Bickerstaff and Tejas commented that the state does not have the authority to implement the revisions proposed, such as implementing remote sensing, test-on-resale, and denial of vehicle re-registration. The Clean Air Act specifically requires registration denial to be included in enhanced programs. In addition, the specific federal law on which this particular proposal is based, NHSDA, §348, authorizes EPA approval only if the state "has all the statutory authority necessary to implement revisions." EPA therefore cannot approve the revisions.

The commission does not currently have the statutory authority necessary to implement test-on-resale, registration denial, and certain enforcement mechanisms of remote sensing as proposed. EPA indicated, however, that it can approve the revised Texas I/M SIP on a conditional/interim basis. A final approval of the revised SIP depends upon the Texas Legislature passing the necessary authority during its 1997 legislative session.

42 U.S.C. §7511 a(c)(iv) does not mandate the use of registration denial in every enhanced I/M program. EPA's Final Rule allows states with I/M programs in place prior to November 15, 1990, to adopt an alternative enforcement method if the state can demonstrate (to EPA's satisfaction) that those methods are either, (1) in an enhanced program area, more effective than registration denial or, (2) in a basic area, as effective as registration denial. The commission had a survey conducted, submitted in Appendix K of the revised SIP, which showed that enforcement through Safety Inspection certificates would be more effective than registration denial.

RAQPC commented that three components of the program require legislative approval – remote sensing, re-registration denial, and testing on resale. These components are essential to the overall success of the TMCP, and it is critical that appropriate and timely legislative approval occur on these components.

The commission, TxDOT and DPS will facilitate legislative approval for remote sensing enforcement, re-registration denial, and test-on-resale. Currently, DPS has the authority to issue a misdemeanor citation to a motorist operating a vehicle in violation of Texas Transportation Code, Chapter 548, Texas Transportation Code, which includes emissions related inspections.

Tejas commented that SB 178 is void, and at the time of passage of SB 178, the state lacked the legislative authority to amend the SIP.

At this time the commission is not aware of any court decision which renders SB 178 null and void. Until such a decision is made, the commission must obey state and federal laws currently in force.

PROGRAM EVALUATION. EDF commented that the commission proposes to evaluate the I/M program on a continuous basis to assess its effectiveness, however, the first report will not be submitted until January 1999. The commission should complete its first assessment by January 1998 and update it in January 1999 allowing time for program corrections.

The commission will monitor and evaluate the program continuously. The first program evaluation will be provided to EPA no earlier than March 1998. The actual date will be established once interim approval has been granted by EPA.

An individual commented that, within the 18 months for TMCP evaluation, it is a very low return on the equipment investment that the shop owners are to make. At the end of this 18 months, the requirements of the equipment in which they've invested could change. The state does not realize the economic impact that it makes on the public.

Should the state be required to modify the TMCP after the 18 month evaluation, provisions may be made for the continued use of equipment purchased by station owners at the start of the TMCP. This will allow for a continued return on the investment of the test equipment. Some equipment manufacturers are expected to offer equipment that is capable of being upgraded to handle new technology.

RAQPC commented on concerns relating to the schedule of the SIP, the associated rule-making, and the time constraints imposed by the NHSDA on "full credit amounts."

The commission anticipates interim/conditional approval in the fall of 1996, with a program start date scheduled for July 1, 1996 in Dallas and Tarrant Counties.

Under the NHSDA, current implementation time lines allow an interim/conditional program to begin and undergo an evaluation period of eighteen months rather than a two year evaluation period. EPA is to approve state programs based on emissions reduction credits as estimated by the state if the state estimates reflect a "good faith" expectation of performance. EPA also has indicated that at least six months of program operation are needed to evaluate performance. After this six month period, evaluation of data collected will determine whether adjustments are necessary. Approval based on the state's proposed emissions reductions can be made permanent if the interim program demonstrated that the credits are appropriate. Early legislative approval of the remote sensing enforcement mechanisms and the test-on-resale element will allow sufficient time for data collection. The re-registration element will impact the compliance rate of the program. The commission is confident that sufficient data will be available to meet the program evaluation requirements.

RAQPC commented that the commission should develop contingency measures in the vehicle emissions testing and inspection program in the event that current components are determined by EPA to not achieve "full credit amounts," or in the event there is insufficient time to thoroughly evaluate them.

The commission expects EPA to grant "full credit" for the portion of the program that is conducted at test-and-repair stations, and expects to meet the time line required by the NHSDA for program evaluation. After EPA has released final ASM specifications, the commission will develop the loaded mode element; resulting in additional credit for the I/M program.

The commission anticipates the adoption of ASM specifications within nine months of EPA promulgation. Any ASM facilities certified would produce extra credits not currently counted in the state's estimates.

As noted in the SIP, the Texas Health and Safety Code 382.037 A-1 gives the authority to expand the geographic coverage of the I/M program beyond urbanized area boundaries to include areas that contribute in a significant way to mobile source emissions inventory in the nonattainment area. The commission has authority to extend the I/M program area, and has designed the TMCP to correspond with county boundaries. Other measures that would be considered include adjustments to cut points, modifying waiver criteria, or adding additional testing requirements. Additional contingency measures will be developed if needed.

An individual noted that the commission does not commit to accepting and working jointly with EPA to develop a protocol for this program.

The commission is currently assisting with the development of a joint program evaluation protocol by participating in workgroups with several other states and representatives of EPA. It is anticipated that a jointly developed protocol will be available in July 1996.

MODELING/GOOD FAITH EFFORTS. EDF commented that the commission's calculations of emissions reductions were not based on "good faith" estimates, but rather on unsubstantiated assumptions, therefore the SIP does not meet the minimum requirements for approval by EPA.

The TMCP is based on "good faith" estimates. The 1990 FCAA Amendments clearly anticipated EPA issuance of guidance allowing the use of "an electronically connected testing system, a licensing system, or other measures to be considered as equally effective" as a centralized I/M program. A contract with the commission has been awarded to MCI to provide an electronically connected testing system that will prevent shopping around by motorists. Other measures to be implemented include remote

sensing technology, a test-on-resale component, recognized repair technicians, and testing of heavy duty vehicles. The commission believes that the SIP meets the requirements for EPA approval.

EDF commented that although it may be possible to design a decentralized program that would be equally effective as a centralized one, the commission does not provide any data to demonstrate the validity of that assumption and provides no numerical breakdown of the emissions reductions from individual program elements. It is therefore difficult to gauge by how much the commission has overestimated the overall emissions reductions from the revised I/M program.

The MOBILE computer model does not lend itself to segmenting portions of an I/M program. There is not a linear relationship as many of the testing elements are inter-related, other testing elements only apply to certain vehicles in the mix. The MOBILE model includes an automatic deduction of 50% for test-and-repair tailpipe emissions tests, purge tests, evaporative system integrity tests, catalyst check, and gas cap check; and 75% less for the evaporative canister checks, PCV check, and air system checks. Pursuant to the NHSDA, the commission claimed 100% credit for the tailpipe emissions test, gas cap, catalyst, evaporative canister, PCV, and air system checks pursuant to the NHSDA.

Bickerstaff, representing Tejas, commented that the state cannot support its request for full credit. Congress removed the automatic discount, but it did not amend the existing Clean Air Act requirement that enhanced programs must operate "on a centralized basis unless the state demonstrates to the satisfaction of EPA that a decentralized program will be equally effective."

The commission believes that test-and-repair emissions inspections facilities are honest and capable and that the data link system has not been allowed to be proven as an effective measure to deter fraud. Legislation passed by Congress in November 1995, allows Texas and other states the necessary time to demonstrate that its decentralized, hybrid (partially test-only and partially test-and-repair) I/M program can receive full credit. The commission believes that a good faith claim of 100% of possible reduction credits is reasonable.

Bickerstaff and Tejas commented that the state contemplates that 40% of the affected motorists will choose loaded-mode test-only facilities. In fact, there are no such facilities currently available.

The commission concurs with this statement and has changed language in the Technical Supplement to reflect that the affected vehicle population will have their emissions tests performed at decentralized, two-speed idle facilities. The commission plans to adopt ASM testing specifications and procedures within 9 months of EPA's final action on the ASM specifications.

The Sierra Club and one individual commented that the SIP is not clear in describing how a delay of two years in emissions reductions will be gained back. The commenter requested that the commission explain the actual reductions expected from this "weaker program" versus what Congress will allow the commission to claim.

The I/M SIP is based on demonstration that the proposed program meets or exceeds EPA's low enhanced performance standard. In order to accurately compare EPA's standard and the TMCP, the commission, with EPA approval, modeled the program with the same start dates. With the performance demonstration of the TMCP, initial modeling indicates the necessary credit for the Rate of Progress (ROP) SIP will exist with the program starting as proposed (1996/1997).

The passage of the NHSDA allows the dismissal of the 50% reduction credit for test-and-repair facilities. With the increased enforcement elements of the TMCP, the state feels that the program will be as effective as a test-only program.

Two individuals commented that the high enhanced performance standard should be required in Houston.

The TMCP is one of many control strategies in the SIP for Houston. The 15% and 9% plans for Houston will meet the emissions reduction requirements of the FCAA Amendments.

LWV-H expressed concerns that the I/M program for Harris County will result in less improvement in Houston's air quality.

Modeling indicates that the revised emissions testing program will achieve the appropriate amount of emissions credits needed to meet or exceed the 15% and 9% SIP requirements. In order to be effective, an emissions testing program must be both convenient and acceptable to the motoring public.

A representative from the LWV-H and an individual commented that the new program will gain fewer emission reduction credits for the area as the centralized system.

The amount of credits the TMCP receives at this time is sufficient to meet the requirements of the state's 15% and 9% SIPs.

EPA commented that the state proposal on credit estimates deviates from past guidance in three areas and will need to be included in the program demonstration. The three areas are: 1) full credit for test-and-repair, 2) full credit for self testing of fleet vehicles, and 3) full pressure test credit for gas cap integrity test.

The commission concurs with these comments.

EPA commented that the SIP should include an explanation of the basis for determining the 60/40 split for annual idle and biennial loaded mode tests.

The commission has removed any language referring to a 60/40 split, and will submit modeling to reflect 100% of the affected vehicle population having their emissions test performed on an annual basis at two speed idle facilities. The revised figures for Dallas and Tarrant counties are submitted as part of this action. Revised figures for Harris County will be submitted as soon as they are available.

EPA commented that the SIP should include a commitment that if the number of exempt on-road vehicles exceeds 0.5% of the vehicle fleet it will be accounted for in the modeling credit estimates.

The commission has included language in the SIP to revise credit estimates if the number of exempt on-road vehicles exceeds 0.5%.

RAQPC commented that the TMCP is estimated to achieve about 15% of the total 215 tons per day of reduction in volatile organic compounds that are required in the 1996 ROP SIP at a cost per ton that is significantly lower than almost any other control strategy in that plan.

The commission concurs with this comment.

FINA commented that a shortfall in emissions reduction from the TMCP will ultimately be borne by the business community.

The amount of credits the TMCP receives at this time is sufficient to meet the requirement's of the state's 9% and 15% SIPs. The commission will continuously evaluate the TMCP and if data indicates program changes are required to meet federal mandates, other program options may be considered.

FINA commented that businesses have borne the brunt of the required pollution reductions to date and are now required to make additional reductions to address Mobile Sources that contribute to air pollution. Also, VOC's are reduced at a cost of approximately $500/tons, making mobile sources one of the most cost effective means to reduce emissions.

No additional point or area source reductions are required to meet the 9% or 15% SIPs as a result of the redesign of the I/M program.

An individual commented that extensive vehicle testing is not a cost effective means to try to comply with the FCAA ozone standards in areas such as Houston.

In the state's effort to comply with the FCAA ozone standards in Houston, three source types are targeted for emissions reductions: stationary, area, and mobile. As the state's 9% and 15% SIPs are written, stationary sources have substantial requirements to reduce emissions. To avoid further restrictions on stationary sources that may be more costly, the I/M program provides a substantial portion of the planned emissions reduction requirements in the state's air quality plans. Vehicle emissions reductions are one of the least costly control strategies.

GEOGRAPHIC COVERAGE. Bickerstaff commented that the revisions do not include Beaumont/Port Arthur, a moderate area requiring a basic I/M program.

In its initial I/M rules following the 1990 FCAA Amendments, EPA required moderate nonattainment areas to implement a basic I/M program in any 1990 census-defined urbanized area. On September 18, 1995, EPA published a revision that required a basic I/M program in any 1990 census-defined urbanized area with a 1980 Census population of 200,000 or more inside the nonattainment area. Neither Beaumont nor Port Arthur's urbanized area inside the metropolitan statistical area (MSA) contains 200,000 or more people (based on the 1980 Census population). Therefore, a basic I/M program is not required.

The Sierra Club, Harris County Commissioners Court, LWVH, LWV-TX, HCPCD, RAQPC, PAC, and four individuals commented that all eight counties in the Houston-Galveston nonattainment area need to be included in the I/M program. Thousands and thousands of vehicles will escape effective regulation under this loophole in §114.3(3). Ozone levels do not stop at county lines.

EPA's I/M Final rule requires that the I/M program area in the Houston/Galveston CMSA cover an area with a population equal to the CMSA's census-defined urbanized area population for 1990. The urbanized area in this CMSA is almost entirely within Harris County. EPA has determined that the state can limit the emissions testing portion of the safety inspection program area to Harris County. The difference between the population of Harris County and the urbanized area (approximately 80,000 people in the Houston/Galveston nonattainment area) would be accounted for through remote sensing of a representative number, or more, of commuting vehicles registered in surrounding counties. EPA has indicated that 40 CFR §51.350 (b) (2) of the I/M Final Rule allows for such a procedure.

The TMCP does not exempt vehicles in all counties surrounding Harris County. Vehicles registered in surrounding counties that travel into Harris County will be targeted by remote sensing after September 1, 1997. Those subject vehicles failing remote sensing will be required to pass an emissions test or qualify for a waiver. Vehicles from rural parts of Harris County will be subject to the same testing requirements as all other parts of Harris County. Many of the counties surrounding Harris County are largely rural. It does not appear to be an effective use of resources to require testing of these vehicles that are routinely driven in areas that contribute little to air quality problems in Harris County. The TMCP is designed to achieve the greatest pollution reduction benefit, while maintaining convenience to individuals as a high priority.

EDF commented that the exclusion of Collin and Denton Counties from the DFW area means that the SIP is inadequate. While this exclusion may result in a failure to inspect only 147,000 "commuting" vehicles, it also leaves out 304,000 other, non-commuting vehicles in the two counties.

The proposed program will require 82% of the four county area's subject vehicles (based on estimated 1996 registration figures), to be tested periodically. Much of northern Collin and Denton Counties are rural. It does not appear to be an effective use of resources to require testing of these vehicles that are routinely driven in areas that are upwind of the monitors and contribute little to air quality problems in Dallas and Tarrant Counties.

FINA, the Greater Dallas Chamber, LWV-TX, and three individuals made comments to include Collin and Denton Counties in the program. The projected growth rates for Collin and Denton Counties are higher than Dallas and Tarrant Counties. Excluding these high growth areas will only exacerbate the regional air quality problems in the future.

Data provided by the 1990 Census indicates that there are approximately 2.8 million vehicles in the program area that could be operating daily in Dallas and Tarrant Counties. Data also indicates that potentially 450,000 of these vehicles could originate in Denton and Collin Counties. Consequently, less than 16% of all vehicles operating in Dallas and Tarrant Counties potentially originate in Denton or Collin Counties on a given day. The TMCP will be able to satisfy all federal requirements without requiring every vehicle in Denton and Collin Counties to undergo emissions inspections. The commission and the DPS will locate remote sensing sites in Dallas and Tarrant Counties so they can detect gross polluting vehicles commuting from outlying areas.

FINA and the Greater Dallas Chamber recommended that remote sensing locations should include Collin and Denton Counties.

The TMCP will be able to meet all federal requirements without putting remote sensing sites in Denton or Collin Counties or subjecting every vehicle in those counties to mandatory emissions testing. The commission will locate remote sensing sites so that they will detect gross polluting vehicles commuting from Denton and Collin Counties. Denton and Collin were excluded from regular testing requirements because that level of participation was not necessary to meet federal requirements and the commission sought to minimize the economic impact for motorists in Denton and Collin Counties, as well as the cost to the state of Texas of administering the I/M program.

FINA commented that since the I/M program and remote sensing affected only Dallas and Tarrant Counties, it is not clear why Collin and Denton are included in the definition of "Program Area".

Denton and Collin Counties are included in the definition because "program area" defines any county that is included in any element of the I/M program. Since vehicles in Denton and Collin Counties may be subject to remote sensing, they are included in this definition.

HCPCD commented that if two vehicles were gross polluters within Harris County, they should both be tested. For example if two vehicles start from one point and end at the same point, it shouldn't matter that one vehicle is from Harris County and one vehicle is from Fort Bend County.

Vehicles from Fort Bend are excluded from periodic testing. However, gross polluters from the program area, which includes Fort Bend, are subject to remote sensing scans when they commute into the core program area. If a vehicle is identified as a gross polluter by a remote sensing scan, this vehicle will be required to have an emissions test.

An individual commented that the counties surrounding Harris County are going to grow. With this growth, the surrounding counties will make up a larger percentage of the air quality problem. Also, the Greater Houston Partnership commented that if additional reductions are necessary, then the inclusion of the remaining seven counties should be the first option the state considers. FINA commented that a time line should be set up when all counties are included in the program.

The commission will continuously evaluate the TMCP. If data indicates program changes are required to meet federal mandates, the option of additional county coverage may be considered if appropriate.

HCPCD commented that the state will target 75,000 vehicles in the Houston area for remote sensing scanning with 10,000 vehicles subject to an emissions test. This number is insignificant in terms of 2,000,000 vehicles having to be inspected in Harris County. Adding 10,000 vehicles to the total amount of vehicles that have to be tested will not cover the shortage in EPA's required population coverage.

The shortage in required population coverage in the Houston area is approximately 84,000. According to the 1990 census, the commuting vehicle/persons ratio from surrounding counties is 77.3%. Using this information, the TMCP can cover the shortage in population coverage with the addition of approximately 65,000 vehicles. EPA has indicated acceptance of the TMCP urbanized area description.

Four individuals commented that the people of Harris, Dallas, Tarrant and El Paso Counties are being discriminated against because they were the only counties subject to routine emissions testing. All counties in Texas should be included in emissions testing.

Most areas of Texas maintain compliance with federal air quality standards. Harris, Dallas, Tarrant, and El Paso Counties are not in compliance with federal air quality standards, and are, therefore, required to implement an emissions testing program.

INSPECTOR REQUIREMENTS. METRO is in agreement with the stringent licensing requirements for testing stations and inspectors and is prepared to meet all provisions for testing of METRO's gasoline fueled vehicle fleet as a self-testing, licensed station.

Comment noted.

METRO fully supports the requirements established for certification of test stations and inspectors, but noted an inconsistency in the prerequisites for license application in the draft revisions. To become a licensed inspector, the inspector must be employed by a licensed inspection station. To become a licensed inspection station, the station must employ a licensed inspector.

The commission has modified SIP language to clarify requirements. DPS rules and regulations allow for a simultaneous process to become a licensed station and a licensed inspector. A station must employ at least one licensed inspector before it can become a licensed inspection station. To become a licensed inspector, the inspector must be affiliated with a licensed station. If a licensed inspector leaves employment of a licensed station, the inspector has three months to enter employment with another licensed station. If this time period expires, the inspector's license will also expire.

OTHER ISSUES. EDF stated that the NHSDA did not grant "presumptive equivalency" between test-only and test-and-repair components, as claimed by the commission.

The commission agrees with this comment. The "Presumptive Equivalency" subsection title has been changed to read "National Highway System Designation Act of 1995 Good Faith Estimates".

RAQPC commented that the TMCP will likely be revised several times before 2007.

The commission will continuously evaluate the TMCP. If data indicates program changes are required to meet federal mandates, other program options may be considered.

An individual stated support for any type of emissions testing program.

Comment noted.

METRO recommends that provisions be made to replace inspection certificates which are lost due to broken windshields.

This comment is beyond the scope of this rule.

Greater Houston Partnership stated that the organization supports the proposed TMCP and commends the state for developing a program that is more convenient and less intrusive than previously proposed plans and still meets the ozone reduction requirements.

Comment noted.

TADA commented that the association supports the TMCP and views it as a vast improvement over the centralized plan that was repealed by the 74th Legislature.

Comment noted.

The El Paso MPO commented that four testing stations and one referee station were built for the now-defunct centralized emissions testing program. The MPO would like to hear from the commission on their plans for these structures.

The facilities that were built in El Paso for the previous IM240 centralized emissions testing program are currently not the property of the state. MARTA Technologies, the IM240 contractor that was selected for El Paso, is current owner and is in negotiations with the state.

LWV-TX stated the League's positions are based on public health concerns. But there are economic benefits of cleaner air including fewer sick days off, lower medical costs, and fewer pollution-associated deaths. In addition, businesses attracted by the state's quality of life would be adversely affected by sanctions imposed by the federal government if federal ozone reductions requirements are not met.

Comment noted. The TMCP will meet federal requirements for the I/M, 9% and 15% SIPs.

CEC urged all policy makers and stakeholders to do everything possible to reduce emissions on all fronts.

The commission recognizes the comment of the CEC. The commission is charged with developing an I/M program that satisfies the law and serves the best interest of all Texas citizens.

An individual commented that the TMCP was lacking in common sense.

The commission tries to base policy on sound science and common sense. The commission believes that the TMCP represents the highest degree of sound science and common sense possible, given the requirements that the program must meet.

An elected official stated monitors should be placed in Gainesville to determine the impact of pollution from Denton and Collin Counties. Pollution from Ellis County and those south of the metroplex cause problems in the nonattainment area.

The placement of monitors is beyond the scope of this plan.

An individual commented that the I/M program was a health issue.

Comment noted.

An individual commented that people with new cars in the previous arrangement had to pay a mitigation fee or a hidden tax.

The commission has never required that a mitigation fee be paid by owners of new vehicles.

An individual commented that they wanted to see it published that the state has paid $8.3 million to get out of the previous emissions testing program and the outcome of the lawsuit is still unknown.

The amount of funds referred to in the comment was approved through legislative authority and was a loan to Tejas.

An individual commented that air pollution will not be identified without proper testing techniques and will never be resolved without good credible repair techniques.

Several studies have demonstrated that two-speed idle (or "BAR90") testing technology is an effective technique for identification of high-emitting vehicles. As with all testing technologies, it is imperative that proper procedures be followed by the inspector conducting the test. The commission agrees effective repairs are important and has incorporated effectiveness components into the program as detailed in Section 20 of the SIP.

An individual commented that the state should look into the possibility of creating a new safety program that is designed to be used in a two-year testing cycle.

This comment is beyond the scope of this rule.

An individual commented that he cannot support the TMCP concept because clean air is deserved by all Texas citizens.

As with all emissions testing programs, the TMCP is based on testing vehicles to identify high-emitters and requiring that such vehicles receive effective repairs. Another goal of the program is to promote increased awareness of the value of routine maintenance.

An individual commented that the state is replacing a program that took them 2 years to develop with one which took them 3 to 4 months to develop and which hasn't been tested yet.

The TMCP which is being implemented is an enhancement of the emissions testing program which has been a component of the annual safety inspection in DFW and El Paso since 1990 and 1987, respectively. A primary aspect of the enhancement is greater efficiency in the data collection process which will be provided by the Vehicle Inspection Database (VID).

An individual commented that air pollution is unburned fuel. People spend more on their fuel bills to operate vehicles that are not properly tuned. Properly tuned vehicles will meet test standards and cost less to operate.

Comment noted.

An individual expressed concern that the public will have to sit in line to have their car tested. The individual also expressed concern of having vehicle identification numbers placed in the data link system each year and having it tied to their name.

The wait time for having a vehicle tested under the TMCP should be minimal and determined by the motorist. The motorist is allowed to choose which station they would like to have test their vehicle. If the line at one facility is too long for the motorist's liking, they may choose another facility. The vehicle database is securely managed with very limited access. While the state understands concerns of having personal information

in the database such as a motorist's name and VIN, such information is necessary to ensure compliance and to run an effective program.

An individual commented that this proposal is as bad as the centralized testing program.

The TMCP has been designed to appeal to as many segments of the effected community as possible. The TMCP offers improved convenience over the old centralized program by being offered at more facilities in each area and being combined with the safety inspection. The TMCP also allows for more inspectors to participate by having a decentralized network rather than a centralized contractor. While the state realizes that this program cannot be all things to all people, it has tried to design a program which will satisfy as many interests as possible.

An individual commented that EPA is forcing states to adopt the emissions testing of vehicles, and that politics has taken precedence over science.

The TMCP is being implemented in accordance with both state and federal law. If either state and/or federal law require I/M program changes in the future, such changes will be instituted.

An individual commented that the commission should consider testing commercial and military aircraft.

The commission does not have regulatory authority over these vehicles.

Several individuals commented on landfills in the Houston area, reformulated gasoline, freon, and other issues.

These comments are beyond the scope of this rulemaking.

COMMISSION COMMENTS. Section 114.3 Rule Modifications. The commission made the following changes to §114.3 for clarification: Commission was substituted in place of all references to TNRCC, and in §114.3(f)(2) certificates was substituted in place of stickers.

The commission added §114.3(a)(6), a definition for "First safety inspection certificate." Due to formatting requirements the commission renumbered §114.3(a)(6) through §114.3(a)(16) appropriately.

Section 114.3(a)(8) was changed in order to clarify the definition: changed Utilizing remote sensing... to read Utilization of remote sensing.

Section 114.3(a)(10) was changed in order to clarify the definition: changed ...60 continuous days per year... to read ...60 continuous days per testing cycle... and added: It is presumed that a vehicle is primarily operated in the county in which it is registered.

Section 114.3(a)(13) was changed in order to clarify the definition: changed The Texas SIP as revised in accordance with the 40 Code of Federal Regulations Part 51, Subpart S, issued November 5, 1992 and proposed revisions dated February 28, 1996, as provided for in the National Highway Systems designation Act of 1995, including the procedures and requirements of the vehicle emissions inspection and maintenance program. A copy of the revised Texas I/M SIP is available at the Texas Natural Resource Conservation Commission, 12124 Park 35 Circle, Austin, Texas, 78753 to read: The portion of the Texas SIP which includes the procedures and requirements of the vehicle emissions inspection maintenance program as adopted by the commission May 29, 1996, in accordance with the 40 Code of Federal Regulations Part 51, Subpart S, issued November 5, 1992; the EPA flexibility amendments dated September 18, 1995; and the National Highway System Designation Act of 1995. A copy of the revised Texas I/M SIP is available at the Texas Natural Resource Conservation Commission, 12124 Park 35 Circle, Austin, Texas, 78753; mailing address: P.O. Box 13087, MC166, Austin, Texas 78711-3087.

Since there is no reason to differentiate between test-only and test-and-repair facilities, the commission deleted §114.3(a)(15) and §114.3(a)(16).

Section 114.3(b)(1) was changed in order to clarify the requirement to begin emissions testing on an applicable vehicle: added ...beginning with the first safety inspection certificate expiration date.

Section 114.3(b)(2) was changed in order to clarify the requirement to begin emissions testing on an applicable vehicle: deleted ...El Paso and, and added ...beginning with the first safety inspection certificate expiration date.

Section 114.3(b)(3) was changed in order to clarify the requirement to begin emissions testing on an applicable vehicle: changed §114.3(b)(3) to §114.3(b)(4); and inserted new §114.3(b)(3).

Section 114.3(c)(3) was changed in order to clarify the requirement for commanding officers or directors of federal facilities: added ...to the Executive Director... to the requirement "Commanding officers or directors of federal facilities shall certify annually to the Executive Director that all subject vehicles have been tested and are in compliance the Federal Clean Air Act (FCAA)."

Section 114.3(c)(4) was changed in order to clarify the requirement for recall notice compliance: changed: Any motorists in an enhanced program area whose motor vehicle has been issued an emissions recall notice from an emissions inspection station stating there are unresolved recall items shall furnish proof of compliance... to read: Any motorists in an enhanced program area who has received a notice from an emissions inspection station that there are recall items unresolved on their motor vehicle should furnish proof of compliance.

Section 114.3(c)(7) was changed in order to clarify the requirement for on-road testing: changed A motorist whose motor vehicle... to read ...A motorist whose vehicle... and changed ...administered by the TNRCC or DPS... to read ...administered by the DPS.

Section 114.3(c)(7)(A) was changed in order to clarify the requirement for on-road testing: changed ...submit the motor vehicle... to read ...submit the vehicle... and changed ...notice by the TNRCC or DPS... to read ...notice by the DPS.

Section 114.3(c)(7)(B) was changed in order to clarify the requirement for on-road testing: changed...notice by the TNRCC or DPS... to read ...notice by the DPS.

Section 114.3(c)(8) was changed in order to clarify the requirement for state, government, and quasi-governmental agencies:

changed...registration renewal process... to read ...registration or inspection process... and added ...for vehicles primarily operated in I/M program areas.

Section 114.3(e) was changed in order to clarify the requirement for biennial testing: deleted ...at a test-only facility... and added: This does not include out-of-cycle tests.

Section 114.3(f)(3) was changed for clarification of the requirement: changed ...as an inspector certified by... to read ...as an emissions inspector certified by.

Section 114.3(h) was changed in order to clarify the requirement: changed ...for certification... to read ...for DPS certification.

The commission added §114.3(h)(4) to clarify the requirements to be a certified emissions inspection station, and added: §114.3(h)(5) and §114.3(h)(6) to facilitate a phase-in approach and pilot program for the TX96 analyzer.

Section 114.4 Rule Modifications. Commission was substituted in place of TNRCC in §114.4 due to procedural requirements.

The commission added §114.4(f) to facilitate a phase-in approach and pilot program for the TX96 analyzer.

Section 114.6 Rule Modifications. Section 114.6(b)(1) was changed in order to clarify the requirement for a minimum expenditure waiver: changed The motor vehicle must have a valid Vehicle Inspection Report (VIR), a valid Vehicle Repair Form (VRF), and have failed a retest after repairs, which meet the following conditions: to read - The applicant must have a valid retest Vehicle Inspection Report (VIR), a valid Vehicle Repair Form (VRF), and the vehicle must have failed a retest after all qualifying repairs. Qualifying repairs must meet the following conditions:.

Section 114.6(b)(1)(C) was changed in order to clarify qualifying repairs for a minimum expenditure waiver: added... (repairs conducted up to 60 days prior to the initial test may count towards the waiver amount).

Section 114.6(c)(2)(C)(ii) was changed in order to clarify qualifying adjusted gross income levels for the low income time extension: deleted ...the following maximum income limits (for families of more than 10 members, add $267 for each additional person) or... and the associated chart. Section 114.6(c)(2)(C)(ii) now reads ..."the applicant's adjusted gross income is within the current federal poverty income guidelines."

Section 114.6(d)(5) was changed in order to clarify the requirement for parts availability waivers: added...in addition to other penalties authorized for non-compliance.

Section 114.7 Rule Modifications. Section 114.7(a) was changed in order to clarify applicability: changed ...for Dallas, Tarrant, Harris, and El Paso Counties... to read ...for vehicles registered in Dallas, Tarrant, Harris, and El Paso Counties.

Section 114.7(a)(1) was changed in order to set standard fees for emissions testing stations: changed ...Test and Repair Stations... to read ...Emissions Inspection Stations.

The commission deleted §114.7(a)(2) in order to set standard fees for emissions testing stations.

The commission made the following changes to §114.7(a)(3) in order to set standard fees for emissions testing stations: changed §114.7(a)(3) to §114.7(a)(2) due to formatting requirements, changed ...Test and Repair Stations... to read ...Emissions Inspection Stations..., and changed ...Market Driven (Fee set by inspection station)... to read ...$26.

The commission changed §114.7(a)(4) to §114.7(a)(3) due to formatting requirements.

Section 114.7(c) was changed in order to clarify the fee for out of cycle vehicle emissions inspections: changed ...emissions inspection, resulting... to read ...emissions inspection in the amount specified in subsection (a) of this section, resulting.

Analyzer Specifications Modifications. The commission clarified portions of the draft Specifications For Preconditioned Two Speed Idle Vehicle Exhaust Gas Analyzer System For Use In The Texas Motorist's Choice Emissions Testing Program, dated February 23, 1996, to facilitate and improve the design of the analyzer system. The final specifications are dated April 26, 1996 and changes have been incorporated into the final version. A copy of the specifications and all changes are available upon request.

To facilitate the requirement for phasing in the program and a pilot program, the commission modified the specifications to reflect §114.4(f)(1) and §114.4(f)(2).

30 TAC §114.3, §114.4

The repeals are adopted under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§114.3. Inspection Requirements.

§114.4. Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 3, 1996.

9607653
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: June 24, 1996
For further information, please call: (512) 239–1970

30 TAC §§114.3, 114.4, 114.6, 114.7

The new sections are adopted under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§§114.3. Vehicle Emissions Inspection Requirements.

(a) Definitions. Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Natural Resource Conservation Commission (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 words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Adjusted annually - Percentage, if any, by which the Consumer Price Index (CPI) for the preceding calendar year differs (as of August 31) from the CPI for 1989; adjustments shall be effective on January 1 of each year.

(2) Basic program area - Collin, Dallas, Denton, and Tarrant Counties.

(3) Core program area - Dallas, El Paso, Harris, and Tarrant Counties.

(4) Emissions tune-up - A basic tune-up along with functional checks and any necessary replacement or repair of emissions control components.

(5) Enhanced program areas - Harris, Waller, Galveston, Montgomery, Chambers, Liberty, Fort Bend, Brazoria, and El Paso Counties.

