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# TEXAS REGISTER

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***7th Grade***

***Klein Intermediate***

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# THE GOVERNOR

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

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## Executive Orders

THE STATE OF TEXAS EXECUTIVE DEPARTMENT, OFFICE OF THE GOVERNOR—AUSTIN, TEXAS EXECUTIVE ORDER GWB 99-1

RELATING TO THE CONTINUATION OF THE TEXAS COMMISSION ON VOLUNTEERISM AND COMMUNITY SERVICE.

WHEREAS, Texans are a dedicated, selfless people who successfully marshal volunteer resources to meet crises and serve their fellow citizens; and

WHEREAS, genuine volunteerism encourages a sense of stewardship with one's community and helps foster a more responsible and enterprising citizenry; and

WHEREAS, Texas can benefit from a comprehensive and coordinated effort to (i) improve and strengthen the state's volunteerism and community service infrastructure, (ii) maximize the utilization of available resources, and (iii) cultivate volunteer service opportunities that address the state's pressing needs; and

WHEREAS, Congress passed and the President signed the National and Community Services Trust Act of 1993 (the "Act") to reward community service with education grants; and

WHEREAS, Texas Has designated the Texas Commission on Volunteerism and Community Service ("TxCVCS") to serve as the state's administrative vehicle under the Act, and to oversee Texas' participation in programs authorized and appropriated by the Corporation for National and Community Services; and

WHEREAS, in 1995, the 74th Texas Legislature passed House Bill 1863 (now Codified as Texas Labor Code §302.021), which consolidated several job-training, employment, and employment-related educational programs and functions, including programs under the Act, under the authority of the Division of Workforce Development of the Texas Workforce Commission.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, by virtue of the power vested in me, do hereby order that TxCVCS is hereby continued, and, aside from any additional duties prescribed by the Act, is charged with the following responsibilities:

1. Serving as the states liaison to the Corporation for National and Community Service, applying for funding under the Act, overseeing Texas' participation in the relevant programs, and preparing a comprehensive national and community service plan for the state that shall be updated annually;
2. Provident technical assistance, education, information, and other support to Texas' extensive volunteer community, and improving and strengthening the state's volunteerism and community service infrastructure.

3. Promoting innovative and model programs and initiatives that address Texas' educational, public safety, human, and environmental needs;

4. Working closely with faith-based and private charities, community-based groups, voluntary associations, educational entities, and other organizations to promote volunteerism and community service based not on the institutions of government, but on the institutions of civil society, and to:

(a) encourage community services and volunteer participation as a means of community and state problem solving;

(b) promote and support voluntary citizen involvement in various programs throughout the state;

5. Assuming the functions of the Governor's Office of Volunteerism; preparing and presenting the annual Governor's Volunteer Leadership Conference and the annual Governor's Volunteer Awards; coordinating statewide activities of the Texas Pledge-Keeping America's Promise; coordinating a statewide Texas Mentoring Initiative; promoting activities that complement the state's Lone Star Leaders initiative; promoting youth service and youth service leadership through the creation, training and operational support of a network of youth service councils; and supporting other volunteerism-related efforts throughout Texas.

TxCVCS shall remain housed under the authority of the Texas Workforce Commission's Division of Workforce Development, pursuant to §302.021 of the Texas Labor Code. TxCVCS shall continue to accomplish its responsibilities and charges under the direction of, and in cooperation with, the Texas Workforce Commission, which renders administrative and programmatic oversight pursuant to § 302.002 of the Texas Labor Code. While exercising ultimate supervision over TxCVCS' fiscal, personnel, and legal matters, the Workforce Commission is directed to recognize TxCVCS' unique status as a federally-authorized and -funded entity with its own Governor-appointed slate of commissioners.

The total number of voting members on TxCVCS shall be 15, of which no more than 50 percent plus one can be from the same political party. All commissioners shall serve three-year terms. Members may be reappointed and serve up to two consecutive terms. The voting members of TxCVCS who are officers or employees of the state shall not exceed 25 percent (reduced to the nearest whole number) of the total membership. The Governor may replace a TxCVCS commissioner who misses three scheduled meetings. The voting member of TxCVCS shall elect annually one of its voting members to serve as chairperson.

Pursuant to federal law, TxCVCS shall include the following voting members and such other voting members as the Governor may appoint:

1. An individual with expertise in the educational, training, and development needs of youth, particularly disadvantaged youth;
2. An individual with expertise in promoting involvement of senior citizens in service and volunteerism;
3. A representative of community-based organizations within the state;
4. The commissioner of the Texas Education Agency;
5. A representative of local governments in the state;
6. A representative of local labor unions in the state;
7. A representative of business;
8. An individual between the ages of 16 and 25 who is a participant or supervisor in a service program; and
9. A representative of a national service program.

The Governor may also appoint as ex officio, nonvoting members of TxCVCS representatives selected from among officers and employees of state agencies involved with or operating community service, youth service, education, social service, senior service, and job training programs. Nonvoting member shall serve at the pleasure of the Governor.

A member of TxCVCS shall serve without compensation, but may be reimbursed by the Texas Workforce Commission for reasonable and necessary travel expenses incurred while performing approved TxCVCS duties, as provided in the General Appropriations Act.

George W. Bush, Governor of Texas

Filed: September 9, 1999

George W. Bush, Governor of Texas

Filed: September 9, 1999



THE STATE OF TEXAS EXECUTIVE DEPARTMENT, OFFICE OF THE GOVERNOR-AUSTIN, TEXAS EXECUTIVE ORDER GWB 99-2

RELATING TO COMMUNITY-BASED ALTERNATIVES FOR PEOPLE WITH DISABILITIES

WHEREAS, The State of Texas Is committed to providing community-based alternatives for people with disabilities and recognizes that such services advance the best interests of all Texans; and

WHEREAS, Texas seeks to ensure that Texas' community-based programs effectively foster independence and acceptance of people with disabilities; and

WHEREAS, programs such as Community Based Alternatives and Home and Community Services provide the opportunity for people to live productive lives in their home communities; and

WHEREAS, as Governor, I have been a consistent advocate for increasing funds to expand community-based services for the elderly and people with disabilities and, working with the Legislature, have increased funding for such programs by more than \$1.7 billion, a 72 percent increase, since taking office; and

WHEREAS, the 76th Legislature has provided funding to allow an additional 15,000 Texans to live outside of institutional settings through our Medicaid waiver and non-waiver community services; and

WHEREAS, Texas must build upon its success and undertake a broader review of our programs for people with disabilities and ensure services offered are in the most appropriate setting.

NOW, THEREFORE, I, GEORGE W. BUSH, GOVERNOR OF TEXAS, by virtue of the power vested in me, do hereby order the following directives:

1. The Texas Health and Human Services Commission (HHSC) shall conduct a comprehensive review of all services and support systems available to people with disabilities in Texas. This review shall analyze the availability, application, and efficacy of existing community-based alternative for people with disabilities. The review shall focus on identifying affected populations, improving the flow of information about supports in the community, and removing barriers that impede opportunities for community placement. The review shall examine these issues in light of the recent United States Supreme Court decision in *Olmstead v. Zimring*.

2. HHSC shall ensure the involvement of consumers, advocates, providers and relevant agency representatives in this review.

3. HHSC shall submit a comprehensive written report of its findings to the Governor, the Lieutenant Governor, the Speaker of the House, and the appropriate committees of the 77th Legislature no later than January 9, 2001. The report will include specific recommendations on how Texas can improve its community-based programs for people with disabilities by legislative or administrative action.

4. All affected agencies and other public entities shall cooperate fully with HHSC's research, analysis, and production of the report. This report should be made available electronically.

5. Ass opportunities for system improvements are identified, HHSC shall use its statutory authority to effect appropriate changes.

George W. Bush, Governor of Texas

Filed: September 28, 1999



THE STATE OF TEXAS EXECUTIVE DEPARTMENT, OFFICE OF THE GOVERNOR-AUSTIN, TEXAS EXECUTIVE ORDER GWB 99-3

RELATING TO CONTINUING THE GOVERNOR'S COMMISSION FOR WOMEN

WHEREAS, more than half the population of our nation and this state are women;

WHEREAS, it is imperative that the potential of all citizens be utilized to the fullest extent without regard to sex, race, religion, national origin, marital or parental status;

WHEREAS, this administration has a sincere and firm commitment to the goals of achieving equal legal, economic, political, educational, and social opportunity and advancement of women;

WHEREAS, the achievement of these goals is facilitated by continuing and redirecting the Governor's Commission for Women;

NOW, THEREFORE, I, GEORGE W. BUSH, GOVERNOR OF THE STATE OF TEXAS under the authority vested in me, do hereby order that the Governor's Commission for Women, hereafter referred to as the Commission, is continued without interruption.

The Commission will consist of no more than fifteen (15) members appointed by the Governor for a two-year. Members shall serve at the pleasure of the Governor. The Governor shall designate a Chair and Vice-Chair form the membership who shall hold such designations at the pleasure of the Governor. The Governor shall appoint and



executive director who shall assist the Commission as it adopts rules and procedures and develops and implements activities consistent with the provisions of the executive order.

The Commission shall have as its principal charge the achievement of the following:

- (a) Identify and research key issues facing and affecting the women of Texas today;
- (b) Assess and develop strategies and projects-including community outreach activities, public-private partnerships, and coordination of community and state resources-to increase the awareness of, and enhance sensitivities to, these previously identified issues;
- (c) Organize, coordinate and host the Texas Hall of Fame Awards Dinner, which recognizes and honors outstanding women in Texas; and
- (d) Establish a State Agency Council to assist the Commission in fulfilling its charge.

The Commission shall make a biennial written report of its findings, activities, and recommendations to the Governor.

The Commission shall meet quarterly or at the call of the Chair. A majority of the membership shall constitute a quorum for the purpose of conducting the business of the Commission

The members of the Commission shall serve without salary.

All agencies of state and local government are hereby directed to cooperate and assist the Commission in the performance of duties.

This Executive Order shall be effective immediately and shall remain in full force and effect until modified, amended, or rescinded by me.

George W. Bush, Governor of Texas

Filed: September 28, 1999



# OFFICE OF THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at <http://www.oag.state.tx.us>. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

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## Open Records Question

*Parties interested in submitting a brief to the Attorney General concerning this Open Records Question are asked to please submit the brief no later than March 17, 2000.*

Pursuant to §552.011 of the Texas Government Code, in order to maintain uniformity in the application, operation and interpretation of the Public Information Act, this office will prepare and publish a formal decision on the following issue.

**ORQ-50.** Requestor: No requestor.

What constitutes a "business day" or "working day" for purposes of Subchapter G of Chapter 552 of the Government Code? (ID# 134212)

**If further information is needed, please contact Sarah Duke at 936-6736.**

TRD-200001227  
Elizabeth Robinson  
Assistant Attorney General  
Office of the Attorney General  
Filed: February 16, 2000



## Opinions

**Opinion No. JC-0181.** Mr. Harold E. Feeney, Credit Union Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, Re: Whether credit unions may recover from investigating authorities the cost of producing records in response to grand jury subpoenas, and related questions (RQ-0109-JC)

**S U M M A R Y.** A credit union is not entitled to recover the reasonable costs of retrieving and producing documents in response to a grand jury subpoena.

**Opinion No. JC-0182.** The Honorable Ben W. Bud Childers, Fort Bend County Attorney, 301 Jackson, Suite 621, Richmond, Texas 77469-3108, Re: Whether, under Falls County v. Mires, 218 S.W.2d 491 (Tex. Civ. App. Waco 1949, writ ref'd), the two-year statute of limitations bars county court at law judges' claims for unpaid annual salaries going back more than two years (RQ-0116-JC)

**S U M M A R Y.** A county that has paid county court at law judges less annual salary than that to which the judges are statutorily entitled may raise the four-year statute of limitations for causes of action based upon debt, see Tex. Rev. Civ. Prac. Code Ann. 16.004(a)(3) (Vernon Supp. 2000), as an affirmative defense to prevent the judges from collecting on claims more than four years old. The two-year statute of limitations applied in Falls County v. Mires, 218 S.W.2d 491 (Tex. Civ. App. Waco 1949, writ ref'd), no longer applies to causes of action premised upon statutory liability for back pay.

**Opinion No. JC-0183.** Mr. Vernon M. Arrell, Commissioner, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Austin, Texas 78751-2399, Re: Selective service verification for state employment under section 651.005 of the Government Code (RQ-0118-JC)

**S U M M A R Y.** Section 651.005 of the Government Code requires only those males who are between the ages of eighteen and twenty-five years inclusive to furnish proof of either selective service registration or exemption therefrom as a condition of state employment.

**Opinion No. JC-0184.** The Honorable Karen H. Meinardus, Wharton County Attorney, 103 South Fulton, Wharton, Texas 77488, Re: Whether a municipal utility district may employ the spouse of a board member in a paid position (RQ-0111-JC)

**S U M M A R Y.** A municipal utility district's action in employing the spouse of a board member in a paid position violated section 573.041 of the Government Code, even though the related board member abstained from participation in the action.

**For further information, please call (512) 463-2110.**

TRD-200001343  
Elizabeth Robinson  
Assistant Attorney General  
Office of the Attorney General  
Filed: February 23, 2000



Requests for Opinions

**RQ-0177-JC.** Requested by: The Honorable Chris Harris, Chair, Jurisprudence Committee, Texas State Senate, P.O. Box 12068, E1.704, Austin, Texas 78711-2068, regarding time when a municipal tax abatement ends for a property owner who serves on a city council that granted the abatement: Clarification of Attorney General Opinion No. JC-155 (1999) (Request No. 0177-JC) Briefs requested by March 9, 2000.

**RQ-0178-JC.** Requested by: Mr. Louis J. Rodriguez, President, Mid-western State University, 3410 Taft Boulevard, Wichita Falls, Texas 76308-2099, regarding whether donated endowment and scholarship funds may be transferred from a university to the private foundation (Request No. 0178-JC) Briefs requested by March 3, 2000.

**RQ-0179-JC.** Requested by: Ms. Pamela B. Tackett, Executive Director, State Board for Educator Certification, 1001 Trinity Street, Austin, Texas 78701-2603, regarding whether the State Board for Educator Certification may serve as an internet portal for distance-learning courses offered by other entities, and related questions (Request No. 0179-JC) Briefs requested by March 9, 2000.

**RQ-0180-JC.** Requested by: The Honorable Richard J. Miller, Bell County Attorney, P.O. Box 1127, Belton, Texas 76513, regarding whether the state has a right to a jury trial in a juvenile proceeding (Request No. 0180-JC) Briefs requested by March 9, 2000.

**RQ-0181-JC.** Requested by: The Honorable Debra Danburg, Chair, Committee on Elections, Texas House of Representatives, P.O. Box 2910, IN.5, Austin, Texas 78768-2910, regarding constitutionality of section 255.001(a), Texas Election Code, in light of the United States Supreme Court's decision in *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995) (Request No. 0181-JC) Briefs requested by March 9, 2000.

**RQ-0182-JC.** Requested by: The Honorable Bill G. Carter, Chair, Committee on Urban Affairs, Texas House of Representatives, P.O. Box 2910, GW.16, Austin, Texas 78768-2910, regarding use of funds collected by counties for the registration of motor vehicles (Request No. 0182-JC) Briefs requested by March 10, 2000.

**For further information, please call 463-2110.**

TRD-200001325  
Elizabeth Robinson  
Assistant Attorney General  
Office of the Attorney General  
Filed: February 22, 2000



# TEXAS ETHICS COMMISSION

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

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

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Opinions

**EAO-425.** Whether a law firm may make a severance payment, a payment of moving or relocation expenses, or a payment of other benefits to a lawyer who is currently employed by the firm and who has accepted an offer of future employment with a state agency. (AOR-468)

**SUMMARY.** The term "public servant" includes an individual who has been selected as a state employee, even if the individual has not yet assumed his or her duties.

In some circumstances the bribery law in §36.02 of the Penal Code, the gift restrictions in §36.08 of the Penal Code, and the honorarium law in §36.07 of the Penal Code, would prohibit a law firm from making a severance payment, a payment of moving or relocation expenses, or a payment of other benefits to a lawyer currently employed by the firm who has accepted an offer of future employment with a state agency.

**EAO-426** Regarding the application of the revolving door provision in Government Code section §572.054 to a former employee of a state agency who has the opportunity to contract with a publishing

company to write a book that deals with subject matter relevant to the work of the state agency. (AOR-469)

**SUMMARY.** All tasks that are part of a regulatory agency's involvement in negotiating or executing a book endorsement contract are part of the "matter" of the book endorsement. If a former state employee had offered advice or analysis in connection with the matter of the endorsement, he or she could not receive compensation for writing any part of the material that would be the subject of the contemplated endorsement.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200001281  
Tom Harrison  
Executive Director  
Texas Ethics Commission  
Filed: February 18, 2000



# 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 text being underlined. [Brackets] and ~~strike-through~~ of text indicates deletion of existing material within a section.

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## TITLE 1. ADMINISTRATION

### Part 5. GENERAL SERVICES COMMISSION

#### Chapter 117. CENTRALIZED SERVICES DIVISION

##### Subchapter C. CENTRAL STORE

###### 1 TAC §117.51

The General Services Commission proposes an amendments to Title 1, T.A.C., Chapter 117, Subchapter C, Rule §117.51, concerning the operation authority of the Central Supply Store Program. The amendment is being proposed in order to revise statutory citations, to update the terminology for "purchase voucher" to "interagency transaction voucher," and to clarify language.

Frank H. Mays, Director of Support Services, has determined that for the first five-year period the rule is in effect, there will be no adverse effect to state or local government as a result of enforcing these rule.

Frank H. Mays, Director for Support Services, further determines that for each year of the first five-year period the amendment is in effect, the public benefit anticipated as a result of enforcing these rule will be clarification of terminology and statutory citation. There will be no effect on small or large businesses and/or persons.

Comments on the proposal may be submitted to Ann Dillon, General Counsel, General Services Commission, P.O. Box 13047, Austin, TX 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in this issue of the *Texas Register*.

The amendment is proposed under the authority of the Texas Government Code, Title 10, Subtitle D, §2152.003 and §2172.001, which provides the General Services Commission with the authority to promulgate rules necessary to implement the section.

The following code is affected by the amendment: Government Code, Title 10, Subtitle D, Chapter 2172, §2172.001.

###### §117.51. Operation Authority.

(a) The central store is operated pursuant to §2172.001, Texas Government Code [Texas Civil Statutes, Article 601b, §11.04], for state agencies to secure small, desktop supply items, without delay and with a minimum of paperwork and administrative cost.

(b) Purchases from the central store may only be made by authorized personnel from state agencies, the legislature, and legislative agencies who possess a central supply store credit card issued by the commission for this purpose.

(c) The commission is not responsible for loss of any merchandise after charge slips are signed by state agency employees making purchases.

(d) After the close of each month, the commission shall submit an interagency transaction voucher [a purchase voucher], along with a detailed report of receipts and original copies of receipts [copy of signed charge slips] to agencies purchasing items at the central store.

(e) Agencies shall promptly process any interagency transaction voucher [purchase voucher] prepared by the commission. The commission may refuse to permit additional sales transactions with [~~for~~] an agency that has not processed previous interagency transaction vouchers [so long as that agency holds unprocessed a previous voucher].

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

Filed with the Office of the Secretary of State, on February 17, 2000.

TRD-200001232

Ann Dillon

General Counsel

General Services Commission

Earliest possible date of adoption: April 2, 2000

For further information, please call: (512) 463-3960

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## TITLE 7. BANKING AND SECURITIES

### Part 1. FINANCE COMMISSION OF TEXAS

#### Chapter 1. CONSUMER CREDIT COMMISSIONER

##### Subchapter F. ALTERNATE CHARGES FOR CONSUMER LOANS

###### 7 TAC §1.605

The Finance Commission of Texas (the commission) proposes new §1.605 concerning the authority to engage in deferred presentment transactions.

New 7 TAC §1.605 authorizes regulated lenders to engage in deferred presentment transactions under the authority of Subchapter F, Chapter 342. In essence, this rule permits the lender to take and hold a check as collateral for a consumer loan.

New §1.605 establishes the authority for a lender licensed under Chapter 342 to take a check as collateral for the payment of a loan. The practice of deferred presentment transactions has rapidly spread across the United States. This rule recognizes and authorizes this type of loan within the Texas statutory usury framework.

Subsections (a) and (b) of the rule establish the definition and application of a deferred presentment transaction. These subsections are necessary to appropriately define the types of transactions that may fall within the rule's purview.

Subsection (c) clarifies the maximum charge that may be assessed on this type of loan. The subsection applies the provision of Texas Finance Code, §342.253 to a loan of this type.

Subsection (d) establishes a minimum term of 7 days of a loan of this type. Texas Finance Code, §342.258 authorizes the commissioner to establish repayment schedules on a weekly basis. This subsection conforms the rule with the statutory authorization.

Subsection (e) prescribes the procedures for these types of loans. The subsection addresses the disclosures that must be given in addition to providing the measures for rebating the unearned charges and the time limitation on presenting a check for payment.

Disclosures are necessary to adequately inform the borrower of the requirements and cost of this transaction. The time restriction of 31 days for presenting checks to a bank for payment is necessary to prevent checks from becoming stale, in addition, to ensuring that the borrower is adequately aware of the outstanding nature of the check.

Subsection (f) provides that these loans may not be duplicated, that the borrowers may not be prosecuted criminally, and that renewals of these loans are limited.

These rules conform this type of transaction to the Texas statutes.

Leslie L. Pettijohn, Consumer Credit Commissioner has determined that for the first five-year period the rule will be in effect,

there will be no fiscal implications for state or local government as a result of administering or enforcing the rule.

Commissioner Pettijohn also has determined that for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of the adoption of the new rule will be to more adequately inform the public and the regulated entities of the procedures pertaining to engaging in deferred presentment transactions.

The additional cost to the licensee to comply with the rule will be minimal in order to provide this new type of transaction. The licensee will be required to give a uniform disclosure to each consumer and to post a notice. The cost should not exceed the equivalent cost of duplicating a single copy multiplied by the number of transactions that the lender consummates. A standard cost for reproducing a single copy is five to ten cents. If a lender makes 250 loans in a month, then the range of costs should not exceed \$12.50 to \$25.00 per month. The additional cost would be incurred on the basis of the number of transactions and not based upon the dollar volume of the loans. The rule provides no additional requirement for licensure beyond that already required by the Texas Finance Code, Chapter 342.

Comments on the proposed new section may be submitted in writing to Leslie L. Pettijohn, Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207.

The new section is proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code.

The rule affects Subchapter F of Chapter 342, Texas Finance Code.

###### §1.605. Deferred Presentment Transactions.

(a) Definitions. For the purposes of this chapter, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Check means a check, draft, share draft, automatic debit, or other instrument for the payment of money.

(2) Deferred presentment transaction means a short term cash advance made in exchange for the consumer's personal check, in the amount of the advance plus a fee and an agreement, whether express or implied, to hold or defer presentation of the check for payment until a designated future date.

(b) Authorization. A licensee may engage in a deferred presentment transaction under this chapter and subject to the provisions of Texas Finance Code, Chapter 342, Subchapter F. A deferred presentment transaction is a loan and any consideration or charge associated with the transaction is interest. The check serves as security for the payment of the loan and no other security interest in personal property may be taken as collateral. A person who negotiates, arranges, or acts as an agent for an authorized lender in a deferred presentment transaction that has an effective annual rate of greater than 10% is required to be licensed.

(c) Maximum charge. A licensee may not charge an amount in excess of the rates authorized in Texas Finance Code, §342.253. The chart in Exhibit 1 provides examples of the maximum authorized rates for loans made under this section.

Figure: 7 TAC §1.605(c)

(d) Minimum and maximum term. A licensee may not engage in a deferred presentment transaction with a term of less than seven days or more than one month.

(e) Procedures.

(1) The licensee must require that the check be made payable to the actual name of the company printed on the license and must be dated the day the loan is made.

(2) The transaction must be documented by a written agreement signed by the borrower and the licensee. The agreement must contain the name of the licensee, the transaction date, the amount of the check, a statement of the total amount of fees charged, expressed both as a dollar amount and as an annual percentage rate (APR), and the date on which the check will be deposited. The agreement must also contain a notice of the name and address of the agency and the telephone number of the consumer helpline. Additionally, the lender shall provide a notice to the consumer that reads as follows: *This cash advance is not intended to meet long-term financial needs. This loan should only be used to meet immediate short-term cash needs. Renewing the loan rather than paying the debt in full when due will require the payment of additional fees.*

(3) The borrower shall have a right to prepay the loan and redeem the check at any time prior to the due date. If the loan is prepaid, the lender must rebate the unearned finance charges.

(4) No check may be held for more than 31 days and then subsequently presented to the bank for payment.

(5) The licensee must post a notice of the fee schedule for engaging in a deferred presentment loan.

(f) Prohibitions.

(1) Duplicate loans. The provisions of Texas Finance Code, §342.501 and 7 TAC §1.851 apply to loans made under the authority of this section.

(2) Collection practices. If a check is returned to the licensee from a payer financial institution due to insufficient funds, closed account, or stop payment order, the licensee may pursue all legally available civil means to collect the check. A borrower who presents a personal check to a licensee under a deferred presentment agreement is not subject to criminal penalty. Collection practices must be in accordance with this chapter and with the Texas Debt Collection Practices Act, Texas Finance Code, §392.001 *et seq.*

(3) Renewals. Prior to refinancing any loan the lender must make a good faith effort to assess the consumer's ability to repay the refinance loan under the new loan terms or risk the loan being determined to be unconscionable and unenforceable. A reasonable analysis of ability to repay may include, but not be limited to, reviewing credit reports, income verification, bank account statements, and a budget analysis or financial statement of all income and obligations such as rent or mortgage, utilities, groceries, gas, and outstanding loans including payday loans, credit cards, and other installment debt. All material reviewed must be current and the lender's records must document that the information was collected and a reasonable analysis made. Although a consumer may once have had the ability to pay the original loan, a refinance request requires a new review and evaluation of the consumer's financial situation. After one consecutive renewal, in order to renew the account again, the lender must convert the loan from a single payment balloon loan to a declining balance installment note.

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

Filed with the Office of the Secretary of State, on February 18, 2000.

TRD-200001276

Leslie L. Pettijohn

Commissioner

Finance Commission of Texas

Earliest possible date of adoption: April 2, 2000

For further information, please call: (512) 936-7640



## TITLE 22. EXAMINING BOARDS

### Part 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

#### Chapter 80. MISCELLANEOUS

##### 22 TAC §80.3

The Texas Board of Chiropractic Examiners proposes to amend Chapter 80 relating to miscellaneous provisions to add a new §80.3. This new section was inadvertently omitted from the February 11, 2000, issue of the *Texas Register*.

The proposal transfers the current text of §76.3 of Title 22, relating to requests for information and records of practitioners to Chapter 80. No substantive changes are made to the section. This change is in conjunction with the board's review of this chapter and Chapter 75 which relates to the board disciplinary procedures. Proposed revisions to the board's disciplinary procedures required additional provisions. Chapter 76 was repealed by separate rulemaking published in the February 11, 2000, issue of the *Texas Register* (25 TexReg 1025), and new sections relating to procedures at the State Office of Administrative Hearings were proposed for Chapter 76.

Cynthia Vaughn, D.C., Chair of the Rules Committee, has determined that for the first five-year period the proposed section is in effect, there will be no fiscal implications for state government or local government as a result of enforcing or administering Chapter 80 as amended.

Dr. Vaughn also has determined that for each year of the first five years, the proposed section is in effect, the public benefit anticipated as a result of enforcing the rule will be that the board's rules will be arranged in a more logical and orderly system, making it easier for the public, including those regulated by the board, to locate rules of interest. There will be no added adverse economic effect on micro or small businesses versus that on larger businesses or anticipated economic cost to persons who are required to comply with the rule.

Written comments may be submitted, no later than 30 days from the date of this publication, to Joyce Kershner, Rules Committee, Texas Board of Chiropractic Examiners, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701.

The new section proposed under Occupations Code, §201.152, which the board interprets as authorizing it to adopt rules necessary for performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Chiropractic

Act, and §210.405 which sets out statutory responsibilities and requirements for release of patient records, and which the board interprets as one of the provisions it is charged with enforcing.

The following are the statutes, articles, or codes affected by the proposed section: §80.3 – Occupations Code, §§201.152, .405.

§80.3. Request for Information and Records from Licensees.

(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 the Chiropractic Act 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 another licensee or other 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.

(g) 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.

(h) Impaired licensees.

(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 licensee 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 listed in subparagraphs (A)-(F) of this paragraph:

(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 legal authority to adopt.

Filed with the Office of the Secretary of State, on February 16, 2000.

TRD-200001229

Gary K. Cain, Ed. D.

Executive Director

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: April 2, 2000

For further information, please call: (512) 305-6709

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## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### Chapter 53. FINANCE

##### Subchapter A. LICENSE FEES AND BOAT AND MOTOR FEES

###### 31 TAC §53.6

The Texas Parks and Wildlife Department proposes an amendment to §53.6, concerning Commercial Fishing Licenses and Tags.

Responsibility for establishing provisions enabling a commercial finfish fishery license limitation program, including creation of a commercial finfish fishing license, is delegated to the Texas Parks and Wildlife Commission by passage of Senate Bill 1303 by the 76th Legislature. The proposed amendments establish license fees, license transfer fees, and duplicate license fees for resident and non-resident commercial finfish fisherman's licenses.

Robin Riechers, staff economist, has determined that for each of the first five years that the rule as proposed is in effect, there will be no additional fiscal implications to state or local governments as a result of enforcing or administering the rule.

Mr. Riechers has also determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of administering the new rule will be the development of a more efficient and economically stable finfishing industry, thus maximizing the social and economic benefits to the state.

There will be costs to small businesses and individuals required to comply with the proposed new rules as proposed. These will be the costs associated with the license fees.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedures Act, Government Code, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Paul Hammerschmidt, Coastal Fisheries Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4650 or 1-800-792-1112 extension 4650.

The amendment is proposed under Parks and Wildlife Code, Chapter 47, which delegates to the Texas Parks and Wildlife Commission the authority to establish provisions enabling a commercial finfish fishery license limitation program, including creation of commercial finfish fishing licenses.

The amendment affects Parks and Wildlife Code, Chapter 47.

§53.6. *Commercial Fishing Licenses and Tags.*

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

(c) General, finfish, menhaden, mussel, clam, and miscellaneous licenses.

(1) Licenses. The following license fee amounts are effective for the license year beginning September 1, 1996:

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

~~[(D)] resident commercial finfish fisherman's (type 371) – \$75;~~

~~[(E)] resident commercial mussel and clam fisherman's (type 320) – \$30;~~

~~[(F)] resident shell buyer's (type 324) – \$100;~~

~~[(G)] nonresident commercial fishing boat (type 404) – \$60;~~

~~[(H)] nonresident general commercial fisherman's (type 340) – \$150;~~

~~[(I)] nonresident commercial finfish fisherman's (type 361) – \$150;~~

~~[(J)] nonresident commercial mussel and clam fisherman's (type 420) – \$800; and~~

~~[(K)] nonresident shell buyer's (type 424) – \$1,500.~~

(2) Licenses and permits. The following license fee amounts are effective for the license year beginning September 1, 1997, and thereafter:

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

~~[(E)] resident commercial finfish fisherman's (type 371) – \$75;~~

~~[(F)] resident commercial mussel and clam fisherman's (type 320);~~

~~[(G)] resident shell buyer's (type 324) – \$100;~~

~~[(H)] nonresident commercial fishing boat (type 404) – \$60;~~

~~[(I)] nonresident general commercial fisherman's (type 340) – \$150;~~

~~[(J)] nonresident commercial finfish fisherman's (type 361) – \$150;~~

~~[(K)] nonresident commercial mussel and clam fisherman's (type 420) – \$800;~~

~~[(L)] nonresident shell buyer's (type 424) – \$1,500;~~

~~[(M)] menhaden fish plant permit (type 326) – \$150; and~~

~~[(N)] mussel dredge fee (type 323) – \$30.~~

(3)-(4) (No change.)

(d) (No change.)

(e) Finfishing licenses.

(1) Licenses and permits. The following license fee amounts are effective for the license year beginning September 1, 2000, and thereafter:

(A) resident commercial finfish fisherman's (type 371) – \$300; and

(B) nonresident commercial finfish fisherman's (type 361) – \$1,200.

(2) License transfers. The following license transfer fee amounts are effective for the license year beginning September 1, 2000, and thereafter:

(A) resident commercial finfish fisherman's (type 472) – \$300; and

(B) nonresident commercial finfish fisherman's (type 482) – \$1,200.

(3) Duplicate license plates. The following duplicate license plate fee amounts are effective for the license year beginning September 1, 2000, and thereafter:

(A) resident commercial finfish fisherman's (type 471) – \$5.00; and

(B) nonresident commercial finfish fisherman's (type 481) – \$5.00.

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

Filed with the Office of the Secretary of State, on February 18, 2000.

TRD-200001242

Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

Earliest possible date of adoption: April 2, 2000

For further information, please call: (512) 389-4775



## Chapter 58. OYSTERS AND SHRIMP

### Subchapter D. FINFISH FISHERY PROCLAMATION

#### 31 TAC §§58.301 - 58.304

The Texas Parks and Wildlife Department proposes new §§58.301 - 58.304, concerning Finfish Fishery Proclamation.

Responsibility for establishing provisions enabling a commercial finfish fishery license limitation program, including creation of a commercial finfish fishing license, is delegated to the Texas Parks and Wildlife Commission by passage of Senate Bill 1303 by the 76th Legislature, 1999. The proposed new rules create a finfish license management program, including rules to establish delegation of administrative authority to the executive director, display of license, terms of license transfer, and provisions for a license buyback program.

The new rules create a finfish fishery license management program and should provide increasing social and economic benefits for the finfish fishery in Texas. The program should stabilize effort in the fishery, thus creating a more stable and economically viable industry. The program should also provide the mechanisms needed to ensure reduction of effort through time, allowing for the long-term recovery and protection of the finfish fishery.

Robin Riechers, staff economist, has determined that for each of the first five years that the rules as proposed are in effect,

there will be no additional fiscal implications to state or local governments as a result of enforcing or administering the rules.

Mr. Riechers has also determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of administering the new rules will be the development of a more efficient and economically stable finfishing industry, thus maximizing the social and economic benefits to the state.

There will be no costs for small businesses, micro-businesses, and individuals required to comply with the new rule as proposed.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedures Act, Government Code, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rules may be submitted to Paul Hammerschmidt, Coastal Fisheries Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4650 or 1-800-792-1112 extension 4650.

The new rules are proposed under Parks and Wildlife Code, Chapter 47, which delegates to the Texas Parks and Wildlife Commission the authority to establish provisions enabling a commercial finfish fishery license limitation program, including creation of commercial finfish fishing licenses.

The new rules affect Parks and Wildlife Code, Chapter 47.

#### §58.301. Delegation of Authority.

To the fullest extent allowed by law, the Texas Parks and Wildlife Commission delegates power and authority to the executive director to administer the Finfish License Management Program.

#### §58.302. Display of License.

(a) A boat operated for the purposes of commercial finfish fishing is required to have a commercial finfish fisherman's license plate issued under this subchapter prominently displayed as to be clearly visible from both sides of the boat.

(b) No more than one set of commercial finfish fisherman's license plates may be on board a commercial finfish fishing boat while fishing any trotline under the authority of a commercial finfish fisherman's license.

(c) No more than one set of commercial finfish fisherman's license plates may be on board a commercial finfish fishing boat while fishing crab traps under the authority of a commercial finfish fisherman's license.

#### §58.303. License Transfer.

A commercial finfish fisherman's license may be transferred at any time.

#### §58.304. License Buyback Program.

(a) Delegation of Authority. To the fullest extent allowed by law, the commission delegates power and authority to the executive director to administer the Finfish License Buyback Program.

(b) Twenty percent of commercial finfish fisherman's license and commercial finfish fisherman's license transfer fees shall be set aside to be used only for the purpose of buying back commercial finfish fisherman's licenses from a willing license holder.

(c) License buyback application period.

(1) The department will open license buyback bid application periods (hereafter referred to as application) if available funds permit.

(2) The department shall establish during each application period a deadline for receipt of all applications.

(d) License buyback application requirements.

(1) The department shall consider all applications to the Finfish License Buyback Program provided the applicants meet the following requirements:

(A) a completed License Buyback Application form furnished by the department has been submitted to the department by the application deadline;

(B) the applicant is the owner of the license submitted for buyback; and

(C) the applicant has submitted to the department copies of all supplemental information as required in this subsection.

(2) A completed License Buyback Application shall contain:

(A) the full name of the applicant;

(B) the current address of applicant's residence;

(C) the social security number of applicant;

(D) a copy of legal documentation that:

(i) documents applicant holds the sole rights and privileges to the license; or

(ii) documents that all members of a partnership or association, or each officer of a corporation, and the owner of a majority of a corporation's corporate stock, are in agreement to apply to the license buyback program.

(E) a copy of current commercial finfish fisherman's license; and

(F) if required, the applicant's bid offer, in U.S. dollars.

(3) Department records will be used to verify all information supplied by or pertaining to the applicant's history in the finfish fishery and in cases where the applicant has not provided adequate information for proper consideration of the application.

(e) Finfish license buyback criteria.

(1) The department may establish criteria each license year which will be used to determine qualifications for license buyback.

(2) The department may consider:

(A) duration of participation in the fishery prior to enactment of Parks and Wildlife Code, §47.001-47.086;

(B) amount of funds accumulated in the Finfish License Buyback Account;

(C) number of commercial finfish fisherman's licenses in the fishery issued in the license year of the specific bid offer application period;

(D) bid offers from previous application periods;

(E) established open market prices for licenses; and

(F) other relevant factors.

(f) Application Ranking Procedures.

(1) Ranking values will be assigned to all applications based on the above criteria.

(2) The department will purchase licenses beginning with the highest ranking to the lowest.

(3) If bid offers are equally ranked, the Department will rank according to the ascending alphabetical order of the applicant's last name.

(g) Notification of acceptance or rejection of application.

(1) The department will notify each applicant in writing within 45 days of receipt of application regarding acceptance or rejection of application bid offer.

(2) Applicants whose bids are accepted must then notify the department of their intent to accept or reject the offer from the department within 15 days of the postmark of the notification letter sent by the department.

(3) The unsuccessful applicant may withdraw, resubmit, or amend an application for consideration during any future application periods.

(4) The department will continue to purchase in rank order as the buyback fund permits.

(h) Delegation of purchasing authority. The department may designate other qualified agents to purchase licenses on behalf of the department provided all purchased licenses are surrendered to the department and retired.

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

Filed with the Office of the Secretary of State, on February 18, 2000.

TRD-200001243

Gene McCarty  
Chief of Staff

Texas Parks and Wildlife Department

Earliest possible date of adoption: April 2, 2000

For further information, please call: (512) 389-4775



## Chapter 61. DESIGN AND CONSTRUCTION

The Texas Parks and Wildlife Department proposes the repeal of §§61.132 - 61.139 and new §§61.132 - 61.135, concerning Guidelines for Administration of the Local Parks, Recreation, and Open Space Fund Program.

The repeals and new sections are necessary to implement the provisions of House Bill 2108, enacted by the 76th Texas Legislature, 1999, which increased the scope of the program and therefore requires changes to both the Texas Recreation and Parks Account Grant Manual (which is adopted by reference) and the scoring criteria used to evaluate candidate projects for possible funding. The repeals and new sections will function by: adopting by reference the Texas Recreation and Parks Account Grant Manual, which provides communities with a comprehensive explanation of the program and instructions and requirements for participation; and by establishing the purpose, priorities, standards, and scoring systems for grant awards for

outdoor, indoor, and outreach projects submitted by communities.

Tim Hogsett, program director, has determined that for each of the first five years that the proposed rules are in effect, there will be no additional fiscal implications to state or local governments as a result of enforcing or administering the proposed rules.

Mr. Hogsett also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be the department's discharge of its statutory obligation to operate a grants program to provide the local communities of this state with financial assistance for the acquisition and development of parks, recreation areas, open space areas, and outreach activities for the enjoyment of the citizenry.

There will be no effect on small businesses. There are no additional economic costs to persons required to comply with the rules as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as this agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Tim Hogsett, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 912-7115 or 1-800-792-1112.

## Subchapter E. GUIDELINES FOR ADMINISTRATION OF TEXAS LOCAL PARKS, RECREATION, AND OPEN SPACE FUND PROGRAM

### 31 TAC §§61.132 - 61.139

*(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 Parks and Wildlife Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeals are proposed under Parks and Wildlife Code, Chapter 24, which requires the department to adopt regulations for grant assistance.

The repeals affect Parks and Wildlife Code, Chapter 24.

§61.132. *Texas Recreation and Parks Account Grants Manual.*

§61.133. *Purpose.*

§61.134. *Program Priorities.*

§61.135. *Local Master Plan Standard Requirements.*

§61.136. *Project Priority Scoring System - Policy.*

§61.137. *Project Priority Scoring System - Criteria.*

§61.138. *Indoor Project Priority Scoring System - General Rules.*

§61.139. *Indoor Project Priority Scoring System - Criteria.*

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

Filed with the Office of the Secretary of State, on February 18, 2000.

TRD-200001249

Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

Earliest possible date of adoption: April 2, 2000

For further information, please call: (512) 389-4775

### 31 TAC §§61.132 - 61.135

The new sections are proposed under Parks and Wildlife Code, Chapter 24, which requires the department to adopt regulations for grant assistance.

The new sections affect Parks and Wildlife Code, Chapter 24.

§61.132. *Texas Recreation and Parks Account Grants Manual.*

(a) The Texas Recreation and Parks Account (TRPA) Grants Manual contains the standards and requirements for the application, evaluation and award of all grants made under this subchapter.

(b) The Texas Recreation and Parks Account (TRPA) Grants Manual is adopted by reference and can be obtained by contacting Texas Parks and Wildlife at 4200 Smith School Rd., Austin, 78744; 1-800-792-1112; <http://www.tpwd.state.tx.us>.

§61.133. *Grants for Outdoor Recreation Programs.*

(a) Program purpose and priorities. All grant applications submitted to the department for outdoor recreation programs are evaluated for program eligibility and prioritized according to the Project Priority Scoring System set forth in this section. Scored applications are presented to the Texas Parks and Wildlife Commission for approval. In general, recommended priorities for outdoor recreation projects are:

(1) to ensure sponsor performance on active grants and compliance at previously assisted grant sites;

(2) to recognize and reward local planning;

(3) to increase recreational diversity;

(4) to increase water-related park and recreation opportunities;

(5) to improve geographic distribution of park and recreation opportunities;

(6) to maximize the use of funds for basic park and recreation opportunities;

(7) to improve park and recreation opportunities for low income, minority, elderly and youth-at-risk citizens;

(8) to reward cooperative efforts between park and recreation providers and other governmental and/or educational entities;

(9) to reward partnerships between local sponsors and the private sector;

(10) to preserve significant natural resources through public land acquisition and stewardship;

(11) to renovate existing, obsolete park and recreation areas and facilities;

(12) to promote wise use of natural resources;

(13) to provide linear greenbelt linkages to parks, neighborhoods, or public facilities; and

(14) to encourage the appreciation and preservation of cultural resources.

(b) Local master plan standard requirements. Minimum master plan standards must be met to qualify for priority points. Local sponsors may submit applications without having a department-approved master plan; however, only those proposals that address priority needs identified in approved plans will receive priority points under the provisions of subsection (c)(7) of this section. Master plans must have been received in an approvable format at least 60 days prior to the application submission deadline at which time credit is sought. The following are minimum master plan standards:

(1) Proof of adoption. The plan must be formally endorsed by the applicable governing body of the sponsor, and the endorsement must be included with the document.

(2) Jurisdiction-wide scope. The plan must be comprehensive and assess the entire jurisdiction area of the project sponsor. County plans must cover the entire county, and city or district plans must cover the entire city or district. For large urban areas, the plan should cover the entire jurisdiction, and then may break the jurisdiction down into regions, sectors, precincts, districts, etc., as appropriate.

(3) Plan duration. The plan must specifically identify the time period within which the goals and objectives of the plan are to be carried out. Plans should cover a minimum five-year period. If a plan is more than two years old, a brief summary of plan accomplishments to date must be provided to enable the department to recognize and credit program progress. Any revision of priorities other than an update of accomplishments must present a new priority listing justified by additional public input. Plans older than 5 years will be considered obsolete and new plans will be required.

(4) Plan content. The following information should be included in the document:

(A) introduction;

(B) goals and objectives;

(C) plan development process (discuss when the planning process began, plan phases, public input received, survey/studies conducted, committees and/or personnel involved, etc.);

(D) area/facility concepts and standards, including:

(i) population/area service and acreage goals;

(ii) "typical" park and facility standards; and

(iii) applicable local codes, ordinances, and other requirements for community or neighborhood development.

(E) inventory of existing park, recreation and open space areas and facilities (including schools).

(F) needs assessment and identification. Information under this subparagraph shall be area- and facility-specific, and may include basic support facilities/infrastructure which are critical to the recreational experience. A discussion and identification of open space needs in the master plan, or a separate open space plan, shall be included.

(G) prioritization of needs. Applicant shall include:

(i) a single priority list in which all outdoor and indoor needs are ranked; and

(ii) plan implementation recommendations, including a timeline and discussion of resources for meeting priorities (must identify and prioritize which needs are to be met, where and when).

(H) illustrations, maps, charts, surveys, etc.

(c) Outdoor recreation project priority scoring system.

(1) Outdoor recreation projects presented to the commission shall be scored according to the criteria, rating factors, and point values set forth in this subsection.

(2) The priority ranking of a project will depend on its score in relation to the scores of other projects under consideration.

(3) Funding of projects will depend on the availability of TRPA funds.

(4) Projects which have not been approved after two considerations by the commission, without alterations to significantly raise the project score, shall be returned to the sponsor and not accepted for resubmission.

(5) Each site of a multiple-site project shall be scored individually. Individual site scores will be weighted on a pro-rata share of the total budget for the entire project. All weighted scores will be added together for the total project score.

(6) If the sponsor is in full compliance at previously assisted grant project sites and is progressing on schedule with all active grant projects in accordance with the provisions of this subchapter, the application will be scored and presented for award consideration. If the sponsor does not meet the requirements of this paragraph, the application will not be scored or considered further.

(7) A project proposal meeting the requirements of paragraph (6) of this subsection shall be evaluated according to:

(A) the extent that the project will satisfy the priority recreation needs (PRN) identified in the master plan required by subsection (c)(7)(A) of this section. Consideration of "need" for this criterion includes basic support facilities/infrastructure critical to the park and recreation experience. Eligible support facilities/infrastructure are limited to restrooms, roads and parking, area lighting (to ensure public safety), utilities essential to eligible support facilities, irrigation, and land acquisition. Scoring shall be as follows, up to a total of 20 points.

(i) for satisfying PRN 1 only: 10 points.

(ii) for satisfying PRN in the order listed in the master plan:

(I) PRN 1 and 2: 15 points;

(II) PRN 1 through 3: 16 points;

(III) PRN 1 through 4: 17 points;

(IV) PRN 1 through 5: 18 points;

(V) PRN 1 through 6: 19 points; or

(VI) PRN 1 through 7: 20 points.

(iii) for satisfying PRN 1 and 2, but satisfying remaining PRN in other than the order listed in the master plan, 1 point will be awarded for three satisfied PRN lower than any unsatisfied PRN, up to the maximum point total allowed.

(iv) for satisfying PRN 2 only: 5 points.

(v) for satisfying PRN 2, but satisfying remaining PRN lower than 2 in other than the order listed in the master plan,



1 point will be awarded for three satisfied PRN up to the maximum point total allowed.

(vi) for satisfying PRN 3 only: 1 point.

(vii) for satisfying PRN 3, but satisfying remaining PRN lower than 3 in other than the order listed in the master plan, 1 point will be awarded for three satisfied PRN up to the maximum point total allowed.

(B) the extent to which the project will provide diversity of park and recreation opportunities/facilities. Priority points for this criterion shall be awarded based on the number of park and recreation opportunities/facilities provided within the intended service area. One point will be awarded for each type of facility, up to a total of 10 points.

(C) the extent to which the project will provide improved natural water-based park and recreation opportunities, up to a total of 11 points.

(i) project provides direct and complementary park and recreation or conservation opportunities which do not degrade the resource along quality water bodies, for no more than one of the following:

(I) coast, lake, or reservoir: 6 points;

(II) bay or estuary: 5 points;

(III) river: 4 points;

(IV) stream (continuous flow): 3 points;

(V) pond: 2 points; or

(VI) wetland: 1 - 5 points, dependent upon size

and quality.

(ii) project proposes the acquisition of land that would provide needed public access to park and recreational waters, for no more than one of the following:

(I) coast, lake, or reservoir: 5 points;

(II) bay or estuary: 4 points;

(III) river: 3 points;

(IV) stream (continuous flow): 2 points; or

(V) pond: 1 point.

(D) the extent to which the project will improve the geographic distribution of park and recreation lands and facilities in the project's service area or within the sponsor's jurisdiction, up to a total of 25 points.

(i) project provides the first public recreation opportunity in the sponsor's jurisdiction or intended service area: 25 points; or

(ii) project provides the first public park or significantly new and different park and recreation opportunity (other than school facilities) in the sponsor's jurisdiction or intended service area: 15-20 points. Points for this item shall be awarded based on the percentage of construction budget (minimum of 20%), significance to the community, and originality, as follows: new and different facility costs, divided by total construction costs, multiplied by 6.

(E) the extent to which the project maximizes the use of development funds for facilities which provide direct park and recreation opportunities, up to a total of 25 points, determined by dividing the direct recreational facilities costs by the total

construction costs and multiplying the result by 25. "Total Facilities Costs" includes park/recreation and support/infrastructure facilities, contingency, and all required program signage costs in excess of \$1,000.

(F) the extent to which the project improves park and recreation opportunities for low income, minority, elderly or youth-at-risk citizens, up to a total of 16 points.

(i) project improves opportunities for low-income citizens in areas where such action is needed: determined by multiplying the percentage of population qualifying as low income by 4. Maximum of 4 points.

(ii) project improves opportunities for minority citizens in areas where such action is needed: determined by multiplying the percentage of population qualifying as minority by 4. Maximum of 4 points.

(iii) project improves opportunities for the elderly in areas where such action is needed: 1 point for each facility, typically passive activities, except where facilities are designed specifically for an elderly user group). Maximum of 4 points.

(iv) project provides opportunities for youth-at-risk where such action is needed: 1 point for each program offered for youth-at-risk. Sponsor must describe/define the youth-at-risk population and demonstrate how facilities proposed in the application will be specifically programmed. Maximum of 4 points.

(G) the extent to which the project involves cooperation between the sponsor and other governmental or educational institutions to provide park and recreation opportunities at the project site(s). Maximum of 25 points.

(i) project involves the contribution of resources from other governmental or educational institutions, which serves as all or part of the sponsor's matching share of funds. Up to 15 points may be awarded for this item. Points shall be awarded on a percentage basis, dependent on the amount of matching funds provided by the other governmental/educational institution, determined by dividing the total contribution value by the total match and multiplying the result by 15.

(ii) project area is owned by another governmental or educational institution and will be permanently dedicated for public park and recreation use through a land donation, permanent non-revocable lease, or permanent park and recreation or conservation easement: 5 points.

(iii) project involves cooperation between the sponsor and other governmental or educational institutions and resources are contributed to the overall project for non-grant assisted facilities (example: a county constructs roads/parking facilities for a city, but no grant funds are requested for roads/parking): 1 point per activity, to a maximum of 5 points.

(H) the extent to which the project involves donations of land, cash, labor, equipment and/or materials from the private sector as part or all of the sponsor's matching share of the project. Priority points shall be awarded on a percentage basis, dependent on the amount of matching share funds to be received through donations. Maximum of 15 points.

(i) project provides private land and/or cash donations from the private sector as part or all of the sponsor's matching share of the project, determined by dividing the contribution value by the total match and multiplying the result by 15. Maximum of 15 points.

(ii) project provides donated labor, equipment and/or materials from the private sector as part or all of the sponsor's matching share of the project, determined by dividing the contribution value by the total match and multiplying the result by 10. Maximum of 10 points.

(I) the extent to which the project provides for the acquisition and preservation/conservation of park and recreation lands which consist of unique or significant natural resources, provide needed open space, or provide needed parkland for future development. Total point range: 10-40 points for not more than one of the following:

(i) project provides for the acquisition and preservation/conservation of a federal, state, regional, or local government identified natural area which is recognized in an acceptable, published planning document for having valuable or vulnerable natural resources, ecological processes, or rare, threatened, or endangered species of vegetation or wildlife: 40 points;

(ii) project provides for the acquisition and preservation/conservation of a significant wetland area, recognized by TPW, which is usable for recreation, and meets at least one "threshold criteria" as defined in the National Wetlands Priority Conservation Plan (based on significance of acreage and quality): 30-35 points; or

(iii) project provides for the acquisition and preservation/conservation of open space land or water for human use and enjoyment that:

(I) is one acre or larger in size, relatively free of man-made structures, whose physical characteristics will support only minimal development (including creek corridors, floodways, and natural drainage basins, but not agricultural fields), and which is identified in an acceptable, published, and adopted local, jurisdiction-wide open space plan or master plan: 20-25 points, based on acreage and quality; or

(II) provides significant native wildlife habitat, as substantiated by a TPW biologist: 20-25 points.

(iv) project provides only for the acquisition of needed recreational land proposed for future development, or land which is located in a densely developed area within the sponsor's jurisdiction: 10 points. No points are awarded for this item if development is proposed.

(J) project provides for the renovation of an existing obsolete park and recreation area or facilities, determined by dividing the renovation cost by the total construction cost and multiplying the result by 5. Maximum of 5 points.

(K) project promotes the conservation of natural resources by the use of activities or techniques such as xeriscape/native plant materials for landscaping, drip or treated effluent irrigation systems, renovation of obsolete lighting systems with more energy efficient systems, recycled materials for facility construction, environmental education and interpretation, significant tree plantings where no trees exist, or other resource conservation measures. 1 point is awarded for each conservation element proposed in the grant, up to a maximum of 5 points.

(L) project provides greenbelt linkage (not to include streets or sidewalks) to other parks and recreation areas, neighborhoods, or public facilities, as follows, up to a maximum of 5 points for not more than one of the following.

(i) park to park: 5 points;

(ii) park to school: 4 points;

(iii) park to neighborhood: 3 points; or

(iv) park to public facility: 1 point.

(M) project provides park and recreation opportunities that enhance and encourage appreciation and preservation of cultural (historical and archaeological) resources: maximum of 5 points. Points for this item are awarded based on the significance of the enhancement.

§61.134. Grants for Indoor Recreation Programs.

(a) Program purpose and priorities. All grant applications submitted to the department for indoor recreation programs are evaluated for program eligibility and prioritized according to the Project Priority Scoring System set forth in this section. Scored applications are presented to the Texas Parks and Wildlife Commission for approval. The priority ranking of a project depends on its score in relation to the scores of other projects under consideration. Funding of projects will depend on the availability of TRPA funds. In general, recommended priorities for indoor recreation projects are:

(1) to ensure sponsor performance on active grants and compliance at previously assisted grant sites;

(2) to recognize and reward local planning;

(3) to provide indoor recreational diversity;

(4) to provide a better geographic distribution of indoor recreation facilities;

(5) to provide indoor recreation facilities to greater numbers of citizens;

(6) to improve recreation opportunities for youth-at-risk;

(7) to reward cooperative efforts between project sponsors and other governmental or educational entities;

(8) to reward partnerships between local government sponsors and the private sector;

(9) to provide for the renovation of existing, obsolete indoor recreation facilities;

(10) to improve indoor recreation opportunities for low income, minority and elderly citizens; and

(11) to promote the conservation of natural resources and environmental values.

(b) Local master plan standard requirements. Minimum master plan standards must be met to qualify for priority points. Local sponsors may submit applications without having a department-approved master plan; however, only those proposals that address priority needs identified in approved plans will receive priority points under the provisions of subsection (c) of this section. Master plans must have been received in an approvable format at least 60 days prior to the application submission deadline at which time credit is sought. The following are minimum master plan standards:

(1) Proof of adoption. The plan must be formally endorsed by the applicable governing body of the sponsor, and the endorsement must be included with the document.

(2) Jurisdiction-wide scope. The plan must be comprehensive and assess the entire jurisdiction area of the project sponsor. County plans must cover the entire county, and city or district plans must cover the entire city or district. For large urban areas, plans should cover the entire jurisdiction, and then break the jurisdiction down into regions, sectors, precincts, districts, etc., as appropriate.

(3) Plan duration. Plans must specifically identify the time period within which the goals and objectives of the plan are to be carried out. The plan should cover a minimum five-year period. If a plan is more than two years old, a brief summary of plan accomplishments to date must be provided. Plans older than 5 years will be considered obsolete and new plans will be required.

(4) Plan content. The following information should be included in the document:

(A) introduction;

(B) stated goals and objectives;

(C) plan development process (discuss when the planning process began, plan phases, public input received, survey/studies conducted, committees and/or personnel involved, etc.);

(D) area/facility concepts and standards, including:

(i) population/area service and acreage goals;

(ii) "typical" park and facility standards; and

(iii) applicable local codes, ordinances, and other requirements for community or neighborhood development;

(E) inventory of existing park, recreation and open space areas and facilities (including schools);

(F) needs assessment and identification. Information under this subparagraph shall be area/facility specific, and may include basic support facilities/infrastructure which are critical to the recreational experience. A discussion and identification of open space needs in the master plan, or a separate open space plan, shall be included.

(G) prioritization of needs. Applicant shall include:

(i) a priority list in which all outdoor and indoor needs are ranked ; and

(ii) plan implementation recommendations, including a timeline and discussion of resources for meeting priorities (must identify and prioritize which needs are to be met, where and when). Any revision of priorities other than an update of accomplishments must present a new priority listing justified by additional public input.

(H) illustrations, maps, charts, surveys, etc.

(c) Indoor recreation project priority scoring system. If the sponsor is in full compliance at previously assisted grant project sites and is progressing on schedule with all active grant projects in accordance with the provisions of this subchapter, an application will be scored and presented for award consideration. If the sponsor does not meet the requirements of this paragraph, the application will not be scored or considered further. A project proposal meeting the requirements of this paragraph shall be evaluated according to:

(1) the extent to which the project will satisfy the priority indoor recreation needs (PIRN) identified in the master plan required by this section, up to a total of 20 points.