(6) First safety inspection certificate - Initial Department of Public Safety (DPS) certificates issued through DPS certified inspection stations for every new vehicle found to be in compliance with the rules and regulations governing safety inspections.

(7) Loaded mode I/M test - A measurement of the tailpipe exhaust emissions of a vehicle while the drive wheel rotates on a dynamometer, which simulates the full weight of the vehicle driving down a level roadway. Loaded test equipment specifications shall meet United States Environmental Protection Agency (EPA) requirements for Acceleration Simulation Mode equipment.

(8) Motorist - A person or other entity responsible for the inspection, repair and maintenance of a motor vehicle, which may include, but is not limited to, owners and lessees.

(9) On-road test - Utilization of remote sensing technology to identify vehicles operating within the core I/M program area that have a high probability of being high-emitters.

(10) Out-of-cycle test - Required emissions test not associated with vehicle safety inspection testing cycle.

(11) Primarily operated - Use of a motor vehicle greater than 60 continuous days per testing cycle in a county, motorists shall comply with emissions requirements for such county. It is presumed that a vehicle is primarily operated in the county which it is registered.

(12) Program area - County or counties in which the DPS, in coordination with the commission, administers the vehicle emissions inspection and maintenance program contained in the revised Texas I/M State Implementation Plan (SIP). These counties include Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Harris, Galveston, Liberty, Montgomery, Tarrant, and Waller.

(13) Retests - Successive vehicle emissions inspections following the failing of an initial test by a vehicle during a single testing cycle.

(14) Revised Texas I/M SIP - The portion of the Texas SIP which includes the procedures and requirements of the vehicle emissions inspection and maintenance program as adopted by the commission May 29, 1996, in accordance with the 40 Code of Federal Regulations Part 51, Subpart S, issued November 5, 1992; the EPA flexibility amendments dated September 18, 1995; and the National Highway Systems Designation Act of 1995. A copy of the revised Texas I/M SIP is available at the Texas Natural Resource Conservation Commission, 12124 Park 35 Circle, Austin, Texas, 78753; mailing address: P.O. Box 13087, MC 166, Austin, Texas 78711-3087.

(15) Testing cycle - Annual or biennial cycle commencing with the first safety inspection certificate expiration date for which a motor vehicle is subject to a vehicle emissions inspection.

(16) Uncommon part - A part that takes more than 30 days for expected delivery and installation, where a motorist can prove that a reasonable attempt made to locate necessary emission control parts by retail or wholesale part suppliers will exceed the remaining time prior to expiration of the vehicle safety inspection certificate or the 30 day period following an out-of-cycle inspection.

(b) Applicability. The requirements of this section and those contained in the revised Texas I/M SIP shall be applied to model years 24 years and newer of gasoline-powered motor vehicles, excluding motorcycles and dual-fueled vehicles which cannot be operated using gasoline, and safety inspection facilities and inspectors certified by DPS to inspect vehicles, in the program areas in accordance with the following schedule:

(1) annual or biennial emissions inspection of vehicles registered and primarily operated in Dallas and Tarrant Counties beginning on July 1, 1996, beginning with the first safety inspection certificate expiration date;

(2) annual or biennial emissions inspection of vehicles registered and primarily operated in Harris County beginning on January 1, 1997, beginning with the first safety inspection certificate expiration date;

(3) annual emissions inspection of vehicles registered and primarily operated in El Paso County beginning on January 1, 1997, beginning with the first safety inspection certificate expiration date; and

(4) on-road tests of vehicles registered in a program area and operating in a core program area beginning on September 1, 1997.

(c) Control requirements.

(1) No person may operate any motor vehicle which does not comply with:

(A) all applicable air pollution emissions control related requirements included in the annual vehicle safety inspection requirements administered by DPS, as evidenced by a current valid inspection certificate affixed to the vehicle windshield; and

(B) the vehicle emissions inspection and maintenance requirements contained in the revised Texas I/M SIP.

(2) No person or entity may own, operate, or allow the operation of a vehicle registered in a program area, unless the vehicle has complied with all applicable vehicle emissions I/M requirements contained in the revised Texas I/M SIP.

(3) All federal government agencies shall require a motor vehicle operated by any federal government agency employee on any property or facility under the jurisdiction of the agency and located in a program area to comply with all vehicle emissions I/M

requirements contained in the revised Texas I/M SIP. Commanding officers or directors of federal facilities shall certify annually to the Executive Director that all subject vehicles have been tested and are in compliance with the Federal Clean Air Act (FCAA). This requirement shall not apply to visiting agency, employee, or military personnel vehicles as long as such visits do not exceed 60 calendar days per year.

(4) Any motorist in an enhanced program area who has received a notice from an emissions inspection station that there are recall items unresolved on their motor vehicle should furnish proof of compliance with the recall notice prior to having their vehicle emissions inspection for their next testing cycle. The motorist may present a written statement from the dealership or leasing agency indicating that emissions repairs have been completed as proof of compliance.

(5) A motorist whose vehicle has failed an emissions test may request a challenge retest through DPS. If the retest is conducted within 15 days of the initial inspection, the retest is free.

(6) A motorist whose vehicle has failed an emissions test and has not requested a challenge retest or has failed a challenge retest must have emissions-related repairs performed and must submit a properly completed Vehicle Repair Form (VRF) in order to receive a retest, a minimum expenditure waiver, or a parts availability time extension.

(7) A motorist whose vehicle is registered in a program area and has failed an on-road test administered by the DPS shall:

(A) submit the vehicle for an out-of-cycle vehicle emissions inspection within 30 days of written notice by the DPS; and

(B) satisfy all inspection, extension, or waiver requirements of the vehicle emissions I/M program contained in the revised Texas I/M SIP within 60 days of written notice by the DPS.

(8) State, governmental, and quasi-governmental agencies which fall outside the normal registration or inspection process shall be required to comply with all vehicle emissions I/M requirements contained in the Texas I/M SIP for vehicles primarily operated in I/M program areas.

(d) Waivers and extensions. A motorist may apply to the DPS for a waiver or an extension as specified in §114.6 of this title (relating to Waivers and Extensions for Inspection Requirements), which defer the need for full compliance with vehicle emissions standards for a specified period of time after failing a vehicle emissions inspection.

(e) Biennial testing. If a vehicle has passed a loaded mode I/M test, the vehicle is exempt from the emissions testing requirement for the following year. This does not include out-of-cycle tests.

(f) Prohibitions.

(1) No person may issue or allow the issuance of a vehicle inspection report (VIR), as authorized by DPS, unless all applicable air pollution emissions control related requirements of the annual vehicle safety inspection and the vehicle emissions inspection and maintenance requirements and procedures contained in the revised Texas I/M SIP are completely and properly performed in accordance with the rules and regulations adopted by DPS and the commission. Prior to taking any enforcement action regarding this provision, the commission shall consult with DPS.

(2) No person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen safety inspection certificates, VIRs, VRFs, vehicle emissions repair documentation, or other documents which may be used to circumvent the vehicle emissions I/M requirements and procedures contained in the revised Texas I/M SIP.

(3) No organization, business, person, or other entity may represent itself as an emissions inspector certified by the DPS, unless such certification has been issued pursuant to the certification requirements and procedures contained in the revised Texas I/M SIP.

(4) No person may act as or offer to perform services as a Recognized Emissions Repair Technician of Texas, (as defined in this section), without first obtaining and maintaining DPS recognition.

(g) Requirements for Recognized Emissions Repair Technician of Texas.

(1) The following requirements must be met before DPS recognition:

(A) demonstration to the National Institute of Automotive Service Excellence (ASE) of a minimum of three years of full-time automotive repair service experience;

(B) certification in the following four tests offered by the ASE: Engine Repair (Test A1), Electrical Systems (Test A6), Engine Performance (Test A8), and beginning January 1, 1998 Advanced Engine Performance Specialist (Test L1);

(C) notification by DPS that verification of certification by the National Institute of Automotive Service Excellence is completed; and

(D) any other demonstration required by DPS rule.

(2) A Recognized Emissions Repair Technician shall perform the following duties:

(A) certify the emissions related repairs on the VRF form to be submitted to the DPS;

(B) complete and certify the VRF form for customers;

(C) notify the DPS in writing within 14 days of changes in the technician's ASE testing status.

(h) Certified Emissions Inspection Station Requirements. The following requirements must be met for DPS certification to be issued and renewed:

(1) meet all requirements established by DPS rules and regulations;

(2) purchase or lease emissions testing equipment that has been certified as specified in §114.4 of this title (relating to Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers);

(3) have a dedicated phone line for each vehicle exhaust gas analyzer to be used to inspect vehicles;

(4) enter a business arrangement with the Texas Data Link contractor to obtain a telecommunications link to the Texas Data Link System Vehicle Identification Database for each vehicle exhaust gas analyzer to be used to inspect vehicles;

(5) for inspection stations using equipment conditionally approved pursuant to §114.4(f)(1) of this title, the inspection station must have the equipment ordered from the manufacturer by June 30, 1996 in order to operate using the conditional approval; and

(6) for inspection stations using equipment conditionally approved pursuant to §114.4(f)(1) of this title, remit to the Texas Data Link contractor the amount of $.88 for each test conducted prior to securing a telecommunications link to the Texas Data Link System Vehicle Identification Database.

§§114.4. Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers.

(a) Any manufacturer or distributor of vehicle testing equipment may apply to the Executive Director of the Texas Natural Resource Conservation Commission (commission) or his appointee, for approval of an exhaust gas analyzer or analyzer system for use in the Texas Inspection/Maintenance (I/M) program administered by the Texas Department of Public Safety. Each manufacturer shall submit a formal certificate to the commission stating that any analyzer sold or leased by the manufacturer or its authorized representative for use in the I/M program will satisfy all design and performance criteria set forth in "Specifications for Preconditioned Two Speed Idle Vehicle Exhaust Gas Analyzer Systems for Use in the Texas Motorist's Choice Vehicle Emissions Testing Program," dated April 26, 1996. Copies of this document are available at the commission Central Office, 12100 Park 35 Circle, Austin, Texas 78753. The manufacturer shall also provide sufficient documentation to demonstrate conformance with these criteria including a complete description of all hardware components, the results of appropriate performance testing, and a point-by-point response to each specific requirement.

(b) All equipment shall be tested by an independent test laboratory. The cost of the certification shall be absorbed by the manufacturer. The conformance demonstration shall include, but is not limited to:

(1) certification that equipment design and construction conforms with the specifications referenced in subsection (a) of this section;

(2) documentation of successful results from appropriate performance testing;

(3) evidence of necessary changes to internal computer programming, display format, and data recording sequence;

(4) a commitment to fulfill all maintenance, repair, training, and other service requirements described in the specifications referenced in subsection (a) of this section. A copy of the minimum warranty agreement to be offered to the purchaser of an approved vehicle exhaust gas analyzer shall be included in the demonstration of conformance; and

(5) documentation of communication ability using protocol provided by the commission or the commission Texas Data Link contractor.

(c) If a review of the demonstration of conformance and all related support material indicates compliance with the criteria listed in subsections (a) and (b) of this section, the Executive Director or his appointee may issue a notice of approval to the analyzer manufacturer which endorses the use of the specified analyzer or analyzer system in the Texas I/M program.

(d) The applicant shall comply with all special provisions and conditions specified by the Executive Director or his appointee in the notice of approval.

(e) Any manufacturer or distributor which receives a notice of approval from the Executive Director or his appointee for a vehicle exhaust gas analyzer for use in the Texas I/M program may be subject to appropriate enforcement action and penalties prescribed in the Texas Clean Air Act or the rules and regulations promulgated thereunder if:

(1) Any information included in the conformance demonstration as required in subsection (b) of this section is misrepresented resulting in the purchase or operation of equipment in the Texas I/M program which does not meet the specifications referenced in subsection (a) of this section, or

(2) The applicant fails to comply with any requirement or commitment specified in the notice of approval issued by the Executive Director or implied by the representations submitted by the applicant in the conformance demonstration required by subsection (b) of this section.

(f) The Executive Director may issue conditional notice of approval for an analyzer which does not meet every requirement of subsections (a) and (b) of this section in accordance with the following schedule and stipulations:

(1) For the purpose of phasing in the program, the Executive Director or his appointee may issue to the analyzer manufacturer a notice of approval which endorses the use of the specified analyzer system during the month of July 1996 in the Texas I/M program conditional upon the equipment meeting subsections (a) and (b) of this section by July 31, 1996.

(2) For use in a pilot program, the Executive Director or his appointee may issue to the analyzer manufacturer a notice of approval which endorses the use of the specified analyzer system prior to October 31, 1996 in the Texas I/M program conditional upon the equipment meeting subsections (a) and (b) of this section by October 31, 1996.

§114.6. Waivers and Extensions for Inspection Requirements.

(a) Applicability. The waivers and extensions apply to any motorist who can satisfy the conditions of a specific waiver or extension. Applications must be made to the Department of Public Safety (DPS). For the minimum expenditure waiver, individual vehicle waiver, and parts availability time extension, the motorist may apply only once for each testing cycle. For the low income time extension, the motorist may apply every other test cycle.

(b) Minimum expenditure waiver. A motorist shall use any available warranty coverage to obtain needed repairs before expenditures shall be used in calculating the minimum repair expenditures to qualify for a minimum expenditure waiver, unless the warranty remedy has been denied in writing from the manufacturer or authorized dealer. A motorist may not use or attempt to use expenditures for tampering-related repairs in calculating the minimum repair expenditures to qualify for a minimum expenditure waiver. A minimum expenditure waiver shall be valid for the remaining portion of the testing cycle. Tampering includes, but is not limited to, engine modifications, emissions system modifications, or fuel-type modifications disapproved by the Texas Natural Resource Conservation Commission or United States Environmental Protection Agency. A minimum

expenditure waiver may be granted in accordance with the following conditions:

(1) The applicant must have a valid retest Vehicle Inspection Report (VIR), a valid Vehicle Repair Form (VRF), and the vehicle must have failed a retest after all qualifying repairs. Qualifying repairs must meet the following conditions:

(A) The minimum expenditure shall be:

(i) at least $300 until December 31, 1997 and beginning January 1, 1998 a minimum of $450, adjusted annually, in enhanced program areas; or

(ii) at least $75 for pre-1981 model year vehicles and at least $200 for 1981 and later model year vehicles in basic program areas;

(B) After January 1, 1997, for 1981 and newer model year vehicles, all qualifying repairs shall be performed by a Recognized Emissions Repair Technician of Texas in order to count labor cost and/or diagnostic costs;

(C) Qualifying repairs must be directly applicable to the cause for the test failure (repairs conducted up to 60 days prior to the initial test may count towards the waiver amount); and

(D) After January 1, 1997, when repairs are not performed by a Recognized Emissions Repair Technician of Texas, only the purchase price of parts, applicable to the failure, qualify as a repair expenditure for the minimum expenditure waiver.

(2) The motorist provides to the DPS an original retest VIR, a properly completed VRF, and an original itemized receipt indicating the emissions-related repairs performed. If labor and/or diagnostic charges are being claimed towards the minimum expenditure, the VRF shall be completed by a Recognized Emissions Repair Technician of Texas after January 1, 1997.

(c) Low income time extension. A low income time extension may be granted in accordance with the following conditions:

(1) A motorist must supply proof that the subject vehicle failed the initial emissions inspection test in the form of an original failed vehicle inspection report.

(2) A motorist shall provide proof in writing to the DPS that the registered vehicle owner(s) meets the following conditions:

(A) the low income time extension applicant is the owner of the vehicle that has failed an I/M test; and

(B) the vehicle has not been granted a low income time extension waiver in the previous inspection cycle; and

(C) the applicant meets one of the following:

(i) the applicant receives financial assistance from the Texas Department of Human Services (subject to approval by the Director of DPS); or

(ii) the applicant's adjusted gross income is within the current federal poverty income guidelines.

(D) the applicant shows proof of conformity with paragraph (2)(C) of this subsection by providing to the DPS one of the following, which the applicant certifies are true and correct:

(i) a federal income tax return; or

(ii) other documentation authorized by the Director of the DPS.

(3) After a motorist receives an initial low income time extension, the vehicle must pass an emissions test prior to receiving another low income time extension or any waiver or extension.

(d) Parts availability time extension. The parts availability time extension does not exempt the vehicle from the compliance requirements of the I/M program but merely extends the period for compliance. By the end of the time extended, the vehicle must be repaired, retested, and receive a passing VIR or comply with paragraph (4) of this subsection. Only one parts availability time extension is allowed in each test cycle for each vehicle. A parts availability time extension may be granted in accordance with the following conditions:

(1) The motorist can document that emissions-related repairs cannot be completed before the expiration of the safety inspection certificate or before the 30-day period following an out-of-cycle inspection because the repairs require an uncommon part;

(2) The motorist shall provide to the DPS an original VIR indicating that the vehicle failed the emissions test and an original itemized documentation by a Recognized Emissions Repair Technician of Texas (after January 1, 1997), indicating parts ordered by name; description and catalog number; order number; source of parts, including address and phone number; and expected delivery and installation dates of uncommon parts before a parts availability time extension can be issued.

(3) The motorist shall return the motor vehicle to the DPS for a retest and verification of repairs upon completion of the repairs.

(4) The motorist shall provide to the DPS, prior to expiration of a parts availability time extension, adequate documentation that one of the following conditions exists:

(A) the motor vehicle passed a retest;

(B) the motorist qualifies for a Minimum Expenditure Waiver or Low Income Time Extension; or

(C) the motor vehicle shall no longer be operated in the program area.

(5) A vehicle which receives a parts availability time extension in one test cycle must have the vehicle repaired and retested prior to the expiration of such extension or the vehicle shall be ineligible for a parts availability time extension in the subsequent test cycle in addition to other penalties authorized for non-compliance.

(6) The length of a parts availability time extension shall depend upon expected delivery and installation dates of uncommon parts as determined by the DPS representative on a case by case basis and issued for either 30, 60, or 90 days or longer if necessary, but shall not exceed one test cycle.

(e) Individual vehicle waiver. If a vehicle has failed an inspection and maintenance (I/M) test, a motorist may petition the Director of the DPS for an individual vehicle waiver. Upon demonstration that the motorist has taken reasonable measures to comply with the requirements of the vehicle emissions I/M program contained in the revised Texas I/M SIP and that such waiver shall have minimal impact on air quality, the Director may approve the petition, and the motorist may receive a waiver. Motorists may apply for the individual vehicle waiver each test cycle.

§114.7. Inspection and Maintenance Fees.

(a) The following fees must be paid for an emissions inspection of a vehicle at an inspection station. This fee shall include one free retest should the vehicle fail the emissions inspection, provided that the motorist has the retest performed at the same station where the vehicle originally failed and submits, prior to the retest, a properly completed Vehicle Repair Form showing that emissions-related repairs were performed and the retest is conducted within 15 days of the initial emissions test. For vehicles registered in Dallas, Tarrant, Harris, and El Paso Counties:

(1) Emissions Inspection Stations (Two Speed Idle / Annual Test): $13. The inspection station shall remit $1.75 to the Department of Public Safety (DPS).

(2) Emissions Inspection Stations (Loaded or Transient / Biennial Test): $26. The inspection station shall remit $1.75 to the DPS.

(3) The collection of inspection fees set forth in this subsection will coincide with the program start dates outlined in §114.3(b) of this title (relating to Applicability).

(b) The per-vehicle fee and the amount the inspection station remits to the DPS for a challenge test, at an inspection station designated by the DPS, shall be the same as the amounts set forth in subsection (a) of this section. The challenge fee shall not be charged if the vehicle is retested within 15 days of the initial test.

(c) Inspection stations performing out-of-cycle vehicle emissions inspections for the state's remote sensing element shall charge a motorist for an out-of-cycle emissions inspection in the amount specified in subsection (a) of this section, resulting from written notification that subject vehicle failed on-road testing, only, if such vehicle fails the emissions inspection and is registered outside the core program area. Inspection stations shall charge the DPS for all other vehicle emissions inspections resulting from on-road testing. This agency hereby certifies that the sections as adopted have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. Issued in Austin, Texas, on May 30, 1996. MOTOR VEHICLES The repeals are adopted under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA. §114.3. Inspection Requirements. §114.4. Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on, June 3, 1996.

TRD-96076652
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: June 24, 1996
For further information, please call: (512) 239–1970

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 57. Fisheries

Freshwater Mussels

31 TAC §57.158

The Texas Parks and Wildlife Commission adopts an amendment to §57.158, concerning Mussels and Clams, without changes to the proposed text as published in the April 5, 1996, issue of the *Texas Register*(21 TexReg 2963).

The amendment is necessary to fulfill the department's obligation to prevent depletion and waste of the state's aquatic resources and, in general, to preserve and enhance existing populations while allowing for harvest according to prescribed fisheries tenets.

The amendment alters mussel and clam harvest restrictions on the Neches River.

The department received no comments on the proposed rules.

The amendment is adopted under Parks and Wildlife Code, Chapter 78, which provides the Commission with the authority to regulate the taking, possession, purchase, and sale of mussels and clams.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 31, 1996.

TRD-9607612
Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department
Effective date: June 21, 1996
Proposal publication date: April 5, 1996
For further information, please call: (512) 389-4642

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Chapter 65. Wildlife

The Texas Parks and Wildlife Commission adopts the repeal of §§65.1, 65.3, 65.5, 65.9, 65.11, 65.13, 65.15, 65.17, 65.19, 65.21, 65.23, 65.25-65.29, 65.31-65.34, 65.36-65.38, 65.40, 65.42, 65.44, 65.46, 65.48, 65.50, 65.52, 65.54, 65.56, 65.58, 65.60, 65.62, 65.64, 65.66, 65.71, 65.72, 65.78, 65.82, 65.90 and 65.91; and new §§65.1, 65.3, 65.5, 65.9-65.11, 65.13, 65.15, 65.19, 65.21, 65.24-65.29, 65.31-65.33, 65.38, 65.40, 65.42, 65.44, 65.46, 65.48, 65.50, 65.52, 65.54, 65.56, 65.58, 65.60, 65.62, 65.64, 65.66, 65.71, 65.72, 65.78, 65.82, and 65.91. Sections 65.3, 65.5, 65.13, 65.15, 65.42, 65.64, 65.71, and 65.72 are adopted with changes to the proposed text as published in the April 5, 1996, issue of the *Texas Register* (21 TexReg 2965). The repeals and new §§65.1, 65.9-65.11, 65.19, 65.21, 65.24-65.29, 65.31-65.33, 65.38, 65.40, 65.44, 65.46, 65.48, 65.50, 65.52, 65.54, 65.56, 65.58, 65.60, 65.62, and 65.66, 65.78, 65.82, and 65.91 are adopted without change and will not be republished.

The repeals and new sections are necessary to implement the statutory duty of the department to regulate the commercial and recreational harvest of the wildlife resources of this state.

The repeals and new sections will function to eliminate duplication and unnecessary regulations, restructure and reorganize regulatory provisions in the interest of promoting user-friendliness, and implement regulatory changes which advance the Commission policy of increasing recreational opportunity within the tenets of sound biological management practices.

New §65.1, concerning Application, specifies the scope of the subchapter; new §65.3, concerning Definitions, qualifies the words and terms used in the subchapter; new §65.5, concerning Importation of a Wildlife Resource, sets the requirements under which wildlife resources taken out-of-state may be brought into Texas; new §65.9, concerning Open Seasons: General Rules, specifies regulations pertaining generally to hunting seasons; new §65.10, concerning Possession of Wildlife Resources, sets the requirements for lawful possession of wildlife resources; new §65.11, concerning Means and Methods, establishes the subchapter as the authority for lawful devices and activities with respect to hunting and fishing; new §65.13, concerning Firearms, outlines restrictions related to the use of firearms for hunting; new §65.15, concerning Archery, outlines restrictions and requirements related to the use of archery equipment for taking wildlife resources; new §65.19, concerning Hunting Deer with Dogs, regulates the use of dogs in conjunction with deer-hunting activities; new §65.21, concerning Falconry, provides for the hunting of wildlife resources by means of raptors; new §65.24, concerning Permits, sets the stipulations and requirements for persons receiving permits issued under the authority of the subchapter; new §65.25, concerning Wildlife Management Plan, specifies what must be contained in a wildlife management plan in order for it to be approved by the department; new §65.26, concerning Managed Lands Deer Permits, creates a program to encourage sound resource management and allow landowners greater management flexibility; new §65.27, concerning Antlerless and Spike-Buck Deer Control Permits, provides a mechanism to control overpopulation of deer; new §65.28, concerning Landowner Assisted Management Plan, creates a program that allows landowners to manage antlerless deer more effectively; new §65.29 and §65.31, concerning Pronghorn Antelope Permits and Antlerless Mule Deer Permits, provide for department issuance of permits for the hunting of those species; new §65.32, concerning Mandatory Check Stations, provides authority for the department to operate check stations for the collection of biological data; new §65.33, concerning Elk Permits, provides for department issuance of permits for the hunting of elk; new §65.38, concerning Game Animals: Open Seasons and Bag Limits, sets provisions generally applicable to the hunting of game animals; new §§65.40, 65.42, 65.44, 65.46, 65.48, 65.50, and 65.52 provide specific seasons, bag limits, and special regulations for the hunting of pronghorn antelope, white-tailed deer, mule deer, javelina, squirrel, desert bighorn sheep, elk, and aoudad sheep; new §65.54, concerning Game Birds: Open Seasons and Bag Limits, sets provisions generally applicable to the hunting of game birds; new §§65.56, 65.58, 65.60, 65.62, 65.64, and 65.66 provide specific seasons, bag limits, and special regulations for the hunting of Prairie Chicken, Partridge, Pheasant, Quail, Turkey, and Chachalaca; new §65.71, concerning Reservoir Boundaries, establishes specifically delineated areas for the purpose of imposing bag, possession, and length limits for fish; new §65.72, concerning Fish, sets the lawful means and methods, daily bag, possession, and length limits, and special regulations regarding the harvest of fish; new §65.78, concerning Crabs and Ghost Shrimp, imposes the requirements for taking and possessing those species; new §65.82, concerning Other Aquatic Life, prohibits the take of certain species of aquatic life; and new §65.91, concerning Penalty for Violation, prescribes the penalty for acts in violation of the subchapter.

The department received 3,611 comments concerning the proposed regulations.

The proposed repeal of the prohibition on .22-caliber rimfire ammunition was opposed by 138 commenters. The department responds by retaining the prohibition. Two comments in favor of the proposal were received.

The proposal to permit the use of crossbows during the general open season was opposed by 96 commenters. The department responds by retaining the current regulation that limits crossbow use to the archery-only season by hunters with upper-limb disabilities. The department received 13 comments in support of the proposal.

Four commenters opposed the proposed open seasons for white-tailed deer in Winkler County. The department responds by retaining a closed season in that county.

Forty-one commenters opposed the proposed open seasons for white-tailed deer and turkey in Grayson County. The department responds by retaining the current regulations, which limit the hunting of white-tailed deer and turkey to the archery-only season. Two comments in support of the proposal were received.

The department received 36 comments in opposition to the proposal to institute South Texas-type seasons and bag limits for the hunting of white-tailed deer in Aransas, Atascosa, Bee, Calhoun, Cameron, Crockett, Edwards, Hidalgo, Kinney (north of U.S. 90), Live Oak, Nueces, Refugio, San Patricio, Schleicher, Starr, Sutton, Terrell, Val Verde (north of U.S. 90), and Willacy counties. The department responds by retaining the current regulations in effect for those counties. Four comments in support of the proposal were received.

The department received 18 comments against and 14 comments in favor of the proposal to offer greater harvest flexibility to landowners with department-approved management plans. The comments against the proposal concerned the duration of harvest and the duration of the buck harvest. The department responds by modifying the proposal to allow landowners with department-approved management plans that specify a both-sex harvest quota to permit hunters to take up to five white-tailed deer (no more than three bucks) during the current season length, and to harvest antlerless deer for 14 days following the close of the general season.

The department received one comment in favor of the proposed white-tailed deer regulations in Young County, and 12 comments in favor of the proposed white-tailed deer regulations in Parker County. No comments opposing the proposal were received.

The department received 105 comments in favor of instituting a full white-tailed deer season in Hunt County. Four commenters were opposed to the proposal, requesting that the department

retain the current nine-day season. The department responds that population trends for white-tailed deer in Hunt County indicate that a full season can be sustained by the resource, and no changes were made as a result of the comments.

The department received 1,585 requests for various permutations of existing deer regulations, elimination of present regulations, and implementation of suggested regulations. With respect to requests for more 'doe days,' fewer 'doe days,' no 'doe days,' shorter seasons, longer seasons, increased bag limits, and decreased bag limits, the department responds that the proposal represents the department's implementation of commission policy to offer the greatest opportunity consistent with sound biological practice. No changes were made as a result of the comments. Several commenters requested regulating deer harvest by acreage. The department responds that given the department's present human resources, such an approach would be impossible to implement. No changes were made as a result of the comment. One comment was received suggesting regulation of the buck harvest by antler size. The department responds that its obligation is to conserve the resource and equitably distribute harvest opportunity. At present, the management of deer for specific characteristics is, in the department's opinion, a matter best left to landowners/land managers. No change was made as a result of the comment. One commenter requested that the department permit spike bucks to be harvested on a year-round basis. The department responds that such an approach, in addition to presenting substantial enforcement problems, would be biologically imprudent in light of the high probability of incidental take of antlered deer.

Forty-seven comments were received in opposition to the proposal to allow the harvest of mule deer during the entirety of the white-tailed deer season on properties with department-approved management plans. The department responds by dropping the proposal. Twelve comments in favor of the proposal were received.

Two comments in favor of the proposal to open mule deer seasons in Foard and Hardeman counties were received.

One commenter favored elimination of the muzzleloader-only season and one commenter favored expansion of the muzzleloader-only season. The department responds by pointing out that the muzzleloader-only season is a reflection of its obligation to equitably distribute harvest opportunity, and that muzzleloading firearms are a legal means during the general season. No changes were made as a result of the comments.

The department received four comments supporting and three comments opposing the proposed realignment of the archery-only season so that its 30-day length would always include five full weekends of hunting opportunity. The comments in opposition stated that such a season would end earlier than in the past and that many bow hunters regard the last week of the season as the prime period for hunting. The department responds that in balancing opportunity in general against what is at most a few days at the end of the season, the commission policy of offering the greatest opportunity is clearly best served by adjusting the season as proposed. No changes were made as a result of the comments.

Twelve comments were received in opposition to the proposed opening dates for the spring turkey season; all of the comments suggested opening the season earlier. The department responds that although it believes the proposed dates are based on the best data available, moving the entire season up one week does not pose a threat to the resource. The change was made accordingly.

Nine comments in favor of the proposed spring seasons for turkey in East Texas were received.

One comment in favor of the proposed decrease in the turkey bag limit in Milam County was received, and one comment in favor of the proposed turkey seasons in Denton and Tarrant counties was received.

Four commenters requested a shortened quail season. The department responds by maintaining that the size of quail populations is to a large degree a function of timely rainfall, and that hunting pressure is not a factor at the present time. No changes were made as a result of the comments.

The department received 58 comments opposing the creation of a special youth-only hunting season. Opposition concerned fears that adults would take advantage of opportunity meant for youth, that there are already too many special seasons, that the timing of the proposed season would result in deer being spooked before the general season, and that the proposed season would impinge upon the archery-only season. The department responds by dropping the proposal. Eighteen comments in support of the proposal were received.

One commenter suggested that the department replace the words 'hunt' and 'take' with the phrase 'kill for fun' throughout the regulations. The department disagrees with the suggestion because it does not reflect the sentiment of the department, the regulated community, or the public.

The department received 736 comments in opposition to the proposed regulations regarding trout in the Guadalupe River. Opposition centered around the issue of prohibiting the use of natural bait. The department responds by dropping the proposal. The department received 188 comments supporting the proposal.

Two comments opposing the proposed standardization of seine length were received; both contended that the reduction from 60 to 20 feet placed an undue burden on certain commercial operations. The department responds that the proposed standardization is intended as a law enforcement tool, and that the department will issue permits for the longer seine lengths in those parts of the state where minnow seining is a commercial enterprise. No changes were made as a result of the comments.

Three comments supporting the proposal to change largemouth bass regulations on Lake Raven were received.

One commenter supported the proposed white bass regulations for the Colorado River above Lake Buchanan.

The department received one request to increase the bag limit for trout. The department responds that the trout fishery is a put-and-take fishery, and that an increase in the bag limit would be biologically imprudent.

The department received 50 comments opposing the proposed new commercial flounder regulations. Thirty-eight commenters stated the 60-fish bag limit is too restrictive. Twelve commenters opposed the minimum size limit. The department disagrees with the comments because biological data indicate that the flounder fishery is experiencing problems related to overharvest of the resource. No changes were made as a result of the comments. The department received 247 comments in favor of the proposed regulations.

The department received three comments in favor of the proposed shrimping regulations that would limit finfish by catch to less than 50% of the shrimp catch.

Two commenters were in favor of the proposal to close the red snapper fishery whenever federal regulations closed that fishery in the Exclusive Economic Zone.

Comments in favor of the proposed regulations were made by Gulf Coast Conservation Association, Guadalupe River Trout Unlimited, Texas Wildlife Association, Texas Youth Hunting Association, Texas Trophy Hunters Association, Lone Star Bowhunters Association, Texas Archery Retailers and Manufacturers Association, Texas Sportsmen Association, National Wild Turkey Federation, and Texas State Coonhunters Association. Action for Animals and Texas Seafood Producers Association commented in opposition to the proposed regulations.