(A) for satisfying PIRN 1 only: 10 points.

(B) for satisfying PIRN in the order listed in the master plan:

(i) PIRN 1 and 2: 15 points;

(ii) PIRN 1 through 3: 16 points;

(iii) PIRN 1 through 4: 17 points;

(iv) PIRN 1 through 5: 18 points;

(v) PIRN 1 through 6: 19 points; or

(vi) PIRN 1 through 7: 20 points.

(C) for satisfying PIRN 1 and 2, but satisfying remaining PIRN in other than the order listed in the master plan, 1 point will be awarded for three satisfied PIRN lower than any unsatisfied PIRN, up to the maximum point total allowed.

(D) for satisfying PIRN 2 only: 5 points.

(E) for satisfying PIRN 2, but satisfying remaining PIRN lower than 2 in other than the order listed in the master plan, 1 point will be awarded for three satisfied PIRN up to the maximum point total allowed.

(F) for satisfying PIRN 3 only: 1 point.

(G) for satisfying PIRN 3, but satisfying remaining PIRN lower than 3 in other than the order listed in the master plan, 1 point will be awarded for three satisfied PIRN up to the maximum point total allowed.

(2) the extent to which the project will provide diversity of public indoor recreation facilities. Points shall be awarded based on the number of indoor recreation facilities provided. Five points will be awarded for each type of facility, up to a maximum of 30 points. Points may be deducted for projects which propose support facilities which do not support recreational activities.

(3) the extent to which the project provides facilities that enhance outdoor education or conservation (such as nature centers or facilities for environmental education programs or exhibits): 1-5 points.

(4) the extent to which the project will improve geographic distribution of public indoor recreation facilities. Maximum of 20 points.

(A) project provides the first public indoor recreation facility in the sponsor's jurisdiction or intended service area: 20 points; or

(B) project provides new and different public indoor recreation facilities (other than school facilities) in the sponsor's jurisdiction or intended service area, determined by dividing new and different facility costs by the total construction costs, multiplied by 11. Maximum point total: 15 points.

(5) the extent to which the project provides public indoor recreation opportunities to significant segments of the population within the sponsor's jurisdiction area, determined by dividing the estimated number of individuals to be served by the total population of the sponsor's jurisdiction area, and multiplying the result by five. Maximum of 5 points.

(6) the extent to which the project provides improved recreation opportunities for at-risk youth, where a demonstrated need for such action exists. Points are awarded for projects that demonstrate and define the existence of at-risk youth within the intended service area, and which propose specific grant-assisted facilities for at-risk youth. One point shall be awarded for each proposed activity, up to a total of 10 points.

(7) the extent to which the project involves cooperation between the sponsor and other governmental or educational institutions to provide public indoor recreation facilities at the project site. Maximum of 15 points.

(A) project involves the contribution of resources (other than land) from other governmental or educational institutions

which serves as all or part of the sponsor's matching share of funds. Up to 10 points may be awarded for this item. Points shall be awarded on a percentage basis, dependent on the amount of matching funds provided by the other governmental/educational institution, determined by dividing the total contribution value by the total match and multiplying the result by 10.

(B) project area is owned by another governmental or educational institution and will be permanently dedicated for public park and recreation use through a land donation, or permanent non-revocable lease or easement: 5 points.

(8) the extent to which the project involves donations of land, cash, labor, equipment and/or materials from the private sector as part or all of the sponsor's matching share of the project. Priority points shall be awarded on a percentage basis, dependent on the amount of matching share funds to be received through donations. Maximum of 10 points.

(A) project provides private land and/or cash donations from the private sector as part or all of the sponsor's matching share of the project, determined by dividing the contribution value by the total match and multiplying the result by 10. Maximum of 10 points.

(B) project provides donated labor, equipment and/or materials from the private sector as part or all of the sponsor's matching share of the project, determined by dividing the value of the donations by the total match and multiplying the result by five. Maximum of 5 points.

(9) the extent to which the project provides for the renovation of an existing obsolete public indoor recreation facility, determined by dividing the renovation cost by the total construction cost and multiplying the result by 10. Maximum of 10 points.

(10) the extent to which the project improves public indoor recreation opportunities for low income, minority, or elderly citizens, up to a total of 6 points.

(A) project improves opportunities for low income citizens in areas where such action is needed: determined by multiplying the percentage of population qualifying as low income by 2. Maximum of 2 points.

(B) project improves opportunities for minority citizens in areas where such action is needed: determined by multiplying the percentage of population qualifying as minority by 2. Maximum of 2 points.

(C) project improves opportunities for the elderly in areas where such action is needed. Points for this item shall be awarded on the basis of recreational facility type and service. Maximum of 2 points.

(11) The extent to which the project promotes the conservation of natural resources and environmental values. Projects that propose energy efficient design, construction techniques, or materials will receive points for this criteria. Maximum of 5 points.

§61.135. Grants for Community Outdoor Outreach Programs.

(a) Program purpose and priorities. All grant applications submitted to the department for community outdoor outreach programs are evaluated for program eligibility and prioritized according to the Project Priority Scoring System set forth in this section. In general, recommended priorities for community outdoor outreach projects are:

(1) to ensure sponsor performance on active grants and compliance on previous grants;

(2) to improve community outdoor outreach opportunities for inner-city, rural, low-income, minority, female, physically/mentally challenged, and youth-at-risk citizens;

(3) to reward partnerships between local sponsors and other organized groups;

(4) to increase the number of participants served;

(5) to maximize the use of funds for direct community outdoor outreach opportunities;

(6) to reward commitment of sponsor resources;

(7) to increase use of TPW programs and facilities; and

(8) to reward promotion of outdoor educational activities.

(b) Project Priority Scoring System.

(1) Proposed project's primary constituency. Maximum of 14 points.

(A) inner city (city must have population of 100,000 or greater): 2 points;

(B) rural (cities less than 17,500 population or counties with a population of less than 28,000): 2 points;

(C) minority (minorities within served population greater than or equal to 50% of total served population): 2 points;

(D) female (females within served population greater than or equal to 50% of total served population): 2 points;

(E) low-income (served families with annual combined family income less than \$19,500 greater than or equal to 50% of total served population): 2 points;

(F) physically/mentally challenged (includes ADD, ADHD): 2 points;

(G) youth (age 17 and under) : 2 points.

(2) Proposed project encourages partnerships with organized groups. Application must include written and signed agreements between the project sponsor and the proposed partnership group. Letters of endorsement by themselves will not receive credit. One point shall be awarded for each partnership agreement that commits cash contributions, volunteer labor, program materials, physical facilities use, transportation, food, etc. Maximum of 4 points.

(3) Number of program participants the proposed project will serve. One point awarded per 25 persons served, up to a maximum of 10 points.

(4) The extent to which the proposed project prioritizes direct service costs. Points shall be awarded on a percentage basis, determined by dividing the direct service delivery costs by the total project cost and multiplying the result by 10. Maximum of 10 points.

(5) The extent to which the sponsor's funds and resources are committed to the project. Points shall be awarded on a percentage basis, determined by dividing the local/sponsor funds by the total project cost and multiplying the result by 4. Maximum of 4 points.

(6) The extent of the proposed project's direct relationship with TPW programs and/or facilities. Maximum of 5 points. One point shall be awarded per:

(A) TPW facility used;

(B) instance of TPW personnel involved;

(C) instance of TPW instructional materials used; or

(D) instance of TPW program provided. Maximum of 5 points.

(7) Project specifically serves at-risk youth. A definition of at-risk youth must be included, as well as a description of each activity designed to serve at-risk youth. One point shall be awarded for each activity serving at-risk youth as defined in the project. Maximum of 3 points.

(8) Project proposes activities related to TPW initiatives. One point shall be awarded for each proposed activity related to a TPW initiative (e.g., fishing, camping, hunting, environmental education, or other outdoor activity) Demonstrated participation in the TPW Outdoor Kids Program automatically receives the full point total. Maximum of 5 points.

(9) Project promotes outdoor educational activities. Each educational element must be demonstrated by a discussion of the curriculum to be employed. Maximum of 4 points. Points will be awarded according to the curriculum's potential to increase participants' :

- (A) awareness;
- (B) knowledge, skills, and abilities;
- (C) critical thinking; and
- (D) behavioral change.

Filed with the Office of the Secretary of State, on February 18, 2000.

TRD-200001250

Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

Earliest possible date of adoption: April 2, 2000

For further information, please call: (512) 389-4775



## Chapter 65. WILDLIFE

### Subchapter A. STATEWIDE HUNTING AND FISHING PROCLAMATION

The Texas Parks and Wildlife Department proposes the repeal of §65.25, amendments to §§65.11, 65.26, 65.42, 65.64, 65.72, and 65.78, and new §65.25, concerning the Statewide Hunting and Fishing Proclamation.

The amendment to §65.11, concerning Lawful Means, allows the use of lawful archery equipment and crossbows during open spring Eastern turkey seasons.

New §65.25, concerning Wildlife Management Plan, requires wildlife management plans to include recommendations for management practices.

The amendment to §65.26, concerning Managed Lands Deer Permits, creates an intermediate permit and clarifies that tagging requirements apply only to deer affected by the landowner's wildlife management plan.

The amendment to §65.42, concerning Deer: implements four 'doe days' in Cass, Marion, and Harrison counties; implements 'doe days' through the Sunday following Thanksgiving and increases the buck limit in San Jacinto, Trinity, and Walker counties; rewords regulatory language governing antlerless harvest in counties currently having 23-day 'doe days' to permit

either-sex harvest through the Sunday following Thanksgiving; eliminates a special provision in Henderson County; increases the bag limit and creates a special late season in certain Hill Country counties; opens a muzzleloader-only open season in 11 Pineywoods counties while closing the muzzleloader season in those Hill Country counties where a special late season is proposed; extends the mule deer season to 16 days in counties presently having a five-day season; and opens a 16-day mule deer season in Cochran County.

The amendment to §65.64, concerning Turkey, opens a spring Eastern turkey season in eight additional counties in East Texas.

The amendment to §65.72: eliminates the statewide minimum length restrictions for Guadalupe and spotted bass; increases the minimum length requirement for largemouth bass on Lakes Jacksonville, Cleburne State Park, and Meridian State Park from 14 inches to 18 inches; replaces the minimum length restrictions for largemouth bass on Lake Austin, Buescher State Park Lake, and Town Lake with a 14-21 inch slot limit and allows only one largemouth bass of greater than 21 inches to be retained; increases the minimum length restrictions for blue marlin, white marlin, and sailfish; decreases the bag limit and imposes a minimum length limit for sharks; establishes a commercial season for sharks concurrent with federal seasons; and defines marking requirements for, and establishes maximum numbers for commercial and recreational trotlines.

The amendment to 65.78, concerning Crabs and Ghost Shrimp, define marking requirements for, and establish maximum numbers for crab traps used by commercial finfish fishermen.

Robert Macdonald, Wildlife Division Regulations Coordinator, has determined that for each of the first five years that the proposed repeal, new section, and amendments are in effect, there will be no additional fiscal implications to state or local governments as a result of enforcing or administering the proposed repeal, new section, and amendments.

Mr. Macdonald also has determined that for each of the first five years the proposed repeal, new section and amendments are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be the dispensation of the agency's statutory duty to protect and conserve the wildlife resources of this state, the duty to equitably distribute opportunity for the enjoyment of those resources among the citizens, and the execution of the commission's policy to maximize recreational opportunity within the precepts of sound biological management practices. There will be negligible effect on small businesses. There are no additional economic costs to persons required to comply with the rules as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as this agency has determined that the rules as proposed will not significantly impact local economies.

The department has determined that there will not be a taking of private property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Robert Macdonald (Wildlife (512) 389-4775), Ken Kurzawski (Inland Fisheries 389-4591), Paul Hammerschmidt (Coastal Fisheries 389-4650), David Sinclair (Wildlife Enforcement 389-4854), or Dennis Johnston (Fisheries Enforcement 389-4628), Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (512) 389-4775 or 1-800-792-1112.

## Division 1. GENERAL PROVISIONS

### 31 TAC §§65.11, 65.25, 65.26

The amendments and new section are proposed under the authority of Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provide the Commission with authority to establish wildlife resource regulations for this state.

The proposed amendments and new section affect Parks and Wildlife Code, Chapter 61.

#### §65.11. Lawful Means.

It is unlawful to hunt any of the wildlife resources of this state except by the means authorized by this section and as provided in §65.19 of this title (relating to Hunting Deer with Dogs).

(1) (No change.)

(2) Archery.

(A) A person may hunt by means of lawful archery equipment [~~longbow, compound bow, or recurved bow~~] during any open season except a special muzzleloader-only antlerless deer season [~~or spring Eastern turkey season~~].

(B)-(E) (No change.)

(3) Crossbow. Crossbows are lawful during any general open season [~~except Eastern turkey seasons~~]. A person having an upper-limb disability may use a crossbow to hunt deer and turkey during an archery-only season, provided the person has in their immediate possession a physician's statement certifying the extent of the disability. When hunting turkey and all game animals other than squirrels by means of crossbow:

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

(4)-(5) (No change.)

#### §65.25. Wildlife Management Plan (WMP).

(a) A WMP is required for the issuance of Managed Lands Deer Permits and Antlerless/Spike-Buck Deer Control Permits.

(b) Each WMP shall apply to a specific tract of land, and shall consist of:

(1) historical data, including:

(A) measurements of density, production, and sex composition of the deer population;

(B) measurements of the number, sex, and when possible, the age, weight, and antler measurements of harvested deer;

(C) an evaluation and appraisal of habitats determined to be of significance to deer; and

(D) descriptions of land management practices presently being employed;

(2) recommendations specifically identifying:

(A) goals for the density, production, population, and sex composition of deer on the property, based solely on the biology of deer in their natural habitat; and

(B) habitat management practices necessary to accomplish the goals specified in subparagraph (A) of this paragraph; and

(3) a harvest quota specifying the number and sex of deer to be taken on the tract of land.

(c) A WMP is not valid unless it is:

(1) consistent with Parks and Wildlife Code, §61.053 and §61.056; and

(2) signed by a Wildlife Division biologist or technician. A WMP is valid for one year following the date of such signature.

#### §65.26. Managed Lands Deer (MLD) Permits.

(a) MLD permits may be issued only to a landowner who has a current WMP in accordance with §65.25 of this title (relating to Wildlife Management Plan) [~~that specifies a harvest quota of buck and/or antlerless white-tailed deer or antlerless mule deer~~].

(b) An applicant may request the issuance of any type of MLD listed in this section [~~permits for antlerless-only or both-sex harvest quotas for white-tailed deer, or an antlerless-only harvest quota for mule deer~~].

(1) Level 1. Level 1 MLD permits authorize only the take of antlerless white-tailed or antlerless mule deer. A Level 1 MLD permit is valid only during the general open season in the county for which it is issued, and the bag limit for antlerless deer in that county applies.

(2) Level 2. Level 2 MLD permits authorize the take of buck and antlerless white-tailed deer as specified by the permit. A Level 2 MLD:

(A) antlerless permit is valid during the general open season and for 14 consecutive days immediately following in the county for which it is issued;

(B) buck permit is valid for any buck deer during the general open season in the county for which it is issued, and for 14 consecutive days following the close of the general open season is valid only for the take of spike bucks.

(3) Level 3. Level 3 MLD permits authorize the take of buck and antlerless white-tailed deer as specified by the permit. A Level 3 MLD permit is valid from the Saturday nearest September 30 through the last Sunday in January.

(c) The number of MLD permits distributed to a hunter shall be at the discretion of the landowner.

(d) Except for deer taken under an Antlerless and Spike-Buck Control Permit, all deer harvested by MLD permit [~~on a property where MLD permits have been issued~~] must immediately be tagged with the appropriate MLD permit [~~as specified in the WMP~~] and either an appropriate tag from the hunting license of the person who killed the deer or a valid bonus tag.

(e) On all tracts of land for which Level 2 [~~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~~]:

(1) the bag limit shall be five white-tailed deer, no more than three bucks, regardless of the county bag limit; and

(2) the provisions of §65.42(b)(9) of this title (relating to Muzzleloader-Only Open Season) and the stamp requirements of Parks and Wildlife Code, Chapter 43, Subchapter Q, do not apply.

(f) On all tracts of land for which Level 3 MLD permits have been issued:

(1) the bag limit shall be five white-tailed deer, no more than three bucks, regardless of the county bag limit; and

(2) the provisions of §65.42(b)(8) [~~§65.42(b)(7)~~] of this title (relating to Archery-Only Open Season), §65.42(b)(9) [~~§65.42(b)(8)~~] of this title (relating to Muzzleloader-Only Open

Season), and the stamp requirements of Parks and Wildlife Code, Chapter 43, Subchapters ~~[Subchapter] I and Q~~, do not apply. ~~[; and]~~

~~[(3) the landowner may allow the hunting of white-tailed deer from the Saturday closest to September 30 through the last Sunday in January.]~~

~~(g) [(#)] If a landowner in possession of MLD permits does not wish to abide by the harvest quota specified by the WMP, the landowner must return all MLD permits to the department by the Saturday closest to September 30.~~

~~(h) A landowner who accepts Level 3 MLD permits and fails to abide by all recommendations of the WMP is not eligible for Level 3 permits the following year, but is eligible for other levels of MLD permits or may choose to cease accepting MLD permits.~~

~~(i) A landowner who accepts Level 2 MLD permits and fails to make a reasonable effort to attain the harvest quota specified in the WMP may, at the discretion of the department, be denied further issuance of Level 2 permits.~~

~~(j) [(g)] The department reserves the right to deny further issuance of MLD permits to a landowner who exceeds the harvest quota specified by the WMP or who does not otherwise abide by the WMP.~~

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

Filed with the Office of the Secretary of State, on February 18, 2000.

TRD-200001245

Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

Earliest possible date of adoption: April 2, 2000

For further information, please call: (512) 389-4775

◆ ◆ ◆  
**31 TAC §65.25**

*(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 Parks and Wildlife Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under the authority of Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provide the Commission with authority to establish wildlife resource regulations for this state.

The proposed repeal affect Parks and Wildlife Code, Chapter 61.

§65.25. *Wildlife Management Plan (WMP).*

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

Filed with the Office of the Secretary of State, on February 18, 2000.

TRD-200001244

Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

Earliest possible date of adoption: April 2, 2000

For further information, please call: (512) 389-4775

◆ ◆ ◆  
**Division 2. OPENS SEASONS AND BAG LIMITS—HUNTING PROVISIONS**

**31 TAC §65.42, §65.64**

The amendments are proposed 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.

The proposed amendments affect Parks and Wildlife Code, Chapter 61.

§65.42. *Deer.*

(a) Except as provided in §65.27 of this title (relating to Antlerless and Spike-Buck Deer Control Permits) or subsection (b)(11) of this section [paragraph (10) of this subsection], 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. The open seasons and annual bag limits for white-tailed deer shall be as follows.

(1) In ~~[Bandera, Bexar, Blanco,]~~ Brewster, Brown, ~~[Burnet,]~~ Coke, Coleman, ~~[Comal (west of Interstate 35),]~~ Concho, ~~[Crockett,]~~ Culberson, ~~[Edwards, Gillespie,]~~ Glasscock, ~~[Hays (west of Interstate 35),]~~ Howard, Irion, Jeff Davis, ~~[Kendall, Kerr, Kimble, Kinney (north of U.S. Highway 90), Llano, Mason, McCulloch, Medina (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 (west of Interstate 35),]~~ and Upton (that southeastern portion located both south of U.S. Highway 67 and east of State Highway 349)~~;~~ ~~[Uvalde (north of U.S. Highway 90) ; and Val Verde (north of U.S. Highway 90; and that portion located both south of U.S. 90 and west of Spur 239)]~~ counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two bucks.

(2) In Bandera, Bexar, Blanco, Burnet, Comal (west of Interstate 35), Crockett, Edwards, Gillespie, Hays (west of Interstate 35), Kendall, Kerr, Kimble, Kinney (north of U.S. Highway 90), Llano, Mason, McCulloch, Medina (north of U.S. Highway 90), Menard, Real, San Saba, Schleicher, Sutton, Travis (west of Interstate 35), Uvalde (north of U.S. Highway 90) and Val Verde (north of U.S. Highway 90; and that portion located both south of U.S. 90 and west of Spur 239) counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: five deer, no more than two bucks.

(C) Special Late General Season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only.

(i) Open season: 14 consecutive days starting the first Monday following the first Sunday in January.

(ii) Bag limit: five antlerless or spike-buck deer in the aggregate, no more than two of which may be spike bucks.

(3) [(2)] In Aransas, Atascosa, Bee, Calhoun, Cameron, Hidalgo, Live Oak, Nueces, Refugio, San Patricio, Starr, and Willacy counties, there is a general open season.

(A) Open season: second Saturday in November through the third Sunday in January.

(B) Bag limit: four deer, no more than two bucks.

(C) Special Late General Season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only.

(i) Open season: 14 consecutive days starting the first Monday following the third Sunday in January.

(ii) Bag limit: four antlerless or spike-buck deer in the aggregate, no more than two of which may be spike bucks.

(4) [(3)] In Brooks, Dimmit, Duval, Frio, Jim Hogg, Jim Wells, Kenedy, Kinney (south of U.S. Highway 90), Kleberg, LaSalle, Maverick, McMullen, Medina (south of U.S. Highway 90), Uvalde (south of U.S. Highway 90), Val Verde (that southeastern portion located both south of U.S. Highway 90 and east of Spur 239), Webb, Zapata, and Zavala counties, there is a general open season.

(A) Open season: Second Saturday in November through the third Sunday in January.

(B) Bag limit: five deer, no more than three bucks.

(C) Special Late General Season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only.

(i) Open season: 14 consecutive days starting the first Monday following the third Sunday in January.

(ii) Bag limit: five antlerless or spike-buck deer in the aggregate, no more than three of which may be spike bucks.

(5) [(4)] No person may take or attempt to take more than one buck deer per license year from the counties, in the aggregate, listed within this paragraph, except as provided in subsection (a) of this section or authorized under the provisions of §65.26 of this title (relating to Managed Land Deer Permits).

(A) In Archer, Baylor, Bell (west of Interstate 35), Bosque, Callahan, Clay, Comanche, Coryell, Eastland, Erath, Grayson, Hamilton, Hood, Jack, Lampasas, McLennan, Montague, Palo Pinto, Parker, Shackelford, Somervell, Stephens, Taylor, Throckmorton, Williamson (west of Interstate 35), Wise, and Young counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) Special regulation. In Grayson County:

(I) lawful means are restricted to lawful archery equipment and crossbows only; and

(II) antlerless deer shall be taken by MLD permit only, except on the Hagerman National Wildlife Refuge.

(B) In Brazoria, Fort Bend, Goliad (south of U.S. Highway 59), Harris, Jackson (south of U.S. Highway 59), Matagorda, Victoria (that portion of the county that is south of both U.S. Highway 59 and U.S. Business Highway 59), and Wharton (south of U.S. Highway 59) counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) During the first 23 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. 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.

(C) In Armstrong, Borden, Briscoe, Carson, Childress, Collingsworth, Cottle, Crosby, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hansford, Hardeman, Haskell, Hemphill, Hutchinson, Jones, Kent, King, Knox, Lipscomb, Motley, Ochiltree, Randall, Roberts, Scurry, Stonewall, Swisher, Wheeler, Wichita, and Wilbarger counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) During the first 16 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 16 days, antlerless deer may be taken only by MLD antlerless permits.

(D) In Cooke, Denton, Hill, Johnson, and Tarrant counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(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, Delta, Franklin, Freestone, Gregg, Grimes, [Harrison,] Henderson, Hopkins, Houston, Lamar, Leon, Limestone, Madison, [Marion,] Morris, Navarro, Red River, Robertson, Rusk, [San Jacinto,] Smith, Titus, [Trinity,] Upshur, Van Zandt, [Walker,] and Wood counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(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, longbow, compound bow, recurved bow, or crossbow. Other game animals or game birds may be taken only with shotgun, longbow, compound bow, recurved bow, or crossbow.]



(F) In Dallam, Hartley, Moore, Oldham, Potter, and Sherman Counties, there is a general open season.

(i) Open season: Saturday before Thanksgiving for 16 consecutive days.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) Antlerless deer may be taken only by MLD antlerless permits.

(G) In Cass, Harrison, Marion, Nacogdoches, Panola, Sabine, San Augustine and Shelby Counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) From Thanksgiving Day through the Sunday immediately following Thanksgiving Day, antlerless deer may be taken without antlerless deer permits unless MLD or LAMPS permits have been issued for the tract of land. If MLD or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the first Saturday in November through the day before Thanksgiving Day, and from the Monday immediately following Thanksgiving Day through the first Sunday in January, 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. On the Bannister and Moore Plantation Wildlife Management Areas, antlerless deer may be taken by Wildlife Management Area antlerless permit only.

(H) In Austin, Bastrop, Bell (east of Interstate 35), Caldwell, Colorado, Comal (east of Interstate 35), Crane, DeWitt, Ector, Ellis, Falls, Fannin, Fayette, Goliad (north of U.S. Highway 59), Gonzales, Guadalupe, Hays (east of Interstate 35), Hunt, Jackson (north of U.S. Highway 59), Karnes, Kaufman, Lavaca, Lee, Loving, Midland, Milam, Rains, Travis (east of Interstate 35), Upton (that portion located north of U.S. Highway 67; and that area located both south of U.S. Highway 67 and west of state highway 349), Victoria (that portion of the county that is north of both U.S. Highway 59 and U.S. Business Highway 59), Waller, Ward, Washington, Wharton (north of U.S. Highway 59), Williamson (east of Interstate 35), and Wilson counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) Antlerless deer may be taken only by MLD antlerless permits.

(6) [(5)] In Angelina, Chambers, Hardin, Jasper, Jefferson, Liberty, Montgomery, Newton, Orange, Polk, San Jacinto, Trinity, [and ] Tyler, and Walker counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two bucks and no more than two antlerless.

(C) From opening day through the Sunday immediately following Thanksgiving [~~During the first 23 days of the general~~

~~season], antlerless deer may be taken without antlerless deer permits unless MLD or LAMPS permits have been issued for the tract of land. If MLD or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the Monday following Thanksgiving [~~After the first 23 days], antlerless deer may be taken only by MLD antlerless permits or LAMPS permits. On tracts of land for which LAMPS permits have been issued, no LAMPS permit is required for the harvest of antlerless deer during the muzzleloader-only open season. On Corps of Engineers, Sabine River Authority and Trinity River Authority lands, antlerless deer may be taken only by MLD antlerless permits. On the Sam Houston, [Bannister,] Alabama Creek, and Moore Plantation Wildlife Management Areas, antlerless deer may only be taken by Wildlife Management Area antlerless permit [~~written authorization of the U.S. Forest Service].~~~~~~

(7) [(6)] In Andrews, Bailey, Castro, Cochran, Collin, Dallas, Dawson, Deaf Smith, El Paso, Gaines, Galveston, Hale, Hockley, Hudspeth, Lamb, Lubbock, Lynn, Martin, Parmer, Rockwall, Terry, Winkler, and Yoakum counties, there is no general open season.

(8) [(7)] Archery-only open seasons. In all counties where there is a general open season for white-tailed deer, there is an archery-only open season during which either sex of white-tailed deer may be taken as provided for in §65.11(2) and (3) of this title (relating to Means and Methods).

(A) Open season: the Saturday closest to September 30 for 30 consecutive days.

(B) Bag limit: the bag limit in any given county is as provided for that county during the general open season.

(9) [(8)] Muzzleloader-only open seasons, and bag and possession limits shall be as follows.

(A) In [~~Bandera, Bexar, Blanco,]~~ Brewster, Brown, [~~Burnet,]~~ Coke, Coleman, [~~Comal (west of Interstate 35),]~~ Concho, [~~Crockett,]~~ Culberson, [~~Edwards, Gillespie,]~~ Glasscock, [~~Hays (west of Interstate 35),]~~ Howard, Irion, Jeff Davis, [~~Kendall, Kerr, Kimble, Kinney (north of U.S. Highway 90), Llano, Mason, Medina (north of U.S. Highway 90), Menard, McCulloch,]~~ Mills, Mitchell, Nolan, Pecos, Presidio, Reagan, [~~Real,]~~ Reeves, Runnels, [~~San Saba, Schleicher,]~~ Sterling, [~~Sutton,]~~ Terrell, Tom Green, and [~~Travis (west of Interstate 35),]~~ Upton (that portion located both south of U.S. Highway 67 and east of state highway 349) [~~Uvalde (north of U.S. Highway 90); and Val Verde (north of U.S. Highway 90; and that portion located both south of U.S. Highway 90 and west of Spur 239)] counties, there is an open season during which only antlerless and spike-buck deer may be taken only with a muzzleloader.~~

(i) [(B)] Open Season: from the first Saturday following the closing of the general open season for nine consecutive days.

(ii) [(C)] Bag limit: four antlerless or spike-buck deer in the aggregate, no more than two [~~of which may be]~~ spike bucks.

(B) In Angelina, Chambers, Hardin, Jasper, Jefferson, Liberty, Montgomery, Newton, Orange, Polk, and Tyler counties, there is an open season during which only antlerless and spike-buck deer may be taken only with a muzzleloader.

(i) Open Season: from the first Saturday following the closing of the general open season for nine consecutive days.

(ii) Bag limit: four antlerless or spike-buck deer in the aggregate, no more than two spike bucks and no more than two antlerless.

(10) [~~9~~] Special Youth-Only Season. There shall be a special youth-only general hunting season in all counties where there is a general open season.

(A) open season: the Saturday and Sunday immediately preceding the first Saturday in November.

(B) bag limits, provisions for the take of antlerless deer, and special requirements:

(i) as specified for the first two days of the general season in the individual counties in paragraphs (1)-(6) of this subsection, except as provided in clause [~~item~~] (ii) of this subparagraph; and

(ii) in the counties listed in paragraph (5)(G) [~~(4)(G)~~] of this subsection, as specified for the period of time from Thanksgiving Day through the Sunday immediately following Thanksgiving Day.

(C) Only licensed hunters 16 years of age or younger may hunt during the season established by this subsection.

(11) [~~10~~] Bonus tag.

(A) A person in possession of a valid bonus deer tag may take one buck or antlerless white-tailed deer during an open white-tailed deer season in any county, irrespective of the county bag limit, provided that person also possesses one of the following:

(i) an appropriate, valid MLD permit (buck or antlerless);

(ii) a valid LAMPS permit (antlerless only); or

(iii) an appropriate, valid Special Permit (buck or antlerless) issued by the department for a public hunt, in which case the bonus tag is valid only on the wildlife management area or state park specified by the permit and only during the date and time specified on the permit.

(B) No person may:

(i) purchase more than five bonus tags per license year;

(ii) use a bonus tag on more than one animal; or

(iii) buy, sell, or otherwise exchange a bonus tag for remuneration or considerations of any kind; however, a bonus tag may be given to another person.

(C) A person who kills a deer shall immediately attach a properly executed bonus tag to the deer.

(c) Mule deer. The open seasons and annual bag limits for mule deer shall be as follows.

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

(3) In Andrews (west of U.S. Highway 385), Bailey, Cochran, Hockley, Lamb, Terry, and Yoakum counties, there is a general open season.

(A) Open season: Saturday before Thanksgiving for 16 [~~five~~] consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken only by Antlerless Mule Deer or MLD Permits.

(4)-(5) (No change.)

§65.64. *Turkey.*

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

(c) Eastern turkey. The open seasons and bag limits for Eastern turkey shall be as follows. In Angelina, Bowie, Camp, Cass, Cherokee, Delta, Fannin, Franklin, Grayson, Gregg, Harrison, Hopkins, Hunt, Jasper, Lamar, Marion, Montgomery (north of State Hwy. 105), Morris, Nacogdoches, Newton, Panola, Polk, Rains, Red River, Sabine, San Augustine, San Jacinto, Shelby, Titus, Trinity, Tyler (north of U.S. Hwy. 190), and Walker counties, there is a spring season during which both Rio Grande and Eastern turkey may be lawfully hunted.

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

(d) (No change.)

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

Filed with the Office of the Secretary of State, on February 18, 2000.

TRD-200001246

Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775

### Division 3. OPENS SEASONS AND BAG LIMITS—FISHING PROVISIONS

#### 31 TAC §65.72, §65.78

The amendment is proposed 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.

The proposed amendment affects Parks and Wildlife Code, Chapter 61.

§65.72. *Fish.*

(a) General rules.

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

(5) Commercial fishing seasons.

(A) The commercial seasons for finfish species listed in this paragraph and caught in Texas waters shall run concurrently with commercial seasons established for the same species caught in federal waters of the Exclusive Economic Zone (EEZ).

(B) The commercial fishing season in the EEZ will be set by the National Marine Fisheries Service for:

(i) red snapper under guidelines established by the Fishery Management Plan for Reef Fish Resources for the Gulf of Mexico; ~~and~~

(ii) king mackerel under guidelines established by the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; ~~and~~ [-]

(iii) sharks (all species, their hybrids and sub-species) under guidelines established by the Fishery Management Plan for Highly Migratory Species).

(C) (No change.)

(6) (No change.)

(b) Bag, possession, and length limits. [~~The bag and possession limits for red snapper become effective May 20, 1999.~~]

(1) (No change.)

(2) There are no bag, possession, or length limits on game or non-game fish, except as provided in these rules.

(A) (No change.)

(B) Statewide daily bag and length limits shall be as follows:

Figure: 31 TAC §65.72(b)(2)(B)

(C) Exceptions to statewide daily bag, possession, and length limits shall be as follows:

(i) The following is a figure:

Figure: 31 TAC §65.72(b)(2)(C)(i)

(ii) (No change.)

(c) Devices, means and methods.

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

(5) Device restrictions.

(A)-(P) (No change.)

(Q) Trotline.

(i)-(iii) (No change.)

(iv) In salt water:

(I) it is unlawful to use a trotline:

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

~~{(-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.}~~

~~(-c-) [(-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;~~

~~(-d-) [(-e-)] baited with other than natural bait, except sail lines;~~

~~(-e-) [(-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~~

~~(-f-) [(-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 1:00 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.

(III) It is unlawful to fish for commercial purposes with:

~~(-a-) more than 20 trotlines at one time;~~

~~(-b-) any trotline that is not marked with yellow flagging attached to stakes or with a floating yellow buoy not less than six inches in height, six inches in length, and six inches in width attached to end fixtures;~~

~~(-c-) any trotline that is not marked with yellow flagging attached to stakes or with a yellow buoy bearing the commercial finfish fisherman's license plate number in letters of a contrasting color at least two inches high attached to end fixtures;~~

~~(-d-) any trotline that is marked with yellow flagging or with a buoy bearing a commercial finfish fisherman's license plate number other than the commercial finfish fisherman's license plate number displayed on the finfish fishing boat;~~

(IV) It is unlawful to fish for non-commercial purposes with:

~~(-a-) more than 1 trotline at any time; or~~

~~(-b-) any trotline that is not marked with a floating yellow buoy not less than six inches in height, six inches in length, and six inches in width, bearing a two-inch wide stripe of contrasting color, attached to end fixtures.~~

(R) (No change.)

§65.78. *Crabs and Ghost Shrimp.*

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

(d) Devices, means and methods.

(1) (No change.)

(2) Only the following means and methods may be used for taking crabs:

(A) (No change.)

(B) Crab trap. It is unlawful to:

(i) fish for commercial purposes under authority of a commercial crab fisherman's license with more than 200 crab traps at one time;

(ii) fish for commercial purposes under authority of a commercial finfish fisherman's license with more than 20 crab traps at one time;

(iii) [~~(ii)~~] fish for non-commercial purposes with more than six crab traps at one time;

(iv) [~~(iii)~~] fish a crab trap in the fresh waters of this state;

(v) [~~(iv)~~] fish a crab trap that:

(I) exceeds 18 cubic feet in volume;

(II) is not equipped with at least two escape vents (minimum 2-3/8 inches inside diameter) in each crab-retaining chamber, and located on the outside trap walls of each chamber; and

(III) is not equipped with a degradable panel. A trap shall be considered to have a degradable panel if one of the following methods is used in construction of the trap:

(-a-) the trap lid tie-down strap is secured to the trap by a loop of untreated jute twine (comparable to Lehigh brand #530) or sisal twine (comparable to Lehigh brand #390). The trap lid must be secured so that when the twine degrades, the lid will no longer be securely closed; or

(-b-) the trap lid tie-down strap is secured to the trap by a loop of untreated steel wire with a diameter of no larger than 20 gauge. The trap lid must be secured so that when the wire degrades, the lid will no longer be securely closed; or

(-c-) the trap contains at least one sidewall, not including the bottom panel, with a rectangular opening no smaller than three inches by six inches. Any obstruction placed in this opening may not be secured in any manner except:

(-1-) it may be laced, sewn, or otherwise obstructed by a single length of untreated jute twine (comparable to Lehigh brand #530) or sisal twine (comparable to Lehigh brand #390) knotted only at each end and not tied or looped more than once around a single mesh bar. When the twine degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(-2-) it may be laced, sewn, or otherwise obstructed by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the wire degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(-3-) the obstruction may be loosely hinged at the bottom of the opening by no more than two untreated steel hog rings and secured at the top of the obstruction in no more than one place by a single length of untreated jute twine (comparable to Lehigh brand #530), sisal twine (comparable to Lehigh brand #390), or by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the twine or wire degrades, the obstruction will hinge downward and the opening in the sidewall of the trap will no longer be obstructed.

(vi) fish a crab trap for commercial purposes under authority of a commercial crab fisherman's license:

(I) that is not marked with a floating white buoy not less than six inches in height, six inches in length, and six inches in width attached to the crab trap;

(II) that is not marked with a white buoy bearing the commercial crab fisherman's license plate number in letters of a contrasting color at least two inches high attached to the crab trap;

(III) that is marked with a buoy bearing a commercial crab fisherman's license plate number other than the commercial crab fisherman's license plate number displayed on the crab fishing boat;

(vii) fish a crab trap for commercial purposes under authority of a commercial finfish fisherman's license:

(I) that is not marked with a floating yellow buoy not less than six inches in height, six inches in length, and six inches in width attached to the crab trap;

(II) that is not marked with a yellow buoy bearing the letter 'F' and the commercial finfish fisherman's license plate number in letters of a contrasting color at least two inches high attached to the crab trap;

(III) that is marked with a buoy bearing a commercial finfish fisherman's license plate number other than the commercial finfish fisherman's license plate number displayed on the finfish fishing boat;

{(v)} fish a crab trap for commercial purposes that is not marked with a floating white buoy not less than six inches in height, six inches in length, and six inches in width attached to the crab trap;}

{(vi)} fish a crab trap for commercial purposes that is not marked with a floating white buoy bearing the commercial crab fisherman's license plate number in letters of a contrasting color at least two inches high attached to the crab trap;}

{(vii)} fish a crab trap that is marked with a buoy bearing a commercial crab fisherman's license plate number other than the commercial crab fisherman's license plate number displayed on the crab fishing boat;}

(viii) fish a crab trap for non-commercial purposes without a floating white buoy not less than six inches in height, six inches in length, and six inches in width, bearing a two-inch wide center stripe of contrasting color, attached to the crab trap;

(ix) fish a crab trap in public salt waters without a valid gear tag. Gear tags must be attached within 6 inches of the buoy and are valid for 30 days after date set out.

(x) fish a crab trap within 200 feet of a marked navigable channel in Aransas County; and in 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 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 or possess, use or place more than three crab traps in waters north and west of Highway 146 where it crosses the Houston Ship Channel in Harris County;

(xi) remove crab traps from the water or remove crabs from crab traps during the period from 30 minutes after sunset to 30 minutes before sunrise;

(xii) place a crab trap or portion thereof closer than 100 feet from any other crab trap, except when traps are secured to a pier or dock;

(xiii) fish a crab trap in public waters that is marked with a buoy made of a plastic bottle(s) of any color or size; or

(xiv) use or place more than three crab traps in public waters of the San Bernard River north of a line marked by the boat access channel at Bernard Acres.

(C)-(D) (No change.)

{(e) Effective Dates. The provisions of subsections (a)-(c), (d)(1)-(2)(B)(iv)(II), and (d)(2)(B)(v)-(xiv), above shall take effect September 1, 1998.}

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

Filed with the Office of the Secretary of State, on February 18, 2000.

TRD-200001247

Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

Earliest possible date of adoption: April 2, 2000

For further information, please call: (512) 389-4775



## Subchapter H. PUBLIC LANDS PROCLAMATION

### 31 TAC §§65.191, 65.193, 65.199

The Texas Parks and Wildlife Commission proposes amendments to §§65.191, 65.193, and 65.199, concerning the Public Lands Proclamation.

The amendment to §65.191, concerning Definitions, lowers the minimum age requirement for persons supervising youths engaged in hunting activities, and is necessary to provide greater opportunity for young hunters; and updates a legal reference under the definition for 'Disabled person'.

The amendment to §65.193, concerning Access Permit Required and Fees: creates a uniform requirement for possession of an Annual Public Hunting permit to enter department lands for the purpose of hunting; authorizes certain permit holders to access public waters from public hunting lands and fish from riverbanks on public lands; waives regular permit fees for hunting and fishing activities on public lands for holders of an Annual Public Hunting permit; and waives regular permit fees for holders of certain annual permits who do not engage in hunting or fishing. The amendment to §65.193 is necessary to, respectively: to simplify and streamline regulations; maximize public access to public resources; and to prevent persons from having to pay fees for activities in which they are not engaged.

The amendment to §65.199, concerning General Rules of Conduct, requires a department-issued Antlerless Deer permit for the harvest of antlerless deer on Wildlife Management Areas jointly administered by the department and the U.S. Forest Service, and prohibits the disturbance or removal of wood, sand, soil, gravel, or shell from public hunting lands without the consent of the department. The amendment to §65.199 is necessary to properly manage the harvest of deer on certain department-administered properties and to protect public property.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the amendments as proposed are in effect, there will be no fiscal implications to state

or local governments as a result of enforcing or administering the amendments.

Mr. Macdonald also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments as proposed will be the discharge of the department's statutory duty to effectively and efficiently manage public hunting lands, access to them, and enjoyment of them. There will be no effect on small businesses. There is no additional economic cost to persons required to comply with the amendments as proposed.

The department has not filed a local impact statement with the Texas Employment Commission as required by Government Code, §2001.022, as this agency has determined that the amendments as proposed will not impact local economies.

The department has determined that there will not be a taking of private property, as defined by Government Code, Chapter 2007, as a result of the proposed amendments.

Comments on the proposed amendments may be submitted to Herb Kothmann, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (512) 389-4770 or 1-800-792-1112.

The amendment is proposed under Parks and Wildlife Code, Chapter 81, Subchapter E, which provides the Parks and Wildlife Commission with authority to establish an open season on wildlife management areas and public hunting lands and authorizes the executive director to regulate numbers, means, methods, and conditions for taking wildlife resources on wildlife management areas and public hunting lands; 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; 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; and §42.0177, which authorizes the commission to modify or eliminate the tagging requirements of Chapter 42.

The amendments affect Parks and Wildlife Code, Chapter 81, Subchapter E; Chapter 12, Subchapter A; Chapter 62, Subchapter D; and Chapter 42.

#### §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).

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

(5) Authorized supervising adult—A parent, legal guardian, or individual at least 18 [24] years of age who assumes liability responsibility for a minor.

(6)-(15) (No change.)

(16) Disabled person—A paraplegic or a person who has a physician's statement in their immediate possession certifying that they qualify for privileged handicapped parking under Transportation Code, Chapter 681 [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"].

(17)-(43) (No change.)

§65.193. *Access Permit Required and Fees.*

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

(c) Annual Public Hunting (APH) Permit and Limited Public Use (LPU) Permit.

(1) (No change.)

(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) Persons possessing an APH permit, a LPU permit, or Texas Conservation Passport (Gold or Silver) may use public hunting lands to access adjacent public waters, and may fish in adjacent public waters from riverbanks on public hunting lands [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 or crossbow 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;

(B) persons who enter on U.S. Army Corps of Engineers lands (Aquilla, Cooper, Dam B, Granger, Pat Mayse, Ray Roberts, Somerville, and White Oak Creek WMAs) designated as public hunting lands for purposes other than hunting or equestrian use; [ø]

(C) persons who enter Caddo Lake State Park and Wildlife Management Area and do not hunt or enter upon the land; [-]

(D) persons who enter and hunt waterfowl within the Bayside Marsh Unit of Matagorda Island State Park and Wildlife Management Area;

(E) persons who enter the Bryan Beach Unit of Peach Point Wildlife Management Area and do not hunt; or

(F) persons who enter Zone C of the Guadalupe River Unit of the Guadalupe Delta Wildlife Management Area and do not hunt or fish.

(5)-(6) (No change.)

(d)-(l) (No change.)

(m) Any applicable regular permit fees for hunting or fishing activities will be waived for persons possessing an APH permit.

(n) Any applicable regular permit fees for authorized activities other than hunting or fishing will be waived for persons possess-

ing an APH permit, a LPU permit, or Texas Conservation Passport (Gold or Silver).

(o) [~~ø~~] 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.

(p) [~~ø~~] It is an offense if a person fails to obey the conditions of a permit issued under this subchapter.

§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)-(5) (No change.)

(6) disturb or remove plants, wood, rocks, gravel, sand, soil, shell, artifacts, or other objects from public hunting lands, except as authorized by the department;

(7)-(10) (No change.)

(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; [ø]

(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; or [-]

(13) take an antlerless deer during the general open season on wildlife management areas jointly managed by TPW and the U.S. Forest Service (Alabama Creek, Bannister, Caddo, Moore Plantation, or Sam Houston National Forest) unless that person possesses on their person a TPW-issued WMA Antlerless Permit.

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

Filed with the Office of the Secretary of State, on February 18, 2000.

TRD-200001248

Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

Earliest possible date of adoption: April 2, 2000

For further information, please call: (512) 389-4775



## Part 10. TEXAS WATER DEVELOPMENT BOARD

### Chapter 363. FINANCIAL ASSISTANCE PROGRAM

## Subchapter E. ECONOMICALLY DISTRESSED AREAS PROGRAM

### 31 TAC §363.506

The Texas Water Development Board (the board) proposes amendments to 31 TAC §363.506(d), concerning the Economically Distressed Areas Program (EDAP) to facilitate completion of water supply or wastewater projects through the self-help efforts and initiatives of the residents receiving service from the project to be acquired. The amendments are intended to clarify the application requirements and parameters for determination of the type and amount of financial assistance the board will consider providing to political subdivisions desiring to acquire such projects after completion.

Amendments are proposed to §363.506(d) to provide criteria under which the board may consider providing grant assistance to a qualified political subdivision that desires to acquire and operate a water supply or wastewater project completed through the self-help efforts and initiatives of the residents receiving service from the project. In addition to the reduction in the conventional costs through self-help, the applicant must demonstrate that the residents will assume the responsibility of paying at least 10% of the actual costs of the project.

Subsection (d) provides the requirements for an application submitted under the self-help program. The application must be submitted by a qualified political subdivision and must include a facility plan which demonstrates that the conventional costs of the proposed project will be reduced by a minimum of 40% through the efforts of the residents that will benefit from the completed project. The application must further demonstrate that the residents will bear at least 10% of the actual costs of the project and that the design and construction of the project will be reviewed and inspected by the political subdivision applying for assistance. The applicant must also meet the applicable board requirements for acquisition of a system or treatment plant capacity.

Ms. Marla Young, Acting Director of Accounting and Finance, has determined that for the first five-year period the section is in effect there will be no additional fiscal implications on state and local government as a result of implementation and administration of the amended section.

Ms. Young has also determined that for the first five years the section as proposed is in effect the public benefit anticipated as a result of implementing the section will be to clarify for potential applicants the criteria that will be applied by the board in determining whether to provide financial assistance for acquisition of self-help projects from the Economically Distressed Areas Account of the Texas Water Development Fund. Ms. Young has determined there will be no new economic costs to small businesses or individuals who comply with the section as proposed.

Comments on the proposed amendments will be accepted for 30 days following publication and may be submitted to Jonathan Steinberg, 512/475-2051, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231.

The amendments are proposed under the authority of the Texas Water Code, §6.101 and §16.342 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water

Code and other laws of the State including, specifically, the Economically Distressed Areas Program.

The statutory provisions affected by the proposed amendments are Texas Water Code, Chapter 17, Subchapter K, §17.932 and §17.933.

#### §363.506. *Calculation of Financial Assistance.*

(a) The board's financial assistance will be determined by the provisions of this section, including calculating:

(1) capacity within the applicant's existing water or wastewater plants and associated facilities which will be funded by the board to serve the project area. The amount of financial assistance for existing system capacity shall be based on the percentage of the system capacity necessary to serve the project area. The percentage of system capacity for the project is then multiplied by the historical plant cost to the utility. This amount will be paid directly by the board in grant funds upon completion of construction and acceptance of the project to the extent other funds and system revenues are not sufficient to pay for such capacity; and

(2) revenue available for payment of debt service. The board will determine the revenue available for payment of debt service by using the appropriate method specified in either subparagraph (A) or (B) of this paragraph.

(A) Upon the submission of evidence satisfactory to the executive administrator that the rates, fees and charges to the average customer to be served by the project will be the same as the rates, fees, and charges that other families of similar income who are similarly situated pay for comparable services, the revenue available for payment of debt service will be either:

(i) the regional capital component benchmark multiplied by the estimated number of LUEs of the area to be served at the end of construction of the proposed project less other debt incurred by the provider utility attributable to the overall project proposed in the application to the board; or

(ii) for existing systems with a capital component of greater than zero and which are extending service to an area to which the provider utility has not previously provided service the capital component multiplied by the estimated number of LUEs of the area to be served at the end of construction of the proposed project less other debt incurred by the provider utility attributable to the overall project proposed in the application to the board.

(B) If there is insufficient satisfactory evidence that there are other families of similar income who are similarly situated paying the same rates, then the revenue available for debt service will be either:

(i) the regional payment benchmark multiplied by the regional capital component benchmark of the same water or service providers used to determine the regional payment benchmark multiplied by the estimated number of LUEs in the project area at the end of construction of the project less other debt incurred by the provider utility attributable to the overall project proposed in the application to the board; or

(ii) for existing systems with a capital component of greater than zero and which are extending service to an area to which the provider utility has not previously provided service the revenue available for payment of debt service will be the payment rate of the provider utility multiplied by the capital component of the provider utility multiplied by the estimated number of LUEs in the project area at the end of construction of the project less other

debt incurred by the provider utility attributable to the overall project proposed in the application to the board; and

(3) for applications requesting an increase in the amount of financial assistance previously provided by the board for the project under this program, the amount of the increase for which repayment will be required will be the greater of:

(A) an amount equal to the amount of the loan of the financial assistance provided by the board in its first commitment for the project divided by the total amount of the financial assistance provided by the board in its first commitment for the project multiplied by the amount of the additional financial assistance request under consideration by the board; or

(B) an amount equal to the amount of the loan that would have resulted by applying the provisions of subsection (a)(2) of this section to the total project area, less the amount of the loan portion of the financial assistance provided by the board in its previous commitments for the project under this subchapter.

(b) In determining the amount and form of financial assistance and the amount and form of repayment, the board also will consider sources of funding available to the applicant from federal and private funds, and from other state funds, as well as any other sources of funds to the applicant if the economically distressed area to be served by the board's financial assistance is within the boundary of the applicant, and the just, fair, and reasonable charges for water and wastewater service as provided in the Texas Water Code.

(c) If the amount of financial assistance for which repayment is not required exceeds 50% of the total amount of financial assistance requested from the Economically Distressed Areas Program, including funds for system capacity, plus the total interest on any amount of financial assistance that must be repaid, the applicant will be asked to provide a finding from the Texas Department of Health that a nuisance dangerous to the public health and safety exists resulting from water supply and sanitation problems in the area to be served by the proposed project.

(d) In lieu of using the calculations or considerations provided in subsections (a) and (b) of this section to determine the amount and form of financial assistance, the board ~~may~~will provide financial assistance in the form of a grant to an applicant desiring to acquire a proposed project that meets the requirements of this section. Prior to construction of the proposed project, the applicant shall submit an application that includes:

(1) a facility plan that meets the requirements of 31 TAC §355.73 and particularly includes an amount identified as total conventional project costs which is the cost to construct the project without the labor of the residents of the area;

(2) sufficient evidence that the residents of the area to be served by the proposed project will contribute labor to the construction of the system or other cost savings such that the actual cost of the project is 60% of the total conventional project costs;

(3) information which establishes that the residents will contribute funds in an amount not less than 10% of the total actual project cost including capacity buy-in;

(4) a resolution from the eligible political subdivision that it will prepare or review plans and specifications of the proposed system to ensure service by the applicant;

(5) a resolution from the eligible political subdivision that it will inspect or provide for inspection of the system during

construction to ensure that it is constructed in accordance with plans and specifications; and

(6) information which adequately identifies an amount necessary for the purchase of capacity in the treatment plant to which the system will be connected, if applicable. [~~grants to political subdivisions approved by the board for construction funding through the Community Self-Help Program, which provides assistance to small communities using self-help initiatives coordinated through a contract between the board, the Rensselaerville Institute and WaterWorks.~~]

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

Filed with the Office of the Secretary of State, on February 18, 2000.

TRD-200001273

Suzanne Schwartz

General Counsel

Texas Water Development Board

Proposed date of adoption: April 19, 2000

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



## TITLE 34. PUBLIC FINANCE

### Part 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### Chapter 3. TAX ADMINISTRATION

##### Subchapter O. STATE SALES AND USE TAX

###### 34 TAC §3.295

The Comptroller of Public Accounts proposes an amendment to §3.295, concerning natural gas and electricity. This rule is being amended to reflect changes to the Tax Code, §151.317, enacted by the 76th Legislature, 1999, adding clarifications and codifying the agency's long-standing policy of using predominant use to determine the taxability of gas or electricity used for exempt and taxable purposes and measured through a single meter.

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

Mr. 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 Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This 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, §151.317.

§3.295. *Natural Gas and Electricity.*

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

~~[(1) Commercial use – Use by persons engaged in selling, warehousing, or distributing a commodity or use by persons engaged in selling a service, either professional or personal, including uses by the wholesale and retail trade, hotels, office buildings, preparation or storage of food for immediate consumption, and those persons providing taxable services.]~~

~~(1) [(2)] Electric utility – Any entity owning or operating for compensation in this state equipment or facilities for producing, generating, transmitting, distributing, selling, or furnishing electricity whose rates for the sale of electric power are set by the Public Utilities Commission under the Public Utility Regulatory Act. The term does not include:~~

~~(A) a qualifying small power producer or qualifying co-generator, as defined in the Federal Power Act, §3(17)(D) and §3(18)(C), as amended (16 United States Code §796(17)(D) and §796(18)(C)); or~~

~~(B) any person not otherwise a public utility that owns or operates in this state equipment or facilities for producing, generating, transmitting, distributing, selling, or furnishing electric energy to an electric utility, if the equipment or facilities are used primarily for the production and generation of electric energy for the person's own consumption.~~

~~(2) [(3)] Fabrication – To make, build, create, produce, or assemble components of tangible personal property, or to make tangible personal property work in a new or different manner.~~

~~(3) [(4)] Manufacturing – Every operation commencing with the first stage of production of tangible personal property and ending with the completion of tangible personal property. The first production stage means the first act of production and it does not include acts in preparation for production. For example, a manufacturer gathering, arranging, or sorting raw material or inventory is preparing for production. When production is completed, maintaining the life of tangible personal property or preventing its deterioration is not a part of the manufacturing process. Tangible personal property is complete when it has the physical properties, including packaging, if any, that it has when transferred by the manufacturer to another. [For the purposes of this section, direct use of natural gas or electricity in manufacturing, which includes fabricating and processing, and in providing lighting, cooling, and heating in the manufacturing area, will be referred to as noncommercial use.] Also see §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing).~~

~~[(5) Other noncommercial uses – Include:]~~

~~[(A) exploration for production or transportation of material extracted from the earth;]~~

~~[(B) agriculture, including dairy or poultry operations and pumping water for farm and ranch irrigation;]~~

~~[(C) electrical processes such as electroplating, electrolysis, and cathode protection;]~~

~~[(D) direct or indirect use, consumption, or loss of electricity by an electric utility engaged in the purchase of electricity for resale;]~~

~~[(E) the off-wing processing, overhaul, or repair of a jet turbine engine or its parts for a certificated or licensed carrier of persons or property; or]~~

~~[(F) the repair, maintenance, or restoration of rolling stock.]~~

~~(4) [(6)] Remodeling – To make tangible personal property belonging to another over again without causing a loss of its identity, or without causing the property to work in a new or different manner.~~

~~(5) [(7)] Processing – The physical application of the materials and labor necessary to modify or to change the characteristics of tangible personal property. The property being processed may belong either to the processor or the customer, the only tests being whether the property is processed and whether it will ultimately be sold. Direct use of natural gas or electricity in processing will be referred to as exempt [noncommercial] use. Processing does not include remodeling or any action taken to prolong the life of tangible personal property or to prevent a deterioration of the tangible personal property being held for sale. The repair of tangible personal property belonging to another by restoring it to its original condition is not considered processing of that property. The mere packing, unpacking, or shelving of a product to be sold will not be considered to be processing of that product.~~

~~(6) [(8)] Residential use – Use in a family dwelling or in a multifamily apartment complex or housing complex or nursing home or in a building or portion of a building occupied as a home or residence when the use is by the owner of the dwelling, apartment, complex, home, or building or part of the building occupied. Residential use also includes use in a dwelling, apartment, complex, house, or building or part of a building occupied as a home or residence when the use is by a tenant who occupies the dwelling, apartment, complex, house, or building or part of a building under a contract for an express initial term of more than 29 consecutive days. Absent a contract, only the period exceeding 29 consecutive days will be considered residential use, when supported by valid documentation (i.e., receipts, canceled [cancelled] checks, etc.). For purposes of the exemption for residential use of natural gas and electricity, nursing homes qualify for exemption only for periods beginning after December 31, 1987.~~

~~(b) Sales tax applicable. The furnishing of natural gas or electricity is a sale of tangible personal property. All the provisions in the Tax Code, Chapter 151, applying to the sale of tangible personal property, apply to the sale of natural gas or electricity.~~

~~(c) Gas and electricity are exempted from the taxes imposed by this chapter when sold for: [Commercial uses taxable; noncommercial uses exempt. The tax imposed by the Tax Code, Chapter 151, must be collected on the sale of natural gas or electricity for commercial use. The sale of natural gas or electricity for residential use or for use directly in manufacturing, processing, or for other noncommercial uses is exempt.]~~

~~(1) residential use;~~

~~(2) use in agriculture, including dairy or poultry operations and pumping for farm or ranch irrigation;~~

~~(3) direct or indirect use or consumption, including electricity lost in the lines, by an electric utility engaged in the purchase of electricity for resale;~~

~~(4) direct use in:~~

(A) powering equipment exempt under Tax Code, §151.318, to process tangible personal property for sale as tangible personal property, other than preparation of or storage of food for immediate consumption;

(B) lighting, cooling and heating in the manufacturing area during the actual manufacturing or processing of tangible personal property for sale as tangible personal property, other than preparation or storage of food for immediate consumption;

(C) exploring for, producing, or transporting a material extracted from the earth;

(D) electrical processes, such as electroplating, electrolysis, and cathodic protection;

(E) the off-wing processing, overhaul, or repair of a jet turbine engine or its parts for a certificated or licensed carrier of persons or property; or

(F) providing, under contract with or on behalf of the United States government or foreign governments, defense or national security-related electronics, classified intelligence data processing and handling systems, or defense-related platform modifications or upgrades;

(G) the repair, maintenance, or restoration of rolling stock.