Subchapter A. Statewide Hunting and Fishing Proclamation

General Provisions

31 TAC §§65.1, 65.3, 65.5, 65.9, 65.11, 65.13, 65.15, 65.17, 65.19, 65.21, 65.23, 65.25-65.29, 65.31-65.34, 65.36, 65.37

The repeals are adopted under Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the Commission with authority to establish wildlife resource regulations for this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 31, 1996.

TRD-9607611
Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department
Effective date: September 1, 1996
Proposal publication date: April 5, 1996
For further information, please call: (512) 389-4642

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31 TAC §§65.1, 65.3, 65.5, 65.9-65.11, 65.13, 65.15, 65.19, 65.21, 65.24-65.29, 65.31-65.33

The new sections are adopted under Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the Commission with authority to establish wildlife resource regulations for this state.

§65.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms in this chapter shall have the meanings assigned in the Texas Parks and Wildlife Code.

Agent - A person authorized by a landowner to act on behalf of the landowner. For the purposes of this chapter, the use of the term 'landowner' also includes the landowner's agent.

Annual bag limit - The quantity of a species of a wildlife resource that may be taken from September 1 of one year to August 31 of the following year.

Antlerless deer - A deer having no hardened antler protruding through the skin.

Bait - Something used to lure any wildlife resource.

Baited area - Any area where minerals, vegetative material or any other food substances are placed so as to lure a wildlife resource to, on, or over any area where hunters are hunting wildlife resources.

Bearded hen - A female turkey possessing a clearly visible beard protruding through the feathers of the breast.

Buck deer - A deer having a hardened antler protruding through the skin.

Cast net - A net which can be hand-thrown over an area.

Coastal waters boundary - All public waters east and south of the following boundary are considered coastal waters: Beginning at the International Toll Bridge in Brownsville, thence northward along U.S. Highway 77 to the junction of Paredes Lines Road (F.M. Road 1847) in Brownsville, thence northward along F.M. Road 1847 to the junction of F.M. Road 106 east of Rio Hondo, thence westward along F.M. Road 106 to the junction of F.M. Road 508 in Rio Hondo, thence northward along F.M. Road 508 to the junction of F.M. Road 1420, thence northward along F.M. Road 1420 to the junction of State Highway 186 east of Raymondville, thence westward along State Highway 186 to the junction of U.S. Highway 77 near Raymondville, thence northward along U.S. Highway 77 to the junction of F.M. Road 774 in Refugio, thence eastward along F.M. Road 774 to the junction of State Highway 35 south of Tivoli, thence northward along State Highway 35 to the junction of State Highway 185 between Bloomington and Seadrift, thence northwestward along State Highway 185 to the junction of F.M. Road 616 in Bloomington, thence northeastward along F.M. Road 616 to the junction of State Highway 35 east of Blessing, thence southward along State Highway 35 to the junction of F.M. Road 521 north of Palacios, thence northeastward along F.M. Road 521 to the junction of State Highway 36 south of Brazoria, thence northward along State Highway 36 to the junction of State Highway 332 in Brazoria, thence eastward along State Highway 332 to the junction of F.M. Road 2004 in Lake Jackson, thence northeastward along F.M. Road 2004 to the junction of Interstate Highway 45 between Dickinson and La Marque, thence northwestward along Interstate Highway 45 to the junction of Interstate Highway 610 in Houston, thence east and northward along Interstate Highway 610 to the junction of Interstate Highway 10 in Houston, thence eastward along Interstate Highway 10 to the junction of State Highway 73 in Winnie, thence eastward along State Highway 73 to the junction of U.S. Highway 287 in Port Arthur, thence northwestward along U.S. Highway 287 to the junction of Interstate Highway 10 in Beaumont, thence eastward along Interstate Highway 10 to the Louisiana State Line. The public waters north of the dam on

Lake Anahuac in Chambers County; north and west of the junction of the north and south forks of the Guadalupe River in Calhoun and Refugio counties; the waters of Taylor Bayou and Big Hill Bayou inland from the saltwater locks on Taylor Bayou in Jefferson County; the Galveston County Reservoir on State Highway 146 in Galveston County; Lakeview City Park Lake in Corpus Christi; Lake Burke-Crenshaw in Pasadena; Galveston County Reservoir in Galveston County; Galveston State Park ponds #1-7 in Galveston County; Lake Nassau in Harris County; Fort Brown Resaca in Cameron County; Resaca de la Guerra in Cameron County; Resaca de la Palma in Cameron County; Resaca de los Cuates in Cameron County; Resaca de los Fresnos in Cameron County; Resaca Rancho Viejo in Cameron County; and Town Resaca in Cameron County are not considered coastal waters for purposes of this subchapter.

Community fishing lake - All public impoundments 75 acres or smaller located totally within an incorporated city limits or a public park, and all impoundments of any size lying totally within the boundaries of a state park.

Crab line - A baited line with no hook attached.

Daily bag limit - The quantity of a species of a wildlife resource that may be taken in one day.

Day - A 24-hour period of time that begins at midnight and ends at midnight.

Dip net - A mesh bag suspended from a frame attached to a handle.

Final destination for all wildlife resources - The permanent residence of the person possessing or receiving the wildlife resource, or a part of the wildlife resource, or a commercial processing plant after the carcass of the wildlife resource has been finally processed.

Fish -

(A) Game fish - Blue catfish, blue marlin, broadbill swordfish, brown trout, channel catfish, cobia, crappie (black and white), flathead catfish, Guadalupe bass, king mackerel, largemouth bass, longbill spearfish, pickerel, red drum, rainbow trout, sailfish, sauger, sharks, smallmouth bass, snook, Spanish mackerel, spotted bass, spotted seatrout, striped bass, tarpon, wahoo, walleye, white bass, white marlin, yellow bass, and hybrids or subspecies of the species listed in this subparagraph.

(B) Non-game fish - All species not listed as game fish, except endangered and threatened fish, which are defined and regulated under separate proclamations.

Fishing - Taking or attempting to take aquatic animal life by any means.

Fish length - That straight-line measurement (while the fish is lying on its side) from the tip of the snout (jaw closed) to the extreme tip of the tail when the tail is squeezed together or rotated to produce the maximum overall length.

Fish species names - The names of fishes are those prescribed by the American Fisheries Society in the most recent edition of "A List of Common and Scientific Names of Fishes of The United States and Canada."

Fully automatic firearm - Any firearm that is capable of firing more than one cartridge in succession by a single pull or function of the trigger.

Gaff - Any hand-held pole with a hook attached directly to the pole.

Gear tag - A tag constructed of material as durable as the device to which it is attached. The gear tag must be legible and contain the name and address of the person using the device and the date the device was set out.

Gig - Any hand-held shaft with single or multiple points, barbed or barbless.

Jug line - A fishing line with five or less hooks tied to a free-floating device.

Lawful archery equipment - longbow, recurved bow, compound bow, and crossbow.

License year - The period of time for which a hunting or fishing license is valid, whether or not the taking of wildlife is permitted in one or more periods during this time.

Muzzleloader - Any firearm that is loaded only through the muzzle using black powder or other propellant and separate projectile(s) and is ignited by a flint or percussion mechanism.

Natural bait - A whole or cut-up portion of a fish or shellfish or a whole or cut-up portion of plant material in its natural state, provided that none of these may be altered beyond cutting into portions.

Pole and line - A line with hook, attached to a pole. This gear includes rod and reel.

Possession limit - The maximum number of a wildlife resource that may be possessed at one time.

Purse seine (net) - A net with flotation on the corkline adequate to support the net in open water without touching bottom, with a rope or wire cable strung through rings attached along the bottom edge to close the bottom of the net.

Sail line - A type of trotline with one end of the main line fixed on the shore, the other end of the main line attached to a wind-powered floating device or sail.

Sand Pump - A self-contained, hand-held, hand-operated suction device used to remove and capture Callianassid ghost shrimp (Callichirus islagrande, formerly Callianassa islagrande) from their burrows.

Seine - A section of non-metallic mesh webbing, the top edge buoyed upwards by a floatline and the bottom edge weighted.

Silencer or sound-suppressing device - Any device that reduces the normal noise level created when the firearm is discharged or fired.

Spear - Any shaft with single or multiple points, barbed or barbless, which may be propelled by any means, but does not include arrows.

Spear gun - Any hand-operated device designed and used for propelling a spear, but does not include the crossbow.

Spike-buck deer - A buck deer with no antler having a fork or branching point.

Throwline - A fishing line with five or less hooks and with one end attached to a permanent fixture. Components of a throwline may also include swivels, snaps, rubber and rigid support structures.

Trap - A rigid device of various designs and dimensions used to entrap aquatic life.

Trawl - A bag-shaped net which is dragged along the bottom or through the water to catch aquatic life.

Trotline - A nonmetallic main fishing line with more than five hooks attached and with each end attached to a fixture.

Umbrella net - A non-metallic mesh net that is suspended horizontally in the water by multiple lines attached to a rigid frame.

Upper-limb handicap - a permanent loss of the use of fingers, hand or arm in a manner that renders a person incapable of using a longbow, compound bow or recurved bow.

Wildlife resources - All game animals, game birds (except migratory birds), marine animals, fish, and other aquatic life.

Wounded deer - A deer leaving a blood trail.

§65.5. Importation of a Wildlife Resource.

(a) No person may import into this state or possess a wildlife resource taken outside this state, unless the person possessing the wildlife resource produces upon demand by a game warden a valid hunting, fishing, or other applicable license, stamp, tag, permit, or document for the state or country in which the wildlife resource was legally taken.

(b) A person possessing a wildlife resource under this section must produce upon demand by a game warden a valid driver's license or personal identification certificate.

§65.13. Firearms.

(a) It is lawful to hunt game animals and game birds with any legal firearm, including muzzleloading weapons, except as specifically restricted in this chapter.

(b) It is unlawful to use rimfire ammunition to hunt deer, antelope, desert bighorn sheep, and elk or aoudad sheep (in counties where elk or aoudad sheep are game animals).

(c) It is unlawful to hunt game animals or game birds with a fully automatic firearm or any firearm equipped with a silencer or sound-suppressing device.

(d) Special muzzleloader-only antlerless deer seasons are restricted to muzzleloading firearms only.

§65.15. Archery.

(a) It is lawful to hunt any game bird or game animal by means of lawful archery equipment except crossbows during the open seasons specified for those species.

(b) Arrows or bolts that are treated with poisons, or drugs, or that contain explosives are not lawful devices for hunting any species of wildlife resource in this state.

(c) While hunting turkey and all game animals other than squirrels by means of a longbow, compound bow, or recurved bow:

(1) the bow must be hand-held and hand-drawn, and shall not be equipped with any means of propelling an arrow other than by the hand-drawn energy stored in the bow;

(2) the bow must have a minimum peak draw weight of 40 pounds;

(3) the bow shall not be equipped with any device that permits the bow to be locked at full or partial draw; and

(4) the arrow must be equipped with a broadhead hunting point at least 7/8-inch in width upon impact, with a minimum of two cutting edges. The width must be demonstrable.

(d) It is unlawful to hunt deer or turkey with a broadhead hunting point while in possession of a firearm during the archery-only seasons.

(e) A person having an upper-limb handicap may use a crossbow to hunt deer and turkey during the archery-only open season, provided:

(1) the person has in their immediate possession a physician's statement certifying the extent of the disability;

(2) the crossbow has a minimum of 125 pounds of pull;

(3) the crossbow has a mechanical safety;

(4) the crossbow stock is not less than 25 inches in length; and

(5) the bolt conforms with subsections (b) and (c)(4) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 31, 1996.

TRD-9607610
Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department
Effective date: September 1, 1996
Proposal publication date: April 5, 1996
For further information, please call: (512) 389-4642

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Seasons and Bag Limits-Hunting Provisions

31 TAC §§65.38, 65.40, 65.42, 65.44, 65.46, 65.48, 65.50, 65.52, 65.54, 65.56, 65.58, 65.60, 65.62, 65.64, 65.66

The repeals are adopted under Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the Commission with authority to establish wildlife resource regulations for this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 31, 1996.

TRD-9607609
Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department
Effective date: June 21, 1996
Proposal publication date: April 5, 1996
For further information, please call: (512) 389-4642

♦ ♦ ♦

31 TAC §§65.38, 65.40, 65.42, 65.44, 65.46, 65.48, 65.50, 65.52, 65.54, 65.56, 65.58, 65.60, 65.62, 65.64, 65.66

The new sections are adopted under Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the Commission with authority to establish wildlife resource regulations for this state.

§65.42. Deer: White-tailed and Mule Deer.

(a) Except as provided in §65.27 of this title (relating to Antlerless and Spike-Buck Deer Control Permits), no person may exceed the annual bag limit of five white-tailed deer (no more than three bucks) and two mule deer (no more than one buck).

(b) White-tailed deer: open seasons and annual bag limits shall be as follows.

(1) In Bandera, Bexar, Blanco, Brewster, Brown, Burnet, Coke, Coleman, Comal, Concho, Crockett, Culberson, Edwards, Gillespie, Glasscock, Hays, Howard, Irion, Jeff Davis, Kendall, Kerr, Kimble, Kinney (only north of U.S. Highway 90), Llano, Mason, McCulloch, Medina (only north of U.S. Highway 90), Menard, Mills, Mitchell, Nolan, Pecos, Presidio, Reagan, Real, Reeves, Runnels, San Saba, Schleicher, Sterling, Sutton, Terrell, Tom Green, Travis, Upton (only in that southeastern portion located south of U.S. Highway 67 and east of State Highway 349), Uvalde (only north of U.S. Highway 90), and Val Verde (all that portion located north of U.S. Highway 90; and that portion located both south of U.S. 90 and west of Spur 239/277 S) counties, there is a general open season for white-tailed deer.

(A) Open season: First Saturday in November through the first Sunday in January.

(B) Annual bag limit: Four white-tailed deer, no more than two bucks.

(2) In Aransas, Atascosa, Bee, Calhoun, Cameron, Hidalgo, Live Oak, Nueces, Refugio, San Patricio, Starr, and Willacy counties, there is a general open season for white-tailed deer.

(A) Open season: Second Saturday in November through the second Sunday in January.

(B) Annual bag limit: Four white-tailed deer, no more than two bucks.

(C) General Late Antlerless-Only Deer Season. In the counties listed in this paragraph there is a general late antlerless-only season for white-tailed deer.

(i) Open season: 14 consecutive days starting the first Monday following the second Sunday in January.

(ii) Annual bag limit: Four antlerless white-tailed deer.

(3) In Brooks, Dimmit, Duval, Frio, Jim Hogg, Jim Wells, Kenedy, Kinney (only south of U. S. Highway 90), Kleberg, LaSalle, Maverick, McMullen, Medina (only south of U. S. Highway 90), Uvalde (only south of U. S. Highway 90), Val Verde (only in that southeastern portion located both south of U.S. Highway 90 and east of Spur 239/277S), Webb, Zapata, and Zavala counties, there is an open season for white-tailed deer.

(A) Open season: Second Saturday in November through the third Sunday in January.

(B) Bag limit: Five white-tailed deer, no more than three bucks.

(C) General Late Antlerless-Only Deer Season. In the counties listed in this paragraph there is a general late antlerless-only season for white-tailed deer.

(i) Open season: 14 consecutive days starting the first Monday following the third Sunday in January.

(ii) Bag limit: Five antlerless white-tailed deer.

(4) No person may take or attempt to take more than one white-tailed buck deer per license year from counties, in the aggregate, listed within this paragraph, except on tracts of land for which MLD buck permits have been issued.

(A) In Bell, Bosque, Callahan, Comanche, Coryell, Eastland, Erath, Hamilton, Hood, Jack, Lampasas, McLennan, Palo Pinto, Parker, Shackelford, Somervell, Stephens, Taylor, Throckmorton, Williamson, and Young counties, there is a general open season for white-tailed deer.

(i) Open season: First Saturday in November through the first Sunday in January.

(ii) Annual bag limit: Three deer, no more than one buck and no more than two antlerless deer.

(B) In Angelina, Brazoria, Chambers, Fort Bend, Goliad (south of U.S. Highway 59), Hardin, Harris, Jackson (south of U.S. Highway 59), Jasper, Jefferson, Liberty, Matagorda, Montgomery, Newton, Orange, Polk, Tyler, Victoria (south of U.S. Highway 59),and Wharton (south of U.S. Highway 59) counties, there is a general open season for white-tailed deer.

(i) Open season: First Saturday in November through the first Sunday in January.

(ii) Annual bag limit: Three deer, no more than one buck and no more than two antlerless deer.

(iii) During the first 23 days of the season, antlerless deer may be taken without antlerless deer permits unless MLD permits have been issued for the tract of land. If MLD permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. After the first 23 days, antlerless deer may be taken only by MLD antlerless permits or LAMPS permits. On National Forest, Corps of Engineers, Sabine River Authority and Trinity River Authority lands, antlerless deer may be taken only by MLD antlerless permits.

(C) In Armstrong, Borden, Briscoe, Carson, Childress, Collingsworth, Cottle, Crosby, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hansford, Hardeman, Haskell, Hemphill, Hutchinson, Jones, Karnes, Kent, King, Knox, Lipscomb, Motley, Ochiltree, Randall, Roberts, Scurry, Stonewall, Swisher, Wheeler, Wichita, Wilbarger, and Wilson counties, there is a general open season for white-tailed deer.

(i) Open season: First Saturday in November through the first Sunday in January.

(ii) Annual bag limit: Three deer, no more than one buck and no more than two antlerless deer.

(iii) During the first six days of the general season, antlerless deer may be taken without antlerless deer permits unless MLD permits have been issued for the tract of land. After the first six days, antlerless deer may be taken only by MLD antlerless permits.

(D) In Archer, Baylor, Clay, Cooke, Denton, Hill, Johnson, Montague, Tarrant, and Wise counties, there is a general open season for white-tailed deer.

(i) Open season: First Saturday in November through the first Sunday in January.

(ii) Annual bag limit: Three deer, no more than one buck and no more than two antlerless deer.

(iii) During the first nine days of the general season, antlerless deer may be taken without antlerless deer permits unless MLD permits have been issued for the tract of land. After the first nine days, antlerless deer may be taken only by MLD antlerless permits.

(E) In Anderson, Bowie, Brazos, Burleson, Camp, Cass, Cherokee, Colorado, Delta, Franklin, Freestone, Gregg, Grimes, Harrison, Henderson, Hopkins, Houston, Jackson (north of U.S. Highway 59), Lamar, Lavaca, Leon, Limestone, Madison, Marion, Morris, Navarro, Red River, Robertson, Rusk, San Jacinto, Smith, Titus, Trinity, Upshur, Van Zandt, Walker, Wharton (north of U.S. Highway 59), and Wood counties, there is a general open season for white-tailed deer.

(i) Open season: First Saturday in November through the first Sunday in January.

(ii) Annual bag limit: Three deer, no more than one buck and no more than two antlerless deer.

(iii) Antlerless deer may be taken only by MLD antlerless permits or LAMPS permits.

(iv) Special Requirement: In that portion of Henderson County bounded on the north by the county line, on the east by U.S. Highway 175 and Tin Can Alley Road, on the south by State Highway 31, and on the west by State Highway 274, hunting of deer is restricted to shotguns with buckshot or lawful archery equipment except crossbows. Other game animals or game birds may be taken only with shotgun or lawful archery equipment except crossbows.

(F) In Hartley, Moore, Oldham and Potter counties, there is a general open season for white-tailed deer.

(i) Open season: Saturday before Thanksgiving for 16 consecutive days.

(ii) Annual bag limit: Three deer, no more than one buck and no more than two antlerless deer.

(iii) Antlerless deer may be taken only by MLD antlerless permits.

(G) In Nacogdoches, Panola, Sabine, San Augustine and Shelby counties, there is a general open season for white-tailed deer.

(i) Open season: First Saturday in November through the first Sunday in January.

(ii) Annual bag limit: Three deer, no more than one buck and no more than two antlerless deer.

(iii) During the first two days of the season, antlerless deer may be taken without antlerless deer permits unless MLD permits have been issued for the tract of land. If MLD permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. After the first two days, antlerless deer may be taken only by MLD antlerless deer permits or LAMPS permits. On National Forest, Corps of Engineers, Sabine River Authority and Trinity River Authority lands, antlerless deer may be taken only by MLD antlerless permits.

(H) In Austin, Bastrop, Caldwell, Crane, De Witt, Ector, Ellis, Falls, Fannin, Fayette, Goliad (north of U.S. Highway 59), Gonzales, Guadalupe, Hunt, Kaufman, Lee, Loving, Midland, Milam, Rains, Upton (all that portion located north of U.S. Highway 67; and in that area located south of U.S. Highway 67 and west of state highway 349), Victoria (north of U.S. Highway 59), Waller, Ward, and Washington counties, there is a general open season for white-tailed deer.

(i) Open season: First Saturday in November through the first Sunday in January.

(ii) Annual bag limit: Three deer, no more than one buck and no more than two antlerless deer.

(iii) Antlerless deer may be taken only by MLD antlerless permits.

(4) In Andrews, Bailey, Castro, Cochran, Collin, Dallam, Dallas, Dawson, Deaf Smith, El Paso, Gaines, Galveston, Grayson, Hale, Hockley, Hudspeth, Lamb, Lubbock, Lynn, Martin, Parmer, Rockwall, Sherman, Terry, Winkler, and Yoakum counties, there is no general open season for white-tailed deer.

(5) On all tracts of land for which both MLD buck permits and MLD antlerless permits have been issued for the harvest of white-tailed deer, and on properties for which the WMP specifies a harvest quota of zero for either sex, the landowner may allow the hunting of antlerless white-tailed deer for 14 consecutive days beginning the day immediately following the last day of the general open season.

(c) White-tailed deer: archery-only open seasons. In all counties where there is a general open season for white-tailed deer, and in Grayson County, there is an archery-only open season during which white-tailed deer may be taken with lawful archery equipment as provided in §65.15 of this title (relating to Archery). The archery-only open season begins on the Saturday closest to September 30 and runs for 30 consecutive days. In any county the bag limit shall be as provided for that county in subsection (b) of this section. Antlerless deer may be taken without an antlerless permit during the archery-only season, except on properties for which MLD permits have been issued.

(d) White-tailed deer: Muzzleloader-only open seasons, bag and possession limits shall be as follows.

(1) In Bandera, Brown, Coke, Coleman, Concho, Edwards, Gillespie, Irion, Kendall, Kerr, Kimble, Kinney (north of U.S. Highway 90), Llano, Mason, Medina (north of U.S. Highway 90), Menard, McCulloch, Mills, Real, Runnels, San Saba, Schleicher, Sterling, Sutton, Tom Green, and Uvalde (north of U.S. Highway 90) counties, there is an open season during which only antlerless white-tailed deer may be taken only with a muzzleloader.

(2) Open Season: From the first Saturday following the closing of the general open season for nine consecutive days.

(3) Annual bag limit: Four antlerless white-tailed deer.

(e) Mule deer: open season and annual bag limit shall be as follows.

(1) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens,

Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hardeman, Hartley, Hemphill, Hutchinson, Kent, King, Lipscomb, Moore, Motley, Ochiltree, Oldham, Potter, Randall, Roberts, Scurry, Stonewall, and Swisher counties, there is a general open season for mule deer.

(A) Open season: Saturday before Thanksgiving for 16 consecutive days.

(B) Annual bag limit: Two mule deer, no more than one buck.

(C) Antlerless mule deer may be taken only by Antlerless Mule Deer Permits.

(2) In Brewster, Crane, Crockett, Culberson, Ector, El Paso, Hudspeth, Jeff Davis, Loving, Midland, Pecos, Presidio, Reagan, Reeves, Terrell, Upton, Val Verde, Ward, and Winkler counties, there is a general open season for mule deer.

(A) Open season: Last Saturday in November for 16 consecutive days.

(B) Annual bag limit: Two mule deer, no more than one buck.

(C) Antlerless mule deer may be taken only by Antlerless Mule Deer Permits.

(3) In all other counties, there is no general open season for mule deer.

(f) Mule deer: archery-only open seasons, bag and possession limits shall be as follows.

(1) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Deaf Smith, Dickens, Donley, Ector, El Paso, Fisher, Floyd, Foard, Garza, Gray, Hall, Hardeman, Hartley, Hemphill, Hudspeth, Hutchinson, Jeff Davis, Kent, King, Lipscomb, Loving, Midland, Moore, Motley, Ochiltree, Oldham, Potter, Presidio, Randall, Reagan, Reeves, Roberts, Scurry, Stonewall, Swisher, Upton, Val Verde, Ward, and Winkler counties, there is an open season during which mule deer may be taken only with lawful archery equipment as provided in §65.15 of this title (relating to Archery).

(A) Open season: from the Saturday closest to September 30 for 30 consecutive days.

(B) Annual bag limit: One buck mule deer.

(2) In Brewster, Pecos, and Terrell counties, there is an open season during which mule deer may be taken only with lawful archery equipment as provided in §65.15 of this title (relating to Archery).

(A) Open season: from the Saturday closest to September 30 for 30 consecutive days.

(B) Annual bag limit: Two mule deer, no more than one buck.

(3) In all other counties, there is no archery-only open season for mule deer.

(4) The archery-only season bag limit is not in addition to any other lawful open season bag limits for mule deer.

(g) White-tailed Deer: national wildlife refuges. Hunting season dates may further be restricted in compliance with regulations promulgated by the U.S. Fish and Wildlife Service and published in the Federal Register.

§65.64. Turkey.

No person may take more than four turkeys per license year.

(1) Seasons and annual bag limits:

(A) In Archer, Bandera, Bell, Bexar, Blanco, Bosque, Burnet, Clay, Comal, Comanche, Cooke, Coryell, Erath, Gillespie, Goliad, Gonzales, Hamilton, Hays, Hood, Jack, Karnes, Kendall, Kerr, Lampasas, Llano, McLennan, Medina (only north of U.S. Highway 90), Montague, Palo Pinto, Parker, Real, Somervell, Stephens, Travis, Wichita, Williamson, Wilson, Wise, and Young counties, there is a general open season for turkey.

(i) General open season: First Saturday in November through the first Sunday in January.

(ii) Annual bag limit: Four turkeys, gobblers or bearded hens.

(B) In Aransas, Atascosa, Bee, Calhoun, Hidalgo, Live Oak, Nueces, Refugio, San Patricio, and Starr counties, there is a general open season for turkey.

(i) General open season: Second Saturday in November through the second Sunday in January.

(ii) Annual bag limit: Four turkeys, gobblers or bearded hens.

(C) In Dimmit, Duval, Frio, Jim Hogg, Jim Wells, LaSalle, Maverick, McMullen, Medina (only south of U.S. Highway 90), Webb, and Zavala counties, there is a general open season for turkey.

(i) General open season: Second Saturday in November through the third Sunday in January.

(ii) Bag limit: Four turkeys, gobblers or bearded hens.

(D) In Kinney (only south of U.S. Highway 90) and Uvalde (only south of U.S. Highway 90), and Val Verde (only in that southeastern portion located both south of U.S. Highway 90 and east of Spur 239/277S) counties, there is a general open season for turkeys.

(i) General open season: Second Saturday in November through the third Sunday in January.

(ii) Bag limit: Four turkeys, either sex.

(E) In Brooks, Kenedy and Kleberg counties, there is a general open season for turkeys.

(i) General open season: Second Saturday in November through the last Sunday in February.

(ii) Annual bag limit: Four turkeys, either sex.

(F) In Armstrong, Baylor, Borden, Briscoe, Brown, Callahan, Carson, Childress, Coke, Coleman, Collingsworth, Concho, Cottle, Crane, Crockett, Crosby, Dawson, Dickens, Donley, Eastland, Ector, Edwards, Fisher, Floyd, Foard, Garza, Glasscock, Gray, Hall, Hardeman, Hartley, Haskell, Hemphill, Howard, Hutchinson, Irion, Jones, Kent, Kimble, King, Kinney (north of U.S. Highway 90), Knox, Lipscomb, Lynn, Martin, Mason, McCulloch, Menard, Midland, Mills, Mitchell, Moore, Motley, Nolan, Ochiltree, Oldham,

Pecos, Potter, Randall, Reagan, Roberts, Runnels, Sutton, San Saba, Schleicher, Scurry, Shackelford, Sterling, Stonewall, Swisher, Taylor, Terrell, Throckmorton, Tom Green, Upton, Uvalde (only north of U.S. Highway 90), Ward, Wheeler, Wilbarger, and Val Verde (all that portion located north of U.S. Highway 90 and that portion located both south of U.S. 90 and west of Spur 239/277S) counties, there is a general open season for turkey.

(i) General open season: First Saturday in November through the first Sunday in January.

(ii) Annual bag limit: Four turkeys, either sex.

(G) In Willacy County, there is a general open season for turkeys.

(i) General open season: Second Saturday in November through the second Sunday in January.

(ii) Annual bag limit: Four turkeys, either sex.

(2) Archery-only season and bag limits. In all counties where there is a general fall season for turkey there is an open season during which turkey may be taken only with lawful archery equipment as provided in §65.15 of this title (relating to Archery).

(A) Archery-only open season: from the Saturday closest to September 30 for 30 consecutive days.

(B) Annual bag limit: In any given county, the annual bag limit is as provided by this section for the fall general season for that county.

(3) Spring turkey season and bag limits:

(A) In Archer, Armstrong, Bandera, Baylor, Bell, Blanco, Borden, Bosque, Brewster, Briscoe, Brown, Burnet, Callahan, Carson, Childress, Clay, Coke, Coleman, Collingsworth, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Donley, Eastland, Ector, Edwards, Ellis, Erath, Fisher, Floyd, Foard, Garza, Gillespie, Glasscock, Gray, Hall, Hamilton, Hardeman, Hartley, Haskell, Hays, Hemphill, Hill, Hood, Howard, Hutchinson, Irion, Jack, Jeff Davis, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Knox, Lampasas, Lipscomb, Llano, Lynn, Martin, Mason, McCulloch, McLennan, Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Pecos, Potter, Randall, Reagan, Real, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Throckmorton, Tom Green, Travis, Upton, Val Verde, Ward, Wheeler, Wichita, Wilbarger, Williamson, Wise, and Young counties, there is a spring season for turkeys.

(i) Spring season: First Saturday in April for 37 consecutive days.

(ii) Annual bag limit: Four turkeys, gobblers only.

(B) In Bastrop, Caldwell, Colorado, DeWitt, Fayette, Guadalupe, Jackson, Lavaca, Lee, Milam, and Victoria counties, there is a spring season for turkeys.

(i) Spring season: First Saturday in April for 37 consecutive days.

(ii) Annual bag limit: One turkey, gobblers only.

(C) In Aransas, Atascosa, Bee, Bexar, Brooks, Calhoun, Dimmit, Duval, Frio, Goliad, Gonzales, Hidalgo, Jim Hogg, Jim Wells, Karnes, Kenedy, Kinney, Kleberg, LaSalle, Live Oak, Maverick, McMullen, Medina, Nueces, Refugio, San Patricio, Starr, Uvalde, Webb, Willacy, Wilson, and Zavala counties, there is a spring season for turkeys.

(i) Spring season: Last Saturday in March for 37 consecutive days.

(ii) Annual bag limit: Four turkeys, gobblers only.

(D) In Bowie, Cass, Cherokee, Harrison, Jasper, Marion, Nacogdoches, Newton, Red River, and Trinity counties there is a spring season for turkeys.

(i) Spring season: The Monday nearest April 20 for 14 consecutive days.

(ii) Annual bag limit: One turkey, gobbler only.

(iii) No person shall take or attempt to take turkeys by the aid of baiting, or on or over a baited area, in the counties listed in this subparagraph.

(iv) In the counties listed in this subparagraph it is unlawful to hunt turkey with any firearm other than a shotgun.

(v) All turkeys harvested during the spring season in the counties listed in this subparagraph must be registered at designated check stations within 24 hours of the time of kill. Harvested turkeys may be field dressed but must otherwise remain intact.

(4) In all counties not listed in paragraph (3) (A)-(D) of this section, the season is closed for hunting turkey.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 31, 1996.

TRD-9607608
Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department
Effective date: June 21, 1996
Proposal publication date: April 5, 1996
For further information, please call: (512) 389-4642

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31 TAC §§65.71, 65.72, 65.78, 65.82, 65.91

The new sections are adopted under Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the Commission with authority to establish wildlife resource regulations for this state.

§65.72. Fish.

(a) General rules.

(1) There are no public waters closed to the taking and retaining of fish, except as provided in this subchapter.

(2) Game fish may be taken only by pole and line, except as provided in this subchapter.

(3) It is unlawful:

(A) to take or attempt to take, or possess fish within a protected length limit, in greater numbers, by other means, or at any time or place, other than as permitted under this subchapter;

(B) while fishing on or in public waters to have in possession fish in excess of the daily bag limit or fish within a protected length limit as established for those waters;

(C) to use game fish or any part thereof as bait;

(D) to possess a finfish of any species, except broadbill swordfish, shark or king mackerel, taken from public water that has the head or tail removed until such person finally lands the catch on the mainland, a peninsula, or barrier island not including jetties or piers and does not transport the catch by boat;

(E) to use airboats or jet-driven devices to pursue and harass or harry fish; or

(F) to release into the public waters of this state a fish with a device or substance implanted or attached that is designed, constructed or adapted to produce an audible, visual, or electronic signal used to monitor, track, follow, or in any manner aid in the location of the released fish.

(4) Finfish tags: Prohibited Acts.

(A) No person may purchase or use more finfish (red drum or tarpon) tags during a license year than the number and type authorized by the commission, excluding duplicate tags issued under Parks and Wildlife Code, §46.006.