(d) Use of gas or electricity in an exempt manner by an independent contractor engaged by the purchaser of the gas or electricity to perform one or more of the activities described in subsection (c)(4) of this section is considered use by the purchaser of the gas or electricity.

(e) [d] Predominant use.

(1) Natural gas or electricity used during a regular monthly billing period for both exempt and taxable purposes under a single meter is totally exempt or taxable based upon the predominant use of the natural gas or electricity measured by that meter. A person who performs a processing, manufacturing, or other exempt [noncommercial] function continually must establish predominant use on 12 consecutive months of use.

(2) If, in the regular course of business, a person performs a processing, manufacturing, or other exempt [noncommercial] function only part of the year and a nonprocessing, nonmanufacturing, or other taxable [commercial] function for the remainder of the year, the predominant use may be established for that period of time the processing, manufacturing, or other exempt [noncommercial] function occurs based on the predominant use during that period.

(3) When determining the predominant use of natural gas or electricity, utilities used to operate [production] machinery exempt under subsection (c)(4)(A) and for lighting, cooling, and heating in the manufacturing area during actual manufacturing or processing of tangible personal property for sale are exempt. Gas and electricity used to operate lighting, cooling, and heating in manufacturing support areas are taxable. Manufacturing support areas include, but are not limited to, storage, engineering, office and accounting areas, research and development, and break, eating, and restroom facilities. Utilities used in an area open to the public for the purpose of marketing a product ready for sale are taxable. Utilities used to operate other nonproduction machinery or equipment are taxable.

[(4) Persons whose use of natural gas or electricity is solely in family dwellings will not be required to furnish exemption certificates.]

[(5) A person whose use is in multifamily apartment complexes, housing complexes, nursing homes, or other residential buildings may be required to issue an exemption certificate if one is necessary for the utility company to distinguish exempt residential use from taxable commercial use.]

(f) [(e)] Determining predominant use: utility studies.

(1) Persons claiming a sales tax exemption because the predominant use of natural gas and electricity through a single meter is for processing, manufacturing, fabricating, or other taxable [noncommercial] use must have performed a utility study to establish this predominant exempt use. The study must list all uses of the utility, both exempt and taxable [nonexempt], the times of usage, the energy used, and whether the use was taxable or exempt. Twelve consecutive months of utility usage must be a part of the study. The kilowatt rating or BTU [Btu] rating, duty factor, where needed for cycling equipment, and electrical or natural gas computations must be certified by a registered engineer or a person with an engineering degree from an accredited engineering college. The owner of the business must certify that all items using natural gas or electricity (depending on which utility is covered by the study) are listed and that the hours of use for each item are correct. The certification of both the engineer and the owner must appear on the face of the study. If the owner of the business appoints an agent to act on the owner's behalf, the power of attorney must clearly state that the agent is attempting to qualify the principal for a sales tax exemption, and if a refund of sales tax is involved, the power of attorney must also state that a sales tax refund will be made by the state through the utility company. A person in business less than 12 consecutive months may still apply for a sales tax exemption if a registered engineer or a person with an engineering degree performs a study based upon projected uses which shows the predominant use as exempt. A person claiming an exemption based upon estimated use must be able to support the claimed exemption with a study of actual use after 12 consecutive months of operation if so requested by the comptroller.

(2) The study must be completed and on file at the location of the person claiming the exemption at the time an exemption certificate is submitted to the utility company. Without the study, the claim for exemption will be presumed to be invalid. Persons obtaining a sales tax refund without a valid study will be assessed tax, penalty, and interest by the comptroller on the full amount of the refund, if the exemption is not proved. If the exemption certificate is fully completed with all information required by this section and bears an original seal of a registered engineer or is attached to a signed statement with an original signature from the owner of the business and a person with an engineering degree from an accredited engineering college, as required by paragraph (1) of this subsection, the utility company is not required to make any additional inquiry before honoring the exemption request.

(3) The comptroller may request a copy of the study for review, either before or after the sales tax exemption is granted. Neither the comptroller by reviewing a study nor the utility company by accepting an exemption certificate is confirming the study's accuracy. Tax, penalty, and interest will be assessed on the business owner if the study is proven to be incomplete or inaccurate to the extent that the predominant use of the natural gas or electricity is taxable.

(4) If a sales tax refund is being claimed retroactively, the study must take into account any changes in equipment or other items using utilities, any changes in business activities, and any changes in square footage being served by the meter.

(5) This subsection does not apply to persons whose use of natural gas or electricity is for processing, manufacturing, or other ~~exempt [noncommercial]~~ function if an industry-wide study for that particular industry reflects that the natural gas or electricity used would always qualify as exempt use. The industry-wide study must be submitted to the comptroller's office for review and approval. A subsequent study may be required, in the future, if factors relative to the original study change.

(g) ~~[(f)]~~ Exemption certificates.

(1) ~~Exempt [Noncommercial]~~ users must issue exemption certificates to the utility company to claim a sales tax exemption or to obtain a refund of sales tax. The exemption certificate must be specific as to the reason for the claimed exemption. For example, if a person is claiming that the predominant use of the utility is for processing, the reason for the exemption must state, "A valid and complete study has been performed which shows that (insert the actual exempt percentage) of the natural gas or electricity is for processing tangible personal property for sale in the regular course of business."

(2) The exemption is valid only as long as the person continues to use natural gas and electricity in a manner which is for predominantly exempt purposes. At the time the uses of the utilities change so that the predominant use is taxable ~~[commercial]~~, it is the person's responsibility to immediately notify the utility company in writing that the exemption is no longer valid.

(3) Persons whose use of natural gas or electricity is solely in family dwellings will not be required to furnish exemption certificates.

(4) A person whose use of natural gas and electricity is in multifamily apartment complexes, housing complexes, nursing homes, or other residential buildings may be required to issue an exemption certificate if one is necessary for the utility company to distinguish exempt residential use from taxable use.

~~(h) [(g)]~~ Transportation of a material extracted from the earth.

(1) Sales or use tax is not due on natural gas or electricity used to transport a material or its components extracted from the earth. Examples of materials or components extracted from the earth would be oil, natural gas, coal or coal slurry, crushed stone, sand and gravel, and water.

(2) Sales or use tax is due on natural gas or electricity used to transport a product which was manufactured from a material extracted from the earth. Products which were manufactured from a material extracted from the earth include substances which do not exist in nature or are not components of crude oil, natural gas, coal, or other minerals extracted from the earth.

(3) A material will not be considered to be manufactured when an additive is combined with a material for ancillary reasons, for example, odorant added to natural gas.

~~[(h) Exemptions limited. Natural gas and electricity exemptions are limited to those noncommercial uses covered specifically in the Tax Code, §151.317.]~~

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

Filed with the Office of the Secretary of State, on February 18, 2000.

TRD-200001251

Martin Cherry  
Special Counsel  
Comptroller of Public Accounts  
Earliest possible date of adoption: April 2, 2000  
For further information, please call: (512) 463-3699

◆ ◆ ◆  
**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**Part 1. TEXAS DEPARTMENT OF HUMAN SERVICES**

**Chapter 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION**

The Texas Department of Human Services (DHS) proposes the REPEAL of §19.205, concerning supplemental licensure information; §19.1105, concerning documentation requirements for dietary consultant; and §19.1911, concerning contents of the clinical record; proposes AMENDMENTS to §19.1, concerning basis and scope; §19.101, concerning definitions; §19.201, concerning criteria for licensing; §19.204, concerning application requirements; §19.209, concerning exclusion from licensure; §19.210, concerning change of ownership; §19.216, concerning license fees; §19.301, concerning applicable codes and standards; §19.311, concerning fire service and access; §19.314, concerning fire alarms, detection systems, and sprinkler systems; §19.321, concerning heating, ventilating, and air-conditioning systems (HVAC); §19.326, concerning safety operations; §19.340, concerning mechanical requirements; §19.342, concerning miscellaneous details; §19.403, concerning notice of rights and services; §19.408, concerning grievances; §19.419, concerning directives and durable powers of attorney for health care; §19.502, concerning transfer and discharge in Medicaid-Certified facilities; §19.602, concerning incidents of abuse and neglect reportable to the Texas Department of Human Services (DHS) by facilities; §19.703, concerning social services general requirements; §19.1109, concerning food intake; §19.1206, concerning physician signatures; §19.1601, concerning infection control; §19.1921, concerning general requirements for a nursing facility; §19.2004, concerning determinations and actions pursuant to inspections; §19.2006, concerning reporting incidents and complaints; §19.2112, concerning administrative penalties; §19.2310, concerning nursing facility ceases to participate; §19.2322, concerning allocation, reallocation, and decertification requirements; §19.2403, concerning utilization review process; §19.2500, concerning Preadmission Screening and Resident Review (PASARR); §19.2601, vendor payment (items and services included); and §19.2604, vendor payment information; and proposes NEW §19.205, concerning probationary license; and §19.1911, concerning contents of the clinical record, in its Nursing Facility Requirements for Licensure and Medicaid Certification chapter.

The purpose of the proposal is to comply with legislation from the 76th legislative session, which requires DHS to establish a probationary license; allow an exclusion from licensure when a trustee has been appointed to a facility and trust fund monies are expended, other than for the trustee's salary; increase the trust fund to \$10 million; require facilities to disclose

drug testing policies; require facilities to offer flu vaccinations to employees and residents and pneumonia vaccinations to residents; require facilities to search the Employee Misconduct Registry, in addition to the Nurse Aide Registry, before hiring an employee; prohibit retaliation against volunteers; and require facilities to inform residents of policies regarding advance directives and establish a \$500 administrative penalty for failure to do so. DHS also developed more specific rules regarding administrative penalties, which will provide greater consistency in terms of administering them. In addition, a change to the Social Security Act requires changes to Medicaid rules regarding facilities which voluntarily withdraw from the Medicaid program. The department also made clarifying changes to the Life Safety Code (construction) section of the rules.

Eric M. Bost, commissioner, has determined that for the first five-year period the sections are in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections will be in effect is an estimated additional cost \$0 in fiscal year (FY) 2000; \$93,214 in FY 2001; \$466,148 in FY 2002; \$466,148 in FY 2003; and \$466,148 in FY 2004. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

Mr. Bost 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 stronger nursing facilities, particularly ones which require facilities to inform the public about facility drug testing and advance directive policies; to offer flu vaccinations to employees and residents and pneumonia vaccinations to residents; to search the Employee Misconduct Registry, in addition to the Nurse Aide Registry, before hiring an employee; and to prohibit retaliation against volunteers. There will be an economic effect on large, small, or micro businesses that operate nursing facilities that are required to comply with the proposed sections. The rule requiring that facilities offer their employees flu vaccinations will cost all facilities approximately \$5 per employee for those employees who accept the vaccination. This cost should be offset by the benefits derived from having healthy employees reporting to work during flu season. The increase in the cap on the nursing and convalescent trust fund means an increase in the amount nursing facilities pay into the fund, from \$3.04 to \$12.38 per bed. Both of these rule changes resulted from legislation, so there does not appear to be a way to lessen the effect.

Questions about the content of this proposal may be directed to Susan Syler at (512) 438-3111 in DHS's Long Term Care Section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-085, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714- 9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

## Subchapter A. BASIS AND SCOPE.

### 40 TAC §19.1

The amendment is proposed under the Health and Safety Code, Chapter 242, which authorizes the department to license and regulate nursing facilities.

The amendment implements the Health and Safety Code, §§242.001 - 242.268.

#### §19.1. Basis and scope.

(a) (No change.)

(b) Scope. The Nursing Facility Requirements for Licensure and Medicaid Certification contain the requirements that an institution must meet in order to be licensed as a nursing facility and also to qualify to participate in the Medicaid program. The requirements serve as a basis for survey activities for licensure and certification.

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

(4) Additional documents that a facility may need for reference include, but are not limited to:

(A)-(G) (No change.)

(H) Food Establishment Rules [Service Guidelines] (TDH);

(I) -(J) (No change.)

(K) Methicillin-Resistant [Methicillin-Resistant] Staphylococcus Aureus: A Protocol for Infection Control (TDH); and

(L) (No change.)

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

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Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

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For further information, please call: (512) 438-3108



## Subchapter B. DEFINITIONS

### 40 TAC §19.101

The amendment is proposed under the Health and Safety Code, Chapter 242, which authorizes the department to license and regulate nursing facilities.

The amendment implements the Health and Safety Code, §§242.001 - 242.268.

#### §19.101. Definitions.

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

(1)-(23) (No change.)

(24) Controlling person - - A person with the ability, acting alone or in concert with others, to directly or indirectly, influence, direct, or cause the direction of the management, expenditure of money, or policies of a nursing facility or other person. [A controlling person does not include a person, such as an employee, lender,

secured creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of a facility.] A controlling person includes:

(A)-(B) (No change.)

(C) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a nursing facility, is in a position of actual control or authority with respect to the nursing facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility. This does not include an employee, lender, secured creditor, or landlord, or other person who does not exercise formal or actual influence or control over the operation of an assisted living facility.

(25)-(152) (No change.)

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

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Paul Leche

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Texas Department of Human Services

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## Subchapter C. NURSING FACILITY LICENSURE APPLICATION PROCESS

### 40 TAC §§19.201, 19.204, 19.205, 19.209, 19.210, 19.216

The amendments and new section are proposed under the Health and Safety Code, Chapter 242, which authorizes the department to license and regulate nursing facilities.

The amendments and new section implement the Health and Safety Code, §§242.001 - 242.268.

#### §19.201. *Criteria for Licensure.*

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

(c) No person may apply for a probationary license, a license, change of ownership, increase in capacity, or renewal of a nursing facility license without making a disclosure of information as required in this section.

(d)-(j) (No change.)

#### §19.204. *Application Requirements.*

(a) Applications. All applications must be made on forms prescribed by and available from the Texas Department of Human Services (DHS).

(1) Each application must be completed in accordance with DHS instructions, and it must be signed and notarized.

(2) Changes to information required in the application must be reported to DHS, as required by §19.1918 of this title (relating to Disclosure of Ownership).

(b)-(d) (No change.)

#### §19.205. *Probationary License.*

The initial license issued to a license holder who has not previously held a license is a probationary license and is effective for one year. A permanent license may be issued only after DHS finds that the license holder and any other person listed in §19.201(f) of this title (relating to Criteria for Licensure) continues to meet the nursing facility requirements and submits an application requesting a permanent license with the applicable license fee. The facility must also be able to pass an inspection unless an inspection is not required as provided by §242.047, Health and Safety Code.

#### §19.209. *Exclusion from Licensure.*

(a) The Texas Department of Human Services, after providing notice and opportunity for a hearing, may exclude a person from eligibility for a license if the person or any person described in §19.201(e) of this title (relating to Criteria for Licensure) has substantially failed to comply with the rules in this chapter.

~~[(b)]~~ Exclusion of a person must extend for at least two years, but not more than ten years.

(b) A license holder or controlling person who operates a nursing facility or an assisted living facility for which a trustee was appointed and for which emergency assistance funds, other than funds to pay the expenses of the trustee, were used is subject to exclusion from eligibility for the:

(1) issuance of an original license for a facility for which the person has not previously held a license; or

(2) renewal of the license of the facility for which the trustee was appointed.

#### §19.210. *Change of Ownership.*

(a) During the license term, a license holder may not transfer the license as a part of the sale or other transfer of ownership of the facility. Prior to the sale or other transfer of ownership of the facility, the license holder must notify the Texas Department of Human Services (DHS) that a change of ownership is about to take place. A change of ownership is a ~~[change]~~:

(1) change of 50% or more in the ownership of the business organization or sole proprietorship that is licensed to operate the facility; ~~[or]~~

(2) change in the federal tax payer identification number; or [-]

(3) relinquishment by the license holder of the management of the facility.

(b)-(d) (No change.)

#### §19.216. *License Fees.*

(a) Basic fees.

(1) Probationary license. The license fee is \$125 plus \$5 for each unit of capacity or bed space for which a license is sought.

(2) ~~[(1)]~~ Initial and renewal license. The license fee is \$250 plus \$10 for each unit of capacity or bed space for which a license is sought. The fee must be paid with each initial and renewal of license application.

(3) ~~[(2)]~~ Increase in bed space. An approved increase in bed space is subject to an additional fee of \$10 for each unit of capacity or bed space.

(4) ~~[(3)]~~ Change of administrator. A facility must report a change of administrator within 30 days of the effective date of the change by submitting a change of administrator application and a \$20 fee to the Texas Department of Human Services's (DHS's)

Facility Enrollment Section [that hires a new administrator must notify the Texas Department of Human Services (DHS), Long Term Care Regulatory, Facility Enrollment Section, not later than the 30th day after the date on which the change became effective by submitting a change of administrator application and paying a \$20 change of administrator fee to DHS].

(5) [(4)] Background information fee. The background information fee is \$50.

(b) Trust fund fee.

(1) (No change.)

(2) DHS charges and collects an annual fee from each facility licensed under the Texas Health and Safety Code, Chapter [Chapters] 242[, 247, and 252] each calendar year if the amount of the nursing and convalescent trust fund is less than \$10,000,000 [\$500,000]. The fee is based on a monetary amount specified for each licensed unit of capacity or bed space, not to exceed \$20 annually, and is in an amount sufficient to provide not more than \$10,000,000 [\$500,000] in the trust fund. In calculating the fee, the amount will be rounded to the next whole cent.

(3) DHS may charge and collect a fee more than once a year only if necessary to ensure that the amount in the nursing and convalescent trust fund is sufficient to allow required disbursements.

(c) (No change.)

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Paul Leche

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Texas Department of Human Services

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#### 40 TAC §19.205

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

The repeal is proposed under the Health and Safety Code, Chapter 242, which authorizes the department to license and regulate nursing facilities.

The repeal implements the Health and Safety Code, §§242.001 - 242.268.

§19.205. *Supplemental Licensure Information.*

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

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Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

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## Subchapter D. FACILITY CONSTRUCTION

### 40 TAC §§19.301, 19.311, 19.314, 19.321, 19.326, 19.340, 19.342

The amendments are proposed under the Health and Safety Code, Chapter 242, which authorizes the department to license and regulate nursing facilities.

The amendments implement the Health and Safety Code, §§242.001 - 242.268.

§19.301. *Applicable Codes and Standards.*

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

(c) The following codes, standards, or guidelines generally govern their subject areas for existing construction:

(1)-(8) (No change.)

(9) All boilers not exempted by the Texas Health and Safety Code, §755.022, must be inspected and certified for operation by the Texas Department of Licensing and Regulation.

§19.311. *Fire Service and Access.*

(a) The facility must be served by a paid or volunteer fire department.

(1) The fire department must provide written assurance to the licensing agency that the fire department can respond to an emergency at the facility within an appropriately prompt time for the travel conditions involved.

(2) The facility must have an annual inspection by the local fire marshal and maintain documentation of such an inspection at the facility.

(b)-(d) (No change.)

§19.314. *Fire Alarms, Detection Systems, and Sprinkler Systems.*

Fire alarms, detection systems, and sprinkler systems must be as required by the Life Safety Code, the National Fire Protection Association (NFPA) 72, and NFPA 13.

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

(4) Smoke detector sensitivity must be checked within one year after installation and every alternate year thereafter in accordance with NFPA 72. Documentation, including as-built installation drawings, operation and maintenance manuals, and a written sequence of operation must be available for examination by the Texas Department of Human Services (DHS).

(5) [(4)] The fire alarm system must be designed so that whenever the general alarm is sounded by activation of any device (such as manual pull, smoke sensor, sprinkler, or kitchen range hood extinguisher) the following will occur automatically:

(A) smoke and fire doors which are held open by an approved device must be released to close;

(B) air handlers (air conditioning/heating distribution fans) serving three or more rooms or any means of egress must shut down immediately;

(C) smoke dampers must close; and

(D) the alarm-initiating location must be clearly indicated on the fire alarm control panel(s) and all auxiliary panels.

(6) [(5)] Consistent fire alarm bells or horns must be located throughout the building for audible coverage. Flashing alarm

lights (visual alarms) must be installed to be visible in corridors and public areas including dining rooms and living rooms.

(7) [(6)] A master control panel which indicates location of alarm and trouble conditions (by zone or device) must be visible at the main nurse station. All control panels must be listed in accordance with the provisions of the Underwriters Laboratories, Inc. (UL) for intended use, such as manual, automatic, and water-flow activation. Alarm and trouble zoning must be by smoke compartments and by floors in multi-story facilities.

(8) [(7)] Remote annunciator panels, indicating location of alarm initiation by zone or device and common trouble signals, must be located at auxiliary or secondary nurses stations on each floor or major subdivision of single story facilities and indicate the alarm condition of adjacent zones and the alarm conditions at all other nurse stations.

(9) [(8)] Manual pull stations must be provided at all exits, living rooms, dining rooms, and at or near the nurse stations.

(10) [(9)] The NFPA 13 sprinkler system must be monitored for flow and tamper conditions by the fire alarm system.

(11) [(10)] The kitchen range hood extinguisher must be interconnected with the fire alarm system. This interconnection may be a separate zone on the panel or combined with other initiating devices located in the same zone as the range hood is located.

(12) [(11)] Partial sprinkler systems provided only for hazardous areas must be interconnected to the fire alarm system and comply with the Life Safety Code. Each partial system must have a valve with a supervisory switch to sound a supervisory signal, water-flow switch to activate the fire alarm, and an end-of-line test drain.

#### §19.321. Heating, Ventilating, and Air-conditioning Systems (HVAC).

(a) The heating system must be capable of maintaining a temperature of not less than 71 degrees Fahrenheit at the resident level in all resident-use areas.

(1) Auxiliary heating devices permanently installed, such as heat strips in ducts, electric ceiling-mounted heating units, and electric baseboards, may be used to augment a central heating system as approved by the Texas Department of Human Services (DHS). See §19.705 of this title (relating to Environment).

(2) All gas heating systems must be checked prior to the heating season for proper operation and safety by persons who are licensed or approved by the State of Texas to inspect such equipment. A record of this service must be maintained by the facility. Any unsatisfactory conditions must be corrected promptly.

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

#### §19.326. Safety Operations.

(a) The facility must have a written emergency preparedness and response plan. [with procedures] Procedures to be followed in an internal or external disaster [and for the care of casualties] should be attached to the plan. The plan must address, at a minimum, the eight core functions of emergency management, which are: direction and control; warning (how the facility will be notified of emergencies and who they will notify); communication (with whom and by what mechanism); sheltering arrangements; evacuation (destinations, routes); transportation; health and medical needs; and resource management (supplies, staffing, emergency equipment, records). Plans should address those natural, technological, and man-made emergencies that could affect the facility and [Plans dealing with natural disasters, such as hurricanes, floods, and tornadoes,] must be coordinated

with the local emergency management coordinator. Information about the local emergency management coordinator may be obtained from the office of the local mayor or county judge.

(1)-(6) (No change.)

(b)-(e) (No change.)

(f) Emergency generators, if required or provided, must be maintained in operating condition at all times. These must be inspected and run, under load, for at least 30 minutes each week. A signed or initialed record or log must be kept on file by the facility. The log should document maintenance performed, time taken to transfer load, and length of run times. The condition and proper operation of the emergency egress lighting should also be checked at this time.

(g)-(p) (No change.)

#### §19.340. Mechanical Requirements.

The design of the mechanical systems must be done by or under the direction of a registered professional (mechanical) engineer approved by the Texas State Board of Registration for Professional Engineers to operate in Texas, and the parts of the plans and specifications covering mechanical design must bear the legible seal of the engineer. Building services pertaining to utilities; heating, ventilating, and air-conditioning systems; vertical conveyors; and chutes must be in accordance with the Life Safety Code. Required plumbing fixtures must be in accordance with the Life Safety Code and §19.334 of this title relating to Architectural Space Planning and Utilization) in specific use areas.

(1) Plumbing.

(A)-(O) (No change.)

(P) All boilers not exempted by the Texas Health and Safety Code §755.022 must be inspected and certified for operation by The Texas Department of Licensing and Regulation.

(2) Heating, ventilating, and air-conditioning systems.

(A)-(B) (No change.)

(C) Systems using liquefied petroleum gas fuel must meet the requirements of the Railroad Commission of Texas and NFPA 58 Liquefied Petroleum Gases [54].

(D)-(P) (No change.)

(3)-(4) (No change.)

#### §19.342. Miscellaneous Details.

(a) Safety related details. A high degree of safety for the occupants is needed to minimize accidents which are more apt to occur with the elderly and/or infirm residents in a nursing facility. Consideration must be given to the fact that many will have impaired vision, hearing, spatial perception, and ambulation.

(1)-(6) (No change.)

(7) Grab bars must be provided at all residents' toilets, showers, tubs, and sitz baths. The bars must be 1- 1/4 to 1-1/2 inches in diameter and must have 1-1/2 [1/2] inch clearance to walls. Bars must have sufficient strength and anchorage to sustain a concentrated load of 250 pounds. Grab bar standards must comply with standards adopted under the Americans with Disabilities Act of 1990.

(8) Handrails must be provided on both sides of corridors used by residents. A clear distance of 1- 1/2 [1/2] inches must be provided between the handrail and the wall. Handrails must be securely mounted to withstand downward forces of 250 pounds.

Handrails may be omitted on wall segments less than 18 inches. Handrails must be mounted 33 inches to 36 inches above the floor, and must comply with standards adopted under the Americans with Disabilities Act.

(9)-(10) (No change.)

(b) (No change.)

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## Subchapter E. RESIDENT RIGHTS

### 40 TAC §§19.403, 19.408, 19.419

The amendments are proposed under the Health and Safety Code, Chapter 242, which authorizes the department to license and regulate nursing facilities.

The amendments implement the Health and Safety Code, §§242.001 - 242.268.

§19.403. *Notice of Rights and Services.*

(a) (No change.)

(b) The facility must also inform the resident, upon admission and during the stay, in a language the resident understands, of the following:

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

(3) the Human Resources Code, Title 6, Chapter 102; or a written list of the rights and responsibilities contained in the Human Resources Code, Title 6, Chapter 102; ~~and~~

(4) a written description of the services available through the Office of the State Long Term Care Ombudsman, Texas Department on Aging. This information must be made available to each facility by the ombudsman program. Facilities are responsible for reproducing this information and making it available to residents, their families, and legal representatives; and [-]

(5) a written statement describing the facility's policy for the drug testing of employees who have direct contact with residents.

(c)-(1) (No change.)

§19.408. *Grievances.*

(a) (No change.)

(b) A nursing facility may not retaliate or discriminate against a resident or a volunteer because ~~if~~ the resident, the resident's guardian, a volunteer, or any other person:

(1) makes a complaint or files a grievance concerning the facility.

(2) reports a violation of law, including a violation of laws or regulations regarding nursing facilities; or

(3) initiates or cooperates in an investigation or proceeding of a governmental entity relating to care, services, or conditions at the nursing facility.

§19.419. *Directives and Durable Powers of Attorney for Health Care.*

(a) (No change.)

(b) The nursing facility must maintain policies and procedures regarding the following rules with respect to all adult individuals receiving services provided by the facility:

(1) the facility must maintain written policies regarding the implementation of advance directives. The policies must include a clear and precise statement of any procedure the facility is unwilling or unable to provide or withhold in accordance with an advance directive;

(2) ~~[-]~~ upon admission, all individuals must be provided with the following written information:

(A) the individual's rights under Texas law (whether statutory or as recognized by the courts of the state) to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives; and

(B) the nursing facility's policies respecting the implementation of these rights including the written policies regarding the implementation of advance directives; [-]

(3) ~~[(2)]~~ the nursing facility must document in the resident's clinical record whether or not the individual has executed an advance directive;

(4) ~~[(3)]~~ the nursing facility must not condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive;

(5) ~~[(4)]~~ the facility must ensure compliance with the requirements of Texas law, whether statutory or as recognized by the courts of Texas, respecting advance directives;

(6) ~~[(5)]~~ the facility must provide, individually or with others, for education for staff and the community on issues concerning advance directives. For the community, this may include, but is not limited to, newsletters, articles in the newspaper, local news reports, or commercials. For educating staff, this may include, but is not limited to, in-service programs;

(7) ~~[(6)]~~ the facility must provide the attending physician with any information relating to a known existing Directive to Physicians and/or Living Will or Medical ~~Durable~~ Power of Attorney ~~for Health Care~~, and assist with coordinating physicians' orders with any resident directive;

(8) ~~[(7)]~~ when an individual is in a comatose or otherwise incapacitated state, and therefore is unable to receive information or articulate whether he has executed an advance directive; ~~[- the family, surrogate, or other concerned person must receive the information concerning advance directives. The facility must provide this information to the resident once he is no longer incapacitated; and]~~

(A) written information regarding advance directives, including facility policies regarding the implementation of advance directives, must be provided in the following order of preference, to:

(i) the resident's legal guardian;

(ii) a person responsible for the resident's health care decisions;

(iii) the resident's spouse;

(iv) the resident's adult child;



(v) the resident's parents; or

(vi) the person admitting the resident.

(B) if the facility is unable, after diligent search, to locate an individual listed under subparagraph (A) of this paragraph, the facility is not required to give notice;

(9) if a resident, who was incompetent or otherwise incapacitated and unable to receive information regarding advance directives, including written policies regarding the implementation of advance directives, later becomes able to receive the information, the facility must provide the written information at the time the individual becomes able to receive the information; and

(10) [~~(8)~~] when the resident or a relative, surrogate, or other concerned or related individual presents the facility with a copy of the individual's advance directive, the facility must comply with the advance directive including recognition of a Medical Power of Attorney [durable power of attorney for health care], to the extent allowed under state law. If no one comes forward with a previously executed advance directive and the resident is incapacitated or otherwise unable to receive information or articulate whether he has executed an advance directive, the facility must note that the individual was not able to receive information and was unable to communicate whether an advance directive existed.

(c) Failure to inform the resident of facility policies regarding the implementation of advance directives will result in an administrative penalty of \$500.

(d) [~~(e)~~] Nursing facilities that provide services to children must ensure that:

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

(2) the decision made by the family or guardian regarding advance directives is addressed in the comprehensive care plan (see §19.802 of this title (relating to Comprehensive Care Plans)).

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## Subchapter F. ADMISSION, TRANSFER, AND DISCHARGE RIGHTS IN MEDICAID-CERTIFIED FACILITIES

### 40 TAC §19.502

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; the Health and Safety Code, Chapter 242, which authorizes the department to license and regulate nursing facilities; 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 the Health and Safety Code, §§242.001 - 242.268, and the Human Resources Code, §§22.001 - 22.024 and §§32.001 - 32.040.

§19.502. *Transfer and Discharge in Medicaid-certified Facilities.*

(a) (No change.)

(b) Transfer and discharge requirements. The facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless:

(1)-(6) (No change.)

(7) the facility ceases to operate or participate in the program which pays for the resident's care. If the facility voluntarily withdraws from participation in Medicaid, but continues to provide nursing facility services:

(A) the facility's voluntary withdrawal from Medicaid is not an acceptable basis for the transfer or discharge of residents who were residing in the facility on the day before the effective date of the withdrawal (including those residents who were not entitled to Medicaid assistance as of such day);

(B) for individuals who begin residence in the facility after the effective date of the withdrawal, the facility must provide notice orally and in a prominent manner in writing on a separate page of the admission agreement at the time the resident begins residence and document receipt in writing, signed by the individual, and separate from other documents signed by the individual of the following information:

(i) The facility is not participating in the Medicaid program with respect to these residents.

(ii) The facility may transfer or discharge these residents if they are unable to pay the charges of the facility, even though the resident may have become eligible for Medicaid nursing facility services.

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

(f) Contents of the notice. For nursing facilities, the written notice specified in subsection (d) of this section must include the following:

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

(5) the name, address, and telephone number of the regional representative of the Office of the State Long Term Care Ombudsman, Texas Department on Aging, and of the toll-free number of the Texas Long Term Care Ombudsman, 1-800-252-2412 [~~1-800-252-2312~~];

(6) in the case of a resident with mental illness or mental retardation, the address and phone number of the state mental health/mental retardation authority, which is: Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, 1-800-252-8154 [~~(512) 323-3282~~]; and the phone number of the agency responsible for the protection and advocacy of persons with mental illness or mental retardation and/or related conditions, which is: Advocacy Incorporated, 7800 Shoal Creek Boulevard, Suite 175-E, Austin, Texas 78757, 1-800-252-9108 [~~(512) 454-4819~~].

(g)-(j) (No change.)

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**Subchapter G. RESIDENT BEHAVIOR AND FACILITY PRACTICE**

**40 TAC §19.602**

The amendment is proposed under the Health and Safety Code, Chapter 242, which authorizes the department to license and regulate nursing facilities.

The amendment implements the Health and Safety Code, §§242.001 - 242.268.

*§19.602. Incidents of Abuse and Neglect Reportable to the Texas Department of Human Services (DHS) by Facilities.*

(a) Any facility staff member who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse, neglect, or exploitation caused by another person must report the abuse, neglect, or exploitation. ~~[which includes conduct or conditions resulting in serious accidental injury to residents or hospitalization of residents. Conduct or conditions means a facility practice, actions/inaction by staff or circumstances within a facility resulting in:]~~

~~[(1) serious accidental injury to residents; or]~~

~~[(2) hospitalization of residents.]~~

(b) (No change.)

(c) Each employee of a facility must sign a statement which states:

(1) (No change.)

(2) under the Health and Safety Code, Title 4, §242.133, the employee has a cause of action against a facility, its owner(s) or employee(s) if he is suspended, terminated, disciplined, or discriminated or retaliated against as a result of:

(A) reporting to the employee's supervisor, the administrator, DHS, or a law enforcement agency a violation of law, including a violation of laws or regulations regarding nursing facilities; or [any action described in subsections (a) and (b) of this section to DHS or a law enforcement agency;]

~~[(B) reporting the abuse or neglect or other complaint to the person's supervisors; or]~~

~~(B)~~ [(C)] for initiating or cooperating in any investigation or proceeding of a governmental entity relating to care, services, or conditions at the nursing facility.

(d) (No change.)

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

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**Subchapter H. QUALITY OF LIFE**

**40 TAC §19.703**

The amendment is proposed under the Health and Safety Code, Chapter 242, which authorizes the department to license and regulate nursing facilities.

The amendment implements the Health and Safety Code, §§242.001 - 242.268.

*§19.703. Social Services General Requirements.*

(a) The facility must provide medically-related social services to attain the highest practicable physical, mental, or psychosocial well-being of each resident. See also §19.901 of this title (relating to Quality of Care) for information concerning psychosocial functioning.

(1) (No change.)

(2) A facility of 120 beds or less must employ or contract with a qualified social worker (or in lieu thereof, a social worker who is licensed by the Texas State Board of Social Work Examiners [as prescribed by the Human Resources Code, Chapter 50, §50.016(a)], and who meets the requirements of subsection (b)(2) of this section) to provide social services a sufficient amount of time to meet the needs of the residents.

(b) A qualified social worker is an individual who is licensed, including a temporary or provisional license [or provisionally licensed], by the Texas State Board of Social Work Examiners as prescribed by Chapter 50 of the Human Resources Code, and who has at least:

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

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

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**Subchapter L. DIETARY SERVICES**

**40 TAC §19.1105**

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

The repeal is proposed under the Health and Safety Code, Chapter 242, which authorizes the department to license and regulate nursing facilities.

The repeal implements the Health and Safety Code, §§242.001 - 242.268.

§19.1105. *Documentation Requirements for Dietary Consultant.*

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

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**40 TAC §19.1109**

The amendment is proposed under the Health and Safety Code, Chapter 242, which authorizes the department to license and regulate nursing facilities.

The amendment implements the Health and Safety Code, §§242.001 - 242.268.

§19.1109. *Food Intake.*

Food intake of residents must be monitored and recorded as follows.

(1) Deviations from normal food and fluid intake must be recorded in the clinical records. See also §19.1911(12)(B)(vi) [~~§19.1911(12)(b)(vi)~~] of this title (relating to Contents of the Clinical Record) for information concerning dietary intake and clinical records.

(2) (No change.)

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

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**Subchapter M. PHYSICIAN SERVICES**

**40 TAC §19.1206**

The amendment is proposed under the Health and Safety Code, Chapter 242, which authorizes the department to license and regulate nursing facilities.

The amendment implements the Health and Safety Code, §§242.001 - 242.268.

§19.1206. *Physician Signatures.*

Signature stamps and faxed signed documents are acceptable if used as described in §19.1912(f)(2) [~~§19.1912(g)(2)~~] of this title (relating to Additional Clinical Record Service Requirements).

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

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**Subchapter Q. INFECTION CONTROL**

**40 TAC §19.1601**

The amendment is proposed under the Health and Safety Code, Chapter 242, which authorizes the department to license and regulate nursing facilities.

The amendment implements the Health and Safety Code, §§242.001 - 242.268.

§19.1601. *Infection Control.*

The facility must establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection.

(1) (No change.)

(2) Preventing spread of infection.

(A) When the infection control program determines that a resident needs isolation to prevent the spread of infection, the facility must isolate the resident. Residents with communicable disease must be provided acceptable accommodations according to current practices and policies for infection control. See §19.1(b)(4)(I) [~~§19.1(b)(7)(K)~~] of this title (relating to Basis and Scope) for information concerning the Centers for Disease Control Guidelines publications.

(B)-(E) (No change.)

(3) Vaccinations. Facilities are required to offer vaccinations in accordance with an immunization schedule adopted by the Texas Department of Health.

(A) Pneumococcal vaccine for residents. The facility must offer pneumococcal vaccination to all residents 65 years of age or older who have not received this immunization and to residents younger than 65 years of age, who have not received this vaccine, but are candidates for vaccination because of chronic illness. Pneumococcal vaccine must be offered both to residents who currently reside in the facility and to new residents upon admission. Vaccination must be completed unless the vaccine is medically contraindicated by a physician or the resident refuses the vaccine. Vaccine administration must be in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention at the time of the vaccination.

(B) Influenza vaccinations for residents and employees. The facility must offer influenza vaccine to residents and employees in contact with residents, unless the vaccine is medically contraindicated by a physician or the employee or resident has refused the vaccine.

(i) Influenza vaccinations for all residents and employees in contact with residents must be completed by November 30 of each year. Employees hired or residents admitted after this date

and during the influenza season (through February of each year) must receive influenza vaccinations, unless medically contraindicated by a physician or the employee or resident refuses the vaccine.

(ii) Vaccine administration must be in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention at the time of the most recent vaccination.

(C) Documentation of receipt or refusal of vaccination. Immunization records must be maintained for each employee in contact with residents and must show the date of the receipt or refusal of each annual influenza vaccination. The medical record for each resident must show the date of the receipt or refusal of the annual influenza vaccination and the pneumococcal vaccine.

(4) [(3)] Linens. Personnel must handle, store, process, and transport linens so as to prevent the spread of infection. [See also §19.1726 of this title (relating to Linen)-]

(5) [(4)] The Quality Assessment and Assurance Committee as described in §19.1917 of this title (relating to Quality Assessment and Assurance) will monitor the infection control program.

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

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## Subchapter T. ADMINISTRATION

### 40 TAC §19.1911

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

The repeal is proposed under the Health and Safety Code, Chapter 242, which authorizes the department to license and regulate nursing facilities.

The repeal implements the Health and Safety Code, §§242.001 - 242.268.

§19.1911. *Contents of the Clinical Record.*

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

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### 40 TAC §19.1911, §19.1921

The new section and the amendment are proposed under the Health and Safety Code, Chapter 242, which authorizes the department to license and regulate nursing facilities.

The new section and the amendment implement the Health and Safety Code, §242.001-242.268.

§19.1911. *Contents of the Clinical Record.*

The clinical record of each resident must contain:

(1) Sufficient information to identify and care for the resident, to include at a minimum:

(A) full name of resident;

(B) full home/ mailing address;

(C) social security number;

(D) health insurance claim numbers, if applicable;

(E) date of birth; and

(F) clinical record number, if applicable.

(2) A record of the resident's assessments.

(3) The comprehensive, interdisciplinary plan of care and services provided (see also §19.802 of this title (relating to Comprehensive Care Plans)).

(4) The results of any preadmission screening and annual resident review conducted by the Texas Department of Human Services (DHS) or the Texas Department of Mental Health and Mental Retardation (TXMHMR).

(5) Progress notes from all health care practitioners involved in the resident's care.

(6) Any directives or durable powers of attorney as described in §19.419 of this title (relating to Directives and Durable Powers of Attorney for Health Care).

(7) Discharge information in accordance with §19.803 of this title (relating to Discharge Summary (Discharge Plan of Care)) and a physician discharge summary, to include, at least, dates of admission and discharge, admitting and discharge diagnoses, condition on discharge, and prognosis, if applicable.

(8) At admission or within 14 days, documentation of an initial medical evaluation, including history, physical examination, diagnoses and an estimate of discharge potential and rehabilitation potential and documentation of an annual medical examination.

(9) Authentication of any hospital diagnoses.

(A) This may be in the form of a signed hospital discharge summary, a signed report from the resident's hospital or attending physician, or a transfer form signed by the physician.

(B) The facility is allowed 14 workdays after admission to receive this information from the hospital or transferring facility. If the author of such reports is not the resident's attending physician, then the attending physician must acknowledge the report in writing by co-signing the report at his or her next scheduled visit.

(10) The physician's signed and dated orders, including medication, treatment, diet, restorative and special medical procedures, and routine care to maintain or improve the resident's functional abilities (required for the safety and well-being of the resident). Changes cannot be made either on a handwritten or computerized

physician's order sheet after the orders have been signed by the physician unless space allows for additional orders below the physician's signature, including space for the physician to sign and date again.

(11) Arrangements for the emergency care of the resident in accordance with §19.1204 of this title (relating to Availability of Physician for Emergency Care).

(12) Observations made by nursing personnel according to the time frames specified in §19.1010 of this title (relating to Nursing Practices). Facility staff must ensure that the observations show at least the following:

(A) items as specified on the Resident Assessment Instrument and the Texas Nursing Facility Client Assessment Review and Evaluation (CARE) form; and

(B) current information including:

(i) PRN medications and results;

(ii) treatments and any notable results;

(iii) physical complaints, changes in clinical signs and behavior, mental and behavioral status, and all incidents or accidents;

(iv) flow sheets which may include bathing, restraint observation and/or release documentation, elimination, fluid intake, vital signs, ambulation status, positioning, continency status and care, and weight;

(v) the resident's ability to participate in activities of daily living as defined in §19.1010(e)(1) of this title (relating to Nursing Practices); and

(vi) dietary intake to include deviations from normal diet, rejection of substitutions, and physician's ordered snacks and/or supplemental feedings.

(13) The date and hour all drugs and treatments are administered.

(14) Documentation of special procedures performed for the safety and well-being of the resident must be included in the clinical record.

§19.1921. *General Requirements for a Nursing Facility.*

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

(e) Each licensed facility must conspicuously and prominently post the information listed in paragraphs (1)-(11) [(4)-(10)] of this subsection in an area of the facility that is readily and customarily available to the public. The posting must be in a manner that each item of information is directly visible at a single time. In the case of a licensed section that is part of a larger building or complex, the posting must be in the licensed section or public way leading thereto. Any exceptions must be approved by the Texas Department of Human Services (DHS). The following items must be posted:

(1)-(9) (No change.)

(10) for a facility which advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders, a disclosure statement describing the nature of its care or treatment of residents with Alzheimer's disease and related disorders in accordance with §19.204(b)(4) [§19.204(e)(8)] of this title (relating to Application [Applicant Disclosure] Requirements).

(11) at each entrance to the facility, a sign in English and Spanish, that it is unlawful to carry a handgun on the premises. The

sign must appear in contrasting colors with block letters at least one inch in height and be displayed in a conspicuous manner, clearly visible to the public.

(f) For facilities serving residents with Alzheimer's disease and related disorders, failure to post the required disclosure statement, as specified in subsection (e)(10) [(e)(6)] of this section, will result in an administrative penalty in accordance with §19.2112 of this title (relating to Administrative Penalties).

(g)-(l) (No change.)

(m) Before a facility hires an employee, the facility must search the employee misconduct registry established under §253.007, Health and Safety Code, and the DHS nurse aide registry to determine whether the individual is designated in either registry as having abused, neglected, or exploited a resident or a consumer of a facility. Both registries can be contacted at 1-800-452-3934.

(1) A facility may not employ a person who is listed in either registry as having abused, neglected, or exploited a resident or a consumer of a facility.

(2) A facility must notify its employees in writing at the time of employment:

(A) about the employee misconduct registry; and

(B) that a person may not be employed if listed on the registry.

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

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Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

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For further information, please call: (512) 438-3108



## Subchapter U. INSPECTIONS, SURVEYS, AND VISITS

### 40 TAC §19.2004, §19.2006

The amendments are proposed under the Health and Safety Code, Chapter 242, which authorizes the department to license and regulate nursing facilities.

The amendments implement the Health and Safety Code, §242.001-242.268.

§19.2004. *Determinations and Actions Pursuant to Inspections.*

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

[(e) Violations found during complaint investigations will be discussed with the facility management at the exit conference. If deficiencies are cited, a list of the deficiencies will be sent to the facility within 10 working days. The source of the complaint will not be revealed.]

(c) [(d)] At the conclusion of an inspection, [ø] survey, or investigation, the violations will be discussed in an exit conference with the facility's management. A written list of the violations will be left with the facility at the time of the exit conference; any additional

violation that may be determined during review of field notes or preparation of the official final list [~~when the official final list was not issued at the exit conference~~] will be communicated to the facility in writing within ten working days of the exit conference. DHS will give the facility an additional exit conference regarding the additional violations. [~~and the facility will have ten working days to reply before the additional violation is made a part of the permanent record. Copies of any narratives or similar papers written to further describe the conditions will be furnished to the facility.~~]

(d) [~~(e)~~] Upon receipt of the final statement of violations, the facility will have 10 working days to submit an acceptable plan of correction to the regional director, except plans of correction under §19.2112(i) of this title (relating to Administrative Penalties). An acceptable plan of correction must address the following areas:

(1) how corrective action will be accomplished for those residents affected by the violation(s);

(2) how the facility will identify other residents with the potential to be affected by the same violation(s);

(3) what measures will be put into place or systemic changes made to ensure the violation(s) will not recur; and

(4) how the facility will monitor its corrective actions to ensure that the violation(s) are being corrected and will not recur.

(e) [~~(f)~~] A clear and concise summary in nontechnical language of each licensure inspection or complaint investigation will be provided by DHS at the time the report of contact or similar document is provided.

#### §19.2006. *Reporting Incidents and Complaints.*

(a) Each incident or complaint report must reflect the reporting person's belief that a resident has been or will be abused or neglected and must contain the following information:

(1) the address or phone number of the person making the report so that the Texas Department of Human Services (DHS) can contact the person for any additional information, except for an anonymous report;

(2) [~~(1)~~] the name and address of the resident;

(3) [~~(2)~~] the name and address of the person responsible for the care of the resident, if available;

(4) [~~(3)~~] information required by DHS guidelines, when the report is an incident; and

(5) [~~(4)~~] any other relevant information. Relevant information includes the reporter's or complainant's basis or cause for reporting and his or her belief that a resident's physical or mental health or welfare has been or may be adversely affected by abuse or neglect caused by another person or persons, and any other information DHS considers relevant for the report.

(b)-(c) (No change.)

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

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Paul Leche

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Texas Department of Human Services

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## Subchapter V. ENFORCEMENT

### Division 2. LICENSING REMEDIES

#### 40 TAC §19.2112

The amendment is proposed under the Health and Safety Code, Chapter 242, which authorizes the department to license and regulate nursing facilities.

The amendment implements the Health and Safety Code, §242.001-242.268.

#### §19.2112. *Administrative Penalties.*

(a)-(e) (No change.)

(f) Administrative penalties may be levied for each violation found in a single survey. Each day of a continuing violation constitutes a separate violation. The administrative penalties for each day of a continuing violation cease on the date the violation is corrected. A violation that is the subject of a penalty is presumed to continue on each successive day until it is corrected. The date of correction alleged by the facility in its written plan of correction will be presumed to be the actual date of correction unless it is later determined by DHS that the correction was not made by that date or was not satisfactory.

(1) Table of administrative penalties. The following table contains the gradations of penalties in accordance with the relative seriousness of the violation. [~~The penalties for a violation of the requirement to post notice of the suspension of admissions; additional reporting requirements found at §19.601(a) of this title (relating to Resident Behavior and Facility Practice); or residents' rights cannot exceed \$1,000 a day for each violation, unless the violation of a resident's right also violates a rule in Subchapter H, Quality of Life, or Subchapter J, Quality of Care.~~]

Figure: 40 TAC §19.2112(f)(1)

[~~Figure: 40 TAC §19.2112(f)~~]

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

#### (A) Severity.

(i) Substantial compliance means a level of violation that has the potential for causing no more than a minor negative impact on the resident.

(ii) Minimal impact means a level of violation that places the resident's health and safety at risk resulting in minor harm with limited consequences or effects.

(iii) Negative outcome means a level of violation that places the resident's health and safety at risk of actual harm that has the potential for long-term effects.

(iv) Immediate threat means a level of violation that places the resident's health and safety at risk of, or is likely to cause, serious harm or death, or has caused serious harm, injury, or death.

#### (B) Scope.

(i) Isolated means one or a very limited number of residents are affected or one or a very limited number of staff are involved, or the situation has occurred only occasionally or in a very limited number of locations.

(ii) Pattern means more than a very limited number of residents are affected, or more than a very limited number of staff are involved, or the situation has occurred in several locations, or the same residents have been affected by repeated occurrences of the same deficient practice. The effect of the deficient practice is not found to be pervasive throughout the facility.

(iii) Widespread means a large number of residents in the facility have the potential to be affected and the survey team identifies the deficient practice as pervasive throughout the facility or a systemic failure in the facility has affected or could affect a large number of residents across the facility and is, therefore, considered pervasive.

(g) The penalties for a violation of the requirement to post notice of the suspension of admissions, additional reporting requirements found at §19.601(a) of this title (relating to Resident Behavior and Facility Practice), or residents' rights cannot exceed \$1,000 a day for each violation, unless the violation of a resident's right also violates a rule in Subchapter H of this chapter (relating to Quality of Life), or Subchapter J of this chapter (relating to Quality of Care).

(h) [(g)] No facility will be penalized because of a physician's or consultant's nonperformance beyond the facility's control or if documentation clearly indicates the violation is beyond the facility's control.

(i) [(h)] DHS may issue a preliminary report regarding an administrative penalty. Within 10 days of the issuance of the preliminary report, DHS will give the facility written notice of the recommendation for an administrative penalty. The notice will include:

- (1) a brief summary of the violations;
- (2) a statement of the amount of penalty recommended;
- (3) a statement of whether the violation is subject to correction under §19.2114 of this title (relating to Right to Correct) and if the violation is subject to correction, a statement of:
  - (A) the date on which the facility must file a plan of correction (POC) to be approved by DHS; and
  - (B) the date on which the POC must be completed to avoid assessment of the penalty; and
- (4) a statement that the facility has a right to a hearing on the violation, the amount of the penalty, or both.

(j) [(i)] Within 20 days after the date on which written notice of recommended assessment of a penalty is sent to a facility, the facility must give DHS written consent to the penalty, make a written request for a hearing, or if the violation is subject to correction, submit a plan of correction in accordance with §19.2114 of this title. If the facility does not make a response within the 20-day period, DHS will assess the penalty.

(k) [(j)] The procedures for notification of recommended assessment, opportunity for hearing, actual assessment, payment of penalty, judicial review, and remittance will be in accordance with Health and Safety Code, §§242.067 - 242.069. Hearings will be held in accordance with DHS's formal hearing procedures in Chapter 79 of this title (relating to Legal Services). Interest on penalties is governed by Health and Safety Code §242.069(g).

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

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Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

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## Subchapter X. REQUIREMENTS FOR MEDICAID-CERTIFIED FACILITIES

### 40 TAC §19.2310, §19.2322

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; the Health and Safety Code, Chapter 242, which authorizes the department to license and regulate nursing facilities; 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 the Health and Safety Code, §242.001-242.268, and the Human Resources Code, §§22.001-22.024 and 32.001-32.040.

*§19.2310. Nursing Facility Ceases to Participate.*

A nursing facility may lose its status as a participating facility if any of the following conditions are met:

(1) the facility withdraws voluntarily from the program. The participation agreement for facilities which voluntarily withdraw from the program remains in effect with respect to services provided to residents residing in the facility the day before the effective date of the withdrawal, in accordance with §1919(c)(2)(F) of the Social Security Act. The owner and administrator must request withdrawal, in writing, from the Texas Department of Human Services (DHS) at least 30 days before the withdrawal date;

(2)-(5) (No change.)

*§19.2322. Allocation, Reallocation, and Decertification Requirements.*

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

(e) Exemptions. If the NFO meets all criteria, DHS may grant the following exemptions from the policy stated in subsection (c) of this section.

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

(5) Teaching facilities. DHS may exempt a nursing facility from the procedures in subsection (c) of this section if the facility:

(A) is affiliated with a state-supported medical school;

(B) is located on land owned or controlled by the state-supported medical school; and

(C) serves as a teaching facility for physicians and related health care professionals. [Facilities approved and contracted to operate as teaching nursing facilities from March 1, 1989, through January 1, 1993, must continue to meet their affiliation agreements.]

(6)-(9) (No change.)

(f)-(j) (No change.)

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

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## Subchapter Y. MEDICAL REVIEW AND RE-EVALUATION

### 40 TAC §19.2403

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; the Health and Safety Code, Chapter 242, which authorizes the department to license and regulate nursing facilities; 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 the Health and Safety Code, §242.001-242.268, and the Human Resources Code, §§22.001-22.024 and 32.001-32.040.

§19.2403. *Utilization Review Process.*

The Utilization Review Committee determines the need for nursing facility care by evaluating the recipient's medical and/or nursing needs based on facility documentation required by the Texas Department of Human Services (DHS). The medical necessity determination must be made before receiving vendor payment for service delivery, except as provided in §19.2408 of this title (relating to Retroactive Medical Necessity Determinations) and §19.2413 of this title (relating to Reconsideration of Medical Necessity Determination (MN) and Effective Dates).

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

(3) To ensure that payments continue, the facility must submit all forms in a timely manner so that they are received by the Utilization Review Committee no later than the day after the expiration of the current form.

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

(E) The Texas Department of Human Services (DHS) does not pay for the period of time between an expired form and the new effective date, unless the facility has requested and been granted a reconsideration of effective dates. See §19.2413 of this title (relating to Reconsideration of Medical Necessity Determination (MN) and Effective Dates).

(i) (No change.)

(ii) If the facility does not receive payment and there has been no reconsideration of effective dates granted, then restrictions apply as described in §19.2608 [§19.1708] of this title (relating to Limitations on Provider Charges [~~to Patients~~]) when the reason for no payment is facility error.

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

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## Subchapter Z. PREADMISSION SCREENING AND RESIDENT REVIEW (PASARR)

### 40 TAC §19.2500

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; the Health and Safety Code, Chapter 242, which authorizes the department to license and regulate nursing facilities; 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 the Health and Safety Code, §242.001-242.268, and the Human Resources Code, §§22.001-22.024 and 32.001-32.040.

§19.2500. *Preadmission Screening and Resident Review (PASARR).*

(a)-(e) (No change.)

(f) Limitations on provider charges. Nursing facilities which admit or retain individuals with a diagnosis of mental illness, mental retardation, or a related condition who have not been screened by DHS or who admit or retain individuals who do not need nursing facility services and who require specialized services will not be reimbursed for that individual, as described in §19.2608 [§19.1708] of this title (relating to Limitations on Provider Charges [~~to Patients~~]).

(g) (No change.)

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

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Paul Leche

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For further information, please call: (512) 438-3108



## Subchapter AA. VENDOR PAYMENT

### 40 TAC §19.2601, §19.2604

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs;



the Health and Safety Code, Chapter 242, which authorizes the department to license and regulate nursing facilities; 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 the Health and Safety Code, §§242.001-242.268, and the Human Resources Code, §§22.001-22.024 and 32.001-32.040.

§19.2601. *Vendor Payment (Items and Services Included).*

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

(d) If a resident has requested and freely chosen to participate in an activity, or to have an item or service provided that is not included, or is different than that provided, in the daily vendor rate, then the resident may be charged for the activity, item, or service.

(1) When documentation is present that supports the above criteria, and that is required by §19.404(d)(5) [~~§19.404(e)(5)~~] of this title (relating to Protection of Resident Funds), the amount may be paid from the resident's trust fund.

(2) (No change.)

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

§19.2604. *Vendor Payment Information.*

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

(e) Days are defined as 24-hour periods extending from midnight to midnight. Payment is computed in terms of whole days, even though the recipient may have been in a nursing facility only a fractional part of the day of entrance. (See §19.2601(e) [~~see §19.2601(m)~~] of this title (relating to Vendor Payment (Items and Services Included)).