(B) It is unlawful to:

(i) use the same finfish tag for the purpose of tagging more than one finfish;

(ii) use a finfish tag in the name of another person;

(iii) use a tag on a finfish for which another tag is specifically required;

(iv) take a finfish required to be tagged and fail to immediately attach and secure a properly executed tag to the finfish at the narrowest part of the finfish tail, just ahead of the tail fin;

(v) have in possession both a Red Drum Tag and a Bonus Red Drum Tag issued to the same license or salt water stamp holder; or

(vi) have in possession both an Exempt Red Drum Tag or a Duplicate Exempt Red Drum Tag and a Bonus Red Drum Tag issued to the same Exempt Red Drum Tag holder, or Duplicate Red Drum Tag holder.

(5) The commercial season for red snapper caught in Texas waters shall run concurrently with the commercial season established for red snapper caught in federal waters of the Exclusive Economic Zone (EEZ).

(A) The commercial fishing season in the EEZ will be set by the National Marine Fishery Service under guidelines established by the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico.

(B) When federal and/or state waters are closed, it will be unlawful to:

(i) purchase, barter, trade or sell red snapper landed in this state;

(ii) transfer at sea red snapper caught or possessed in the waters of this state; and

(iii) possess red snapper in excess of the current recreational bag or possession limit in or on the waters of this state.

(b) Bag, possession, and length limits.

(1) The possession limit does not apply to fish in the possession of or stored by a person who has an invoice or sales ticket showing the name and address of the seller, number of fish by species, date of the sale, and other information required on a sales ticket or invoice.

(2) There are no bag, possession, or length limits on game or non-game fish, except as provided in these rules.

(A) Possession limits are twice the daily bag limit on game and non-game fish except as provided in these rules.

(B) Statewide daily bag and length limits shall be as follows:
Figure 1. 31 TAC §§65.72(b)(2)(B)

(C) Exceptions to statewide daily bag, possession, and length limits shall be as follows:
Figure 2. 31 TAC §§65.(b)(2)(C)(i)

(ii) Bag and possession limits for black drum and sheepshead do not apply to the holder of a valid Commercial Finfish Fisherman's License.

(c) Devices, means and methods.

(1) In fresh water only, it is unlawful to fish with more than 100 hooks on all devices combined.

(2) In community fishing lakes and in sections of rivers lying totally within the boundaries of state parks, game and non-game fish may be taken by pole and line only.

(3) It is unlawful to take, attempt to take, or possess fish caught in public waters of this state by any device, means, or method other than as authorized in this subsection.

(4) In salt water only, it is unlawful to fish with any device that is marked with a buoy made of a plastic bottle(s) of any color or size.

(A) Cast net. It is unlawful to use a cast net exceeding 14 feet in diameter.

(i) Only non-game fish may be taken with a cast net.

(ii) In salt water, non-game fish may be taken for bait purposes only.

(B) Dip net.

(i) It is unlawful to use a dip net except:

(I) to aid in the landing of fish caught on other legal devices; and

(II) to take non-game fish.

(ii) In salt water, non-game fish may be taken for bait purposes only.

(C) Gaff.

(i) It is unlawful to use a gaff except to aid in landing fish caught by other legal devices, means or methods.

(ii) Fish landed with a gaff may not be below the minimum, above the maximum, or within a protected length limit.

(D) Gig. Only non-game fish may be taken with a gig.

(E) Jugline. For use in fresh water only. Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a jugline. It is unlawful to use a jugline:

(i) with invalid gear tags. Gear tags must be attached within six inches of the free-floating device, are valid for 30 days after the date set out, and must include the number of the permit to sell non-game fish taken from freshwater, if applicable;

(ii) for commercial purposes that is not marked with an orange free-floating device;

(iii) for non-commercial purposes that is not marked with a white free-floating device;

(iv) in Lake Bastrop in Bastrop County, Bell Street Lake in Tom Green County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Dixieland Reservoir in Cameron County, and Gibbons Creek Reservoir in Grimes County.

(F) Lawful archery equipment. Only non-game fish may be taken with lawful archery equipment.

(G) Minnow trap. For use in fresh water only

(i) Only non-game fish may be taken with a minnow trap.

(ii) It is unlawful to use a minnow trap that exceeds 24 inches in length or with a throat larger than one by three inches.

(H) Perch traps. For use in salt water only.

(i) Perch traps may be used only for taking non-game fish.

(ii) Perch traps may not exceed 18 cubic feet.

(iii) Perch traps must be marked with floating visible orange buoy not less than six inches in height and six inches in width. The buoy must have a gear tag attached.

(I) Pole and line. Game and non-game fish may be taken by pole and line. It is unlawful to take or attempt to take fish with one or more hooks attached to a line or artificial lure used in a manner to foul-hook a fish (snagging or jerking). A fish is foul-hooked when caught by a hook in an area other than the fish's mouth.

(J) Purse seine (net).

(i) Purse seines may be used only for taking menhaden, only from that portion of the Gulf of Mexico within the jurisdiction of this state extending from one-half mile offshore to nine nautical miles offshore, and only during the period of time beginning the third Monday in April through the first day in November each year.

(ii) Purse seines used for taking menhaden may not be used within one mile of any jetty or pass.

(iii) The purse seine, not including the bag, shall not be less than three-fourths inch square mesh.

(K) Sail line. For use in salt water only.

(i) Non-game fish, red drum, spotted seatrout, and sharks may be taken with a sail line.

(ii) Line length shall not exceed 1,800 feet from the reel to the sail.

(iii) The sail and most shoreward float must be a highly visible orange or red color.

(iv) No float on the line may be more than 200 feet from the sail.

(v) A weight of not less than one ounce shall be attached to the line not less than four feet or more than six feet shoreward of the last shoreward float.

(vi) Reflectors of not less than two square inches shall be affixed to the sail and floats and shall be visible from all directions for sail lines operated from 30 minutes after sunset to 30 minutes before sunrise.

(vii) There is no hook spacing requirement for sail lines.

(viii) No more than one sail line may be used per fisherman.

(ix) Sail lines may not be used by the holder of a commercial fishing license.

(x) Sail lines must be attended at all times the line is fishing.

(xi) Sail lines may not have more than 30 hooks and no hook may be placed more than 200 feet from the sail.

(L) Seine.

(i) Only non-game fish may be taken with a seine.

(ii) It is unlawful to use a seine:

(I) which is not manually operated.

(II) with mesh exceeding 1/2-inch square.

(III) that exceeds 20 feet in length.

(iii) In salt water, non-game fish may taken by seine for bait purposes only.

(M) Shad trawl. For use in fresh water only.

(i) Only non-game fish may be taken with a shad trawl.

(ii) It is unlawful to use a shad trawl longer than six feet or with a mouth larger than 36 inches in diameter.

(iii) A shad trawl may be equipped with a funnel or throat and must be towed by boat or by hand.

(N) Shrimp trawl. For use in salt water only. Non-game fish taken incidental to legal shrimping operations may be retained. The term "legal shrimping operations" is defined as the use of a legal trawl in places, at times, and in manners as authorized by the department. A person taking shrimp with a trawl may not retain a catch of finfish exceeding 50% of the total trawl catch by weight of shrimp on a shrimping vessel, except that up to 1,200 live non-game fish not regulated by bag or size limits may be retained

for bait between June 15 and August 14 aboard a vessel licensed for commercial bait shrimp fishing. A person using an individual bait shrimp trawl for recreational purposes may retain non-game fish in any amount for bait, except those species regulated by bag or size limits.

(O) Spear. Only non-game fish may be taken with a spear.

(P) Spear gun. Only non-game fish may be taken with spear gun.

(Q) Throwline. For use in fresh water only.

(i) Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a throwline.

(ii) It is unlawful to use a throwline in Lake Bastrop in Bastrop County, Bell Street Lake in Tom Green County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Dixieland Reservoir in Cameron County, and Gibbons Creek Reservoir in Grimes County.

(R) Trotline.

(i) Non-game fish, channel catfish, blue catfish, and flathead catfish may be taken by trotline.

(ii) It is unlawful to use a trotline:

(I) with a mainline length exceeding 600 feet;

(II) with invalid gear tags. Gear tags must be attached within three feet of the first hook at each end of the trotline and are valid for 30 days after date set out;

(III) with hook interval less than three horizontal feet;

(IV) with metallic stakes; or

(V) with the main fishing line and attached hooks and stagings above the water's surface.

(iii) In fresh water, it is unlawful to use a trotline:

(I) with more than 50 hooks;

(II) in Gibbons Creek Reservoir in Grimes County, Lake Bastrop in Bastrop County, Fayette County Reservoir in Fayette County, Pinkston Reservoir in Shelby County, Lake Bryan in Brazos County, Bellwood Lake in Smith County, Dixieland Reservoir in Cameron County, Bell Street Lake in Tom Green County, and Boerne City Park Lake in Kendall County.

(iv) In salt water:

(I) it is unlawful to use a trotline:

(-a-) in or on the waters of the Gulf of Mexico within the jurisdiction of this state;

(-b-) from which red drum, sharks or spotted seatrout caught on the trotline are retained or possessed;

(-c-) not marked with yellow flagging attached to stakes or with a yellow floating buoy not less than six inches in height and six inches in width attached to end fixtures. All trotline floats must be yellow.

(-d-) placed closer than 50 feet from any other trotline, or set within 200 feet of the edge of the Intracoastal Waterway or its tributary channels. No trotline may be fished with the main fishing line and attached hooks and stagings above the water's surface;

(-e-) baited with other than natural bait, except sail lines;

(-f-) with hooks other than circle-type hook with point curved in and having a gap (distance from point to shank) of no more than one-half inch, and with the diameter of the circle not less than five-eighths inch. Sail lines are excluded from the restrictions imposed by this clause; or

(-g-) in Aransas County in Little Bay and the water area of Aransas Bay within one-half mile of a line from Hail Point on the Lamar Peninsula, then direct to the eastern end of Goose Island, then along the southern shore of Goose Island, then along the causeway between Lamar Peninsula and Live Oak Peninsula, then along the eastern shoreline of the Live Oak Peninsula past the town of Fulton, past Nine-Mile Point, past the town of Rockport to a point at the east end of Talley Island, including that part of Copano Bay within 1,000 feet of the causeway between Lamar Peninsula and Live Oak Peninsula.

(II) No trotline or trotline components, including lines and hooks, but excluding poles, may be left in or on coastal waters between the hours of 1 p.m. on Friday through 1 p.m. on Sunday of each week, except that attended sail lines are excluded from the restrictions imposed by this clause. Under the authority of the Texas Parks and Wildlife Code, §66.206(b), in the event small craft advisories or higher marine weather advisories issued by the National Weather Service are in place at 8:00 a.m. on Friday, trotlines may remain in the water until 6:00 p.m. on Friday. If small craft advisories are in place at 1:00 p.m. on Friday, trotlines may remain in the water until Saturday. When small craft advisories are lifted by 8:00 a.m. on Saturday, trotlines must be removed by 1:00 p.m. on Saturday. When small craft advisories are lifted by 1:00 p.m. on Saturday, trotlines must be removed by 6:00 p.m. on Saturday. When small craft advisories or higher marine weather advisories are still in place at 1:00 p.m. on Saturday, trotlines may remain in the water through 1:00 p.m. on Sunday. It is a violation to tend, bait, or harvest fish or any other aquatic life from trotlines during the period that trotline removal requirements are suspended under this provision for adverse weather conditions. For purposes of enforcement, the geographic area customarily covered by marine weather advisories will be delineated by department policy;

(S) Umbrella net.

(i) Only non-game fish may be taken with an umbrella net.

(ii) It is unlawful to use an umbrella net with the area within the frame exceeding 16 square feet.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 31, 1996.

TRD-9607606
Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department
Effective date: June 21, 1996
Proposal publication date: April 5, 1996
For further information, please call: (512) 389-4642

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Subchapter H. Public Lands Proclamation

The Texas Parks and Wildlife Department adopts the repeal of §§65.190-65.198 and new §§65.190-65.203 and 65.208, concerning Public Lands Proclamation. New §§65.190, 65.191, 65.193, 65.198, 65.199, and 65.201 are adopted with changes to the proposed text as published in the April 5, 1996, issue of the *Texas Register* (21 TexReg 2981). The repeals and new §§65.192, 65.194-65.197, 65.200, 65.202, 65.203, and 65.208 are adopted without changes and will not be republished.

The change to §65.190, concerning Application, removes Cypress Creek Wildlife Management Area from the purview of the proposed regulations. References to the Application and Map Booklets have been replaced with references to orders of the executive director in §§65.191, 65.198, 65.199, and 65.201, concerning Definitions; Entry, Registration, and Checkout; General Rules of Conduct; and Motor Vehicles, respectively. Clarifying language stating that the Texas Conservation Passports provide group access has been added to §65.191 and §65.193. Additionally, §65.193 has been changed to remove references to the Application and Map Booklets and to clarify that minors may be either disqualified from applying for special package hunts or assessed an application fee. Section 65.201, concerning Motor Vehicles, has been changed by adding the stipulation that a disabled person may possess a loaded firearm in and hunt from a motor vehicle provided the engine is not running.

The repeals and new sections are necessary to fulfill the department's statutory obligation to prevent depletion and waste of the state's wildlife resources, equitably distribute the available harvest on public lands, and, in general, preserve and enhance existing populations while allowing for harvest according to prescribed wildlife and fisheries tenets.

New §65.190, concerning Application, specifies the scope of the subchapter; new §65.191, concerning Definitions, qualifies the words and terms used in the subchapter; new §65.192, concerning Powers of the Executive Director, outlines the duties and responsibilities of the executive director with respect to public hunting lands; new §65.193, concerning Access Permit and Fees, delineates permit and access requirements, and sets fees; §65.194, concerning Competitive Hunting Dog Event Permit and Fees, sets forth the requirements for the conduct of field trials on public hunting lands; new §65.195, concerning Permit Revocation, provides for permit revocation in cases of violations; new §65.196, concerning Refund of Permit Fees, establishes the policy for refunding permit fees; new §65.197, concerning Reinstatement of Preference Points, provides a policy in the event that a hunt is not conducted or an error is made in a hunt assignment; new §65.198, concerning Entry, Registration, and Checkout, sets forth the access and registration requirements for persons on public hunting lands; new §65.199, concerning General Rules of Conduct, delineates unlawful or prohibited acts; new §65.200, concerning Construction of Blinds, sets forth the department policy on construction and maintenance of hunting blinds; new §65.201, concerning Motor Vehicles, sets forth the department policy on the use of motor vehicles on public hunting lands; new §65.202, concerning Minors Hunting on Public Lands, establishes requirements for the supervision of minors; new §65.203, concerning Hunter Safety, provides requirements for maintaining public safety; and new §65.208, concerning Penalties, specifies penalties for violations.

The repeals and new sections will function by regulating access to and conduct on public lands, eliminating duplicated and unnecessary regulations, restructuring and reorganizing regulatory provisions in the interest of promoting user-friendliness, and by implementing the Commission policy of increasing recreational opportunity within the tenets of sound biological management practices.

The department received 38 comments concerning the proposed rules. Twenty-seven commenters were opposed to the proposed regulations for Cypress Creek Wildlife Management Area. The department responds by declining to administer Cypress Creek Wildlife Management Area as a public hunting or nonconsumptive use area. One commenter supported the proposed rules.

Seven comments were received in opposition to hunting on state parks. The department responds that it has statutory authority to provide public hunting opportunity on state parks. No changes were made as a result of public comment. One comment was received in support of hunting on state parks.

One commenter requested a three-buck bag limit on wildlife management areas. The department disagrees with the comment and responds that bag limits are set in the interest of equitably distributing harvest opportunity to the greatest number of public users. No changes were made as a result of public comment.

One commenter requested that the department ban the use of steel leghold traps and opposed adoption of the proposed rules. The department responds that steel leghold traps, when used appropriately, are an effective means of ethically taking wildlife.

Texas Wildlife Association commented in favor of the proposed rules. Texas State Coonhunters Association commented, but was neither in favor of nor opposed to the proposed rules. Action for Animals commented against the rules.

31 TAC §§65.190-65.198

The repeals are adopted under Parks and Wildlife Code, Chapter 81, Subchapter E, which provides the Parks and Wildlife Commission with authority to regulate seasons, numbers, means, methods, and conditions for taking wildlife resources on wildlife management areas; Chapter 12, Subchapter A, which provides that a tract of land purchased primarily for a purpose authorized by the code may be used for any authorized function of the Department if the Commission determines that multiple use is the best utilization of the land's resources; and Chapter 62, Subchapter D, which provides authority, as sound biological management practices warrant, to prescribe seasons, number, size, kind, and sex and the means and method of taking any wildlife.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 31, 1996.

TRD-9607605

Bill Harvey, Ph.D.

Regulatory Coordinator
Texas Parks and Wildlife Department
Effective date: September 1, 1996
Proposal publication date: April 5, 1996
For further information, please call: (512) 389-4642

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31 TAC 65.190-65.203, 65.208

The new sections are adopted under Parks and Wildlife Code, Chapter 81, Subchapter E, which provides the Parks and Wildlife Commission with authority to regulate seasons, numbers, means, methods, and conditions for taking wildlife resources on wildlife management areas; Chapter 12, Subchapter A, which provides that a tract of land purchased primarily for a purpose authorized by the code may be used for any authorized function of the Department if the Commission determines that multiple use is the best utilization of the land's resources; and Chapter 62, Subchapter D, which provides authority, as sound biological management practices warrant, to prescribe seasons, number, size, kind, and sex and the means and method of taking any wildlife.

§65.190. Application.

(a) This subchapter applies to all activities subject to department regulation on lands designated by the department as public hunting lands, regardless of the presence or absence of boundary markers. Public hunting lands are acquired by lease or license, management agreements, trade, gift, and purchase. Records of such acquisition are on file at the Department's central repository.

(b) On U.S. Forest Service Lands designated as public hunting lands (Alabama Creek, Bannister, Caddo, Moore Plantation, and Sam Houston National Forest WMAs) or any portion of Units 902 and 903, persons other than hunters are exempt from the provisions of this subchapter.

(c) On U.S. Army Corps of Engineer Lands designated as public hunting lands (Aquilla, Cooper, Cypress Creek, Dam B, Granger, Pat Mayse, Ray Roberts, Somerville, and White Oak Creek WMAs), persons other than hunters are exempt from requirements for an access permit.

(d) On state park lands designated as public hunting lands, access for fishing and non-consumptive use is governed by state park regulations.

(e) Public hunting lands include, but are not limited to, the following:

(1) Alabama Creek WMA (Unit 904);

(2) Alazan Bayou WMA (Unit 747);

(3) Aquilla WMA (Unit 748);

(4) Atkinson Island WMA;

(5) Bannister WMA (Unit 903);

(6) Big Lake Bottom WMA (Unit 733);

(7) Black Gap WMA (Unit 701);

(8) Blue Elbow Swamp WMA (Unit 712);

(9) Caddo Lake State Park and WMA (Unit 730);

(10) Caddo WMA (Unit 901);

(11) Candy Abshier WMA;

(12) Cedar Creek Islands WMA (includes Big Island, Bird Island, and Telfair Island Units);

(13) Chaparral WMA (Unit 700);

(14) Cleavenger Tract (Unit 617);

(15) Cooper WMA (Unit 731);

(16) Dam B WMA - includes Angelina-Neches Scientific Area (Unit 707);

(17) Designated Units of the Las Palomas WMA;

(18) Designated Units of Pubic Hunting Lands Under Short-Term Lease;

(19) Designated Units of the Playa Lakes WMA;

(20) Designated Units of the State Park System;

(21) Elephant Mountain WMA (Unit 725);

(22) Gene Howe WMA (Unit 755) - includes Pat Murphy Unit (Unit 706);

(23) Granger WMA (Unit 709);

(24) Guadalupe Delta WMA (Unit 729);

(25) Gus Engeling WMA (Unit 754);

(26) James Daughtrey WMA (Unit 713);

(27) J. D. Murphree WMA (Unit 783);

(28) Keechi Creek WMA (Unit 726);

(29) Kerr WMA (Unit 756);

(30) Lands Within a Desert Bighorn Sheep Cooperative Unit;

(31) Lower Neches WMA (Unit 728);

(32) Mad Island WMA (Unit 729) - includes Matagorda Peninsula Unit (Unit P150);

(33) Matador WMA (Unit 702);

(34) Matagorda Island State Park and WMA (Unit 722);

(35) M. O. Neasloney WMA;

(36) Moore Plantation WMA (Unit 902);

(37) North Toledo Bend WMA (Unit 615);

(38) Old Sabine Bottom WMA (Unit 732);

(39) Old Tunnel WMA;

(40) Pat Mayse WMA (Unit 705);

(41) Peach Point WMA (Unit 721) - includes Bryan Beach Unit (Unit P075);

(42) Ray Roberts WMA (Unit 501);

(43) Richland Creek WMA (Unit 703);

(44) Sam Houston National Forest WMA (Unit 905);

(45) Sheldon State Park and WMA (Unit 716);

(46) Sierra Diablo WMA (Unit 767);

(47) Somerville WMA (Unit 711);

(48) Tawakoni WMA (Unit 708);

(49) Walter Buck WMA (Unit 757);

(50) White Oak Creek WMA (Unit 727); and

(51) Other numbered units of public hunting lands.

§65.191 Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings assigned in §65.3 of this title (relating to Statewide Hunting and Fishing Proclamation).

Adult - A person 17 years of age or older.

All terrain vehicle (ATV) - A motor vehicle which does not meet traffic code requirements for operation on a public roadway with respect to licensing, inspection and insurance requirements.

Annual Public Hunting (APH) Permit - A $40 permit, valid from issuance date through the following August 31, which allows entry to designated public hunting lands at designated times and the taking of wildlife resources as designated.

Application fee - A non-refundable fee which may be required to accompany and validate an individual's application for a special permit.

Authorized supervising adult - A parent, legal guardian, or individual at least 21 years of age who assumes liability responsibility for a minor.

Blind - Any structure assembled of man-made or natural materials for the purpose or having the effect of promoting concealment or increasing the field of vision of a person.

Buckshot - Lead pellets ranging in size from .24-inch to .36-inch in diameter normally loaded in a shotgun (includes, but is not limited to 0 and 00 buckshot).

Competitive hunting dog event (field trial) - A department-sanctioned contest in which the skills of hunting dogs are tested.

Concurrent hunt - A hunt that maintains the same permit requirements, hunt dates, means and methods, or shooting hours or combinations thereof for more than one species of animal, as designated and subject to any special provisions.

Consumptive user - A person who takes or attempts to take wildlife resources.

Designated campsite - A designated area where camping and camping activities are authorized.

Designated days - Specific days within an established season or period of time as designated by the executive director.

Designated road - A constructed roadway indicated as being open to the public by either signs posted to that effect or by current maps and leaflets distributed at the area. Roads closed to the public may additionally be identified by on-site signing, barricades at entrances, or informational literature made available to the public. Designated roads do not include county or state roads or highways.

Designated target practice area - An area designated by on-site signing or by order of the executive director within which the discharge of firearms for target practice is authorized.

Designated units of the state park system - pecific units of the state park system approved by the commission for application of provisions of this subchapter.

Disabled person - A paraplegic or a person who has a physician's statement in their immediate possession certifying that they qualify for handicapped parking privileges (criteria for permanent ambulatory disability as defined in Texas Civil Statutes, Article 6675a-5e.1, referenced in "Application for Disabled Persons - Special Registration Insignia").

General Season - A specified time period, or designated days within a specified time period, during which more than one means or methods (as designated) may be used to take designated species.

Headwear - garment or item of apparel worn on or about the head.

Immediate supervision - Control of a minor by an authorized supervising adult issuing verbal instructions in a normal voice level.

Lands within a desert bighorn sheep cooperative - An aggregation of lands for which the concerned landowners and the Texas Parks and Wildlife Department have agreed to coordinate efforts to restore, manage, and harvest desert bighorn sheep.

Limited Public Use (LPU) Permit - A $10 permit, valid from issuance date through the following August 31, which allows access to designated public hunting lands at the same times that access is provided by an APH permit. A LPU permit does not authorize the taking of wildlife resources, except on U.S. Forest Service lands where restrictions are placed on the type of device for taking wildlife which may be possessed.

Limited use zone - An area designated by order of the executive director and/or by boundary signs on the area, within which public use is prohibited or restricted to specified activities.

Loaded firearm - A firearm containing a live round of ammunition within the chamber and/or the magazine, or if muzzleloading, one which has a cap on the nipple or a priming charge in the pan.

Minor - An individual less than 17 years of age.

Non-consumptive activities - Activities which do not involve the take or attempted take of wildlife resources.

On-site registration - The requirement for public users to register at designated places upon entry to and exit from specified public hunting lands, but does not constitute a permit.

Permit - Documentation authorizing specified access and public use privileges on public hunting lands.

Predatory animals - Coyotes and bobcats.

Preference point system - A method of special permit distribution in which the probability of selection is progressively enhanced by prior unsuccessful applications within a given hunt category by individuals or groups.

Public hunting area - A portion of public hunting lands designated as being open to the activity of hunting, and may include all or only a portion of a certain unit of public hunting land.

Public hunting compartment - A defined portion of a public hunting area to which hunters are assigned and authorized to perform public hunting activity.

Public hunting lands - Lands identified in §65.190 of this title (relating to Application) or by order of the executive director on which provisions of this subchapter apply.

Regular Permit - A permit issued on a first-come-first-served basis, on-site, at the time of the hunt that allows the taking of designated species of wildlife on the issuing area.

Restricted area - All or portions of public hunting lands identified by boundary signs as being closed to public entry or use.

Sanctuary - All or a portion of public hunting lands identified by boundary signs as being closed to the hunting of specified wildlife resources.

Slug - A metallic object designed for being fired as a single projectile by discharge of a shotgun.

Special Permit - A permit, issued pursuant to a selection procedure, which allows the taking of designated species of wildlife.

Special package hunt - A public hunt conducted for promotional or fund raising purposes and offering the selected applicant(s) a high quality experience with enhanced provisions for food, lodging, transportation, and guide services.

Tagging fee - A fee which may be assessed in addition to the special permit fee for the harvest of alligators for commercial sale or prior to the attempted harvest of desert bighorn sheep or designated exotic mammals.

Texas Conservation Passport (gold or silver edition) - A permit which provides group access at designated times to designated portions of public hunting lands for non-consumptive use as authorized under the Texas Conservation Passport Program.

Wildlife management area (WMA) - A unit of public hunting lands which is intensively managed for the conservation, enhancement, and public use of wildlife resources and supporting habitats.

Wildlife resources - Game animals, game birds, furbearing animals, alligators, marine mammals, frogs, fish, crayfish, other aquatic life, exotic animals, predatory animals, rabbits and hares, and other wild fauna.

Wounded exotic mammal - An exotic mammal leaving a blood trail.

§65.193 Access Permit Required and Fees.

(a) It is an offense for a person without a valid access permit to enter public hunting lands, except:

(1) on areas or for activities where no permit is required;

(2) persons who are authorized by, and acting in an official capacity for the department or the landowners of public hunting lands;

(3) persons participating in educational programs, management demonstrations, or other scheduled activities sponsored or sanctioned by the department with written approval;

(4) persons owning or leasing land within the boundaries of public hunting lands, while traveling directly to or from their property;

(5) for a non-hunting or non-fishing adult who is assisting a permitted disabled person;

(6) for a non-hunting adult who is supervising a permitted minor in a youth-only hunt; or

(7) for minors under the supervision of an authorized supervising adult possessing an APH permit or a LPU permit.

(b) A Texas Conservation Passport (Gold or Silver) provides group access to designated public hunting lands at times when non-consumptive use is authorized under the Texas Conservation Passport Program. The Texas Conservation Passport is not required to hunt or fish, nor does it authorize the taking of wildlife resources or provide access to public hunting lands at times when an APH permit, LPU permit, regular permit, or special permit is required.

(c) Annual Public Hunting (APH) Permit and Limited Public Use (LPU) Permit.

(1) Except as provided in paragraphs (2)-(4) of this subsection, it is an offense for a person 17 years of age or older to enter public hunting lands or take or attempt to take wildlife resources on public hunting lands at times when an APH permit is required without possessing an APH permit or to fail to display the APH permit, upon request, to a department employee or other official authorized to enforce regulations on public hunting lands. The fee for the APH permit is $40.

(2) A person possessing a LPU permit may enter public hunting lands at times that access is allowed under the APH permit, but is not authorized to hunt or fish, except as provided in paragraph (3) of this subsection. The fee for the LPU permit is $10.

(3) The APH permit is required of each person 17 years of age or older who enters the Alabama Creek, Bannister, Caddo, Moore Plantation, or Sam Houston National Forest WMAs and possesses a centerfire or muzzleloading rifle or handgun, a shotgun with shot larger than #4 lead, or lawful archery equipment with broadhead hunting point; however, a person 17 years of age or older may enter these units with other legal devices for hunting as defined in this subchapter and take specified legal wildlife resources provided the person possesses a LPU permit.

(4) The permits required under paragraphs (1)-(3) of this subsection are not required for:

(A) persons who enter on United States Forest Service lands designated as a public hunting area (Alabama Creek, Bannister, Caddo, Moore Plantation, and Sam Houston National Forest WMAs) or any portion of Units 902 and 903 for any purpose other than hunting; or

(B) persons who enter on U.S. Army Corps of Engineers lands (Aquilla, Cooper, Cypress Creek, Dam B, Granger, Pat Mayse, Ray Roberts, Somerville, and White Oak Creek WMAs) designated as public hunting lands for purposes other than hunting.

(5) The permit required by paragraphs (1)-(3) of this subsection is not valid unless the signature of the holder appears on the permit.

(6) A person, by signature of the permit and by payment of a permit fee required by paragraphs (1)-(3) of this subsection waives all liability towards the landowner (licensor) and Texas Parks and Wildlife Department (licensee).

(d) Regular Permit - A regular permit is issued on a first come-first served basis at the hunt area on the day of the scheduled hunt with the department reserving the right to limit the number of regular permits to be issued.

(e) Special Permit - A special permit is issued to an applicant selected in a drawing.

(f) Permits for hunting wildlife resources on public hunting lands shall be issued by the department to applicants by means of a fair method of distribution subject to limitations on the maximum number of permits to be issued.

(g) The department may implement a system of issuing special permits that gives preference to those applicants who have applied previously but were not selected to receive a permit.

(h) Application fees.

(1) The department may charge a non-refundable fee which may be required to accompany and validate an individual's application in a drawing for a special hunting permit.

(2) The application fee for each person 17 years of age or older listed on an application for a special hunting permit may not exceed $25 per legal species and, unless otherwise established by the commission, shall be in the amount of:

(A) $2 in the general drawings; and

(B) $10 for special package hunts.

(3) The application fee for a special hunting permit is waived for a person under 17 years of age; however, the minor must apply in conjunction with an authorized supervising adult to whom an application fee is assessed, except as provided in paragraphs (4) and (5) of this subsection.

(4) The application fee for a special permit is waived for an adult who is making application to serve as a non-hunting authorized supervising adult for a minor in a youth-only drawn hunt category.

(5) Persons under 17 years of age may be disqualified from applying for special package hunts or may be assessed the application fee.

(6) The application fee for a special permit is waived for on-site applications made under standby procedures at the time of a hunt.

(7) In the event an application for a special permit is determined to be invalid, then:

(A) the application card and related application fees will be returned to the applicant for correction and resubmission, provided the error is detected prior to the time that the application information is processed; or

(B) the error will result in disqualification of the applicant(s), and the application fees will be retained by the department.

(i) Legal animals to be taken by special or regular permit shall be stipulated on the permit.

(j) The fees for special and regular permits are:

(1) deer, exotic mammal, pronghorn antelope, javelina, turkey, coyote, alligator - $50;

(2) deer, exotic mammal, alligator - extended period - $100;

(3) squirrel, game birds (other than turkey), rabbits and hares - $10;

(4) special package hunts, desert bighorn sheep - no charge;

(k) Only one special or regular permit fee will be assessed in the event of concurrent hunts for multiple species, and the fee for the legal species having the most expensive permit will prevail.

(l) Any applicable special or regular permit fees will be waived for minors under the supervision of a duly permitted authorized supervising adult.

(m) Any applicable regular permit fees will be waived for persons possessing an APH permit.

(n) Except for the Texas Conservation Passport, all access permits apply only to the individual to whom the permit is issued, and neither the permit nor the rights granted thereunder are transferrable to another person.

(o) It is an offense if a person fails to obey the conditions of a permit issued under this subchapter.

§65.198 Entry, Registration and Checkout.

(a) It is an offense if a person:

(1) who does not possess a valid permit enters public hunting lands at a time when access is restricted only to persons possessing a valid permit;

(2) enters an area identified by boundary signs as a limited use zone, sanctuary, or restricted area and fails to obey the restrictions on public use posted at the area or as set forth in this subchapter; or

(3) on areas where on-site registration is required, fails to check in at a registration station and properly complete registration procedures before initiation of hunting, fishing, or non-consumptive use activities or fails to properly check out at the registration station before departing the area.

(b) Unless otherwise authorized in writing by the department or as provided in subsection (c) of this section, it is an offense if a person hunting under special or regular permit fails to;

(1) check in at a designated check station prior to initiation of hunting activities; and

(2) check out at a designated check station or otherwise fails to allow inspection of the bag before leaving the area.

(c) The requirements of subsection (b) of this section may be waived for specific hunts as designated by order of the executive director or by direction of the hunt supervisor. Participation in regular permit hunts for which the check station requirement has been waived will be solely by APH permit.

(d) Access for non-consumptive use and fishing may be temporarily restricted while hunts are being conducted by special or regular permit or at times when ongoing research or management activities may be impacted.