(f)-(h) (No change.)

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

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Paul Leche

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## Part 3. TEXAS COMMISSION ON ALCOHOL AND DRUG ABUSE

### Chapter 141. GENERAL PROVISIONS

#### 40 TAC §§141.51 - 141.55

The Texas Commission on Alcohol and Drug Abuse proposes new §§141.51 - 141.55 concerning General Provisions. These sections contain information regarding notice of a claim, agency counterclaim, timetable for negotiations and contested case hearings, conduct of negotiations and mediation.

These new sections are proposed to establish a process for negotiating and mediating certain contract disputes as required in Chapter 2260 of the Government Code. These sections

describe the process and timetable for filing a claim of breach of contract; explain the steps involved if the commission files a counterclaim; establish time limits for negotiations and contested case hearings; specify the steps that must be taken prior to a contested case hearing; spell out the circumstances under which a case may be submitted to the State Office of Administrative Hearings; describe how negotiations may be conducted; stipulate that mediation is an alternative and explain how that process will be conducted.

Jim McDade, Interim Executive Director, 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 the rules.

Mr. McDade has also determined that for each year of the first five years the rules are in effect the anticipated public benefit will be a well-defined process for settling certain contract disputes through negotiation or mediation. There is no additional effect on small businesses. There is no anticipated economic cost to persons required to comply with the proposed amendments; however, there may be costs involved for individuals who use the process described to address a contract dispute.

Comments on the proposal may be submitted to Tamara Allen, Rules Manager, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas, 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*.

The new sections are proposed under the Texas Health and Safety Code, Title 6, Subtitle B, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the proposed new sections is the Texas Health and Safety Code, Chapter 461.

§141.51. *Notice of Claim.*

(a) To file a claim of breach of contract under Government Code, Chapter 2260, the contractor must deliver written notice of the claim to the commission's Executive Director.

(b) The notice must be signed by the contractor's authorized representative and delivered by hand, certified mail return receipt requested, or other verifiable delivery service.

(c) The claim must specifically describe:

(1) the nature of the alleged breach of contract, including the date of the event which forms the basis of the claim and the contract provision(s) breached;

(2) the damages claimed, including the amount and the method used to calculate them; and

(3) the legal basis for filing the claim (i.e., breach of contract), including the relationship between the alleged breach and the damages claimed.

(d) The contractor may submit supporting documentation with the notice of the claim.

(e) The notice must be delivered no later than 180 calendar days after the date of the event that forms the basis of the claim.

(f) Any amount(s) owed by the contractor shall be deducted from the total damages claimed. This includes amounts owed for

work not performed or work not performed in substantial compliance with the terms of the contract. The total amount of damages (after deduction of amount owed by contractor) may not exceed the contracted amount or include consequential or similar damages, exemplary damages, any damages based on an unjust enrichment theory, attorney's fees or home office overhead.

§141.52. Agency Counterclaim.

(a) The commission may file a counterclaim of breach of contract.

(b) Written notice of counterclaim must be delivered to the representative of the contractor who signed the notice of claim of breach of contract.

(c) The notice must be delivered by hand, certified mail return receipt requested, or other verifiable delivery service.

(d) The notice must specifically describe:

(1) the nature of the counterclaim;

(2) a description of the damages or offsets, including the amount and the method used to calculate them; and

(3) the legal theory supporting the counterclaim.

(e) The notice of counterclaim must be delivered to the contractor no later than 90 calendar days after receipt of notice of the claim.

§141.53. Timetable for Negotiations and Contested Case Hearings.

(a) The commission's Executive Director must examine the contractor's claim and the commission's counterclaim, if any, and initiate negotiations.

(b) Except as provided in subsection (c) of this section, negotiations shall begin no more than 60 calendar days following the latest of:

(1) the date of termination of the contract;

(2) the completion date in the original contract; or

(3) the date the notice of claim of breach of contract is received by the commission.

(c) The commission may delay the negotiations until the 181st calendar day after the date of the event giving rise to the claim of breach of contract. The commission shall give the contractor written notice of the delay and notify the contractor when it is ready to begin negotiations.

(d) The parties must complete the negotiations as a prerequisite to a contested case hearing no later than 270 days after the commission receives the notice of claim of breach of contract. The negotiation period may be extended through a written agreement signed by the authorized representatives of each party.

(e) The parties may agree to mediate the dispute at any time before the 270th day after the commission receives the notice of claim of breach of contract, or before the expiration of any extension agreed to in writing by the parties.

(f) If negotiations fail to resolve the dispute, the case may be submitted to the State Office of Administrative Hearings (SOAH).

(1) The contractor may file a request for contested case hearing with the commission if a complete settlement agreement has not been reached 270 calendar days after the date the claim is delivered to the commission, or after the expiration of any extension agreed to in writing by the parties.

(2) The parties may agree to submit the case to SOAH before the 270th day if they have reached a partial settlement or if an impasse has been reached in the negotiations and proceeding to a contested case hearing would serve the interests of justice.

(3) The parties may continue to negotiate or mediate after a request for contested case hearing is referred to the SOAH.

§141.54. Conduct of Negotiations.

(a) Any limitations on the settlement authority of the representatives participating in the negotiations must be disclosed by the parties as soon as possible. To the extent possible, the parties shall select negotiators who are knowledgeable about the dispute and who are in a position to reach agreement or can credibly recommend approval of an agreement.

(b) Negotiation may be conducted by any method, technique, or procedure authorized under the contract or agreed upon by the parties. The contractor and the commission may conduct negotiations with the assistance of one or more neutral third parties.

(c) The parties may choose to mediate the dispute according to §141.55 of this title (relating to Mediation).

(d) To facilitate meaningful negotiation, the parties must exchange relevant documentation that supports their claims, defenses, counterclaims or positions.

(e) Any settlement reached during the negotiation must be put in writing and signed by representatives of the contractor and the commission. The agreement must describe any procedures that must be followed to secure final approval.

(f) The final settlement must be documented in writing and signed by representatives of the contractor and the commission with authority to bind the respective party. If the settlement does not resolve all issues raised by the claim and counterclaim, the agreement must specifically identify the issues that are not resolved.

(g) Unless the contractor and the commission agree otherwise, each party shall be responsible for its own costs.

§141.55. Mediation.

(a) The contractor and the commission may agree to mediate a claim through an impartial third party. Mediation is a forum in which an impartial person facilitates communication between parties to promote reconciliation, settlement, or understanding, but does not impose his own judgment on the issues

(b) The mediation is governed by the provisions of the Governmental Dispute Resolution Act, Government Code, Chapter 2009.

(c) The commission and the contractor select an impartial third party that is acceptable to both. The impartial third party must:

(1) possess the qualifications required under Civil Practice and Remedies Code, §154.052;

(2) be subject to the standards and duties prescribed by Civil Practice and Remedies Code, §154.053; and

(3) have the qualified immunity prescribed by Civil Practice and Remedies Code, §154.055, if applicable.

(d) A mediation conducted under this section is confidential in accordance with Government Code, §2009.054.

(e) A final settlement agreement signed by the commission under this section is subject to or excepted from required disclosure in accordance with Government Code, Chapter 552.

(f) Unless the contractor and the commission agree otherwise, the costs of the mediator shall be divided equally between the parties and each party shall be responsible for its own costs.

(g) Any limitations on the settlement authority of the representatives participating in the negotiations must be disclosed by the parties before mediation begins.

(h) Any settlement reached during the mediation must be put in writing and signed by representatives of the contractor and the commission. The agreement must describe any procedures that must be followed to secure final approval.

(i) The final settlement must be documented in writing and signed by representatives of the contractor and the commission with authority to bind the respective party. If the settlement does not resolve all issues raised by the claim and counterclaim, the agreement must specifically identify the issues that are not resolved.

(j) If mediation does not resolve the claim to the satisfaction of the contractor, the contractor may file a request that the claim be referred to the State Office Of Administrative Hearings pursuant to subchapter C, Chapter 2260, Government Code. The request for referral must be filed according to the timetable described in §141.53 of this title (relating to Timetables for Negotiations and Contested Case Hearings).

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

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Karen Pettigrew  
General Counsel

Texas Commission on Alcohol and Drug Abuse  
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For further information, please call: (512) 349-6794



## Part 20. TEXAS WORKFORCE COMMISSION

### Chapter 800. GENERAL ADMINISTRATION

#### Subchapter D. INCENTIVE AWARD RULES

#### **40 TAC §§800.101, 800.102, 800.112 - 800.115, 800.118, 800.120**

The Texas Workforce Commission (Commission) proposes new §800.120 relating to the Workforce Investment Act (WIA) Local Incentive Awards, and proposes amendments to §800.101 relating to Scope and Purpose, §800.102 relating to Definitions, §800.112 relating to Criteria for Award, §800.113 relating to Non-Monetary Incentive Awards, §800.114 relating to Monetary Incentive Awards, §800.115 relating to Incentive Policy Adjustment Model, and §800.118 relating to Distribution of Incentive Awards.

#### BACKGROUND AND PURPOSE

Sections 800.101, 800.102, 800.112, 800.113, 800.114, and 800.118 are amended to provide a uniform use of terms. Sections 800.101 and 800.102 are amended to remove references to the Job Training Partnership Act (JTPA) since the State

has fully implemented WIA which replaces the JTPA. Section 800.102 is also amended to replace the definition for caseload reduction and add definitions for exemplary performance, local coordination, regional cooperation, and workforce area. The definition of core outcome measures is amended to include performance measures approved by the Legislative Budget Board. The use of the term "active TANF cases" in the definition of caseload reduction was included to clarify that caseload reduction will be evaluated based on the number of families who received Temporary Assistance for Needy Families (TANF) assistance during specific time periods. The definition for local coordination emphasizes the importance of local workforce development boards (Boards) coordinating their services with services provided by the Commission but not funded through the Boards, as well as services funded by sources other than the Commission. The list of grants contained in the proposed definition provides examples of such programs and is not intended to be an exhaustive list of all possible programs. Section 800.113 is amended to clarify that five is the maximum number of non-monetary awards available each fiscal year.

As provided by WIA (29 U.S.C. §2801 *et seq.*) and the federal regulations governing the program (specifically 20 C.F.R. 665.300 *et seq.*), the State is responsible for oversight of WIA programs administered by the Boards and, as appropriate, awarding incentive awards for outstanding performance by the Boards. The State has developed §800.120, the WIA incentive awards policy, to meet these statutory and regulatory requirements. A provision is included in §800.120 which provides that in determining eligibility for an incentive award, the Commission may consider whether a Board reached a specified minimum expenditure level during the previous program year. It is anticipated that a similar provision will be added to the eligibility requirements for all awards of state reserve WIA funds.

The purpose of these rules is to establish Board eligibility criteria for incentive awards reflective of the WIA principles and the principles of Texas' vision as outlined in the Texas Strategic Five-Year State Workforce Investment Plan for Title I of the Workforce Investment Act of 1998 and the Wagner-Peyser Act for the Period of July 1, 1999-June 30, 2000-Transition Plan (State Plan).

The WIA principles are streamlining services, empowering individuals, universal access, increased accountability, strong role for Boards and the private sector, and state and local flexibility. The four principles of Texas' vision are limited and efficient state government, local control, personal responsibility, and support for strong families.

Randy Townsend, Chief Financial Officer, has determined that for the first five years the rules are in effect, the following statements shall apply:

there are no additional estimated costs to the State and to local governments expected as a result of enforcing or administering the rules;

there are no estimated reductions in costs to the State or to local governments expected as a result of enforcing or administering the rules;

there are no estimated losses or increases in revenue to the State or to local governments as a result of enforcing and administering the rules;

there are no foreseeable implications relating to costs or revenues to the State or to local governments as a result of enforcing or administering the rules; and

there are no anticipated costs to persons who are required to comply with the rules as proposed.

Randy Townsend, Chief Financial Officer, has determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering these rules because small businesses (including micro-businesses) are not required to do anything as a result of these rules.

Jean Mitchell, Director of Workforce Development, has determined that the public benefit anticipated as a result of the rules as proposed shall be to encourage and reward outstanding performance by Boards and thereby improve the quality of workforce services provided in their communities.

Mark Hughes, Director of Labor Market Information, has determined that there is no foreseeable negative impact upon employment conditions in this state as a result of these proposed rules.

#### COMMENTS

Comments on the proposed rules may be submitted to Barbara Cigainero, Workforce Development Division, Texas Workforce Commission, 101 East 15th Street, Room 130BT, Austin, Texas 78778; Fax Number (512) 463-3424; or E-mail to barbara.cigainero@twc.state.tx.us.

Comments must be received by the Commission no later than 30 days from the date this proposal is published in the *Texas Register*.

The new rules are proposed under Texas Labor Code §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs.

The proposal affects the Texas Labor Code, Title 4.

#### §800.101. *Scope and Purpose.*

(a) The purpose of the incentive is to reward Local Workforce Development Boards (Boards) [~~boards~~] that meet the stated goals of the Commission to increase the local control of workforce development programs and to put Texans to work. The Board [~~board~~] is responsible for providing strategic planning for the workforce [~~local~~] area for all workforce development programs consolidated into the Texas Workforce Commission (Commission). The development of an integrated and coherent workforce development system at the local level is the primary focus of Boards [~~boards~~]. Thus, this policy seeks to recognize Boards [~~boards~~] for achieving high performance as a system, as well as high performance on behalf of the populations annually targeted by the Commission during the budget process. Incentives will emphasize accountability, high performance, continuous improvement and support the State [~~state~~] in achieving workforce development goals.

(b) [~~This rule incorporates by reference the existing rule for performance standards for the Job Training Partnership Act Program cited in §§805.160 - 805.165 of this title (relating to Performance Standards)-]~~ State variation of performance standards established by the U. S. Department of Labor and/or state standards shall be published in the *Texas Register* on an annual basis and in a numbered TWC Letter.

#### §800.102. *Definitions.*

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

(1) [~~7~~] Caseload Reduction – The caseload reduction measure is calculated by first determining the annual monthly average number of active Temporary Assistance for Needy Families (TANF) cases for each county in a workforce area for each of two consecutive years. The annual monthly average number of active TANF cases for each county within the workforce area are averaged to determine the annual monthly average TANF caseload for each Board. This procedure is then repeated for the second year. This results in an annual monthly average number of active TANF cases for each Board for each year. Finally, the percentage of change between the two annual monthly averages is calculated by subtracting year two from year one; dividing the difference by year one, and then; multiplying the result by 100. This caseload reduction method does not mirror that promulgated by the Administration for Children and Families (ACF), U.S. Department of Health and Human Services, in calculating the State's caseload reduction factor used to determine the State's federally required participation rate. [The number of percentage points by which the annual average monthly number of families receiving TANF cash assistance has declined in a Local Workforce Development Area (LWDA) during the performance period as specified in TWC Letter ID/NO WD 88-97, "Incentive Policy Adjustment Model-"]

(2) [~~4~~] Core Outcome Measures – Workforce Development Program performance measures adopted by the Governor and developed and recommended through the Texas Council on Workforce and Economic Competitiveness (TCWEC), or as otherwise approved by the Legislative Budget Board. TCWEC Core Outcome Measures have been adjusted to allow for a follow-up period of six months in lieu of the one-year period established by TCWEC.

(3) [~~2~~] Earnings Gains Measure – The average earnings of persons employed during the post-placement follow-up periods (six months) compared to the average earnings of the same persons six months prior to program entry.

(4) [~~3~~] Employment Measure – The annual percentage of individuals who entered unsubsidized employment subsequent to participation in job preparation services, who remained employed (by the same or another employer) six months after entering employment.

(5) Exemplary Performance – Achievement by a Board on WIA performance measures in meeting one or more of the following criteria:

(A) exceeding contract performance measures;

(B) exceeding Commission-designated Full Service Texas Workforce Center certification standards;

(C) implementing an innovative and successful system integration as identified in a One-Stop Innovation Plan; or

(D) demonstrating exemplary performance through other means as determined by the Commission.

(6) High Performance Achievement – The top five Boards [~~boards~~] as ranked by performance outcomes, adjusted for regional economic conditions according to the model cited in § 800.115 of this title (relating to Incentive Policy Adjustment Model).

(7) [~~9~~] Incentive Award Pool – Funding that the Commission shall reserve during the annual budget process in sufficient amount to use to reward Boards [~~boards~~] for high performance achievement.

(8) Local Coordination – Boards providing leadership to ensure cooperation to achieve the most effective customer service results for its population through one or more of the following:

(A) Memorandums of Understanding with required partners that achieve active implementation and integration of related services;

(B) Memorandums of Understanding with partners required by WIA §121(b)(1) but not required by 40 TAC §801.27(b) that include active implementation and integration of related services;

(C) ongoing and regular communication and training on best practices and benchmarks in building systems or delivering services; or

(D) demonstrating local coordination through other means as determined by the Commission, including but not limited to demonstrating coordination with demonstration grants, Welfare-to-Work competitive grants, youth opportunity grants, self-sufficiency grants, and skills development grants.

(9) [~~8~~] Local Workforce Development Boards – A Board [board] that is certified by the Governor of the State of Texas, has a plan approved by the Governor of the State of Texas, and is operating multiple workforce development programs through an executed contract with the Commission.

(10) Regional Cooperation – Boards working together as a cooperative unit to provide excellence in customer service as a region through one or more of the following:

(A) submitting joint plans or agreements;

(B) engaging in ongoing and regular communication regarding best practices and working together to implement those practices by sharing ideas, data, staff, and other resources;

(C) providing opportunities for joint training, conferences, and staff interaction; or

(D) demonstrating regional cooperation through other means as determined by the Commission.

(11) [~~4~~] Skill Attainment Measure – The annual measure specified by the Commission based upon the percentage of individuals who completed skill attainment activities and acquired a skill as recognized by the State [state] or an industry in the form of an achievement as specified below:

(A) Board certification of youth and adult competency levels set in consultation with area employers and, where appropriate, educational agencies, labor organizations and community-based organizations based on such factors as entry level skills and other hiring requirements; [board certification of youth/adult competency levels as specified by Job Training Partnership Act §106a(5);]

(B) a high school diploma;

(C) GED certificate;

(D) postsecondary [post secondary] education degree;

(E) occupational license;

(F) occupational certification; or

(G) other certifications recognized by the State [state].

(12) Workforce area – Local Workforce Development Area designated by the Governor as provided in Texas Government Code §2308.252.

(13) [~~5~~] Workforce Development Programs – Job-training, employment and employment-related educational programs and functions as listed in Texas Labor Code §302.021.

§800.112. *Criteria for Award.*

(a) To encourage system building and accountability in meeting the needs of employers and jobseekers, the State [state] will apply four outcome measures to establish a high performance recognition. The four outcome measures are:

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

(b) Each Board [board] will be evaluated on these core outcome measures for high performance recognition.

(c) In order to be eligible to receive an incentive, a Board [board] must be within 90% of the variance range established for each contract performance measure.

§800.113. *Non-Monetary Incentive Awards.*

(a) (No change.)

(b) To be eligible for a non-monetary incentive award, a certified Board [board] must be one of the five outstanding Boards in the state and must have demonstrated exceptional performance in [performers for any] one of the four specified core outcome measures.

(c) (No change.)

(d) A Board [board] may be recognized as an outstanding performer under more than one measure.

§800.114. *Monetary Incentive Awards.*

(a) Amounts from the Incentive Award Pool may be distributed to Boards [boards] based on high performance achievement to a targeted population, and may be used to carry out innovative workforce investment activities consistent with state and federal requirements as determined by the Commission.

(b) A targeted population will be annually identified by the Commission in the budget process. The first three measures set out in §800.112 of this title (relating to Criteria for Award) will be applied to this targeted population, while the fourth measure will be applied as written. Monetary incentives will reward up to five top performing Boards [boards] based on high performance in meeting these four measures.

(c) (No change.)

§800.115. *Incentive Policy Adjustment Model.*

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

(c) The adjustment rates shall be calculated for each of the workforce areas [LWDAs]. The calculated rates shall be used to produce adjusted performance standard rates for each of the workforce areas [LWDAs].

(d) (No change.)

§800.118. *Distribution of Incentive Awards.*

The monetary Incentive Award Pool will be awarded to the top five Boards [boards] meeting or exceeding their targeted performance measures for the targeted populations.

§800.120. *WIA Local Incentive Awards.*

(a) Allocation of Funding. The Commission shall determine annually the total amount of funds to be allocated from funds available through WIA §128(a) and §133(a)(1) for local incentive awards, taking into consideration availability of funds, number of workforce

areas eligible for local incentive awards funds, and other factors as identified by the Commission.

(b) Eligibility Criteria for WIA Local Incentive Awards.

(1) A Board may be considered for a local incentive award for exemplary performance in one or more of the following areas:

(A) regional cooperation among workforce areas;

(B) local coordination of activities carried out under WIA; and

(C) exemplary performance on local performance measures established by the Commission.

(2) In determining the amount of funds awarded to a Board, the Commission may consider such factors as:

(A) the amount of formula WIA funds allocated to the eligible Board relative to the formula allocations to the other Boards;

(B) for awards made during PY 2000, whether the Board can demonstrate that on July 1 it had expended 60 percent of the prior year WIA allocated funds;

(C) for awards made during PY 2001 and succeeding program years, whether the Board can demonstrate that it has met all expenditure requirements for eligibility for awards from State activity funds found in Subchapter B of Chapter 800 of this title (relating to Allocations and Funding);

(D) performance improvement relative to the previous year;

(E) changes in economic conditions, population characteristics, and service delivery system in the workforce area;

(F) the eligible Board's performance for each contract performance measure compared with other Boards;

(G) performance in those areas considered most critical in accomplishing overall system goals;

(H) monitoring reports and resolution activities;

(I) achievement of goals outlined in a One-Stop Innovation Plan; and

(J) additional criteria consistent with implementation of WIA.

(c) Application for WIA Local Incentive Awards.

(1) Only those Boards making a written application shall be considered for local incentive awards.

(2) The Commission shall issue instructions annually which shall include the amount of funds available for awards, the maximum number of awards and instructions for submitting applications for local incentive awards.

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

Filed with the Office of the Secretary of State, on February 18, 2000.

TRD-200001236

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: April 2, 2000

For further information, please call: (512) 463-8812



# WITHDRAWN RULES

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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 filing 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*.

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**TITLE 31. NATURAL RESOURCES AND  
CONSERVATION**

**Part 2. TEXAS PARKS AND WILDLIFE  
DEPARTMENT**

**Chapter 65. WILDLIFE**

**Subchapter T. SCIENTIFIC BREEDER'S PER-  
MIT**

**31 TAC §§65.601, 65.602, 65.605, 65.607-65.610**

The Texas Parks and Wildlife Department has withdrawn from consideration for permanent adoption the amendments to

§§65.601, 65.602, 65.605, and 65.607-65.610, which appeared in the October 1, 1999, issue of the *Texas Register* (24 TexReg 8510).

Filed with the Office of the Secretary of State on February 15, 2000.

TRD-200001193

Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

Effective date: February 15, 2000

For further information, please call: (512) 389-4775





# ADOPTED RULES

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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.

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## TITLE 1. ADMINISTRATION

### Part 12. ADVISORY COMMISSION ON STATE EMERGENCY COMMUNICATIONS

#### Chapter 251. REGIONAL PLANS—STANDARDS

##### 1 TAC §251.6

The Commission on State Emergency Communications (CSEC) adopts the amendment to §251.6, concerning guidelines for submission of requests from councils of governments regarding strategic plans, amendments, and allocation of equalization surcharge funds, without changes to the proposed text as published in the December 24, 1999, issue of the *Texas Register* (24 TexReg 11645).

The amendment provides recommended funding levels and components starting with Fiscal Year 2002. The current funding levels and components remain to allow for ease in transition for the regional planning commissions in their development of new regional strategic plans and to finish implementation of the current plans. With the submission of the new regional strategic plans in March 2000, each regional planning commission will construct its plan utilizing the new components.

There were no comments received on the proposal during the comment period.

The amendment is adopted under Health and Safety Code, Chapter 771, §§771.051, 771.071, 771.0711, 771.072, and 771.075, which authorize the Commission to adopt policies and procedures prescribing the distribution and use of 9-1-1 funds for providing 9-1-1 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.

Filed with the Office of the Secretary of State on February 18, 2000.

TRD-200001237

James D. Goerke  
Executive Director

Advisory Commission on State Emergency Communications  
Effective date: March 9, 2000

Proposal publication date: December 24, 1999

For further information, please call: (512) 305-6933

## Chapter 255. FINANCE

### 1 TAC §255.7

The Commission on State Emergency Communications (CSEC) adopts the amendment to §255.7, concerning the authority to cease billing customers, penalties for failure to remit the 9-1-1 fees, and quarterly remittance options for 9-1-1 fee remitters, without changes to the proposed text as published in the November 12, 1999, issue of the *Texas Register* (24 TexReg 9915).

The section is being amended to reflect consistency with the Texas Legislature's modification of Health and Safety Code, Chapter 771. The amendment changes the remittance due dates from 60 days after the last day of the month fees are collected to 30 days. In addition, telephone companies remitting less than \$1,000 per month had the option of remitting quarterly; however, that is now being changed to monthly.

No comments were received regarding the amendment.

The amendment is adopted pursuant to the Health and Safety Code, Chapter 771, §§771.071, 771.072, 771.073, 771.075, and 771.076.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 2000.

TRD-200001238

James D. Goerke  
Executive Director

Advisory Commission on State Emergency Communications  
Effective date: March 9, 2000

Proposal publication date: November 12, 1999

For further information, please call: (512) 305-6933

## TITLE 7. BANKING AND SECURITIES

### Part 1. FINANCE COMMISSION OF TEXAS

#### Chapter 1. CONSUMER CREDIT COMMISSIONER

## Subchapter B. MISCELLANEOUS

### 7 TAC §§1.301 - 1.305

The Finance Commission of Texas (the commission) adopts the repeal of §§1.301 - 1.305. This repeal is adopted without changes to the proposal as published in the January 7, 2000, issue of the *Texas Register* (25 TexReg 20). This repeal is necessary because the sections relate to Appeal From Orders to Desist or To Refrain; Notice in Written Contracts; Annual Fee by Holders, Creditors, and Assignees; Notice and Processing Periods for Permit Applications; and Interpretations and Advisory Letters.

These sections are being reviewed and adopted with changes in a new section of the Texas Administrative Code. The subject matter of §1.301 and §1.304 is not being readopted as it is adequately covered by other rules already in effect.

The agency received no comments on the proposal.

The repeal is adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4.

The statutory provisions (as currently in effect) affected by the adopted repeal are Texas Finance Code, Chapters 345, 347, 348, and the rest of Title 4.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 2000.

TRD-200001275

Leslie L. Pettijohn

Commissioner

Finance Commission of Texas

Effective date: March 9, 2000

Proposal publication date: January 7, 2000

For further information, please call: (512) 936-7640



## Subchapter P. REGISTRATION OF RETAIL CREDITORS

### 7 TAC §§1.901, 1.902, 1.911

The Finance Commission of Texas (the commission) adopts new §§1.901, 1.902, and 1.911 concerning Notice in Written Contracts; Annual Registration Fees by Holders, Creditors, and Assignees; and Interpretations and Advisory Letters. The new rules are adopted without changes to the proposal as published in the January 7, 2000, issue of the *Texas Register* (25 TexReg 21).

The adoption is part of a rule review conducted in accordance with HB 1, Article IX, Section 167. Simultaneously, the Finance Commission is repealing the former rules and adopting these rules in their place. The rules being repealed were reviewed and those being adopted here were evaluated and an assessment made that the reasons for (re)adopting the rule continue to exist. The primary changes from the former rules are organizational in nature or to appropriately identify the new statutory citations of the Finance Code.

The agency received no comments on the proposal.

The new sections are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Finance Code.

Texas Finance Code, Chapters 345, 347, and 348 as well as the remainder of Title 4 are affected by these new sections.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 2000.

TRD-200001274

Leslie L. Pettijohn

Commissioner

Finance Commission of Texas

Effective date: March 9, 2000

Proposal publication date: January 7, 2000

For further information, please call: (512) 936-7640



## TITLE 34. PUBLIC FINANCE

### Part 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### Chapter 9. PROPERTY TAX ADMINISTRATION

#### Subchapter C. APPRAISAL DISTRICT ADMINISTRATION

### 34 TAC §9.402

The Comptroller of Public Accounts adopts an amendment to §9.402, concerning applications for special property tax appraisal, with changes to the proposed text as published in the December 3, 1999, issue of the *Texas Register* (24 TexReg 10833).

This rule is being amended to prescribe a model application form for restricted-use timber appraisal, required by Senate Bill 977, 76th Legislature, 1999, effective January 1, 2000, pursuant to §18(b) of the act.

Comments were received from a law firm representing Champion International, Louisiana Pacific, and Temple-Inland requesting three changes to the new form (Form 50-281). The commentor requested that the instructions in Step 3 (B)(b)(3) be changed to clarify legislative intent and adding "providing shelter" to the list of wildlife benefits in Step 3 (B)(b)(3). The commentor also requested that the second, fourth and fifth questions in Step 4 clarify "that a landowner who is actively engaged in the regeneration process can qualify, even though trees may not yet have been planted and established." The comptroller has changed the language and questions as requested.