§65.199. General Rules of Conduct.

This section applies to all public hunting lands unless an exception for a specific area and time period is designated by the executive director or by written permission of the department. It is unlawful for any person to:

(1) fail to obey regulations posted at the area or policies established by order of the executive director, fail to comply with instructions on permits or area leaflets, or refuse to follow directives given by departmental personnel in the discharge of official duties;

(2) possess a firearm, archery equipment, or any other device for taking wildlife resources on public hunting lands, except for persons authorized by the department to hunt or conduct research on the area, commissioned law enforcement officers, and department employees in performance of their duties;

(3) camp or construct an open fire anywhere other than in a designated campsite. On the Alabama Creek, Bannister, Caddo, Moore Plantation, and Sam Houston National Forest WMAs, this restriction applies only during the period from the day prior to the opening of the archery deer season through the day following the close of the general deer season;

(4) cause, create, or contribute to excessive or disturbing sounds beyond the person's immediate campsite between the hours of 10 p.m. and 6 a.m.;

(5) to establish a camp and leave it unattended for a period of longer than 24 hours;

(6) disturb or remove of plants, rocks, artifacts, or other objects from public hunting lands, except as authorized by the department;

(7) write on, scratch, or otherwise deface natural features, signs, buildings, or other structures;

(8) fail to deposit refuse in designated containers or fail to remove it from the area;

(9) consume or be under the influence of alcohol while engaged in hunting activities, or to publicly consume or display an alcoholic beverage while on public hunting lands.

(10) possess dogs in camp that are not confined or leashed;

(11) use or possess any type of riding stock or pack animal on public hunting lands at any time, except:

(A) as may be provided by order of the executive director;

(B) by written authorization of the department; or

(C) when authorized for specific areas and time periods scheduled under the Texas Conservation Passport Program; or

(12) use an airboat within the boundaries of public hunting lands, except as designated for specific areas and time periods by order of the executive director or by written permission of the department.

§65.201. Motor Vehicles.

(a) It is an offense to not confine motor vehicle use to designated roads, except parking is permitted on the shoulder of or immediately adjacent to designated roads, and as provided for a disabled person or for a person directly assisting a disabled person.

(b) It is unlawful to hunt any wildlife resource from a motor vehicle, motor-driven land conveyance, or possess a loaded firearm in or on the vehicle, except as provided for a disabled person.

(c) A disabled person may possess a loaded firearm in or on a motor vehicle and may hunt from a motor vehicle except only paraplegics and single or double amputees of legs may hunt migratory birds from a motor vehicle, provided the motor vehicle is not in motion, the engine is not running, and the motor vehicle is not located on a designated road, designated vehicle parking area, or designated campground.

(d) Except as authorized for specific areas and time periods by order of the executive director, or by written permission of the hunt supervisor or area manager, it is an offense for an individual other than a disabled person or a person directly assisting a disabled person to operate an all terrain vehicle (ATV) on public hunting lands.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 31, 1996.

TRD-9607604
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Effective date: September 1, 1996
Proposal publication date: April 5, 1996
For further information, please call: (512) 389-4642

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Subchapter P. Alligators

31 TAC §§65.351-65.355, 65.357, 65.358, 65.359, 65.364

The Texas Parks and Wildlife Department adopts amendments to §§65.351-65.355, 65.357-65.359, and 65.364, concerning Alligators. Section 65.364 is adopted with changes to the proposed text as published in the April 5, 1996, issue of the *Texas Register*(21 TexReg 2990). Sections 65.351-65.355, 65.357, 65.358, and 65.359 are adopted without changes and will not be republished. The change to §65.364 alters the ratio of dry ground to pooled water; the minimum space requirements; and the fencing specifications for alligator farms, and removes provisions for denial of permit renewal.

The rules are necessary to fulfill the department's statutory obligation to prevent depletion and waste of the state's wildlife resources, and, in general, preserve and enhance existing populations while allowing for harvest according to prescribed wildlife tenets.

The rules will function to clarify language; alter or delete definitions; add provisions to the facility standards for alligator farms; clarify tag requirements and time restrictions for alligator line sets; and establish hatching and hatchling survival standards for permit renewal.

One commenter requested that the department permit mobile alligator exhibits by nonresidents. The department responds that such a permit was not part of the proposed rules as published and thus cannot be incorporated at this time; however, staff will investigate.

The amendments are adopted under Parks and Wildlife Code, Chapter 65, which provides the Commission with the authority to establish regulations governing the propagation and harvest (both commercial and recreational) of alligators.

§65.364. Alligator Farm Facility Requirements.

(a) A first-time applicant for an alligator farmer's permit must, prior to permit issuance, show evidence of the following during a facility examination by the department:

(1) adequate barriers to prevent escape of enclosed alligators and entry by alligators from outside the farm;

(2) a reliable source of clean, fresh water;

(3) a minimum space, per alligator, of:

(A) one square foot for alligators less than 24 inches in length;

(B) 9 square feet for alligators longer than 24 inches but less than 60 inches in length; and

(C) one additional square foot per additional six inches of length beyond 60 inches; and.

(4) provision for protection from the cold, either through adequate denning space or an enclosed, controlled-temperature environment.

(b) If the facility is an indoor facility:

(1) alligators shall have access to an area consisting of 30% dry ground and 70% pooled water with respect to the minimum space requirements established by this section;

(2) the dry ground shall permit complete exit from the water and the pooled water shall permit complete submersion;

(3) the minimum space requirements of this section shall be provided in a fashion that permits all alligators to orient in any direction without touching the sides of the tank;

(4) all alligator sheds shall be maintained a minimum temperature of 80 degrees F; and

(5) all alligator sheds shall be cleaned and washed daily.

(c) If the facility is an outdoor facility:

(1) there shall be a perimeter chain-link fence extending at least five feet above ground and 12 inches below ground. The fence must completely enclose the facility and all fence gates shall have locks;

(2) wild-trapped alligators shall be stocked at a male-to-female ratio of 1:5 and total stocking density shall be no more than 24 alligators per acre;

(3) captive-bred alligators shall be stocked at a male-to-female ratio of 1:4 and total stocking density shall be no more than 40 alligators per acre; and

(4) adequate nesting material must be provided.

(d) All alligators in a facility must be fed daily, except that alligators may remain unfed for seven days prior to harvest.

(e) Alligator farmers possessing alligator eggs outside an alligator nest shall house such eggs in identifiable original clutch groups in an incubation facility approved by the Department.

(f) All alligator farmers possessing hatchling alligators shall house such hatchlings in alligator sheds.

(g) Alligator farmers shall segregate alligators by length, providing, at a minimum, separate areas for those alligators:

(1) less than two feet in length;

(2) between two and four feet in length; and

(3) over four feet in length.

(h) Complete written records of all alligator stock shall be kept, including shipping tickets, invoices, and bills of lading.

(i) Alligator farmers may collect eggs from nests of captive alligators inside alligator farms at any time; provided each clutch is accompanied by a captive nest stamp provided by the department. Nesting activity of captive alligators shall be recorded on a daily basis. An annual summary of nest constructed, eggs collected, number of viable eggs set, and hatching success shall be recorded on forms provided by the department and submitted to the department by September 15 of each year.

(j) Alligator farmers possessing alligator eggs collected from the wild shall complete and submit an annual report to the Department by September 30. The report shall be made using form PWD-371A.

(k) All alligators 48" or less in length shall be housed in alligator sheds unless a written authorization from the department is received to move them to outside growth areas.

(l) Alligator egg incubators shall:

(1) maintain a water and air temperature of 85 to 91 degrees fahrenheit during egg incubation.

(2) utilize temperature monitors.

(3) utilize alarm system which alerts farmer when temperatures are above or below the prescribed range.

(4) maintain backup system to supply power and water if main power source fails.

(m) The department reserves the right to deny permits to:

(1) an incubation facility with less than a 70% hatching success over any period of two consecutive years; and

(2) a farm facility with less than a 70% hatchling survival (hatch-to-harvest) over any period of two consecutive years.

(n) All facilities, alligator stock, and records are subject to examination by department personnel prior to permitting and thereafter during farm operation.

(o) No alligator eggs collected or obtained under authority of this subchapter may be shipped out of state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 31, 1996.

TRD-9607603
Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department
Effective date: June 21, 1996

Proposal publication date: April 5, 1996
For further information, please call: (512) 389-4642

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 12. Special Nutrition Programs

Child and Adult Care Food Program

40 TAC 12.3, 12.25

The Texas Department of Human Services (DHS) adopts amendments to §§12.3 and 12.25 in its Special Nutrition Programs (SNP) chapter. The amendment to §12.3 is adopted with changes to the proposed text as published in the April 5, 1996, issue of the *Texas Register* (21 TexReg 3000). The amendment to §12.25 is adopted without changes to the proposed text and will not be republished.

The justification for the amendments is to require nongovernmental sponsors that have fewer than three years of administrative and financial history to obtain a performance bond as a condition of eligibility and to require Child and Adult Care Food Program (CACFP) contractors to maintain a secondary business office in each region in which they sponsor a day care home. An appropriate representative of the contractor must be available during normal business hours. A contractor must notify DHS in advance of his intent to change the physical location of his secondary business office. The requirements for a contractor's primary business office are also clarified. The amendments will improve the management and accountability of the day care home portion of the CACFP, safeguard the integrity of the program and increase access of day care home providers to their sponsors. In addition, minor changes have been made to the order of the rules to clarify the CACFP contractors to whom they apply.

The amendments will function by improving program efficiency and increasing program integrity. Also, providers will have the most effective access to their sponsoring organizations.

During the comment period, DHS received comments from Southwest Human Development Services and an individual that were generally supportive of the proposal to require day care home sponsor applicants with limited administrative and financial history to obtain a performance bond. DHS received 34 comments opposed to and one comment supporting the proposal to require day care home contractors to maintain a secondary office in any region in which they sponsor day care homes, other than the region in which their primary business office is located. Comments were received from the Texas Professional Home Child Care Association, four sponsoring organizations (Nutrition for Children, Inc., Wee Care Help Services, Nutriservice, Inc., and Southwest Human Development), and 12 individuals. A summary of the comments and DHS's responses follow:

Comments Relating to a Performance Bond Requirement - §§12.3(b)(3) and 12.25(g):

1) One commenter suggested the rules apply to all first-time applicants, as well as all active sponsors, regardless of the length of their administrative and financial history. The commenter indicated that restricting the rule to first-time applicants with limited history would not provide a sufficient level of security for public funds.

2) Another commenter supported the rule as proposed, but requested clarification regarding whether the cost of purchasing a performance bond would be an allowable use of CACFP funds.

Response: SNP staff believe the rule addresses the most pressing issue of financial accountability. The benefit of a performance bond is the protection it affords when public funds are at risk. Based on an examination of program records since 1992, SNP has determined that 65% of contracts terminated or not renewed were with sponsors having less than three years of experience. Therefore, SNP has recommended that first-time applicants with limited administrative and financial history be required to obtain a performance bond. Although extending the requirement to current contractors without an administrative or financial history may increase our ability to protect public funds, SNP believes that our current monitoring and technical assistance processes provide sufficient protection for this group of sponsors. SNP does not believe it to be an efficient use of program funds to require active sponsors, who have been successful in their administration of the program, to purchase a performance bond. SNP believes that this rule will support DHS's effort to enhance the integrity of the program and safeguard public funds.

Comments Relating to a Requirement to Maintain a Secondary Office - §12.3(b)(4) and (5):

Comments Specifically Related to Sponsors:

1) Five commenters stated that the rule imposes unreasonable or unnecessary costs on sponsors for office space, telephone lines, and additional staff. Two commenters stated that program funds would be better spent on costs for sponsors to train, monitor, and recruit providers. One commenter believes the rule requires an insupportable use of funding when government is trying to maximize the use of taxpayer dollars.

Response: DHS agrees that sponsors would incur additional program costs for maintaining secondary offices. However, SNP believes that the costs are justified to ensure that providers are adequately supported in their operation of the program. Sponsors continue to be required to train and monitor providers. The costs for training and monitoring providers, as well as the costs for maintaining secondary offices, are reimbursable program costs.

2) Two commenters stated that the DHS regional boundaries are arbitrary, and if the regions change, sponsors could incur additional costs for establishing new secondary offices.

Response: DHS regions were established by the Texas Legislature; DHS does not anticipate a change to its regional boundaries. Geographic areas that coincide with DHS regional bound-

aries were selected in order for SNP to effectively administer the program.

3) Concerns were expressed over the effect the rule would have on sponsors' management of the program. One commenter feels it is needless to set up and staff secondary offices when the field staff would spend most of their time out of the office training and monitoring providers. One commenter feels that sponsors can provide better service through the modern technology of telephones, mail, and fax, and by having a field employee's time dedicated to a geographic area, rather than requiring sponsors to have "real estate" in an operating area. One commenter believes that quality control and consistency will suffer when management functions are decentralized, and that the small sponsors will lose economies of scale and the expertise of specialization if they are required to duplicate staff responsibilities in secondary offices.

Response: The rule does not require sponsors to decentralize all program management functions, since sponsors must continue to maintain essential management functions at their primary business location. Sponsors retain the flexibility to hire qualified staff to conduct program management functions and expend administrative funds to manage their programs in the most effective manner for their organization and to ensure program requirements are met. The rule allows sponsors to be available to providers by telephone, so that staff who work out of secondary offices may spend time monitoring and training providers and providing technical assistance.

4) One commenter stated that having an office in another region did not necessarily make the sponsor more accessible.

Response: Although requiring sponsors to maintain secondary offices does not ensure sponsors will be more accessible, it reinforces the expectation that sponsors provide adequate support to their providers.

Comment: One commenter believes the rule will limit competition between sponsors.

Response: The rule does not restrict sponsors from operating in any area of the state.

Comments Specifically Related to Providers

1) Nine commenters believe that the rule pertains to an effort by DHS to competitively procure CACFP day care home contracts, and oppose the restrictions that competitive procurement would have on their choice of a sponsor.

Response: The rule does not pertain to the competitive procurement of CACFP day care home contracts, and is not intended to limit a provider's choice of a day care home sponsor.

2) Three commenters stated that the rule will limit or deny providers access to the program if sponsors decline to offer services to areas because of the costs of maintaining secondary offices.

Response: Based on the current number of participating sponsors, DHS does not believe that the rule will limit or deny providers access to the program.

3) Three commenters observed that providers have the option under current rules to choose a sponsor that is close and more accessible.

Response: The rule does not affect a provider's option to choose a sponsor in close proximity. It is intended to improve a provider's accessibility to his sponsor when he has chosen a sponsor whose primary office is not in close proximity.

4) One commenter believes that the rule will negatively impact providers because sponsors may have to hire less qualified persons to monitor, train, and provide technical assistance, in order to have staff available in regions.

Response: The rule does not remove the requirement for sponsors to provide adequate well-qualified personnel to effectively manage and monitor the program.

5) One commenter believes the rule will benefit providers.

Other Comments:

1) Two commenters feel the rule is not supported by federal regulations.

Response: The United States Department of Agriculture has reviewed the rule, confirmed that it is not in conflict with CACFP regulations, and approved it as proposed. The rule is consistent with federal regulations which require sponsors to provide adequate supervisory and operational personnel for the effective management and monitoring of the program at all facilities under their jurisdiction.

2) One commenter opposes the rule but did not give a reason.

3) Four additional comments were received that were unrelated to this rule.

After reviewing the comments, DHS is adopting the rules without change, except for a clarification to §12.3(b)(5), to state that "a secondary business location is not required in the DHS region in which a sponsor's primary business office is located." Also in that paragraph, the word "office" is added for clarification.

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendments implement the Human Resources Code, §§22.001-22.030 and §§33.001-33.024.

§12.3. Eligibility of Contractors and Facilities.

(a) To be eligible to participate in the Child and Adult Care Food Program (CACFP), contractors must meet the definitions in 7 Code of Federal Regulations §226.2, the appropriate requirements of 7 Code of Federal Regulations §§226.6 and 226.15-226.19(a), and this title.

(b) To be eligible to participate in the CACFP as a day care home sponsor, applicants must:

(1) provide documentation that verifies that a minimum of 50 registered or licensed day care homes have signed an application and agreement, as specified by the Texas Department of Human Services (DHS), to participate under the contractor's sponsorship. Each day care home must be providing child care to at least one nonresidential child. Day care homes must be eligible to execute a sponsorship agreement in accordance with §12.6(f) of this title (relating to Agreement). DHS may approve applications for fewer than 50 day care homes, if the sponsorship of day care homes is an

integral but subordinate part of an existing nonprofit or governmental community service provided by the sponsor;

(2) demonstrate that the governing authority is aware of the responsibilities and liabilities it accepts by agreeing to participate in the program;

(3) submit a comprehensive financial statement showing all expenditures and sources of income to the organization for the three years preceding the year for which application is made. Non-governmental entities with fewer than three years of administrative and financial history that apply to participate in the CACFP as day care home contractors must submit a performance bond in an amount equal to the value of the contractor's projected annual level of reimbursement as determined by DHS. The performance bond must be obtained from a company designated in United States Treasury Circular 570 as certified to issue bonds for federally funded programs. Contractors required to submit a performance bond as a condition of eligibility for their initial application must submit a performance bond as a condition of eligibility for each contract renewal until relief from the bonding requirement has been granted, and must adjust the amount of the performance bond based on fluctuations in the value of the contract as determined by DHS. Contractors subject to the bonding requirement who have, at the time of application, less than three but more than two years of administrative and financial history, may request relief from the bonding requirement after 12 months of successful program participation. Contractors who have less than two, but more than one year of administrative and financial history, may request relief from the bonding requirement after 24 months of successful program participation. Contractors who have less than one year of administrative and financial history may request relief from the bonding requirement after 36 months of successful program participation. DHS grants relief from the bonding requirement based on the above schedule and the contractor's successful program operation;

(4) designate the primary physical location at which they can be contacted, and where all program records will be maintained and essential program management functions will be conducted. Program records must be available to Texas Department of Human Services (DHS) staff during normal business hours. Normal business hours are 8:00 a.m. through 5:00 p.m., Monday through Friday. An appropriate representative of the contractor must be available to DHS staff and providers during normal business hours. Contractors are considered to be available to DHS staff and providers if a representative of the contractor can be contacted by telephone at the primary business location during normal business hours, or if the contractor has established a procedure which allows DHS staff and providers to leave a voice message at the primary business location, and the contractor returns the call not later than 24 hours from the time the voice message is left. Contractors must notify DHS in advance of their intent to change their physical location;

(5) maintain a secondary business office physically located in each DHS region in which they sponsor a day care home to conduct program management functions, except that a secondary business location is not required in the DHS region in which a sponsor's primary business office is located. An appropriate representative of the contractor must be available to DHS staff and providers during normal business hours. Normal business hours are 8:00 a.m. through 5:00 p.m., Monday through Friday. Contractors are considered to be available to DHS staff and providers if a representative of the contractor can be contacted by telephone at the secondary business location during normal business hours, or if the contractor has established a procedure which allows DHS staff and providers to leave a voice message at the secondary business location, and the contractor returns the call not later than 24 hours from the time the voice message is left. Contractors must notify DHS in advance of their intent to change a secondary business location; and

(6) participate in program and program related training deemed reasonable and necessary by DHS.

(c)-(i) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 30, 1996.

TRD-9607526
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: June 20, 1996
Proposal publication date: April 5, 1996
For further information, please call: (512) 438-3765

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Chapter 47. Primary Home Care

The Texas Department of Human Services (DHS) adopts amendments to §§47.2902, 47.2904, 47.2913, 47.3901, 47.4901, and 47.6902, in its Primary Home Care chapter. The amendment to §47.2913 is adopted with changes to the proposed text as published in the April 16, 1996, issue of the *Texas Register* (21 TexReg 3336). The amendments to §§47.2902, 47.2904, 47.3901, 47.4901, and 47.6902, are adopted without changes to the proposed text and will not be republished.

The justification for the amendments is to reflect the streamlined prior approval process and to add generic requirements.

The amendments will function by allowing fewer breaks in services to eligible primary home care clients.

No comments were received regarding adoption of the amendments. DHS, however, has deleted a sentence in §47.2913(b). DHS deleted the sentence "If the required forms are not submitted within this time frame, a gap in client coverage occurs."

Service Requirements

40 TAC 47.2902, 47.2904, 47.2913

The amendments are adopted 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 Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement §§22.001-22.030 and 32.001-32.041 of the Human Resources Code.

§47.2913.. Prior Approval Renewal for Primary Home Care.

(a) For clients who are eligible for primary home care under the provisions of the Social Security Act, §1929(b), the supervisor

must send the following forms to the regional nurse to obtain renewal of prior approval:

(1) summary of client need for service, if provided;

(2) approval for CCAD services - referral response, if received from the caseworker; and

(3) client health assessment/proposed service plan.

(b) The supervisor must submit the prior approval material to the regional nurse in time for it to be postmarked or date-stamped by the department no later than one day after the termination date of the current prior approval period.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 30, 1996.

TRD-9607525
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1996
Proposal publication date: April 16, 1996
For further information, please call: (512) 438-3765

Claims Payment

40 TAC 47.3901

The amendment is adopted 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 Government Code,§531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and 32.001-32.041 of the Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 30, 1996.

TRD-9607529
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1996
Proposal publication date: April 16, 1996
For further information, please call: (512) 438-3765

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Provider Contracts

40 TAC 47.4901

The amendment is adopted 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 Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and 32.001-32.041 of the Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 30, 1996.

TRD-9607528
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1996
Proposal publication date: April 16, 1996
For further information, please call: (512) 438-3765

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Sanctions

40 TAC 47.6902

The amendment is adopted 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 Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and 32.001-32.041 of the Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 30, 1996.

TRD-9607534
Glenn Scott
General Counsel, Legal Services
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Effective date: July 1, 1996
Proposal publication date: April 16, 1996
For further information, please call: (512) 438-3765

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Chapter 48. Community Care for Aged and Disabled

Eligibility

40 TAC 48.2918

The Texas Department of Human Services (DHS) adopts an amendment to §48.2918, with changes to the proposed text as published in the April 16, 1996, issue of the *Texas Register* (21 TexReg 3338).

The justification for the amendment is to reflect the streamlined prior approval process for primary home care and to add generic requirements.

The amendment will function by allowing fewer breaks in services to eligible primary home care clients.

No comments were received regarding adoption of the amendment. DHS, however, has initiated a minor change to the text. DHS has deleted the word "chronic" and the phrase "that is expected to be long standing."

The amendment is adopted 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 Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and 32.001-32.041 of the Human Resources Code.

§48.2918. Eligibility for Primary Home Care.

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

(d) Applicants must have prior approval of medical need for primary home care from the department regional nurse. Only initial prior approval of medical need is required for applicants who have a medical condition causing functional impairment in personal care. Annual prior approval by the department regional nurse is required for clients who are eligible under the provisions of the Social Security Act, §1929(b).

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 30, 1996.

TRD-9607535
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1996
Proposal publication date: April 16, 1996
For further information, please call: (512) 438-3765

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Case Management

40 TAC §48.3901

The Texas Department of Human Services (DHS) adopts an amendment to §48.3901, without changes to the proposed text as published in the March 29, 1996, issue of the *Texas Register* (21 TexReg 2526).

The justification for the amendment is to no longer require a CCAD categorically eligible client to submit an application for services. There is no need for this person to submit an application since the Social Security Administration or DHS has already verified that the income/resources are below the CCAD income/resource limit. The person's eligibility will be determined within 30 calendar days of the assessment date or worker contact date, if the person withdraws from the program before the assessment is completed.

The amendment will function by allowing some people to access CCAD services more easily. Also, the cost of printing and mailing applications will be reduced.

No comments were received regarding adoption of the amendment.

The amendment is adopted 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 Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and 32.001-32.041 of the Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 30, 1996.

TRD-9607869
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1996
Proposal publication date: March 29, 1996
For further information, please call: (512) 438-3765

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Chapter 50. Day Activity and Health Services Service Requirements

40 TAC 50.403, 50.410

The Texas Department of Human Services (DHS) adopts amendments to §50.403 and §50.410 in its Day Activity and Health Services (DAHS) chapter. The amendment to §50.403 is adopted with a change to the proposed text as published in the April 16, 1996, issue of the *Texas Register* (21 TexReg 3338). The amendment to §50.410 is adopted without changes to the proposed text and will not be republished.

The justification for the amendments is to reflect the streamlined prior approval process.

The amendments will function by allowing fewer breaks in services to eligible DAHS clients.

No comments were received regarding adoption of the amendments. DHS, however, has deleted proposed paragraph §50.403(e)(10) and changed the reference in subsection (e) from paragraphs (1)-(10) to (1)-(9).

The amendments are adopted 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 Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement §§22.001-22.030 and 32.001-32.041 of the Human Resources Code.

§50.403. Facility-Initiated Referrals.

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

(e) If DHS's Client Health Assessment/Plan of Care form or Physician's Order for Day Activity and Health Services form is missing, or if any of the critical omissions or errors stated in paragraphs (1)-(9) of this subsection have occurred in the required documentation, the facility cannot obtain prior approval.

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

(4) DHS's Physician's Order for Day Activity and Health Services form does not include the MD or DO credential of the physician who signed the form.

(5) DHS's Physician's Order for Day Activity and Health Services form does not include the license number of the physician who signed it.

(6) The physician who signed the order is excluded from participation in Medicare or Medicaid.

(7) The physician's signature is not on DHS's Physician's Order for Day Activity and Health Services form.

(8) The physician's signature date is missing or illegible and the facility's stamped date is missing from DHS's Physician's Order for Day Activity and Health Services form.

(9) The facility's stamped date used instead of the physician's date on DHS's Physician's Order for Day Activity and Health Services form does not include the provider agency's name, abbreviated name, or initials. *§50.410. Renewal of Services.* An individual seeking initial prior approval for day activity and health services must have a physician's order for the service.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 30, 1996.

TRD-9607536
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1996
Proposal publication date: April 16, 1996
For further information, please call: (512) 438-3765

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Chapter 90. Intermediate Care Facilities for Persons with Mental Retardation or a Related Condition

The Texas Department of Human Services (DHS) adopts the repeal of §§90.60, 90.70, 90.80, 90.92-90.105, 90.141, and 90.323-90.325. DHS also adopts amendments to 90.12, 90.15, 90.42, 90.212, and 90.327; and new §§90.60-90.74, 90.231, and 90.323. The amendments to §90.42 and §90.212 and new §90.60 and §90.61 are adopted with changes to the proposed text as published in the February 13, 1996, issue of the *Texas Register* (21 TexReg 1069). The repeal of §§90.60, 90.70, 90.80, 90.92-90.105, 90.141, and 90.323-90.325; amendments to §§90.12, 90.15, 90.42, and 90.327; and new §§90.62-90.74, 90.231, and 90.323 are adopted without changes to the proposed text, and will not be republished.

Justification for the repeals, amendments, and new sections is clear and correct rules.

The repeal of §§90.60, 90.70, 90.80, 90.92-90.105, and 90.141 will function by deleting rules addressing discontinued department functions. The repeal of §§90.323-90.325 will function by deleting rules inadvertently published in two sections.

The amendments to §§90.12, 90.15, and 90.42 will function by deleting out-dated rules, adding a definition of timely filed applications, and correcting a misspelled word. The amendment to §90.212 will function by deleting outdated references to nursing facilities. The amendment to §90.327 will function by deleting sections not applicable to Intermediate Care Facilities for Persons with Mental Retardation or a Related Condition.

New §§90.60-90.74 will function by modifying the facility construction requirements.

New §90.231 will function by providing information about DHS's procedure for warning facilities when their non-compliance with licensure rules places them at risk of licensing actions. New §§90.323 will function by providing information on the procedure for the inspection of public records.

The department received comments from New Avenues of Hope, Inc., and the Texas Health Care Association regarding the adoption of the proposal.

Comment: In cases where the renewal application is mailed on the filing deadline, the facility should not be held liable if the U.S. Post Office fails to deliver the document within 15 days of the postmark.

Response: Section 90.15(c) was modeled after a provision in the Texas Rules of Civil Procedure, and the department will retain it.

Comment: Regarding 90.212, please define "normal workday hours." Further, are weekday evenings considered "weekends" and "holidays" for reporting purposes?

Response: The department has replaced "during normal workday hours" with "between 8 a.m. and 5 p.m. Monday through Friday" and "on weekends and holidays" with "at all other times" in §90.212(c).

Comment: Regarding §90.60 (b), although the providers involved in new construction have the referenced documents readily available, there should be no need for these documents at the state level because there is no longer a plan review mechanism or requirement in place. Removing the requirement for the submission of these documents would reduce the volume of paperwork for both the agency and the industry.

Response: These documents must be provided to the surveyor conducting the initial survey to assure him/her that the facility was, in fact, constructed in accordance with the requirements. Only the final set of documents is required by the surveyor upon approval of the completed construction and made a part of the initial survey packet for the facility file.

Comment: Section 90.60(c)(3) does nothing but increase paperwork for the agency and the industry, and in many cases, irritate the "local authorities." For example, fire marshalls are already required to sign certificates of occupancy at the local level. Requiring these local fire marshalls to provide a letter of

approval (for TDHS) that is above and beyond what is required at the local level is a needless paperwork requirement that is viewed by providers and local authorities alike as a pointless bureaucratic step. Either delete the requirement for "written approval of local authorities" or insert language that states that documentation of local approval that is already on file (i.e., certificates of occupancy) is sufficient.

Response: DHS clarified the section by stating that "A copy of" the written approval be provided. We are not requiring a separate letter of approval, but simply a copy of the certificate of occupancy and other such documents that the local authorities have already provided to the facility.

Comment: Regarding §90.60 (c)(3)(G), although the intent of this proposed rule is a worthy one, the wording "he certifies" may actually be too restrictive. Reputable architects and engineers, for liability reasons, carry "error and omissions" insurance as protection against an oversight or omission on their part. Since letters of certification imply absolute perfection on the part of the architect or engineer, most error/omissions insurance policies will not cover such a letter. Hence, architects and engineers will be extremely hesitant to submit and providers will find very difficult to obtain these types of "certification letters".

Recommendation: Delete the words "he certifies" from the requirement. Doing so would make the necessary documentation much easier to obtain while keeping intact the architect and/or engineer's liability that the building was constructed to code. TDHS should also check with the Texas Society of Professional Engineers and the American Institute of Architects for additional guidance before this rule is finalized.

Response: "To certify" implies that reliable assurance is being provided that the facility is in substantial conformance with the construction requirements, as stated in the standards, which is not "absolute perfection." DHS is not changing the section.

Comment: Section 90.68(a)(3)(A) references Figure 1 for 40 TAC §90.68 (a)(3)(A) for the appropriate sizes of social-diversional spaces which may be incorrect.

Response: Figure 1 for 40 TAC §90.68(a)(3)(A) can be found on page 1189 of the February 13, 1996, issue of the *Texas Register* under Tables and Graphics, Part II - Volume 21, Number 12.

Comment: The requirements in §90.73 - §90.74, though worthy and important, have nothing to do with the construction of new buildings.

Response: No change required. This section pertains to general requirements, i.e., construction, equipment, and maintenance of existing facilities.

Comment: Regarding §90.323, the language does not clarify whether or not the department considers OSCAR reports as incomplete reports in light of the fact that OSCAR information continues to evolve. Also, additional wording is needed allowing reports to be used during investigation of contested proceedings. If OSCAR reports are considered by the department to be incomplete, then the OSCAR reports should be excluded from the proposed rule. Also, the following wording language should be added regarding contested proceedings: "This does not affect disclosure of these reports during discovery and investigations by providers in contested proceedings."

Response: The information data entered into the OSCAR System is maintained as current as is feasibly possible. When released, OSCAR generated reports are not considered "incomplete" as of the date released.

In addition, in §90.60(a)(1) DHS has changed "Architectural Section" to "Long Term Care-Regulatory." In order to promote the "people first" concept, the phrase "Intermediate Care Facilities for the Mentally Retarded" has been changed to "Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions" in the titles of §§90.42 and 90.61 and text of §§90.42(b) and 90.61(b)(2), and DHS also changed the title of Chapter 90 to "Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions."

Subchapter B. Application Procedures

40 TAC §90.12, §90.15

The amendments are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or related condition; and under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer its programs.

The amendments implement the Health and Safety Code, §§242.001- 242.268, and the Human Resources Code, §22.001-22.030.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 30, 1996.

TRD-9607538
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1996
Proposal publication date: February 13, 1996
For further information, please call: (512) 438-3765

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Subchapter C. Standards for Licensure

40 TAC 90.42

The amendment is adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or related condition; and under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer its programs.

The amendment implements the Health and Safety Code, §§242.001- 242.268, and the Human Resources Code, §22.001-22.030.

§90.42. Standards for Facilities for Persons with Mental Retardation or Related Conditions.

(a) (No change.)

(b) Philosophy. Facilities regulated by the standards in this section are known as facilities for persons with mental retardation and related conditions in Texas (MR facilities). Persons in these facilities have the same civil rights, equal liberties, and due process of law as other individuals, plus the right to receive active treatment and habilitation. Facilities shall provide and promote services that enhance the development of such individuals, maximize their achievement through an interdisciplinary approach based on developmental principles, and create an environment, to the extent possible, that is normalized and normalizing.

(c)-(d) (No change.)

(e) Additional requirements.

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

(5) Specialized nutrition support (delivery of parenteral nutrients and enteral feedings by nasogastric, gastrostomy, or jejunostomy tubes, etc.) must be given in accordance with physician's orders by a registered or licensed nurse.

(6)-(8) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 30, 1996.

TRD-9607541
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1996
Proposal publication date: February 13, 1996
For further information, please call: (512) 438-3765

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Subchapter D. General Requirements for Facility Construction

40 TAC 90.60, 90.70, 90.80, 90.92-90.105, 90.141

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or related condition; and under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer its programs.

The repeals implement the Health and Safety Code, §§242.001-242.268, and the Human Resources Code, §22.001-22.030.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 30, 1996.

TRD-9607542
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1996
Proposal publication date: February 13, 1996
For further information, please call: (512) 438-3765

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40 TAC 90.60-90.74

The new sections are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or related condition; and under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer its programs.

The new sections implement the Health and Safety Code, §§242.001- 242.268, and the Human Resources Code, §22.001-22.030.

§90.60. Construction and Initial Survey of Completed Construction.

(a) Construction phase.

(1) The Texas Department of Human Services (DHS), Long Term Care-Regulatory in Austin, Texas, must be notified in writing of construction start.

(2) All construction must be done in accordance with minimum licensing requirements. It is the sponsor's responsibility to employ qualified personnel to prepare the contract documents for construction of a new facility or remodeling of an existing facility. Contract documents for additions and remodeling and for the construction of an entirely new facility must be prepared by an architect licensed by the Texas State Board of Architectural Examiners. Drawings must bear the seal of the architect. Certain parts of final plans, designs, and specifications must bear the seal of a registered professional engineer approved by the State Board of Registration for Professional Engineers to operate in Texas. These certain parts include sheets and sections covering structural, electrical, mechanical, and sanitary engineering.

(A) Remodeling is the construction, removal, or relocation of walls and partitions; the construction of foundations, floors, or ceiling-roof assemblies; the expanding or altering of safety systems (including, but not limited to, sprinkler, fire alarm, and emergency systems); or the conversion of space in a facility to a different use.

(B) General maintenance and repairs of existing material and equipment, repainting, applications of new floor, wall, or ceiling finishes, or similar projects are not included as remodeling, unless as a part of new construction. DHS must be provided flame spread documentation for new materials applied as finishes.

(b) Contract documents.

(1) Site plan documents must include grade contours; streets (with names); north arrow; fire hydrants; fire lanes; utilities, public or private; fences; unusual site conditions, such as ditches, low water levels, other buildings on-site; and indications of buildings five feet or less beyond site property lines.

(2) Foundation plan documents must include general foundation design and details.

(3) Floor plan documents must include room names, numbers, and usages; doors (numbered) including swing; windows; legend or clarification of wall types; dimensions; fixed equipment; plumbing fixtures; and kitchen basic layout; and identification of all smoke barrier walls (outside wall to outside wall) or fire walls.

(4) For both new construction and additions or remodeling to existing buildings, an overall plan of the entire building must be drawn or reduced to fit on an 8 1/2 inch by 11 inch sheet; submit two reduced plans for file record. See §90.80(c)(3) of this title (relating to Construction and Initial Survey of Completed Construction).

(5) Schedules must include door materials, widths, types; window materials, sizes, types; room finishes; and special hardware.

(6) Elevations and roof plan must include exterior elevations, including material note indications and any roof top equipment; roof slopes, drains, and gas piping, and interior elevations where needed for special conditions.

(7) Details must include wall sections as needed (especially for special conditions); cabinet and built-in work, basic design only; cross sections through buildings as needed; and miscellaneous details and enlargements as needed.

(8) Building structure documents must include structural framing layout and details (primarily for column, beam, joist, and structural frame building); roof framing layout (when this cannot be adequately shown on cross section); cross sections in quantity and detail to show sufficient structural design and structural details as necessary to assure adequate structural design, also calculated design loads.

(9) Electrical documents must include electrical layout, including lights, convenience outlets, equipment outlets, switches, and other electrical outlets and devices; service, circuiting, distribution, and panel diagrams; exit light system (exit signs and emergency egress lighting); emergency electrical provisions (such as generators and panels); fire alarm and similar systems (such as control panel, devices, and alarms); sizes and details sufficient to assure safe and properly operating systems; and a staff communication system.

(10) Plumbing documents must include plumbing layout with pipe sizes and details sufficient to assure safe and properly operating systems, water systems, sanitary systems, gas systems, other systems normally considered under the scope of plumbing, fixtures, and provisions for combustion air supply.

(11) Heating, ventilation, and air-conditioning (HVAC) documents must include sufficient details of HVAC systems and components to assure a safe and properly operating installation including, but not limited to, heating, ventilating, and air-conditioning layout, ducts, protection of duct inlets and outlets, combustion air, piping, exhausts, and duct smoke and/or fire dampers; and equipment types, sizes, and locations.

(12) Sprinkler system documents must include plans and details of NFPA designed systems; plans and details of partial systems provided only for hazardous areas; electrical devices interconnected to the alarm system.

(13) Other layouts, plans, or details as may be necessary for a clear understanding of the design and scope of the project; including plans covering private water or sewer systems must be reviewed by the local health or wastewater authority having jurisdiction. If no local authority, then the plans will be reviewed by DHS.

(14) Specifications must include installation techniques, quality standards and/or manufacturers, references to specific codes and standards, design criteria, special equipment, hardware, painting, and any others as needed to amplify drawings and notes.

(c) Initial survey of completed construction.

(1) Upon completion of construction, including grounds and basic equipment and furnishings, a final construction inspection (initial survey) of the facility, including additions or remodeled areas, is required to be performed by DHS (architectural section) prior to occupancy. A minimum of three weeks advance notice is needed. The completed construction must have the written approval of the local authorities having jurisdiction, including the fire marshal, and building inspector.

(2) After the completed construction has been surveyed by a representative of the architectural section of DHS and found acceptable, this information will be conveyed to the licensing officer as part of the information needed to issue a license to the facility. In the case of additions or remodeling of existing facilities, a revision or modification to an existing license may be necessary. Note that the building, grades, drives, parking and grounds must be essentially 100% complete at the time of this initial survey visit for occupancy approval and licensing, including basic furnishings and operational needs.

(3) A copy of the following documents must be available to DHS's surveyor at the time of the survey of the completed building:

(A) written approval of local authorities as called for in paragraph (1) of this subsection;

(B) written certification of the fire alarm system by the installing agent (Form FML-009 of the Texas State Fire Marshal);

(C) documentation of materials used in the building which are required to have a specific limited fire or flame spread rating, including, but not limited to, special wall finishes or floor coverings, flame retardant curtains (including cubicle curtains), and rated ceilings. This must include a signed letter from the installer verifying that the material installed is the same material named in the laboratory test document;

(D) approval of the completed sprinkler system installation by the designing engineer. A copy of the material list and test certification must be available;

(E) service contracts for maintenance and testing of systems, including, but not limited to, alarm systems and sprinkler systems;

(F) a copy of gas test results of the facility's gas lines from the meter;

(G) a written statement from an architect/engineer stating that he certifies that the building was constructed to meet NFPA 101, Life Safety Code, and all locally applicable codes, and that the facility is in substantial conformance with minimum licensing requirements; and

(H) the contract documents specified in subsection (b) of this section.

(d) Non-approval of new construction.

(1) If, during the initial on-site survey of completed construction, the surveyor finds certain basic requirements not met, he may recommend to DHS that the facility not yet be licensed and approved for occupancy. Such basic items may include the following:

(A) construction which does not meet minimum code or licensure standards for basic requirements such as corridor widths

being less than eight feet clear width, ceilings installed at less than the minimum seven feet six inches height, resident bedroom dimensions less than required width, and other such features which would disrupt or otherwise adversely affect the residents and staff if corrected after occupancy;

(B) no written approval by local authorities;

(C) fire protection systems not completely installed or not functioning properly including, but not limited to, fire alarm systems, emergency power and lighting, and sprinkler systems;

(D) required exits are not all usable according to Life Safety Code requirements;

(E) telephone not installed or not properly working;

(F) sufficient basic furnishings, essential appliances and equipment are not installed or not functioning; and

(G) any other basic operational or safety feature which the surveyor, as the authority having jurisdiction, encounters which in his/her judgment would preclude safe and normal occupancy by residents on that day.

(2) If the surveyor encounters deficiencies that do not affect the health and safety of the residents, licensure may be recommended based on an approved written plan of correction by the facility's administrator.

(3) Copies of reduced size floor plan on an 8 1/2 inch by 11 inch sheet must be submitted in duplicate to DHS for record/ file use and for such uses by the facility as evacuation planning and fire alarm zone identification. The plan must contain basic legible information such as overall dimensions, room usage names, actual bedroom numbers, doors, windows, and any other pertinent information.

§90.61. Introduction, Application, and General Requirements for Facilities for Persons with Mental Retardation or Related Conditions.

(a) Scope. The requirements of this section are applicable to both new and existing facilities unless stated otherwise.

(b) Purpose.

(1) The concept of requirements for fire safety with regard to the residents is based on evacuation capability as published by National Fire Protection Association (NFPA) in NFPA 101 Life Safety Code. These standards are written with the premise that the residents will be capable of self-evacuation without continuous staff assistance. Residents that are not normally capable of self-evacuation nor capable of negotiating stairs unassisted shall not be housed above or below the floor of exit discharge unless the facility meets the construction requirements of NFPA 101, Chapter 12 titled "New Health Care Occupancies" for large facilities, or the "impractical" requirements for small facilities as found in NFPA 101, Chapter 21 titled "Residential Board and Care Occupancies." Examples of residents who may not be capable of self-evacuation are as follows:

(A) a person with a physical disability of a nature that he/she is not capable of maneuvering in a wheelchair, walker, etc., unaided;

(B) a person with a mental disability who will not take or cannot understand instructions from a staff member; or

(C) a person that is taking medication before bedtime which will make it difficult for a staff member to arouse the person quickly.

(2) The method of determining the evacuation capability of residents under NFPA 101, Chapter 21, is by rating each resident and each staff member to determine an evacuation difficulty score (E-score). If the E-score is 1.5 or less, the evacuation capability of the facility is prompt, greater than 1.5 to five is slow, greater than five is impractical. The worksheets to be completed are located in NFPA 101, 1985 Edition, Appendix F. Intermediate Care Facilities for Persons with Mental Retardation (ICFs-MR) with 16 beds or less must meet the evacuation requirement for their designated Chapter 21 rating. The ratings and their requirements follow:

(A) Impractical rating.

(i) The facility must have one evacuation and/or fire drill per shift each calendar quarter (minimum of 12 drills per year).

(ii) The facility must actually evacuate clients once a year on each shift.

(iii) All facility staff, including relief and substitute staff, must participate in drills as soon as possible after beginning employment on their shift.

(iv) For initial certification, one client must be admitted.

(v) E-scores are not required for certification under this rating.

(B) Slow rating.

(i) The facility must have one evacuation and/or fire drill per shift each calendar quarter (minimum of 12 drills per year).

(ii) The facility must actually evacuate clients once a year on each shift.

(iii) Staff on each shift must participate in drills.

(iv) New and/or relief or substitute staff must participate in a drill within ten days of employment on their assigned shift.

(v) For initial certification, two clients must be admitted.

(vi) E-scores must be calculated as soon as possible, but within ten calendar days of admission.

(vii) Initial E-scores are based on four drills, as follows:

(I) two conducted during the daytime, and

(II) two conducted during the nighttime, after the first 30 minutes and within the first three hours of sleep.

(viii) After the initial E-scores are obtained, a worksheet for rating residents must be completed for all newly admitted clients to obtain an E-score. The evacuation capability is calculated as described in clause (vii) of this subparagraph.

(ix) E-scores must be updated annually or sooner if significant changes occur in any client's evacuation capability. These updated scores are based on the group's overall performance during fire drills as they are conducted throughout the year. Scores do not

have to be calculated in accordance with the drills required for newly admitted clients based on the requirements stated in clause (vii) of this subparagraph.

(C) Prompt rating.

(i) The facility must have one evacuation and/or fire drill per shift each calendar quarter (minimum of 12 drills per year).

(ii) The facility must actually evacuate clients once a year on each shift.

(iii) Staff on each shift must participate in drills.

(iv) New and/or relief or substitute staff must participate in a drill within ten days of employment on their assigned shift.

(v) For initial certification, all six clients must be admitted.

(vi) E-scores must be calculated as soon as possible, but within ten calendar days of admission.

(vii) Initial E-scores are based on four drills, as follows:

(I) two conducted during the daytime, and

(II) two conducted during the nighttime, after the first 30 minutes and within the first three hours of sleep.

(viii) After the initial E-scores are obtained, a worksheet for rating residents must be completed for all newly admitted clients to obtain an E-score. The evacuation capability is calculated as described in clause (vii) of this subparagraph.

(ix) E-scores must be updated annually or sooner if significant changes occur that would affect a client's evacuation capability. These updated scores are based on the group's overall performance during fire drills as they are conducted throughout the year. Scores do not have to be calculated in accordance with the drills required for newly admitted clients based on the requirements stated in clause (vii) of this subparagraph.

(3) The "E" score will determine which NFPA 101 features are to be installed and maintained in the facility. These features include construction, fire alarm systems, smoke detector systems, interior finish, sprinkler systems, separation of bedrooms, and egress from the building.

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

(1) Addition-The addition of floor space.

(2) Large facilities-Facilities with 17 or more resident beds.

(3) Department-Texas Department of Human Services.

(4) Life safety features-Fire safety components required by NFPA 101 such as building construction, fire alarm systems, smoke detection systems, interior finishes, sizes and thicknesses of doors, exits, emergency electrical systems, sprinkler systems, etc.

(5) Remodeling-The altering of the structure, e.g., removal or addition of walls or partitions, floors, ceiling, roof.

(6) Renovation-The restoration to a former better state by cleaning, repairing, or rebuilding, e.g., routine maintenance, repairs, equipment replacement, painting.

(7) Small facilities-Facilities with 16 or fewer resident beds.

(d) Construction.

(1) New construction is any construction work which began on or after October 3, 1988. The provisions of NFPA 101, Chapter 12 are applicable for large facilities, and Chapter 21 for small facilities.

(2) An existing facility is one which was operating with a license as a facility for persons with mental retardation and related conditions before October 3, 1988, and has not subsequently become unlicensed. The provisions of NFPA 101, Chapter 13 titled "Existing Health Care Occupancies," are applicable for large facilities, and Chapter 21 for small facilities.

(3) Alterations or new installations of building services equipment, such as mechanical and electrical systems, generators, fire alarm, and detection systems, etc., must be accomplished in conformance with the requirements for new construction as required by NFPA 101.

(4) Site approval, as required by the local health officer, building department, and/or fire marshal having jurisdiction, must be obtained. Any conditions considered to be a fire, safety, or health hazard will be grounds for disapproval of the site by the department unless applied in an arbitrary or discriminating manner.

(5) Facilities that renovate must provide documentation for the flame spread rate of any new materials applied as an interior finish.

(6) Life safety features and equipment that have been installed in existing buildings and are now in excess of that required by NFPA 101 must continue to be maintained or must be removed at the direction of DHS.

(7) When an existing licensed facility plans building additions or remodeling, which includes construction of additional resident beds, then the ratio of bathing units must be reevaluated to meet minimum standards and the square footage of dining and living areas must be reevaluated by DHS. Conversion of existing living, dining, or activity areas to resident bedrooms must not reduce these functions to an area less than required by minimum standards.

(8) Buildings must be of recognized permanent type construction. They must be structurally sound with regard to actual or expected dead, live, and wind loads according to applicable building codes.

(9) Each building must be classified as to the building construction type for fire resistance rating purposes in accordance with NFPA 220 Standard on Types of Building Construction, and NFPA 101.

(e) Applicable codes and standards. Facilities must meet the requirements of NFPA 101, 1985 edition, and any other codes and standards of NFPA listed in this section, except as may be otherwise approved or required by DHS.

(1) If the municipality has a building code and a plumbing code, then those codes must govern in those areas of construction.

Where local codes or ordinances are applicable, the most restrictive parts concerning the same subject item must apply unless otherwise determined by the authority having jurisdiction for local codes and DHS.

(2) In the absence of such governing municipal codes, nationally recognized codes must be used, such as the Standard Building Code and the Standard Plumbing Code, both of the Southern Building Code Congress International, Inc. Such nationally recognized codes, when used, must all be publications of the same group or organization to assure the intended continuity.

(3) Heating, ventilating, and air-conditioning systems must be designed and installed in accordance with NFPA 90A Standard for the Installation of Air Conditioning and Ventilating Systems, and NFPA 90B Standard for the Installation of Warm Air Heating and Air Conditioning Systems, as applicable, and the American Society of Heating, Ventilating, and Air-Conditioning Engineers (ASHRAE), except as may be modified in this subchapter.

(4) Electrical and illumination system must be designed and installed in accordance with NFPA 70 National Electrical Code, and the Lighting Handbook of the Illuminating Engineering Society of North America (IES) except as may be modified in this subchapter.

(5) The facility must meet the provisions and requirements concerning accessibility for individuals with disabilities in the following laws: the Americans with Disabilities Act of 1990 (Public Law 101-336; Title 42, United States Code, Chapter 126); Title 28, Code of Federal Regulations, Part 35; Texas Civil Statutes, Article 9102; and Title 16, Texas Administrative Code, Chapter 68. Plans for new construction, substantial renovations, modifications, and alterations must be submitted to the Texas Department of Licensing and Regulation (Attention: Elimination of Architectural Barriers Program) for accessibility approval under Article 9102.

(f) General requirements.

(1) The facility must provide and maintain furnishings and decorations that meet the needs of the residents.

(2) The building, grounds, and equipment must be maintained in good repair, operational, sanitary, and free of hazards.

(3) There must be at least one telephone (other than a pay phone) in the facility, accessible to residents for use in making calls to summon help in case of emergency.

(4) The facility must have:

(A) floors that are free of irregularities and are substantially level (floor areas may be at different elevations with connecting stairs or ramps);

(B) floors that have a resilient, nonabrasive, and slip-resistant surface;

(C) nonabrasive carpeting, if the area used by residents is carpeted and serves residents who lie on the floor or ambulate with parts of their bodies, other than feet, touching the floor; and

(D) exposed floor surfaces and floor coverings that promote mobility in areas used by residents and promote maintenance of sanitary conditions.

(5) Walls and ceilings must be cleanable and in good repair.

(6) Walls and floors must be kept free of cracks. The joint between the walls and floors is to be maintained so as to be free of spaces which might harbor insects, rodents, or vermin.

(7) An adequate supply of hot water must be provided. The hot water system for resident use must be capable of being regulated to not exceed 110 degrees Fahrenheit at the fixtures.

(8) Draperies, curtains (including cubicle curtains), and other similar furnishings and decorations must be flame resistant in accordance with NFPA 701 Standard Methods of Fire Tests for Flame Resistant Textiles and Films. Documentation must be kept on file in the facility.

(9) Wastebaskets must be of noncombustible material.

(10) An initial pressure test of facility gas lines from the meter must be provided. Additional pressure tests will be required when the facility has major renovations or additions where the gas service is interrupted. All gas heating systems must be checked for proper operation and safety prior to the heating season. Any unsatisfactory conditions must be corrected promptly.

(11) The IES recommendations must be followed to achieve proper illumination characteristics and lighting levels throughout the facility. Minimum illumination must be 10 foot candles in resident rooms during the day and 20 foot candles in corridors, staff stations, dining rooms, lobbies, toilets, bathing facilities, laundries, stairways, and elevators during the day. Illumination requirements for these areas apply to lighting throughout the space and should be measured at approximately 30 inches above the floor anywhere in the room. Minimum illumination for medication preparation or storage areas, kitchens, and staff station desks must be 50 foot candles during the day. Illumination requirements for these areas apply to the task performed and should be measured on the tasks.

(12) In addition to the required illumination (normal and emergency), the facility must keep on hand and readily available to night staff, no less than one working flashlight.

(13) Combustible attic areas larger than 3,000 square feet must be divided into compartments not exceeding 3,000 square feet or the attic area must be sprinkled. The separating barrier must be at least one layer of 1/2-inch gypsum board on one side of support members.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 30, 1996.

TRD-9607543
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1996
Proposal publication date: February 13, 1996
For further information, please call: (512) 438-3765

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Subchapter G. Abuse, Neglect, and Exploitation; Complaint and Incident Reports and Investigations

40 TAC 90.212

The amendment is adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or related condition; and under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer its programs.

The amendment implements the Health and Safety Code, §§242.001- 242.268, and the Human Resources Code, §22.001-22.030.

§90.212. Incidents of Abuse and Neglect Reportable by Facilities to the Texas Department of Human Services (DHS).

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

(c) Reports of abuse or neglect in facilities for persons with mental retardation or related conditions are to be made to DHS's state office at (512) 834-6671 between 8 a.m. and 5 p.m. Monday through Friday, and to 1-800-292-2065 at all other times. The person reporting must make an oral report immediately on learning of the alleged abuse or neglect. A written investigation report must be sent no later than the fifth calendar day after the oral report.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 30, 1996.

TRD-9607544
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1996
Proposal publication date: February 13, 1996
For further information, please call: (512) 438-3765

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Subchapter H. Enforcement

40 TAC 90.231

The new section is adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or related condition; and under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer its programs.

The new section implements the Health and Safety Code, §§242.001- 242.268, and the Human Resources Code, §22.001-22.030.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 30, 1996.

TRD-9607545
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1996
Proposal publication date: February 13, 1996
For further information, please call: (512) 438-3765

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Subchapter L. Provisions Applicable to Facilities Generally

40 TAC 90.323-90.325

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or related condition; and under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer its programs.

The repeals implement the Health and Safety Code, §§242.001-242.268, and the Human Resources Code, §22.001-22.030.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 30, 1996.

TRD-9607547
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1996
Proposal publication date: February 13, 1996
For further information, please call: (512) 438-3765

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40 TAC 90.323, 90.327

The new section and amendment are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or related condition; and under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer its programs.

The new section and amendment implement the Health and Safety Code, §§242.001-242.268, and the Human Resources Code, §22.001-22.030.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 30, 1996.

TRD-9607548
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1996
Proposal publication date: February 13, 1996
For further information, please call: (512) 438-3765

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Chapter 92. Personal Care Facilities

The Texas Department of Human Services (DHS) adopts the repeal of §92.19, and §92.63, amendment to §92.62, and new §92.63, without changes to the proposed text published in the

February 13, 1996, issue of the *Texas Register* (21 TexReg 1083). The text will not be republished.

Justification for the repeal, amendment, and new section is to provide clear rules.

The repeal will function by deleting rules regarding functions DHS no longer performs. The amendment will function by updating the rule regarding fire extinguishers.

The new section will function by modifying the new facility construction procedures.

The department received a comment from the Texas Association of Residential Care Communities regarding adoption of the proposal.

Comment: DHS is in the process of a complete review of the personal care standards and should delay the proposed changes in 40 TAC §§92.19, 92.62, and 92.63 until the total review is complete.

Response: DHS's position is that these changes need to be made now to reflect current procedures, which have changed due to a departmental reorganization.

Subchapter B. Application Procedures

40 TAC 92.19

The repeal is adopted under the Health and Safety Code, Chapter 247, which provides the department with the authority to license personal care facilities; and under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer its programs.

The repeal implements the Health and Safety Code, §§247.001-247.066, and the Human Resources Code, §22.001-22.030 and §§32.001-32.042.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 30, 1996.

TRD-9607549
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1996
Proposal publication date: February 13, 1996
For further information, please call: (512) 438-3765

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Chapter 92. Personal Care Facilities

The Texas Department of Human Services (DHS) adopts the repeal of §92.19, and §92.63, amendment to §92.62, and new §92.63, without changes to the proposed text published in the February 13, 1996, issue of the *Texas Register* (21 TexReg 1083). The text will not be republished.

Justification for the repeal, amendment, and new section is to provide clear rules.

The repeal will function by deleting rules regarding functions DHS no longer performs. The amendment will function by updating the rule regarding fire extinguishers.

The new section will function by modifying the new facility construction procedures.

The department received a comment from the Texas Association of Residential Care Communities regarding adoption of the proposal.

Comment: DHS is in the process of a complete review of the personal care standards and should delay the proposed changes in 40 TAC §§92.19, 92.62, and 92.63 until the total review is complete.

Response: DHS's position is that these changes need to be made now to reflect current procedures, which have changed due to a departmental reorganization.

Subchapter B. Application Procedures

40 TAC 92.19

The repeal is adopted under the Health and Safety Code, Chapter 247, which provides the department with the authority to license personal care facilities; and under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer its programs.

The repeal implements the Health and Safety Code, §§247.001-247.066, and the Human Resources Code, §22.001-22.030 and §§32.001-32.042.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 30, 1996.

TRD-9607549
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1996
Proposal publication date: February 13, 1996
For further information, please call: (512) 438-3765

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Subchapter D. Facility Construction

40 TAC 92.62

The amendment is adopted under the Health and Safety Code, Chapter 247, which provides the department with the authority to license personal care facilities; and under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer its programs.

The amendment implements the Health and Safety Code, §§247.001- 247.066, and the Human Resources Code, §22.001-22.030.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 30, 1996.

TRD-9607550
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1996
Proposal publication date: February 13, 1996
For further information, please call: (512) 438-3765

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40 TAC 92.63

The repeal is adopted under the Health and Safety Code, Chapter 247, which provides the department with the authority to license personal care facilities; and under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer its programs.

The repeal implements the Health and Safety Code, §§247.001-247.066, and the Human Resources Code, §22.001-22.030.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 30, 1996.

TRD-9607551
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1996
Proposal publication date: February 13, 1996
For further information, please call: (512) 438-3765

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The new section is adopted under the Health and Safety Code, Chapter 247, which provides the department with the authority to license personal care facilities; and under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer its programs.

The new section implements the Health and Safety Code, §§247.001- 247.066, and the Human Resources Code, §22.001-22.030.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 30, 1996.

TRD-9607552
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1996
Proposal publication date: February 13, 1996
For further information, please call: (512) 438-3765

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Chapter 94. Nurse Aides

40 TAC 94.11

The Texas Department of Human Services (DHS) adopts an amendment to §94.11, without changes to the proposed text as published in the February 13, 1996, issue of the *Texas Register* (21 TexReg 1083).

Justification for the amendment is to provide clear rules.

The amendment will function by correcting a reference.

The department received no comments regarding the adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32; the Health and Safety Code, Chapter 250; and Texas Government Code, §531.021. The Human Resources Code, Chapters 22 and 32, provide the department with the authority to administer public and medical assistance programs. The Health and Safety Code, Chapter 250, provides the department with the authority to administer the nurse aide program and registry. The Texas Government Code, §531.021, provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §32.001-32.042, and the Health and Safety Code, §§250.001-250.009.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 30, 1996.

TRD-9607556
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1996
Proposal publication date: February 13, 1996
For further information, please call: (512) 438-3765

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Chapter 96. Certification of Long-Term Care Facilities

40 TAC §96.9

The Texas Department of Human Services (DHS) adopts the repeal of §96.9, without changes to the proposed text as published in the February 13, 1996, issue of the *Texas Register* (21 TexReg 1086). Also in this issue DHS is withdrawing §96.6, concerning standards for nursing facilities that participate in the medical assistance program, that was proposed in the February 13, 1996, issue of the *Texas Register* (21 TexReg 1086).

The repeal is justified to remove a rule which is no longer applicable. The repeal will function by deleting a rule which is no longer applicable.

The department received no comments regarding the adoption of the proposal.

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under

Texas Civil Statutes, Article 4413(502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 30, 1996.

TRD-9607558
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1996
Proposal publication date: February 13, 1996
For further information, please call: (512) 438-3765

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Chapter 98. Adult Day Care Facilities

The Texas Department of Human Services (DHS) adopts the repeal of §§98.21 and 98.61, an amendment to §98.43, and new §98.61, without changes to the proposed text as published in the February 13, 1996, issue of the *Texas Register* (21 TexReg 1087).

Justification for the repeal, amendment, and new section is to provide clear rules.

The repeal will function by deleting rules regarding functions DHS no longer performs. The amendment and new section will function by modifying new facility construction procedures.

The department received no comments regarding the adoption of the amendment.

Subchapter B Application Procedures

40 TAC 98.21

The repeal is adopted under the Human Resources Code, Chapter 103 which provides the department with the authority to license adult day care facilities.

The repeal implements the Human Resources Code, Chapter 103, §§103.001-103.011.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 30, 1996.

TRD-9607559
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1996
Proposal publication date: February 13, 1996
For further information, please call: (512) 438-3765

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Subchapter C. Standards for Adult Day Care and Adult Day Health Care Facilities

40 TAC 98.43

The amendment is adopted under the Human Resources Code, Chapter 103 which provides the department with the authority to license adult day care facilities.

The amendment implements the Human Resources Code, Chapter 103, §§103.001-103.011.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 30, 1996.

TRD-9607553
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1996
Proposal publication date: February 13, 1996
For further information, please call: (512) 438-3765

Subchapter D. Facility Construction Procedures

40 TAC 98.61

The repeal is adopted under the Human Resources Code, Chapter 103 which provides the department with the authority to license adult day care facilities.

The repeal implements the Human Resources Code, Chapter 103, §§103.001-103.011.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 30, 1996.

TRD-9607554
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1996
Proposal publication date: February 13, 1996
For further information, please call: (512) 438-3765

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The new section is adopted under the Human Resources Code, Chapter 103, which provides the department with the authority to license adult day care facilities.

The new section implements the Human Resources Code, Chapter 103, §§103.001-103.011.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 30, 1996.

TRD-9607555
Glenn Scott
General Counsel, Legal Services

Texas Department of Human Services
Effective date: July 1, 1996
Proposal publication date: February 13, 1996
For further information, please call: (512) 438-3765

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TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 17. Vehicle Titles and Registration

Subchapter A. Motor Vehicle Certificates of Title

43 TAC §17.2, §17.3

The Texas Department of Transportation adopts amendments to §17.2, concerning Definitions, and §17.3, concerning Motor Vehicle Certificates of Title with changes to the text as published in the March 12, 1996, issue of the *Texas Register* (21 TexReg 2048). Section 17.3 is adopted with changes and §17.2 is adopted without changes and will not be republished.

The amended sections are necessary to ensure the department's proper administration of the laws concerning the issuance of motor vehicle certificates of title.

House Bill 1863, 74th Legislature, 1995, amended Texas Civil Statutes, Article 6687-1 by adding §27a which requires that an application for a certificate of title include the applicant's social security number when such application is executed in a county in which the department's automated registration and title system has been implemented. Senate Bill 1435, 74th Legislature, 1995, amended Texas Civil Statutes, Article 6687-1 by adding §35A to allow the transfer of vehicle ownership to a surviving spouse by completion of a "rights of survivorship" agreement on the certificate of title. Senate Bill 1445, 74th Legislature, 1995, effective January 1, 1996, amended Texas Civil Statutes, Article 6687-5, now codified as Transportation Code, §520.023, to allow the transferor of a motor vehicle to make voluntary written notification to the department regarding the sale of such vehicle. The department will note its automated records to indicate the date of transfer, and will maintain manual files containing the full name and address of the transferee. Senate Bill 1445 also amended Texas Civil Statutes, Article 6687-1, §36, now codified as Transportation Code, §501.134, to specify the conditions under which the department may issue a certified copy of a certificate of title to an applicant who is not a vehicle's owner or lienholder, or who is not the verified agent of the owner or lienholder.

Amended §17.2, Definitions, establishes the definitions as used in this subchapter.

Amended §17.3, Motor Vehicle Certificates of Title, establishes the department's policies and procedures for motor vehicle certificates of title. Amended §17.3 provides: policies regarding the requirement that an application for a certificate of title executed in a county in which the department's automated registration and title system (RTS) has been implemented include the applicant's social security number; the ability of a surviving spouse to transfer vehicle ownership by completion of a "rights of survivorship" agreement on the certificate of title; the ability of a transferor of a motor vehicle to make voluntary written notification to the department regarding the sale of the vehicle and the notation of the department's records regarding such; and the conditions under which the department may issue a certified copy of a certificate of title to an applicant who is not a vehicle's owner or lienholder, or who is not the verified agent of the owner or lienholder.

On March 26, 1996, the department conducted a public hearing on the amendments. No written or oral comments were received concerning the proposed amendments.

Section 17.3(a)(3)(B) has been changed to add the citation reference to Transportation Code, §502.276, concerning certain farm vehicles and drilling and construction equipment, for clarity. A citation correction has been made in §17.3(f).

The amended sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Texas Civil Statutes, Article 6687-1, §27a which requires that an application for a certificate of title include the applicant's social security number when such application is executed in a county in which the department's automated registration and title system has been implemented; Texas Civil Statutes, Article 6687-1, §35A which allows the transfer of vehicle ownership to a surviving spouse by completion of a "rights of survivorship" agreement on the certificate of title; Transportation Code, §520.023 which allows the transferor of a motor vehicle to make voluntary written notification to the department regarding the sale of such vehicle and requires the department to note its records indicating the receipt of such notifications; and Transportation Code, §501.134 which specify the conditions under which the department may issue a certified copy of a certificate of title to an applicant who is not a vehicle's owner or lienholder, or who is not the verified agent of the owner or lienholder.

§§17.3. Motor Vehicle Certificates of Title.

(a) Certificates of Title. Unless otherwise exempted by law or this chapter, the owner of any vehicle that is required to be registered in accordance with Transportation Code, Chapter 502, shall be required to apply for a Texas Certificate of Title in accordance with the Certificate of Title Act, Transportation Code, Chapter 501.

(1) Motorcycles, motor-driven cycles, and mopeds.

(A) The title requirements of a motorcycle are the same requirements prescribed for any motor vehicle.

(B) A motorcycle, motor-driven cycle, or a moped designed for or used exclusively on golf courses is not classified as a motor vehicle and, therefore, title cannot be issued until such time as the unit is registered.

(C) A vehicle which meets the criteria for a moped and has been certified as a moped by the Department of Public Safety, must be registered and titled as a moped; otherwise, if the vehicle does not appear on the list of certified mopeds published by that agency, the vehicle will be treated as a motorcycle for title and registration purposes.

(D) A motor installed on a bicycle must be certified by the Department of Public Safety before the vehicle may be classified as a moped.

(2) Farm vehicles.

(A) The term motor vehicle does not apply to implements of husbandry and may not be titled.

(B) Farm tractors owned by agencies exempt from registration fees in accordance with Transportation Code, §502.283, and farm tractors used as road tractors to mow rights-of-way or used to move commodities over the highway for hire are required to be registered and titled.

(3) Exemptions from title. Vehicles registered with the following distinguishing license plates may not be titled under the Certificate of Title Act, Transportation Code, Chapter 501:

(A) vehicles eligible for machinery license plates in accordance with Transportation Code, §502.276, and §502.278;

(B) vehicles eligible for farm trailer license plates in accordance with Transportation Code, §502.163; and

(C) vehicles eligible for permit license plates in accordance with Transportation Code, §§502.351-502.353.

(4) Trailers, semitrailers, and house trailers. Owners of trailers and semitrailers must apply for and receive a Texas Certificate of Title for any stand alone (full) trailer, including homemade full trailers, having an empty weight in excess of 4,000 pounds or any semitrailer having a gross weight in excess of 4,000 pounds. House trailer-type vehicles must meet the criteria outlined in subparagraph (C) of this paragraph in order to be titled.

(A) In the absence of a manufacturer's rated carrying capacity for trailers and semitrailers, the rated carrying capacity shall not be less than one-third of its empty weight.

(B) Mobile office trailers, mobile oil field laboratories, and mobile oil field bunkhouses are not designed as a dwelling, but classified as commercial semitrailers, and must be registered and titled as such if operated upon the public streets and highways.

(C) House trailer-type vehicles and camper trailers must meet the following criteria in order to be titled.

(i) A house trailer-type vehicle designed for living quarters and which is eight body feet or more in width or forty body feet or more in length (not including the hitch), is classified as a mobile home and is titled under the Texas Manufactured Housing Standards Act, Texas Civil Statutes, Article 5221f, administered by the Department of Housing and Community Affairs.

(ii) A house trailer-type vehicle which is less than eight feet in width and less than forty feet in length is classified as a travel trailer and must be registered and titled.

(iii) A camper trailer must be titled as a house trailer and must be registered with travel trailer license plates.

(b) Initial application for Certificate of Title.

(1) Place of application. When motor vehicle ownership is transferred, except as provided by 16 TAC, §111.15(c) (relating to Record of Sales and Inventory) and §17.8(a)(1) (relating to Certificates of Title for Salvage Vehicles), a certificate of title application must be filed with the county tax assessor-collector in the county in which the applicant resides, or the county in which the motor vehicle was purchased or encumbered, within 20 working days of the date of sale.

(2) Information to be included on application. An applicant for an initial certificate of title shall file an application on a form prescribed by the department. The form shall at a minimum require the:

(A) motor vehicle description which includes, but is not limited to, the motor vehicle's:

(i) year;

(ii) make;

(iii) model;

(iv) identification number;

(v) body style;

(vi) manufacturer's rated carrying capacity in tons for commercial motor vehicles; and

(vii) empty weight;

(B) license plate number, if the motor vehicle is subject to registration under Transportation Code, Chapter 502;

(C) odometer reading and brand, or the word "exempt" if the motor vehicle is exempt from federal and state odometer disclosure requirements;

(D) previous owner's name and city and state of residence;

(E) name and complete address of the applicant;

(F) name and mailing address of any lienholder and the date of lien, if applicable;

(G) signature of the seller of the motor vehicle or the seller's authorized agent and the date the certificate of title application was signed;

(H) signature of the applicant or the applicant's authorized agent and the date the certificate of title application was signed; and

(I) applicant's social security number, if the application is filed in a county in which the department's automated registration and title system has been implemented, with the following exceptions:

(i) applications filed in the name of entities which do not have, or are not eligible to obtain, a social security number, or

(ii) individual applicants who do not have, or are not eligible to obtain, a social security number (such applicants shall be required to execute a statement to that effect on a form prescribed by the department).

(3) Serial Number. If no serial number is die-stamped by the manufacturer upon a motor vehicle, house trailer, trailer, semitrailer, or an item of equipment required to be titled, or if the serial number assigned and die-stamped by the manufacturer has been lost, removed or obliterated, the department will upon proper application, presentation of evidence of ownership, and presentation of a law enforcement physical inspection, assign a serial number to the motor

vehicle, trailer or equipment; the manufacturer's serial number or the assigned serial number will be used by the department as the major identification of the motor vehicle or trailer in the issuance of a certificate of title.

(4) Accompanying documentation. The certificate of title application shall be supported by, at a minimum, the following documents:

(A) evidence of vehicle ownership, as described in subsection (c) of this section;

(B) odometer disclosure statement properly executed by the seller of the motor vehicle and acknowledged by the purchaser, if applicable;

(C) the identification certificate required by Transportation Code, §548.256, and Transportation Code, §501.030, if the vehicle was last registered in another state or country; and

(D) release of any liens or, if not released, the liens shall be carried forward on the new certificate of title application pursuant to the following limitations.

(i) An out-of-state lien recorded on out-of-state evidence as described in subsection (c) of this section cannot be carried forward to a Texas title when there is a transfer of ownership, unless a release of lien or authorization from the lienholder is attached.

(ii) A lien recorded on out-of-state evidence as described in subsection (c) of this section is not required to be released when there is no transfer of ownership from an out-of-state title and the same lienholder is being recorded on the Texas application as is recorded on the out-of-state title.

(c) Evidence of motor vehicle ownership. Evidence of motor vehicle ownership properly assigned to the applicant shall accompany the certificate of title application. Evidence shall include, but is not limited to, the following documents.

(1) New motor vehicles. A manufacturer's certificate of origin assigned by the manufacturer or the manufacturer's representative or distributor to the original purchaser shall be required for a new motor vehicle that is sold or offered for sale.

(A) The manufacturer's certificate of origin shall be in the form prescribed by the division director and shall contain, at a minimum, the following information:

(i) motor vehicle description which includes, but is not limited to, the motor vehicle's year, make, model, identification number, body style and empty weight;

(ii) the manufacturer's rated carrying capacity in tons when the manufacturer's certificate of origin is invoiced to a Texas dealer as defined in 16 TAC, §111.2, (relating to Definitions), and is issued for commercial motor vehicles as that term is defined in Transportation Code, Chapter 502; and

(iii) a statement identifying a motor vehicle designed by the manufacturer for off-highway use only.

(B) When a motor vehicle manufactured in another country is sold directly to a non-manufacturer's representative or distributor, the manufacturer's certificate of origin shall be assigned to the purchaser by the importer.

(2) Used motor vehicles.

(A) Evidence of ownership. A certificate of title issued by the department, a certificate of title issued by another state if the motor vehicle was last registered and titled in another state, or other evidence of ownership shall be relinquished in support of the certificate of title application for any used motor vehicle. A letter of Title and Registration verification is required from a vehicle owner coming from a state that no longer titles vehicles after a certain period of time.

(B) Rights of survivorship. A signed "rights of survivorship" agreement, which is either attached to or printed on the certificate of title, allows the transfer of ownership by a surviving spouse. The surviving spouse or the surviving spouse's transferee may make application for a new certificate of title in accordance with the provisions of subsection (b) of this section, surrendering the properly executed certificate of title, along with a copy of the death certificate of the deceased spouse.

(3) Imported motor vehicles. An application for certificate of title for a motor vehicle last registered or titled in a foreign country shall be supported by, but is not limited to, the following documents:

(A) the motor vehicle registration certificate or other verification issued by a foreign country which reflects the name of the applicant as the motor vehicle owner, or reflects that such evidence of ownership has been legally assigned to the applicant; and

(B) proof of compliance with United States Department of Transportation regulations for all 1968 and subsequent year model motor vehicles and for all 1969 and subsequent year model motorcycles which shall include, but is not limited to, the following documents:

(i) the original bond release letter with all attachments advising that the motor vehicle meets federal motor vehicle safety requirements or a letter issued by the United States Department of Transportation, National Highway Traffic Safety Administration, verifying the issuance of the original bond release letter;

(ii) a legible copy of the motor vehicle importation form validated with an original United States Customs stamp, date, and signature as filed with the United States Department of Transportation confirming the exemption from the bond release letter required in subitem (i) of this subparagraph, or a copy thereof certified by United States Customs;

(iii) a verification of motor vehicle inspection by United States Customs certified on United States Customs letterhead and signed by a United States Customs agent verifying that the motor vehicle complies with United States Department of Transportation regulations;

(iv) a written confirmation that a physical inspection of the safety certification label has been made by the department and that the motor vehicle meets United States motor vehicle safety standards;

(v) the original bond release letter, or verification thereof, or written confirmation from the previous state verifying that a bond release letter issued by the United States Department of Transportation was relinquished to that jurisdiction, if the non United States standard motor vehicle was last titled or registered in another state for one year or less; or

(vi) verification from the vehicle manufacturer on their letterhead stationary.

(4) Alterations to documentation. An alteration to a registration receipt, certificate of title, manufacturer's certificate, or other evidence of ownership shall constitute valid reason for the rejection of any transaction to which such altered evidence is attached. The department may accept certain types of alterations provided that they are corrected in accordance with the following procedures.

(A) Altered lien information on any surrendered evidence of ownership requires a release from the original lienholder or a statement from the proper authority of that state in which the lien originated verifying the correct lien information.

(B) A strikeover on any document which leaves any doubt as the legibility of any digit in a number will not be accepted.

(C) A correct manufacturer's certificate of origin will be required if the documents show an:

(i) incomplete or altered vehicle identification number;

(ii) alteration or strikeover of the vehicle's year model;

(iii) alteration or strikeover to the body style, or omitted body style on the manufacturer's certificate of origin; or

(iv) alteration or strikeover to the manufacturer's rated carrying capacity.

(D) A Statement of Fact may be requested to explain errors, corrections, or conditions from which doubt does or could arise concerning the legality of any instrument. A Statement of Fact will be required in all cases:

(i) where the date of sale on an assignment has been erased or altered in any manner; or

(ii) of alteration or erasure on a Dealer's Reassignment of Title.

(d) Certificate of title issuance. Upon receiving a completed application for certificate of title, along with the title application fee of $13 and any other applicable fees, the department or its designated agent will process and issue a certificate of title.

(1) Negotiable titles. The department will issue and mail or deliver negotiable titles, marked "Original," to the applicant or, in the event that there is a lien disclosed in the application, to the first lienholder.

(2) Non-negotiable titles. The department will issue non-negotiable titles, which may be used only as evidence of title and may not be used to transfer any interest or ownership in a motor vehicle, or to establish a new lien:

(A) in the event that there is a lien disclosed in the application a duplicate certificate of title marked "Duplicate Original," will be mailed or delivered to the address of the applicant as disclosed upon the application;

(B) in the event that the owner of a vehicle last registered or titled in another state (and subject to registration in this state) cannot or does not wish to relinquish the negotiable out-of-state evidence of ownership to obtain a negotiable Texas title, a duplicate certificate of title marked "Registration Purposes Only" will be mailed or delivered to the address of the applicant as disclosed upon the application (in instances where the title or registration receipt is assigned to the applicant, an application for "Registration Purposes Only" will not be processed).

(e) Replacement of certificate of title. If a certificate of title is lost or destroyed, the owner or lienholder may obtain a certified copy of that title upon proper application with the department in accordance with the Certificate of Title Act, Transportation Code, Chapter 501, and payment of the appropriate fee to the department.

(1) Certified copy.

(A) Applicant who is a vehicle owner, lienholder, or verified agent.

(i) If the applicant requests that a certified copy be issued before the fourth business day following application, the application must be made in person and the applicant must present valid personal identification, including a photograph, issued by an agency of this state or of the United States.

(ii) If the applicant is an agent, the applicant must present verifiable proof that he or she is an agent of the owner or lienholder. This proof may include a power of attorney, business card, written authorization on company letterhead, or employee identification.

(B) Applicant other than the vehicle owner, lienholder, or verified agent.

(i) The department will not issue a certified copy of a certificate of title before the fourth business day after application has been made.

(ii) Such titles shall only be issued by mail.

(2) Certified copy designation. A certified copy of an existing certificate of title will be marked "Certified Copy" until such time that ownership of the vehicle is transferred, when the words "Certified Copy" will be eliminated from the new certificate of title.

(3) Fees. The fee for obtaining a certified copy of a certificate of title shall be $2.00 if the application is processed at the department's headquarters office, and $5.45 if such application is processed at one of the department's regional offices.

(4) Recovery of lost title. In the event that the "Duplicate Original" or "Original" certificate of title is recovered, the owner shall relinquish the certified copy to the department for cancellation and the words "Certified Copy" will be eliminated from certificates issued thereafter by the department as a result of transfer of ownership.

(f) Department notification of second hand vehicle transfers. A transferor of a motor vehicle may voluntarily make written notification to the department of the sale of the vehicle, in accordance with Texas Civil Statutes, Article 6687-5 as amended, and this subsection.

(1) Notification form. The department shall provide a form for written notice of transfer, which shall include:

(A) vehicle identification number of the vehicle;

(B) license plate number issued to the vehicle;

(C) full name and address of the transferor;

(D) full name and address of the transferee;

(E) date the transferor delivered possession of the vehicle to the transferee;

(F) signature of transferor; and

(G) date the transferor signed the form.

(2) Records. Upon receipt of written notice of transfer and a $5.00 fee from the transferor of a motor vehicle, the department shall mark its records to indicate the date of transfer and the full name and address of the transferee.

(3) Ownership of transferred vehicle. After the date of the transfer of the vehicle as shown in the department records, the transferee of the vehicle is rebuttably presumed to be:

(A) the owner of the vehicle; and

(B) subject to civil and criminal liability arising out of the use, operation, or abandonment of the vehicle, to the extent that ownership of the vehicle subjects the owner of the vehicle to criminal or civil liability under another provision of the law.

(4) Certificate of title issuance. A certificate of title may not be issued in the name of a transferee until such transferee files an application for the certificate of title as described in this section.

(g) Suspension, revocation, or refusal to issue Certificates of Title.

(1) Grounds for title suspension, revocation, or refusal to issue. The department will refuse issuance of a certificate of title, or having issued a certificate of title, suspend or revoke the certificate of title if the:

(A) application contains any false or fraudulent statement;

(B) applicant has failed to furnish required information requested by the department;

(C) applicant is not entitled to the issuance of a certificate of title under the Certificate of Title Act, Transportation Code, Chapter 501;

(D) department has reasonable ground to believe that the vehicle is a stolen or converted vehicle, or that the issuance of a certificate of title would constitute a fraud against the rightful owner or a mortgagee;

(E) registration of the vehicle stands suspended or revoked; or

(F) required fee has not been paid.

(2) Contested case procedure. Any person who has an interest in a motor vehicle to which the department has refused to issue a certificate of title or has suspended or revoked the certificate of title may contest such decisions in accordance with the Certificate of Title Act, Transportation Code, §§501.052-501.053, in the following manner:

(A) Hearing. Any person who has an interest in a motor vehicle to which the department has refused to issue a certificate of title or has suspended or revoked the certificate of title may apply to the designated agent of the county in which they reside for a hearing. At the hearing the applicant and the department may submit evidence, and a ruling of the designated agent will bind both parties. An applicant wishing to appeal the ruling of the designated agent may do so to the County Court of the county in which the applicant resides.

(B) Alternative to hearing. In lieu of a hearing, any person who has an interest in a motor vehicle to which the department has refused to issue a certificate of title or has suspended or revoked a certificate of title may file a bond with the department, in an amount equal to one and one-half times the value of the vehicle as determined by the department, and in a form prescribed by the department. Upon the filing of the bond, the department may issue a certificate of title. The bond shall expire three years after the date it becomes effective and shall be returned to the person posting bond, upon expiration, unless the department has been notified of the pendency of an action to recover on the bond.

This agency hereby certifies that the section 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 31, 1996.

TRD-9607625
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Effective date: June 21, 1996
Proposal publication date: March 12, 1996
For further information, please call: (512) 463-8630

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Subchapter B. Motor Vehicle Registration

43 TAC §§17.21, 17.22, 17.28, 17.30, 17.50

The Texas Department of Transportation adopts amendments to §17.21, §17.22, §17.28, §17.30, and §17.50 concerning, respectively: definitions; motor vehicle registration; special category license plates, symbols, and tabs; commercial vehicle registration; and exempt and alias vehicle registration with changes to the text as published in the March 12, 1996, issue of the *Texas Register* (21 TexReg 2052). Section 17.21, §17.22, and §17.28 are adopted with changes, and §17.30 and §17.50 are adopted without changes and will not be republished.

The amended sections are necessary to ensure the department's proper administration of the laws concerning the issuance of motor vehicle registration.

House Bill 247, 74th Legislature, 1995, amended Texas Civil Statutes, Article 6675a-5k, now codified as Transportation Code, §§502.258-502.266, extending eligibility for U.S. Armed Forces license plates to honorably discharged veterans; extending eligibility for Vietnam Veteran license plates to surviving spouses who have not remarried; and increasing the number of sets of U.S. Armed Forces license plates a qualifying individual may obtain. House Bill 496, 74th Legislature, 1995, amended Texas Civil Statutes, Article 6675a-5e by adding §4(a-1) to authorize the department to issue Foreign Organization license plates. House Bill 1225, 74th Legislature, 1995, amended Texas Civil Statutes, Article 6675a-3e by adding §8A to authorize the department to issue registration numbers to former military vehicles. House Bill 1542, 74th Legislature, 1995, amended Texas Civil Statutes, Articles 6675a-3e and 6675a-13a, now codified as Transportation Code, §§502.180-502.184,

to clarify placement location for windshield registration stickers and procedures for replacement of lost, stolen or mutilated registration insignia. House Bill 1794, 74th Legislature, 1995, amended Texas Civil Statutes, Article 6675a-5p, now codified as Transportation Code, §502.280 to clarify the definition of a "forestry vehicle." House Bill 2053, 74th Legislature, 1995, amended Texas Civil Statutes, Article 6675a-3aa, now codified as Transportation Code, §502.201 and §502.206 to specify criteria for identifying insignia to be displayed on vehicles bearing license plates with the word "exempt." House Bill 2151, 74th Legislature, 1995, added Texas Civil Statutes, Article 6687-1, §37(A)(j) and (n) to prohibit registration or operation of motor vehicles which have been issued a salvage or nonrepairable motor vehicle certificate of title. Senate Bill 123, 74th Legislature, 1995, amended Texas Civil Statutes, Article 6675a-5k, now codified as Transportation Code, §§502.258-502.266, to authorize the department to issue Legion of Valor license plates to recipients of specified military decorations. Senate Bill 209, 74th Legislature, amended Texas Civil Statutes, Article 6675a by adding §5q to authorize the department to issue Peace Officer license plates to officers wounded in the line of duty, and to the surviving spouse, parent, or adult child of an officer killed in the line of duty. Senate Bill 832, 74th Legislature, 1995, amended Texas Civil Statutes, Article 6675a by adding §5q to authorize the department to issue U.S. Olympic Committee license plates. Senate Bill 971, 74th Legislature, 1995, re-codifies the statutes relating to transportation to the Transportation Code. Senate Bill 981, 74th Legislature, 1995, amended Texas Civil Statutes, Article 6675a-6c, now codified as Transportation Code, §502.353 to eliminate 24-hour permits as legal vehicle registration for the movement of foreign commercial vehicles on Texas highways.

Amended §17.21 establishes the definitions as used in this subchapter and includes definitions moved from §17.50.

Amended §17.22 establishes the department's policies and procedures for motor vehicle registration. The amendments include policies regarding the registration of vehicles which have been issued salvage or nonrepairable motor vehicle certificates of title, policies and procedures for the registration of former military vehicles, and policies and procedures regarding the replacement of lost, stolen or mutilated registration symbols, tabs, devices or number plates.

Amended §17.28 establishes the department's policies and procedures for the application and issuance of special category license plates, symbols and tabs. The amendments include policies and procedures regarding the following new special category license plates: Foreign Organization license plates, Legion of Valor license plates, Peace Officer license plates, and U.S. Olympic Committee license plates. Amendments also include policies and procedures regarding the issuance of former military vehicle registration numbers and revised procedures regarding U.S. Armed Forces and Log Loader license plates.

Amended §17.30 establishes the department's policies and procedures for the application and issuance of commercial vehicle registration. Amendments concern the issuance of Combination license plates for vehicles with 24-hour temporary permits. The issuance of 24-hour temporary permits was discontinued with a previous rule adoption (43 Texas Administrative Code, §17.23, relating to Temporary Permits).

Amended §17.50 establishes the department's policies and procedures regarding the issuance of exempt and alias vehicle registration. The amendments include minor organizational revisions to clarify procedures and to conform with the structure of existing sections in this subchapter, as well as to provide new requirements regarding how vehicles bearing license plates with the word "exempt" shall display the agency's name on all vehicles registered under this section, and method by which exempt agencies may obtain exempt license plates without the word "exempt" printed on such license plates.

On March 26, 1996, a public hearing was held to receive comments, views, or testimony concerning the proposed amendments to §§17.21-17.22, §17.28, §17.30, and §17.50, concerning, respectively: definitions; motor vehicle registration; special category license plates, symbols, and tabs; commercial vehicle registration; and exempt and alias vehicle registration. The Texas Department of Mental Health and Mental Retardation indicated that it supported the rules. Insurance Auto Auctions submitted written comments with suggested revisions.

Insurance Auto Auctions suggested §17.22(a) and §17.22(b)(2)(A), be revised to include that if the "most current ownership document" is a salvage or nonrepairable motor vehicle certificate of title, the vehicle may not be operated upon a public roadway. The department has reviewed these subsections and has determined that the term "issued" indicates the ownership document referred to is the most current ownership document and therefore, the vehicle may not be operated upon the public roadways until such document is surrendered with an application for a Rebuilt Salvage or Nonrepairable Certificate of Title. Therefore, these subsections will not be revised.

A citation correction has been made to the definition of light truck in §17.21. Citations corrections have also been made in §17.22(f)(2), §17.28(b)(6),(12),(14), and (18).

For clarity, §17.28(e)(2)(B) has been revised to add "if applicable" in reference to the submission of statutory fees when returning a registration renewal notice for special category license plates.

For clarity, §17.28(e)(2)(C), relating to special category license plate renewal fees, has been amended to remove the reference to these categories which require no fee or a reduced fee.

The amended sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Transportation Code, Chapter 502 which authorizes the department to carry out the provisions of those laws governing the issuance of motor vehicle registration.

§17.21. Definitions.

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

Affidavit for alias exempt registration-A form prescribed by the director that must be executed by an exempt law enforcement agency to request the issuance of exempt registration in the name of an alias.

Agent-A duly authorized representative possessing legal capacity to act for an individual or legal entity.

Alias-The name of a vehicle registrant reflected on the registration, different than the name of the legal owner of the vehicle.

Alias exempt registration-Registration issued under an alias to a specific vehicle to be used in covert criminal investigations by a law enforcement agency.

County or city civil defense agency-An agency authorized by a commissioner's court order or by a city ordinance to provide protective measures and emergency relief activities in the event of hostile attack, sabotage, or natural disaster.

Executive administrator-The director of a federal agency, the director of a Texas state agency, the sheriff of a Texas county, or the chief of police of a Texas city that by law possesses the authority to conduct covert criminal investigations.

Exempt agency-A governmental body exempted by statute from paying registration fees when registering motor vehicles.

Exempt license plates-Specially designated license plates issued to certain vehicles owned or controlled by exempt agencies.

Fire fighting equipment-Equipment mounted on fire fighting vehicles used in the process of fighting fires, including, but not limited to, ladders and hoses.

Light truck-As defined in Transportation Code, §541.201, any truck with a manufacturer's rated carrying capacity not to exceed two thousand pounds, including those trucks commonly known as pickup trucks, panel delivery trucks, and carryall trucks.

Owner-In accordance with Transportation Code, §502.001, any person who holds the legal title of a vehicle or who has the legal right of possession thereof, or the legal right of control of said vehicle.

Passenger car-In accordance with Transportation Code, §502.001, any motor vehicle other than a motorcycle, golf cart, or a bus, designed or used primarily for the transportation of persons.

Vehicle description-Information regarding a specific vehicle, including, but not limited to, the vehicle make, year model, body style, and vehicle identification number.

Volunteer fire department-An association that is organized for the purpose of answering fire alarms, extinguishing fires, and providing emergency medical services.

§17.22. Motor Vehicle Registration.

(a) Registration. Unless otherwise exempted by law or this chapter, a vehicle to be used upon the public highways of this state must be registered in accordance with Transportation Code, Chapter 502 and the provisions of this section. Texas Civil Statutes, Article 6687-1(37A)(j) and (n), and §17.8 of this title (relating to Certificates of Title for Salvage Vehicles) prohibit registration of a vehicle whose owner has been issued a salvage or nonrepairable motor vehicle certificate of title. These vehicles may not be operated upon a public roadway.

(b) Initial application for vehicle registration.

(1) An applicant for initial vehicle registration must file an application on a form prescribed by the department. The form shall at a minimum require:

(A) the signature of the owner;

(B) the motor vehicle description which includes, but is not limited to, the motor vehicle's year, make, model, vehicle identification number, body style, manufacturer's rated carrying capacity in tons for commercial motor vehicles, and empty weight;

(C) the license plate number;

(D) the odometer reading, or the word "exempt" if the motor vehicle is exempt from federal and state odometer disclosure requirements;

(E) the name and complete address of the applicant; and

(F) the name, mailing address, and date of any liens.

(2) The application must be accompanied by the following documents:

(A) evidence of vehicle ownership as specified in Transportation Code, §501.030, unless the vehicle has been issued a salvage or nonrepairable motor vehicle certificate of title in accordance with Texas Civil Statutes, Article 6687-1 (37A)(j) and (n);

(B) registration fees as may be prescribed by law;

(C) any local fees or other fees as may be prescribed by law and collected in conjunction with registering a vehicle;

(D) evidence of financial responsibility as required Transportation Code, §502.153, unless otherwise exempted by law; and

(E) any other documents or fees required by law.

(3) Place of registration. An initial application for registration shall be filed with the tax assessor-collector of the county in which the owner resides; provided, however:

(A) registration involving the transfer of vehicle ownership by a motor vehicle dealer shall be governed by 16 Texas Administrative Code, §§111.1-111.16; and

(B) an application for registration as a prerequisite to filing an application for certificate of title may be filed with the county tax assessor-collector in the county in which the motor vehicle is purchased or encumbered.

(c) Vehicle registration insignia.

(1) Upon receipt of a complete initial application for registration with the accompanying documents and fees, the department will issue vehicle registration insignia to be displayed on the vehicle for which the registration was issued for the current registration period.

(A) If the vehicle has a windshield, the symbol, tab or other device prescribed by and issued by the department must be attached to the inside lower left corner of the vehicle's front windshield within six inches of the vehicle inspection sticker in a manner that will not obstruct the vision of the driver.

(B) If the vehicle has no windshield, the symbol, tab, or other device prescribed by and issued by the department shall be attached to the rear license plate.

(C) If the vehicle is registered as a Former Military Vehicle as prescribed by §17.28(b)(14) of this title (relating to Special Category License Plates, Symbols, and Tabs), the vehicle's

registration number shall be displayed in lieu of displaying a symbol, tab, or license plate.

(i) Former Military Vehicle registration numbers shall be displayed on a prominent location on the vehicle in numbers and letters of at least two inches in height.

(ii) To the extent possible, the location and design of the Former Military Vehicle registration number must conform with the vehicle's original military registration number.

(2) Unless otherwise prescribed by law, each vehicle registered under this subchapter must display two license plates, one at the front and one at the rear of the vehicle.

(3) The provisions of paragraph (1) of this subsection do not apply to vehicles registered with annual license plates issued by the department.

(d) Vehicle registration renewal.

(1) A vehicle owner shall apply to the tax assessor-collector of the county in which the owner resides for registration renewal prior to the expiration of the vehicle's registration.

(2) The department will mail a license plate renewal notice, indicating the proper registration fee and the month and year the registration expires to each vehicle owner approximately six to eight weeks prior to the expiration of the vehicle's registration.

(3) The license plate renewal notice must be returned by the vehicle owner to the appropriate county tax assessor- collector or his or her deputy, either in person or by mail, and shall be accompanied by the following documents and fees:

(A) registration renewal fees as may be prescribed by law;

(B) any local fees or other fees as may be prescribed by law and collected in conjunction with registration renewal; and

(C) evidence of financial responsibility as required by Transportation Code, §502.153, unless otherwise exempted by law.

(4) If a renewal notice is lost, destroyed, or not received by the vehicle owner, the vehicle may be registered if the owner presents personal identification acceptable to the tax assessor-collector. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(5) Renewal of expired vehicle registrations.

(A) In accordance with Transportation Code, §502.407, a vehicle with an expired registration may not be operated upon the highways of the state after the fifth day after the date a vehicle registration expires.

(B) A 20% delinquency penalty is due any time a vehicle is operated upon the public streets or highways without the required registration.

(C) If an owner renews the registration of a vehicle more than one month after the previous registration has expired and the vehicle has not been operated upon the public streets or highways, the vehicle owner will be required to execute a non-use affidavit stating such, and the registration fee will be prorated for the balance of the registration year.

(D) If an owner renews the registration of a vehicle more than one month after the previous registration has expired and cannot execute the non-use affidavit because the vehicle has been operated, the full annual fee shall be collected plus a 20% delinquency penalty as provided by Transportation Code, §502.176.

(6) License plate reissuance and recall program.

(A) The county tax assessor-collectors are authorized to issue new multi-year license plates at no additional charge upon request by the owner at the time of registration renewal, provided the current plates are over five years old.

(B) The county tax assessor-collectors shall issue new multi-year license plates at no additional charge at the time of registration renewal provided the current plates are over eight years old.

(e) Replacement of registration symbol, tab, device, or number plates.

(1) When the registration symbol, tab, device or number plates are lost, stolen, or mutilated, a replacement may be obtained from any county tax assessor-collector as prescribed by law.

(2) The owner must properly execute a replacement affidavit, containing the vehicle description, original license plate number, and sworn statement that the registration symbol, tab, device, or number plates furnished for the vehicle described have been lost, stolen, or mutilated, and will not be used on any other vehicle.

(3) The owner's remaining part of the registration symbol, tab, device, or number plates must be removed and surrendered to the department upon issuance of the replacement and upon request by the county tax assessor-collector, the owner's current year's license receipt.

(f) Out-of-state vehicles. A vehicle brought to Texas from out-of-state must be registered within 30 days of the date which the owner establishes residence or secures gainful employment. Accompanying a completed application, an applicant shall provide:

(1) an application for certificate of title as required by the Certificate of Title Act, Transportation Code, Chapter 501, if the vehicle to be registered has not been previously titled in this state; and

(2) an identification certificate required by the Transportation Code, §548.256 and §501.030.

(g) Enforcement of traffic warrant. The department or a county tax assessor-collector may, pursuant to the provisions of a contract entered into under Transportation Code, §702.003, refuse to register a vehicle owned by a person for whom a warrant of arrest is outstanding for failure to appear or pay a fine on a complaint involving a violation of a traffic law.

§17.28. Special Category License Plates, Symbols, and Tabs.

(a) Purpose and Scope. Transportation Code, §502.201-502.288, charge the department with the responsibility of issuing a plate or plates, symbols, tabs, or other devices which, when attached to a vehicle as prescribed by the department, act as the legal registration insignia for the period issued. In addition, these articles charge the department with providing special category license plates, symbols, and tabs. In order for the department to efficiently and effectively perform these duties, this section prescribes the policies

and procedures for the application, issuance, and renewal of special category license plates, symbols, and tabs.

(b) Plate Categories - The department will issue the following special category license plates, symbols, and tabs.

(1) Amateur Radio Operator license plates.

(A) In accordance with Transportation Code, §502.282, the department will issue Amateur Radio Operator license plates bearing the words "Texas Radio Opr" to a person who:

(i) owns a passenger car or truck that has a manufacturer's rated carrying capacity not to exceed 2,000 pounds;

(ii) provides evidence of holding an unrevoked and unexpired official amateur radio station license issued by the Federal Communications Commission; and

(iii) regularly operates mobile amateur radio equipment in the vehicle.

(B) Amateur Radio Operator license plates will display the owner's official amateur call letters.

(2) Antique license plate. In accordance with Transportation Code, §502.275, the department will issue Antique license plates bearing the words "Antique Vehicle" or "Antique Motorcycle" to an owner of a vehicle that is:

(A) 25 or more years old;

(B) used for exhibitions, club activities, parades, and other functions of public interest; and

(C) not used for regular transportation.

(3) Antique Validation tab. In accordance with Transportation Code, §502.275, the department will issue Antique Validation tabs for display on existing Texas license plates that were originally issued the same year as the model year of the antique vehicle.

(4) Civil Air Patrol license plates. In accordance with Transportation Code, §502.261, the department will issue Civil Air Patrol license plates bearing the words "Texas Wing Civil Air Patrol" to a person who:

(A) owns a passenger car or a light commercial vehicle that has a manufacturer's rated carrying capacity of one ton or less; and

(B) provides evidence of membership in the United States Air Force Auxiliary, Civil Air Patrol.

(5) Classic Auto/Truck windshield validation sticker. In accordance with Transportation Code, §502.274, the department will issue a Classic Auto/Truck windshield validation sticker to an owner of a passenger car or a light commercial motor vehicle that:

(A) has a manufacturer's rated carrying capacity of one ton or less; and

(B) is 25 or more years old; if the vehicle's Texas license plates were originally issued the same year as the model year of the vehicle.

(6) Classic license plates. In accordance with Transportation Code, §502.274, the department will issue Classic license plates bearing the legend "Classic Auto" or "Classic Truck" to an owner of a passenger car or light commercial motor vehicle that:

(A) has a manufacturer's rated carrying capacity of one ton or less; and

(B) is 25 or more years old.

(7) Collegiate license plates. In accordance with Transportation Code, §502.270, the department will issue collegiate license plates bearing the name and insignia of qualifying public or private institutions of higher education to an owner of a passenger car or light commercial vehicle that has a manufacturer's rated carrying capacity of one ton or less.

(8) Congressional Medal of Honor license plates.

(A) In accordance with Transportation Code, §502.255, the department will issue Congressional Medal of Honor license plates bearing the words "Congressional Medal of Honor" to a person who:

(i) owns a passenger car or a light commercial vehicle that has a manufacturer's rated carrying capacity of one ton or less; and

(ii) has received the Congressional Medal of Honor.

(B) An owner operating a vehicle bearing Congressional Medal of Honor license plates shall have the same parking privileges described in Transportation Code, §681.008.

(9) Cotton Vehicle license plates. In accordance with Transportation Code, §502.277, the department will issue Cotton Vehicle license plates bearing the words "Cotton Vehicle" to an owner of a motor vehicle that only transports seed cotton modules, cotton, or equipment used in transporting or processing cotton.

(10) Disabled Veteran license plate.

(A) In accordance with Transportation Code, §502.254, the department will issue Disabled Veteran license plates bearing the words "Disabled Vet" to the following owners of a passenger car or light commercial vehicle that has a manufacturer's rated carrying capacity of one ton or less:

(i) a veteran of the U.S. Armed Forces with a service-connected disability of at least 60%, or a 40% service connected disability due to the amputation of a lower extremity, who receives compensation from the federal government because of such disability;

(ii) an organization that owns a motor vehicle used exclusively for the transportation of disabled veterans without charge; or

(iii) the surviving spouse of a deceased disabled veteran, if such license plates were issued to the veteran prior to the time of death, and as long as that surviving spouse remains unmarried.

(B) A vehicle on which Disabled Veteran license plates are displayed is exempt from the payment of parking fees in accordance with Transportation Code, §681.008.

(11) Disaster Relief license plates. In accordance with Transportation Code, §502.203, the department will issue Disaster Relief license plates bearing the word "Disaster" to an owner of a commercial motor vehicle, truck-tractor, trailer, and semitrailer that

is the property of and used exclusively by a non-profit, disaster relief organization in emergency situations.

(12) Foreign Organization license plates. In accordance with Texas Civil Statutes, Article 6675a-5e.4(a-1) as amended, the department will issue Foreign Organization license plates bearing the words "Foreign Organization" to an instrumentality established by a foreign government recognized by the United States before January 1, 1979, that is without official representation or diplomatic relations with the United States, for a passenger car or light commercial motor vehicle that has a manufacturer's rated carrying capacity of one ton or less.

(13) Forestry Vehicle license plates. In accordance with Transportation Code, §502.280, the department will issue Forestry Vehicle license plates bearing the words "Forestry Vehicle" to an owner of a vehicle used exclusively for transporting forest products in their natural state, including logs, debarked logs, untreated ties, stave bolts, plywood bolts, pulpwood billets, wood chips, stumps, sawdust, moss, bark, wood shavings,and property used in the production of those products.

(14) Former Military Vehicle registration number. In accordance with Texas Civil Statutes, Article 6675a-5a, as amended, the department will issue a registration number in lieu of displaying a symbol, tab, or license plate to the owner of a vehicle that:

(A) is a passenger car, truck, or motorcycle;

(B) has been, but no longer is, used by the armed forces of a national government;

(C) displays markings indicating it was a military vehicle;

(D) is used for exhibitions, club activities, parades, and other functions of public interest; and

(E) is not used for regular transportation.

(15) Former Prisoner of War license plates. In accordance with Transportation Code, §502.257, the department will issue Former Prisoner of War license plates bearing the words "Former POW" to an owner of a passenger car and light commercial vehicle that has a manufacturer's rated carrying capacity of one ton or less, if the owner provides evidence that he or she is:

(A) honorably discharged from the U.S. Armed Forces and was captured and incarcerated by an enemy of the United States during a period of conflict with the United States; or

(B) the surviving spouse of a former prisoner of war and remains unmarried.

(16) Honorary Consul license plates. In accordance with Transportation Code, §502.267, the department will issue Honorary Consul license plates bearing the words "Honorary Consul" to a person who:

(A) owns a passenger car or light commercial vehicle that has a manufacturer's rated carrying capacity of one ton or less; and

(B) is an honorary consul authorized by the United States government to perform consular duties.

(17) Korea Veteran license plates. In accordance with Transportation Code, §502.263, the department will issue Korea Veteran license plates bearing the words "Korea Veteran" to an owner of a passenger car or light commercial vehicle that has a manufacturer's carrying capacity rated of one ton or less, if the owner provides evidence that he or she:

(A) served in a branch of the U.S. Armed Forces after June 26, 1950 and before February 1, 1955; and

(B) was honorably discharged from the U.S. Armed Forces.

(18) Legion of Valor license plates. In accordance with Texas Civil Statutes, Article 6675a-5k as amended, the department will issue Legion of Valor license plates bearing the words "Legion of Valor" to an owner of a passenger car or light commercial vehicle that has a manufacturer's carrying capacity rate of one ton or less, if the owner provides evidence that he or she is a honorably discharged veteran of the armed forces of the United States or is a member of the armed forces of the United States on active duty, and is the recipient of one of the following military decorations:

(A) Air Force Cross;

(B) Air Force Distinguished Service Cross;

(C) Army Distinguished Service Cross;

(D) Navy Cross; or

(E) Congressional Medal of Honor.

(19) Log Loader Vehicle license plates. In accordance with Transportation Code, §502.279, the department will issue Log Loader Vehicle license plates bearing the words "Log Loader" to an owner of a vehicle that does not haul logs and on which is mounted machinery used only for loading logs on other vehicles.

(20) Non-Profit Organization license plates. In accordance with Transportation Code, §502.273, the department will issue Non-Profit Organization license plates bearing the insignia of a non-profit organization to an organization member who is an owner of a passenger car or a light commercial vehicle that has a manufacturer's rated carrying capacity of one ton or less.

(21) Operation Desert Storm license plates. In accordance with Transportation Code, §502.265, the department will issue Operation Desert Storm license plates bearing the words "Desert Storm" to an owner of a passenger car or light commercial vehicle that has a manufacturer's rated carrying capacity of one ton or less, if the owner provides evidence that he or she:

(A) took part in Operation Desert Shield/Storm as a member of the U.S. Armed Forces; and

(B) is an honorably discharged veteran or remains a member of the U.S. Armed Forces.

(22) Parade license plates. In accordance with Transportation Code, §502.283, the department will issue Parade license plates bearing the suffix "PAR" to a non-profit organization that owns and operates a motor vehicle designed, constructed, and used primarily for parade purposes.

(23) Peace Officer license plates. In accordance with Texas Civil Statutes, Article 6675a-5q, the department will issue Peace Officer license plates bearing the words "To Protect and Serve," inscribed above an insignia depicting a yellow rose superimposed on the outline of a badge, to the owner of a passenger car or light

commercial vehicle that has a manufacturer's rated carrying capacity of one ton or less, if the owner provides evidence that he or she:

(A) has been wounded in the line of duty as a peace officer; or

(B) is the surviving spouse, parent, or adult child of a person killed in the line of duty as a peace officer.

(24) Pearl Harbor Survivor license plates.

(A) In accordance with Transportation Code, §502.259, the department will issue Pearl Harbor Survivor license plates bearing the legend "Pearl Harbor Survivor" to an owner of a passenger car or light commercial vehicle that has a manufacturer's rated carrying capacity of one ton or less, if the owner provides evidence that he or she:

(i) served in the U.S. Armed Forces;

(ii) was stationed in the Hawaiian islands on December 7, 1941; and

(iii) survived the attack on Pearl Harbor.

(B) Pearl Harbor license plates may be issued to the surviving spouse of a Pearl Harbor survivor for as long as the surviving spouse remains unmarried.

(25) Personalized license plates. In accordance with Transportation Code, §502.251, the department will issue Personalized license plates, subject to the restrictions of subsection (d)(5) of this section, which display an approved personalized license plate number, to owners of all classifications of vehicles except:

(A) those vehicles bearing license plates which receive full or partial exemption from regular registration fees; and

(B) trailers and semitrailers with gross weights in excess of 10,000 pounds.

(26) Purple Heart license plates.

(A) In accordance with Transportation Code, §502.260, the department will issue Purple Heart license plates bearing the words "Purple Heart" to an owner of a passenger car or light commercial motor vehicle that has a manufacturer's rated carrying capacity of one ton or less, if the owner provides evidence that he or she is:

(i) a recipient of the Purple Heart medal; and

(ii) an honorably discharged veteran or remains on active duty with U.S. Armed Forces.

(B) Purple Heart license plates may be issued to the surviving spouse of a Purple Heart medal recipient for as long as the surviving spouse remains unmarried.

(27) State Capitol license plates. In accordance with Transportation Code, §502.269, the department will issue State Capitol license plates depicting the state capitol to an owner of a passenger car or light commercial motor vehicle that has a manufacturer's rated carrying capacity of one ton or less.

(28) State Official license plates. In accordance with Senate Concurrent Resolution No. 37, 67th Legislature; Senate Concurrent Resolution No. 70, 71st Legislature; and House Concurrent Resolution Number 138, 73rd Legislature; the department will issue State Official license plates bearing the appropriate designation to a vehicle owner who is a member of the U.S. Congress or Texas Legislature, is a U.S. Judge or Magistrate, and to the following elected state officials:

(A) Governor;

(B) Lieutenant Governor;

(C) Speaker of the House;

(D) Attorney General;

(E) Comptroller of Public Accounts;

(F) State Treasurer;

(G) General Land Office Commissioner;

(H) Agriculture Commissioner;

(I) Secretary of State;

(J) Railroad Commissioner;

(K) Supreme Court Justice;

(L) Court of Criminal Appeals Judge; and

(M) Board of Education Member.

(29) Texas Aerospace Commission license plates. In accordance with Transportation Code, §502.271, the department will issue Texas Aerospace Commission license plates bearing the words "Aerospace Commission" to an owner of a passenger car or light commercial motor vehicle that has a manufacturer's rated carrying capacity of one ton or less.

(30) Texas Commission on the Arts license plates. In accordance with Transportation Code, §502.272, the department will issue Texas Commission on the Arts license plates bearing the words "State of the Arts" to an owner of a passenger car or light commercial vehicle that has a manufacturer's rated carrying capacity of one ton or less.

(31) Texas National Guard and State Guard license plates. In accordance with Transportation Code, §502.256, the department will issue Texas National Guard and State Guard license plates bearing the words "Texas Guard" to an owner of a passenger car or light commercial motor vehicle that has a manufacturer's rated carrying capacity of one ton or less, if the owner provides evidence that he or she is:

(A) an active member of the Texas Army National Guard, the Texas Air National Guard, or the Texas State Guard; or

(B) a retired guard member who has completed 20 years of satisfactory service.

(32) U.S. Armed Forces license plates.

(A) In accordance with Transportation Code, §502.256, the department will issue U.S. Armed Forces license plates bearing the name of the appropriate branch of the U.S. Armed Forces to an owner of a passenger car or light commercial vehicle who provides evidence that the owner is an active, retired, or honorably discharged member of a branch of the U.S. Armed Forces.

(B) U.S. Armed Forces license plates may be issued to the surviving spouse of a member killed in action for as long as that spouse remains unmarried.

(33) U.S. Armed Forces Reserve license plates. In accordance with Transportation Code, §502.256, the department will issue U.S. Armed Forces Reserve license plates bearing the words "Armed Forces Reserve" to an owner of a passenger car or light commercial vehicle who provides evidence that the owner is a member of the United States Armed Forces Reserve.

(34) U.S. Coast Guard Auxiliary license plates. In accordance with Transportation Code, §502.261, the department will issue U.S. Coast Guard Auxiliary license plates bearing the words "Coast Guard Auxiliary" to an owner of a passenger car or light commercial vehicle who provides evidence the owner is a member of the United States Coast Guard Auxiliary.

(35) U.S. Marine Corps League license plates. In accordance with Transportation Code, §502.261, the department will issue Marine Corps League license plates bearing the words "Marine Corps League" and the emblem of the U.S. Marine Corps League to a person who:

(A) owns a passenger car or light commercial vehicle that has a manufacturer's rated carrying capacity of one ton or less; and

(B) provides evidence that the owner is a member of the Marine Corps League or its auxiliary.

(36) U.S. Olympic Committee license plates. In accordance with Texas Civil Statutes, Article 6675a-5q, the department will issue U.S. Olympic Committee license plates bearing the words "United States Olympic Committee" to an owner of a passenger car or light commercial motor vehicle that has a manufacturer's rated carrying capacity of one ton or less.

(37) Vietnam Veteran license plates.

(A) In accordance with Transportation Code, §502.264, the department will issue Vietnam Veteran license plates bearing the words "Vietnam Veteran" to an owner of a passenger car or light commercial vehicle that has a manufacturer's rated carrying capacity of one ton or less, if the owner provides evidence that he or she:

(i) served in a branch of the U.S. Armed Forces after August 4, 1964 and before May 8, 1975; and

(ii) is an honorably discharged veteran or remains a member of the U.S. Armed Forces.

(B) Vietnam Veteran license plates may be issued to the surviving spouse of a qualifying Vietnam veteran for as long as the surviving spouse remains unmarried.

(38) Volunteer Firefighter license plates. In accordance with Transportation Code, §502.268, the department will issue Volunteer Firefighter license plates bearing the words "Vol Firefighter" to an owner of a passenger car or light commercial vehicle who provides a certificate of certification as a volunteer firefighter from the Texas Volunteer Firefighters and Fire Marshals Certification Board.

(39) World War II Veteran license plates. In accordance with Transportation Code, §502.262, the department will issue World War II Veteran license plates bearing the words "WWII Veteran" to an owner of a passenger car or light commercial vehicle that has a manufacturer's rated carrying capacity of one ton or less, if the owner provides evidence that he or she:

(A) served in a branch of the U.S. Armed Forces after December 6, 1941 and before January 1, 1947; and

(B) is an honorably discharged veteran or remains a member of the U.S. Armed Forces.

(c) Initial application for special category license plates, symbols, or tabs.

(1) Application Process.

(A) Procedure. An owner of a vehicle registered as specified in §17.22 of this title (relating to Motor Vehicle Registration), who wishes to apply for a special category license plate, symbol, or tab must do so on a form prescribed by the director.

(B) Form requirements. The application form shall at a minimum require:

(i) the signature of the owner; and

(ii) the name and complete address of the applicant.

(2) Fees and Documentation.

(A) The application must be accompanied by registration fees as required by law, with the following special category license plates exempted from regular registration fees by statute:

(i) Congressional Medal of Honor;

(ii) Disabled Veteran;

(iii) Disaster Relief;

(iv) Foreign Organization;

(v) Former Prisoner of War;

(vi) Legion of Valor;

(vii) Log Loader;

(viii) Parade;

(ix) Pearl Harbor Survivor (first set per applicant only); and

(x) Purple Heart Recipient (first set per applicant only).

(B) The application must be accompanied by statutorily prescribed special category license plate fees.

(C) The application must be accompanied by local fees or other fees as may be prescribed by law and collected in conjunction with registering a vehicle, with the exception of vehicles bearing license plates described in subparagraph (A) of this section, which are exempted from such fees.

(D) The application must include prescribed evidence of eligibility for any special category license plates other than personalized, collegiate, State Capitol, Texas Aerospace Commission, Texas Commission on the Arts, and U.S. Olympic Committee, which may include, but is not limited to:

(i) a license issued by a governmental entity;

(ii) a letter issued by a governmental entity on that agency's letterhead;

(iii) discharge papers; and

(iv) marriage and death certificates.

(3) Place of application. All initial applications for special category license plates must be made with the department, with the exception of "Cotton Vehicle" license plates which may be made either with the department or with the County Tax Assessor-Collector in the owner's resident county.

(d) Initial issuance of special category license plates, symbols, or tabs.

(1) Issuance. Upon receipt of a complete initial application for registration, accompanied by the required documentation and fees, the department will issue special category license plates, symbols, or tabs to be displayed on the vehicle for which the license plate was issued for the current registration period. If the vehicle for which the special category license plates are issued is currently registered, the owner must surrender the license plates currently displayed on the vehicle, along with the corresponding license receipt, before the special category license plates may be issued.

(2) Number of plates issued

(A) Two plates. Unless otherwise listed in subparagraph

(B) of this paragraph, two special category license plates, each bearing the same license plate number, will be issued per vehicle.

(B) One plate. One license plate will be issued per vehicle for the following license plate categories:

(i) Cotton Vehicle;

(ii) Disaster Relief;

(iii) Forestry Vehicle;

(iv) Log Loader; and

(v) Parade.

(C) Registration number. One registration number will be assigned for Former Military Vehicles. The applicant may select this number, or the department will assign it.

(3) Assignment of plates.

(A) Title holder. Unless otherwise exempted by law or this section, the vehicle on which special category license plates, symbols, or tabs is to be displayed shall be titled in the name of the person to whom the special category license plates, symbols, or tabs is assigned, or a certificate of title application shall be filed in that person's name at the time the special category license plates, symbols, or tabs are issued.

(B) If the vehicle is titled in a name other than that of the applicant, the applicant must provide evidence of having the legal right of possession and control of the vehicle.

(C) Leased vehicle. In the case of a leased vehicle, the department shall require a copy of the lease agreement verifying the vehicle is currently leased by the person to whom the special category license plate, symbol, or tab was assigned.

(4) Number of vehicles.

(A) Unlimited vehicles. An owner may purchase special category license plates, symbols, or tabs for an unlimited number of vehicles, with the exception of the categories listed in subparagraphs (B) and (C) of this paragraph.

(B) One vehicle. The following categories are limited by statute to one set of special category license plates per owner:

(i) Congressional Medal of Honor;

(ii) Disabled Veteran;

(iii) Former Prisoner of War;

(iv) Legion of Valor;

(v) Non-Profit Organization; and

(vi) U.S. Armed Forces Reserves; and

(vii) Volunteer Firefighter

(C) Two vehicles. State Official license plates are limited to two sets of special category license plates per owner.

(5) Personalized plate numbers.

(A) Issuance. The director will issue a personalized license plate number to be displayed on the standard passenger license plate or on special category license plates subject to the exceptions set forth in this paragraph and in subsection (b)(25) of this section.

(B) Character limit. A personalized license plate number may not contain more than six alpha or numeric characters, or a combination or such characters. Certain personalized special category license plates may not, depending upon the license plate design and space limitations, contain more than five alpha or numeric characters, or a combination of such characters. Spaces, hyphens, periods, or one silhouette of the state of Texas may be used in conjunction with the license plate number.

(C) Personalized plates not approved. A personalized license plate number will not be approved if the number:

(i) conflicts with the department's current or proposed regular license plate numbering system;

(ii) is determined to be obscene or objectional by the director; or

(iii) is currently issued to another owner.

(D) Categories not available. Personalized license plate numbers are not available for display on the following license plates:

(i) Amateur Radio (other than the official call letters of the vehicle owner);

(ii) Antique Vehicle;

(iii) Armed Forces Reserve;

(iv) Cotton Vehicle;

(v) Disabled Veteran;

(vi) Disaster Vehicle;

(vii) Farm Truck;

(viii) Foreign Organization;

(ix) Forestry Vehicle;

(x) Former Prisoner of War;

(xi) Honorary Consul;

(xii) Legion of Valor;

(xiii) Log loader;

(xiv) Machinery;

(xv) Parade;

(xvi) Permit;

(xvii) Soil Conservation; and

(xviii) Texas Guard.

(E) Fee. The statutorily prescribed personalized license plate fee will be charged in addition to any statutorily prescribed special category license plate fee.

(F) Priority. Once a personalized license plate number has been assigned to an applicant, the owner shall have priority to such number for succeeding years, provided timely renewal application is submitted to the department each year in accordance with subsection (e) of this section.

(e) Special Category license plate renewal.

(1) Length of validation. All special category license plates, symbols, or tabs shall be valid for 12 months from the month of issuance, with the following exceptions.

(A) Five year period. The following license plates and registration numbers are issued for a five year period or remainder of that period, and expire every five years in March; (i) Antique license plates and tabs;

(ii) Former Military Vehicle registration numbers; and

(iii) Parade license plates.

(B) March expiration dates. The following license plates are issued for a 12 month period, or remainder of that period, and expire annually in March:

(i) Congressional Medal of Honor;

(ii) Cotton Vehicle;

(iii) Disaster Relief;

(iv) Disabled Veteran;

(v) Forestry Vehicle;

(vi) Former Prisoner of War;

(vii) Legion of Valor;

(viii) Pearl Harbor Survivor; and

(ix) State Official.

(C) June expiration dates. The following license plates are issued for a 12 month period, or remainder of that period, and expire annually in June:

(i) Armed Forces Reserve;

(ii) Honorary Consular; and

(iii) Texas Guard.

(D) September expiration dates. Log Loader license plates are issued for a 12 month period, or remainder of that period, and expire annually in September.

(E) No expiration date. Foreign Organization license plates are valid for as long as the registered vehicle is owned and operated by the foreign organization.

(2) Renewal.

(A) Renewal Notice. The department will send a special category license plate renewal notice to each owner approximately 90 days prior to the expiration date.

(B) Return of Notice. Upon receipt of the renewal notice, the owner must return the renewal, statutory fee, if applicable, and any required documentation to the department.

(C) Registration Renewal. Upon receipt of the special category license plate renewal the department will notify the owner regarding registration renewal, in accordance with §17.22 (d) of this title (relating to Motor Vehicle Registration).

(D) Reservation of expired plate numbers. The department will reserve a personalized license plate number for sixty days after the expiration date of the plates if not renewed in accordance with this subsection. Subsequent to the sixty days the department may consider an application for the issuance of the unused personalized license plate number to a new applicant. All special category license plate renewals received after expiration of the 60-day period will be treated as new applications.

(E) Issuance of validation insignia. Upon receipt of the License Plate Renewal Notice as specified in this subsection, the department will issue registration validation insignia as specified in §17.22 of this title (relating to Motor Vehicle Registration), except for those plates listed in items (i) or (ii) of this paragraph or unless this section or other law require the issuance of new license plates to the owner.

(i) New license plates shall be issued upon expiration for renewed Antique Vehicle, Congressional Medal of Honor, Disaster Relief, Honorary Consular, Legion of Valor, Parade, and State Official license plates.

(ii) New license plates shall be issued every six years for renewed personalized license plates, and every eight years for other license plate categories, in accordance with the provisions of §17.22 of this title (relating to Motor Vehicle Registration).

(F) Lost or destroyed renewal notices. If a renewal notice is lost, destroyed, or not received by the vehicle owner, the special category license plates, symbol, or tab may be renewed if the owner provides acceptable personal identification along with the appropriate fees and documentation. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(f) Transfer of special category license plates.

(1) Transfer between vehicles.

(A) Transferable between vehicles. If the owner of a vehicle registered with special category license plates disposes of the vehicle during the registration year, the owner's special category license plates may be transferred and displayed upon another vehicle upon proper application with the department, provided that the vehicle to which the plates are transferred:

(i) is titled or leased in the owner's name; and

(ii) meets the vehicle classification requirements for that particular special category license plate, symbol, or tab.

(B) Non-transferable between vehicles. The following special category license plates, symbols, or tabs are non-transferrable between vehicles:

(i) Antique vehicle license plates and tabs;

(ii) Classic vehicle license plates;

(iii) Parade license plates;

(iv) Forestry vehicle license plates; and

(v) Log Loader license plates.

(2) Transfer between owners. Special category license plates are non-transferrable between owners unless such transfer is provided for by law or this section. If the owner of a vehicle registered with special category license plates disposes of the vehicle during the registration year, the special category license plates must be returned to the department and regular replacement plates must be purchased for the vehicle.

(3) Transfer of military plates to surviving spouse. Upon the death of the owner, and proper application with the department, the following special category license plates may be transferred to a surviving spouse who remains unmarried:

(A) Armed Forces, if the member is killed in action.

(B) Disabled Veteran, if Disabled Veteran license plates were issued to the deceased veteran prior to the time of death;

(C) Former Prisoner of War;

(D) Pearl Harbor Survivor;

(E) Purple Heart Recipient; and

(F) Vietnam Veteran.

(4) Transfer through court order. A personalized license number may be transferred without payment of the personalized license plate fee when the owner makes a legal name change, or when the personalized license plate number is awarded to a new owner by court order. The department shall require verification of the court order in both instances, and the vehicle shall be titled or leased in the owner's name as specified in subsection (c) of this section.

(g) Replacement.

(1) Application. When special category license plates, symbols, or tabs are lost, stolen, or mutilated, the owner shall apply directly to the department for the issuance of replacements, except that log loader license plates must be reapplied for and accompanied by the required fees and documentation, in accordance with Transportation Code, §502.279 .

(2) Interim replacement plates. In accordance with the provisions of Transportation Code, §502.184, until the department issues the replacement special category license plates, symbols, or tabs, the owner shall obtain regular replacement license plates, symbols or tabs and pay the statutory replacement plate fee.

(3) Stolen vehicles. The department will not approve the issuance of replacement special category license plates with the same personalized license plate number when the department's records indicate that the vehicle displaying the special category license plates, symbols or tabs, or the license plates, symbols or tabs themselves, were reported as stolen. Upon recovery of the stolen vehicle or license plates, symbols, or tabs, or upon expiration, the department will issue, at the owner's request, replacement special category license plates, symbols, or tabs bearing the same personalized number as those that were stolen.

This agency hereby certifies that the section 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 31, 1996.

TRD-9607626
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Effective date: June 21, 1996
Proposal publication date: March 12, 1996
For further information, please call: (512) 463-8630

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IN ADDITION

1996 Publication Schedule

The following is the 1996 Publication Schedule for the *Texas Register*. Listed below are the deadline dates for these issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Monday and Wednesday of the previous week, and deadlines for a Friday edition are Wednesday of the previous week and Monday of the week of publication. No issues will be published on November 8, December 3, and December 31. An asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON:	DEADLINES FOR RULES BY 10 A.M.	DEADLINES FOR MISCELLANEOUS DOCUMENTS BY 10 A.M.	DEADLINES FOR OPEN MEETINGS BY 10 A.M.
32 Friday, May 3	Wednesday, April 24	Monday, April 29	Monday, April 29
33 Tuesday, May 7	Monday, April 29	Wednesday, May 1	Wednesday, May 1
34 Friday, May 10	Wednesday, May 1	Monday, May 6	Monday, May 6
35 Tuesday, May 14	Monday, May 6	Wednesday, May 8	Wednesday, May 8
36 Friday, May 17	Wednesday, May 8	Monday, May 13	Monday, May 13
37 Tuesday, May 21	Monday, May 13	Wednesday, May 15	Wednesday, May 15
38 Friday, May 24	Wednesday, May 15	Monday, May 20	Monday, May 20
39 Tuesday, May 28	Monday, May 20	Wednesday, May 22	Wednesday, May 22
40 Friday, May 31	Wednesday, May 22	*Friday, May 24	*Friday, May 24
41 Tuesday, June 4	*Tuesday, May 28	Wednesday, May 29	Wednesday, May 29
42 Friday, June 7	Wednesday, May 29	Monday, June 3	Monday, June 3
43 Tuesday, June 11	Monday, June 3	Wednesday, June 5	Wednesday, June 5
44 Friday, June 14	Wednesday, June 5	Monday, June 10	Monday, June 10
45 Tuesday, June 18	Monday, June 10	Wednesday, June 12	Wednesday, June 12
46 Friday, June 21	Wednesday, June 12	Monday, June 17	Monday, June 17

47 Tuesday, June 25	Monday, June 17	Wednesday, June 19	Wednesday, June 19
48 Friday, June 28	Wednesday, June 19	Monday, June 24	Wednesday, June 24
49 Tuesday, July 2	Monday, June 24	Wednesday, June 26	Wednesday, June 26
50 Friday, July 5	Wednesday, June 26	Monday, July 1	Monday, July 1
51 Tuesday, July 9	Monday, July 1	Wednesday, July 3	Wednesday, July 3
Friday, July 12	*2nd Quarterly Index*		
52 Tuesday, July 16	Monday, July 8	Wednesday, July 10	Wednesday, July 10
53 Friday, July 19	Wednesday, July 10	Monday, July 15	Monday, July 15
54 Tuesday, July 23	Monday, July 15	Wednesday, July 17	Wednesday, July 17
55 Friday, July 26	Wednesday, July 17	Monday, July 22	Monday, July 22
56 Tuesday, July 30	Monday, July 22	Wednesday, July 24	Wednesday, July 24
57 Friday, August 2	Wednesday, July 24	Monday, July 29	Monday, July 29
58 Tuesday, August 6	Monday, July 29	Wednesday, July 31	Wednesday, July 31
59 Friday, August 9	Wednesday, July 31	Monday, August 5	Monday, August 5
60 Tuesday, August 13	Monday, August 5	Wednesday, August 7	Wednesday, August 7
61 Friday, August 16	Wednesday, August 7	Monday, August 12	Monday, August 12
62 Tuesday, August 20	Monday, August 12	Wednesday, August 14	Wednesday, August 14
63 Friday, August 23	Wednesday, August 14	Monday, August 19	Monday, August 19
64 Tuesday, August 27	Monday, August 19	Wednesday, August 21	Wednesday, August 21
65 Friday, August 30	Wednesday, August 21	Monday, August 26	Monday, August 26
66 Tuesday, September 3	Monday, August 26	Wednesday, August 28	Wednesday, August 28
67 Friday, September 6	Wednesday, August 28	*Friday, August 30	*Friday, August 30
68 Tuesday, September 10	*Tuesday, September 3	Wednesday, September 4	Wednesday, September 4
69 Friday, September 13	Wednesday, September 4	Monday, September 9	Monday, September 9
70 Tuesday, September 17	Monday, September 9	Wednesday, September 11	Wednesday, September 11
71 Friday, September 20	Wednesday, September 11	Monday, September 16	Monday, September 16

72 Tuesday, September 24	Monday, September 16	Wednesday, September 18	Wednesday, September 18
73 Friday, September 27	Wednesday, September 18	Monday, September 23	Monday, September 23
74 Tuesday, October 1	Monday, September 23	Wednesday, September 25	Wednesday, September 25
75 Friday, October 4	Wednesday, September 25	Monday, September 30	Monday, September 30
Tuesday, October 8	*Third Quarterly Index*		
76 Friday, October 11	Wednesday, October 2	Monday, October 7	Monday, October 7
77 Tuesday, October 15	Monday, October 7	Wednesday, October 9	Wednesday, October 9
78 Friday, October 18	Wednesday, October 9	Monday, October 14	Monday, October 14
79 Tuesday, October 22	Monday, October 14	Wednesday, October 16	Wednesday, October 16
80 Friday, October 25	Wednesday, October 16	Monday, October 21	Monday, October 21
81 Tuesday, October 29	Monday, October 21	Wednesday, October 23	Wednesday, October 23
82 Friday, November 1	Wednesday, October 23	Monday, October 28	Monday, October 28
83 Tuesday, November 5	Monday, October 28	Wednesday, October 30	Wednesday, October 30
Friday, November 8	*No Issue Published*		
84 Tuesday, November 12	Monday, November 4	Wednesday, November 6	Wednesday, November 6
85 Friday, November 15	Wednesday, November 6	*Friday, November 8	*Friday, November 8
86 Tuesday, November 19	*Tuesday, November 12	Wednesday, November 13	Wednesday, November 13
87 Friday, November 22	Wednesday, November 13	Monday, November 18	Monday, November 18
88 Tuesday, November 26	Monday, November 18	Wednesday, November 20	Wednesday, November 20
89 Friday, November 29	Wednesday, November 20	Monday, November 25	Monday, November 25
Tuesday, December 3	*No Issue Published*		
90 Friday, December 6	Wednesday, November 27	Monday, December 2	Monday, December 2
91 Tuesday, December 10	Monday, December 2	Wednesday, December 4	Wednesday, December 4
92 Friday, December 13	Wednesday, December 4	Monday, December 9	Monday, December 9
93 Tuesday, December 17	Monday, December 9	Wednesday, December 11	Wednesday, December 11
94 Friday, December 20	Wednesday, December 11	Monday, December 16	Monday, December 16

95 Tuesday, December 24	Monday, December 16	Wednesday, December 18	Wednesday, December 18
96 Friday, December 27	Wednesday, December 18	Monday, December 23	Monday, December 23
Tuesday, December 31	*No Issue Published*		

How to Use the Texas Register

Information Available: The 13 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.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

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

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 21 (1996) is cited as follows: 21 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 "21 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 21 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: http://www.sos.state.tx.us. The *Register* is available in a plain text version as well as a .pdf (portable document format) version through the Internet. In addition to the Internet version, the *Texas Register* is available online through a dialup bulletin board and as ASCII files on diskettte. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code* (*TAC*) is the official compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*. West Publishing Company, the official publisher of the *TAC*, publishes on an annual basis.

The *TAC* volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

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 26, April 9, July 12, and October 8, 1996). 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).

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