Comments were received from Somervell County Appraisal District requesting that a sentence in the "Important Information for Applicants" on Form 50-129, the Application for 1-d-1 (open-space) Agricultural Appraisal form be changed. The comptroller declines to make this change, as this change is outside the scope of the originally proposed changes.

Comments were received from Shelby County Appraisal District requesting three changes to the new form (Form 50-281). The commentor believes "it is important to specify time constraints of this application." The comptroller declines to make this change, as it is not the purpose of the form to determine the effective date of legislation or to whom the appraisal applies. The law requires the chief appraiser to determine specifically each applicant's right to this appraisal. The commentor requested a separate form for the restricted use of timberland, which is not related in substance to the qualification of land for harvesting and regenerating timber production. The comptroller agrees that the separate nature of the activities needs to be clarified and has added a paragraph in the "Important Information for Applicants" section of the form. However, the comptroller declines to adopt separate forms because an additional form could create more administrative burden on chief appraisers and confuse taxpayers. Also, the commentor requested that the signature line have a date section instead of a title section. The comptroller has changed the form to include both sections on the form.

This amendment is adopted under the Tax Code, §5.07, which requires the comptroller to prescribe the contents of all forms necessary for the administration of the property tax system, and Senate Bill 977, 76th Legislature, 1999, effective January 1, 2000, pursuant to §18(b) of the act, which requires the comptroller to prescribe an application form for restricted-use timberland appraisal.

The amendment implements the Tax Code, §23.9804.

*§9.402. Special Use Application Forms.*

(a) In applying for special use valuation under the Tax Code, Chapter 23, the applicant shall use a form provided by the appraisal office. The appraisal office shall use the model form adopted by the Comptroller of Public Accounts which is appropriate to the special use type, or use a form containing information which is in substantial compliance with the model form adopted by the comptroller.

(b) The model application forms listed in paragraphs (1)-(6) of this subsection and the new model form in paragraph (7) of this subsection are adopted by the Comptroller of Public Accounts by reference. Copies of these forms are available for inspection at the office of the Texas Register or can be obtained from the Comptroller of Public Accounts, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528. Copies may also be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999. From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099, toll free. In Austin, the local TDD number is (512) 463-4621:

- (1) 1-d Appraisal Application (1-d Agricultural Land), (Form 50-165);
- (2) 1-d-1 Appraisal Application (1-d-1 Agricultural Land), (Form 50-129);
- (3) open-space land application (1-d-1 timberland), (Form 50-167);
- (4) 1-d-1 Ecological Laboratory Appraisal Application, (Form 50-166);
- (5) application for recreational, park, and scenic land, (Form 50-168);
- (6) application for public access airport property, (Form 50-169); and

(7) application for restricted-use timberland appraisal (Form 50-281).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 17, 2000.

TRD-200001234

Martin Cherry

Special Counsel

Comptroller of Public Accounts

Effective date: March 8, 2000

Proposal publication date: December 3, 1999

For further information, please call: (512) 463-3699



**34 TAC §9.415**

The Comptroller of Public Accounts adopts an amendment to §9.415, concerning applications for property tax exemptions, without changes to the proposed text as published in the December 24, 1999, issue of the *Texas Register* (24 TexReg 11695).

This rule is being amended to change model application forms for charitable organizations, youth spiritual, mental, and physical development organizations, privately owned schools, non-profit water supply or wastewater services corporations, and miscellaneous property tax exemptions adopted by reference, in response to House Bill 873, 76th Legislature, 1999, effective May 18, 1999, which permits these organizations an exemption for up to three years for an incomplete improvement of property owned by the organizations. Changes to the charitable organization exemption application form are proposed in response to House Bill 2269, 76th Legislature, 1999, effective January 1, 1999, to provide an exemption for certain cooperative housing; and in response to House Bill 2821, 76th Legislature, 1999, to address qualification of charitable organizations that share a division of responsibilities if the organizations meet certain specific requirements and House Bill 1978, 76th Legislature, 1999, to address charitable organizations that provide services to elderly persons including the provision of recreational or social activities and facilities designed to address the special needs of elderly persons or to the handicapped. Changes to the property tax abatement exemption application form are proposed in response to House Bill 3034, 76th Legislature, 1999, effective September 1, 1999, to address taxing units having different terms and durations in their tax abatement agreements with a property owner. In addition, an amendment is proposed to adopt a new model application form for associations that provide assistance to ambulatory health care centers, as provided by House Bill 541, 76th Legislature, 1999, effective January 1, 2000.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Tax Code, §11.43(f), which requires the comptroller to prescribe the contents and form for each kind of property tax exemption.

The amendment implements the Tax Code, §§11.111, 11.13, 11.17, 11.18, 11.181, 11.19, 11.20, 11.21, 11.22, 11.23(a)-(k), 11.24, 11.251, 11.27, 11.271, 11.28, 11.29, 11.30, 11.31, 11.32, 11.437, and 11.182.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 2000.

TRD-200001240

Martin Cherry

Special Counsel

Comptroller of Public Accounts

Effective date: March 9, 2000

Proposal publication date: December 24, 1999

For further information, please call: (512) 463-3699



## Subchapter J. PROCEDURES

### Division 2. SUIT FOR DELINQUENT TAXES

#### 34 TAC §9.5151

The Comptroller of Public Accounts adopts the repeal of §9.5151, concerning petition to initiate a suit for the collection of delinquent taxes, without changes to the proposed text as published in the December 24, 1999, issue of the *Texas Register* (24 TexReg 11697).

The rule is being repealed because the Tax Code, §5.07(a) requires the comptroller to prescribe this form but not adopt

the form by rule. The comptroller will continue to prescribe this form.

No comments were received regarding adoption of the repeal.

This repeal is adopted under the Tax Code, §111.002 and §111.0022, which provide the comptroller with the authority to adopt rules for the administration and enforcement of the Tax Code and programs or functions assigned to the comptroller by law.

The repeal implements the Tax Code, §5.07(a) and §33.06.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 2000.

TRD-200001241

Martin Cherry

Special Counsel

Comptroller of Public Accounts

Effective date: March 9, 2000

Proposal publication date: December 24, 1999

For further information, please call: (512) 463-3699



# TEXAS DEPARTMENT OF INSURANCE

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## **Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L**

As required by the Insurance Code, Article 5.96 and 5.97, the *Texas Register* publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the *Texas Register* not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the *Texas Register* not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

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## Texas Department of Insurance

### Final Action on Rules

The Commissioner of Insurance, at a public hearing under Docket Number 2426 held at 9:00 a.m., November 23, 1999 in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, adopted amendments proposed by Staff to the Texas Automobile Rules and Rating Manual (the Manual), Rule 74, including Section E.3., drug and alcohol driving awareness training credits, and also Rules 77 and 79. The amendments' purpose is to implement the provisions of the Insurance Code, Article 5.03-4, adopted by the 76th Legislature in House Bill 3757. Staff's petition (Reference Number A-1099-17-1) was published in the October 22, 1999 issue of the *Texas Register* (24 TexReg 9315).

Three portions of Manual Rule 74, Private Passenger Auto Classifications, will be amended. Directly following the rule's caption, the following words will be deleted: "Applicable to Liability and Collision Insurance." This deletion is needed because some portions of the rule (both current and revised) also apply to Medical Payments and Personal Injury Protection coverage. The parenthetical phrase directly following the above deletion will be amended to read as follows, "(Unless otherwise specified, this rule does not apply to risks rated in accordance with the miscellaneous types rule.)" (Emphasis is used only to show additional language.) This additional wording is needed because Section E.3. will apply to miscellaneous type vehicles.

The paragraph following the caption of Rule 74.E., driver credits, currently reads, "This rule does not apply to an auto that is subject to experience rating or is a miscellaneous type vehicle." The following sentence will be added to that paragraph: "However, Subsection 3, drug and alcohol driving awareness training credits, applies to a miscellaneous type vehicle."

Rule 74.E.3. will be amended in several ways, as mandated by statute, but some of the current wording of Section E.3. is to be retained, such as the amount of the credit (5%). Section E.3.a. is amended to delete references to the Texas A&M University, Safety Education Program and to restrict the credit to persons who complete programs that are regulated and approved by the Texas Education Agency (TEA) under the Texas Driver and Traffic Safety Education Act, Texas Civil Statutes, Article 4413(29c). Section E.3. a. is further amended to add the language "and the principal operator is

in compliance with paragraphs c. and d. of this subsection." In response to testimony at the public hearing and comments received during the 30 day comment period, Section E.3.c., concerning the duration of the credit, has been changed from the language that was originally proposed in Staff's petition. The Department received several comments and several witnesses testified concerning the belief that the duration of the application of the credit should be limited to a 36 month time period. The commenters cited several reasons for this 36 month limitation which are as follows: (1) it is sound public policy to require drivers to periodically retake the course in order to review the course material and to apprise drivers of changes in the law, (2) prior to the enactment of Article 5.03-4, the rule set 36 months as the duration of the time period for application of the credit and (3) a 36 month time period is consistent with the other automobile credits in the auto manual. Staff agrees and the proposed language has been deleted and the language of the current section E.3.c. has been essentially retained. With these changes that have been made in response to comments, the current duration of three years for the 5% credit is to be retained.

A second change to section E.3.c. was made in response to a comment suggesting the substitution of the language "an operator" for "any person" because "any person" is overly broad. Staff agrees that a change should be made to narrow this language but chose the language "customary operator" because "customary operators" of the auto will be ascertained by the insurers when they determine eligibility for the credit. One further change to section E.3.c. is that the language "Subject to the provisions of paragraph d." has been added to the beginning of the paragraph. This change is necessary to clarify that if a customary operator is convicted of DWI or a similar offense, then any person under the policy (unless the convicted person is excluded from the policy) will be ineligible for the credit for seven years from the conviction date. A statutory exception applies to this ineligibility provision if the convicted operator takes a course within three years of expiration of the seven year period mentioned above. In that case, the operator can begin receiving the credit upon expiration of the seven year period, and the credit will continue until the remaining portion of the three years has expired. For example, if a customary operator takes the course five years after the date of conviction, then he or she will receive the credit for one year, beginning two years from the date of completion of the course.

In response to testimony at the public hearing and comments received during the 30 day comment period, section E.3.f., concerning the application of the credit to policies that are effective before or after January 1, 2000, has been changed from the language that was originally proposed in Staff's petition. The Department received several comments and several witnesses testified concerning the belief that it would be unfair to persons who completed the drug and alcohol driving awareness course prior to January 1, 2000 not to allow the credit to be applied to policies that are effective on or after January 1, 2000 because the course that was taken was not the course approved by the Texas Education Agency (TEA). The commenters expressed the belief that persons who have taken the drug and alcohol driving awareness course prior to January 1, 2000 should receive the policy credit for the full balance of the 36 months. The commenters' reason for believing that the credit should be continued for non-TEA approved courses taken prior to January 1, 2000 is that the TEA drug and alcohol driving awareness program is based entirely on the structure and content of the current drug and alcohol awareness program operated through Texas A&M University and that the education received by drivers who took the non-TEA approved course before January 1, 2000 is equal in content and quality to the education received by drivers taking the TEA approved course after January 1, 2000. The commenters also stated that the intent of the new law is to allow persons taking an approved course prior to January 1, 2000 to continue to receive the policy credit for a full 36 months. Staff agrees and has amended section E.3.f. to provide that a policy receiving the credit under rule 74.E.3., as it existed immediately prior to January 1, 2000, may continue to receive the credit subject to the provisions of the rule.

Rule 77, Miscellaneous Type Vehicles, and Rule 79, Motorcycle Operator Credits, will be amended so as to make it more obvious

that revised Rule 74.E.3. will apply to miscellaneous type vehicles (which include motorcycles, motor scooters, etc.). The amendment to Rule 77 will consist of adding a second paragraph under the rule's caption, which new paragraph will read as follows: "Rule 74.E.3., drug and alcohol driving awareness training credits, applies to a miscellaneous type vehicle." The amendment to Rule 79 will consist of adding a first paragraph following the explanatory note that follows the rule's caption, which new paragraph will read as follows: "Rule 74.E.3., drug and alcohol driving awareness training credits, applies to motorcycles or similar vehicles described in this rule."

The amendments as adopted by the Commissioner of Insurance are shown in exhibits on file with the Chief Clerk under Reference Number A-1099-17-I, which are incorporated by reference into Commissioner's Order Number 00-0085.

The Commissioner of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.03-4, 5.10, 5.96, 5.98, and 5.101.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

Consistent with the Insurance Code, Article 5.96(h), the Department will notify all insurers writing automobile insurance of this adoption by letter summarizing the Commissioner's action.

TRD-200001388  
Lynda Nesenholtz  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: February 23, 2000

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# == REVIEW OF AGENCY RULES ==

This Section contains notices of state agency rules review as directed by the 75th Legislature, Regular Session, House Bill 1 (General Appropriations Act) Art. IX, Section 167. Included here are: (1) notices of *plan to review*; (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

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## Proposed Rule Reviews

### General Services Commission

#### Title 1, Part 5

The General Services Commission (the "Commission") proposes to review Title 1, Texas Administrative Code, Part 5, Chapter 117, Subchapter C, §117.51 (relating to the Central Supply Store Program) pursuant to the Texas Government Code, §2001.039 (relating to Agency Review of Existing Rules).

As a part of the rule review process, the General Services Commission proposes amendments to §117.51 that may be found in the proposed rule section of this publication of the *Texas Register*.

The assessment by the Commission at this time indicates that the reason for adopting or readopting these rules continues to exist.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the Texas Register to Ann Dillon, General Counsel, General Services Commission, P.O. Box 13047, Austin, Texas, 78711-3047.

TRD-200001233

Ann Dillon

General Counsel

General Services Commission

Filed: February 17, 2000



### Texas Higher Education Coordinating Board

#### Title 19, Part 1

The Texas Higher Education Coordinating Board proposes to re-adopt Chapter 9, Program Development in Public Community/Junior College Districts and Technical Colleges, in accordance with Section 2001.039 Texas Government Code.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed re-adoption may be submitted to Don W. Brown, Commissioner of Higher Education, P.O. Box 12788, Austin, Texas 78711.

TRD-200001352

James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

Filed: February 23, 2000



### Texas Motor Vehicle Board

#### Title 16, Part 6

The Texas Motor Vehicle Board of the Texas Department of Transportation files this notice of intent to review Title 16, Chapter 105, Advertising Rules, relating to the regulation of advertising by motor vehicle dealers, manufacturers, distributors and converters, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

As required by §167, the Board will accept comments regarding whether the reason for adopting each of the rules in 16 TAC Chapter 105 continues to exist. The Board will conduct the rule review at its May 11, 2000, meeting.

Any questions or written comments pertaining to this notice or intention to review should be directed to Brett Bray, Director, Motor Vehicle Division, Texas Department of Transportation, P.O. Box 2293, Austin, Texas 78768-2293 or at (512) 416-4910 by April 20, 2000.

TRD-200001280

Brett Bray

Director, Motor Vehicle Board

Texas Motor Vehicle Board

Filed: February 18, 2000



### State Securities Board

#### Title 7, Part 7

The State Securities Board (Agency), beginning March 2000, will review and consider for re-adoption, revision, or repeal Chapters 109, Transactions Exempt from Registration; 111, Securities Exempt from Registration; and 139, Exemptions by Rule or Order, in accordance with the General Appropriations Act, Article IX, Section 167, 75th Legislature, and Texas Government Code, Section 2001.039. The

rules to be reviewed are located in Title 7, Part VII, of the Texas Administrative Code.

The assessment made by the Agency at this time indicates that the reasons for readopting these chapters continue to exist.

The Agency's Board will consider, among other things, whether the reasons for adoption of these rules continue to exist and whether amendments are needed. Any changes to the rules proposed by the Agency's Board after reviewing the rules and considering the comments received in response to this notice will appear in the "Rules Proposed" section of the Texas Register and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001. The comment period will last for 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this notice of intention to review may be submitted in writing, within 30 days following the publication of this notice in the *Texas Register*, to David Weaver, General Counsel, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to Mr. Weaver at (512) 305-8310. Comments will be reviewed and discussed in a future Board meeting.

TRD-200001326

Denise Voigt Crawford  
Securities Commissioner  
State Securities Board  
Filed: February 22, 2000

## Adopted Rule Reviews

Texas State Board of Public Accountancy

### Title 22, Part 22

In accordance with the Appropriations Act of 1997, H.B. I, Article IX, Section 167, the Texas State Board of Public Accountancy adopts the reviews of Chapters 503, 505, 507, 509, 511, 513, 515, 517, 519, 521, 523, 525, 526 and 527 of Title 22 Texas Administrative Code. The Board published its reviews of these chapters in the April 9 and August 13, 1999 issues of the Texas Register, (24 TexReg 2957 and 6219).

The Appropriations Act of 1997 required that every agency review each of its rules to determine at a minimum whether the reason for the adoption of the rule continues to exist. In accordance with the provisions of the Act, the Board developed a list of questions and considerations it used to guide its rule review. These considerations included an analysis of whether each rule is needed for fair administration and just enforcement of the Public Accountancy Act and whether the rule reflects current Board policy and current legal interpretations of the Act.

As a result of conducting its review of these chapters, the Board has proposed and/or adopted amendments to or repeals of approximately 380 rules. Each of these amendments and repeals has been published in the Texas Register in accordance with the Administrative Procedure Act. The Board finds that the reasons for adopting those of its rules for which no amendments or repeals have been proposed in the course of its review continue to exist.

TRD-200001284

William Treacy  
Executive Director  
Texas State Board of Public Accountancy  
Filed: February 18, 2000

## Texas Workers' Compensation Commission

### Title 28, Part 2

In accordance with the General Appropriation Act, Article IX, §167, 75th Legislature, the General Appropriations Act, §9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature, and pursuant to the notice of intention to review published in the November 5, 1999 issue of the *Texas Register* (24 TexReg 9854) the Texas Workers' Compensation Commission has reviewed and considered for reoption the following rules in Title 28, Part 2 of the Texas Administrative Code:

#### Chapter 112. Scope of Liability For Compensation

§112.101. Agreement Regarding Workers' Compensation Insurance Coverage Between General Contractors and Subcontractors.

§112.102. Agreements Between Motor Carriers and Owner Operators.

§112.200. Definition of "Residential Structures".

§112.201. Agreement to Establish Employer-Employee Relationship for Certain Building and Construction Workers.

§112.202. Joint Agreement to Affirm Independent Relationship for certain Building and Construction Workers.

§112.203. Exception to Application of Agreement to Affirm Independent Relationship for Certain Building and Construction Workers.

§112.301. Labor Agent's Notification of Coverage.

§112.401. Election of Coverage by Certain Professional Athletes.

§112.402. Determination of Equivalent Benefits for Professional Athletes.

#### Chapter 130. Benefits-Impairment and Supplemental Income Benefits

§130.1. Reports of Medical Evaluation: Maximum Medical Improvement and Permanent Impairment.

§130.2. Certification of Maximum Medical Improvement by the Treating Doctor.

§130.3. Certification of Maximum Medical Improvement by Doctor other than Treating Doctor.

§130.4. Presumption that Maximum Medical Improvement has been Reached and Resolution when MMI has not been Certified.

§130.5. Impairment Rating Disputes.

§130.6. Designated Doctor: General Provisions.

§130.7. Acceleration of Impairment Income Benefits.

§130.8. Initiating Payment of Impairment Income Benefits.

§130.10. Commission Review of Employment Status during the Impairment Income Benefits Period.

§130.100. Applicability.

§130.101. Definitions.

§130.102. Eligibility for Supplemental Income Benefits; Amount.

§130.103. Determination of Entitlement or Non-entitlement for the First Quarter.

§130.104. Determination of Entitlement or Non-entitlement for Subsequent Quarters.

§130.105. Failure to Timely File Application for Supplemental Income Benefits; Subsequent Quarters.

§130.106. Permanent Loss of Entitlement to Supplemental Income Benefits.

§130.107. Payment of Supplemental Income Benefits.

§130.108. Contesting Entitlement or Amount of Supplemental Income Benefits; Attorney Fees.

§130.109. Reinstatement of Entitlement if Discharged with Intent to Deprive of Supplemental Income Benefits.

The Texas Workers' Compensation Commission (the Commission) has assessed whether the reason for adopting or readopting these rules continues to exist. No comments were received regarding the review of these rules.

As a result of the review, the Commission has determined that the reason for adoption of the rules continues to exist. Therefore, the Commission readopts these rules. If the Commission determines that any of these rules should be revised or repealed, the repeal or revisions of the rules will be accomplished in accordance with the Administrative Procedure Act.

TRD-200001231

Susan Cory

General Counsel

Texas Workers' Compensation Commission

Filed: February 17, 2000



# TABLES & GRAPHICS

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Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

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Figure: 7 TAC §1.605(c)

Term - days	\$100.00		\$150.00		\$200.00		\$250.00	
	Finance Charge	APR	Finance Charge	APR	Finance Charge	APR	Finance Charge	APR
7	\$10.93	570.10%	\$11.40	396.29%	\$11.87	309.38%	\$12.33	257.24%
8	\$11.07	504.92%	\$11.60	352.83%	\$12.13	276.79%	\$12.67	231.17%
9	\$11.20	454.22%	\$11.80	319.04%	\$12.40	251.44%	\$13.00	210.89%
10	\$11.33	413.67%	\$12.00	292.00%	\$12.67	231.17%	\$13.33	194.67%
11	\$11.47	380.48%	\$12.20	269.88%	\$12.93	214.58%	\$13.67	181.39%
12	\$11.60	352.83%	\$12.40	251.44%	\$13.20	200.75%	\$14.00	170.33%
13	\$11.73	329.44%	\$12.60	235.85%	\$13.47	189.05%	\$14.33	160.97%
14	\$11.87	309.38%	\$12.80	222.48%	\$13.73	179.02%	\$14.67	152.95%
15	\$12.00	292.00%	\$13.00	210.89%	\$14.00	170.33%	\$15.00	146.00%
16	\$12.13	276.79%	\$13.20	200.75%	\$14.27	162.73%	\$15.33	139.92%
17	\$12.27	263.37%	\$13.40	191.80%	\$14.53	156.02%	\$15.67	134.55%
18	\$12.40	251.44%	\$13.60	183.85%	\$14.80	150.06%	\$16.00	129.78%
19	\$12.53	240.77%	\$13.80	176.74%	\$15.07	144.72%	\$16.33	125.51%
20	\$12.67	231.17%	\$14.00	170.33%	\$15.33	139.92%	\$16.67	121.67%
21	\$12.80	222.48%	\$14.20	164.54%	\$15.60	135.57%	\$17.00	118.19%
22	\$12.93	214.58%	\$14.40	159.27%	\$15.87	131.62%	\$17.33	115.03%
23	\$13.07	207.36%	\$14.60	154.46%	\$16.13	128.01%	\$17.67	112.14%
24	\$13.20	200.75%	\$14.80	150.06%	\$16.40	124.71%	\$18.00	109.50%
25	\$13.33	194.67%	\$15.00	146.00%	\$16.67	121.67%	\$18.33	107.07%
26	\$13.47	189.05%	\$15.20	142.26%	\$16.93	118.86%	\$18.67	104.82%
27	\$13.60	183.85%	\$15.40	138.79%	\$17.20	116.26%	\$19.00	102.74%
28	\$13.73	179.02%	\$15.60	135.57%	\$17.47	113.85%	\$19.33	100.81%
29	\$13.87	174.53%	\$15.80	132.57%	\$17.73	111.60%	\$19.67	99.01%
30	\$14.00	170.33%	\$16.00	129.78%	\$18.00	109.50%	\$20.00	97.33%

Exhibit 1

<b>\$300.00</b>		<b>\$350.00</b>	
<u>Finance Charge</u>	<u>APR</u>	<u>Finance Charge</u>	<u>APR</u>
\$12.80	222.48%	\$13.27	197.65%
\$13.20	200.75%	\$13.73	179.02%
\$13.60	183.85%	\$14.20	164.54%
\$14.00	170.33%	\$14.67	152.95%
\$14.40	159.27%	\$15.13	143.47%
\$14.80	150.06%	\$15.60	135.57%
\$15.20	142.26%	\$16.07	128.89%
\$15.60	135.57%	\$16.53	123.16%
\$16.00	129.78%	\$17.00	118.19%
\$16.40	124.71%	\$17.47	113.85%
\$16.80	120.24%	\$17.93	110.01%
\$17.20	116.26%	\$18.40	106.60%
\$17.60	112.70%	\$18.87	103.55%
\$18.00	109.50%	\$19.33	100.81%
\$18.40	106.60%	\$19.80	98.33%
\$18.80	103.97%	\$20.27	96.07%
\$19.20	101.57%	\$20.73	94.01%
\$19.60	99.36%	\$21.20	92.12%
\$20.00	97.33%	\$21.67	90.38%
\$20.40	95.46%	\$22.13	88.78%
\$20.80	93.73%	\$22.60	87.29%
\$21.20	92.12%	\$23.07	85.91%
\$21.60	90.62%	\$23.53	84.63%
\$22.00	89.22%	\$24.00	83.43%

Exhibit 1

Figure 1: 31 TAC §65.72(b)(2)(B)

Species	Daily Bag	Minimum Length (Inches)	Maximum Length (Inches)
[Spotted and Guadalupe bass.]		[12]	[No limit]
Marlin, blue.	No limit	<u>131</u> [114]	No limit
Marlin, white.	No limit	<u>86</u> [81]	No limit
Sailfish	No limit	<u>84</u> [76]	No limit
Shark: all species, their hybrids, and subspecies.	<u>1</u> [5 (in any combination)]	<u>24</u> [No limit]	No limit



Figure: 31 TAC §65.72(b)(2)(C)(i)

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Bass: largemouth.			
Conroe (Montgomery and Walker), Fort Phantom Hill (Jones), Granbury (Hood), Lost Creek (Jack), and Ratcliff (Houston).	5	16	
Lakes Fairfield (Freestone), <b><u>Jacksonville (Cherokee), Cleburne State Park (Johnson), Meridian State Park (Bosque)</u></b> , San Augustine City (San Augustine), Calaveras (Bexar), O.H. Ivie (Coleman, Concho, and Runnels), Bright (Williamson), Cooper (Delta and Hopkins), Alan Henry (Garza), Aquilla (Hill), Bellwood (Smith), Casa Blanca (Webb), Old Mount Pleasant City (Titus), Rusk State Park (Cherokee), Welsh (Titus), Braunig (Bexar), Bryan (Brazos), and Gilmer (Upshur).	5	18	

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Nelson Park Lake (Taylor) and Buck Lake (Kimble).	0	No Limit	Catch and release and only.
Purtis Creek State Park Lake (Henderson and Van Zandt), Gibbons Creek Reservoir (Grimes), and Raven (Walker).	0	No Limit	Catch and release only except that any bass 21 inches or greater in length may be retained in a live well or other aerated holding device and immediately transported to the Purtis Creek or Huntsville State Park, or Gibbons Creek weigh stations. After weighing, the bass must be released immediately back into the lake or donated to the ShareLunker Program.
Lakes Pinkston (Shelby), Waxahachie (Ellis), Bridgeport (Jack and Wise), Georgetown (Williamson), Caddo (Marion and Harrison), Burke-Crenshaw (Harris), Grapevine (Denton and Tarrant), Davy Crockett (Fannin) , and Madisonville (Madison).	5	14-18 Inch Slot Limit	It is unlawful to retain largemouth bass between 14 and 18 inches in length.

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
<p>Lakes Bastrop (Bastrop), <b><u>Buescher State Park (Bastrop), Town (Travis) Austin (Travis)</u></b> Houston County (Houston), Nacogdoches (Nacogdoches), Mill Creek (Van Zandt), Joe Pool (Dallas, Ellis, and Tarrant), Walter E. Long (Travis), Timpson (Shelby), and Athens (Henderson), and Murvaul (Panola).</p>	5	14-21 Inch Slot Limit	It is unlawful to retain largemouth bass between 14 and 21 inches in length. No more than 1 bass 21 inches or greater in length may be retained each day.
<p>Lakes Fayette County (Fayette), Monticello (Titus), and Ray Roberts (Cooke, Denton, and Grayson).</p>	5	14- <del>24</del> [23]Inch Slot Limit	It is unlawful to retain largemouth bass between 14 and <del>24</del> [23] inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.

Figure: 40 TAC §19.2112(f)(1)

Administrative Penalties Table			
Immediate threat	J \$3,000 - 6,000	K \$4,000 - 8,000	L \$5,000 - 10,000
Negative outcome	G \$500 - 2,000	H \$1,000 - 3,000	I \$2,000 - 5,000
Minimal impact	D \$100 - 600	E \$200 - 800	F \$400 - 1,000
Substantial compliance	A \$0 Isolated	B \$0 Pattern	C \$0 Widespread

# IN ADDITION

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The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

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## Texas Commission on Alcohol and Drug Abuse

### Notice of Intent to Fund

Under the authority of the Texas Health and Safety Code, Title 6, Subtitle B, Chapter 461, the Texas Commission on Alcohol and Drug Abuse (TCADA) is soliciting proposals from organizations to pilot the provision of substance abuse services to eligible Welfare-to Work clients in the Texas Workforce Center service delivery system of the Central Texas Workforce Area. Counties included are Bell, Milam, Coryell, Hamilton, Lampasas, Mills and San Saba. One applicant will be selected to provide the services proposed.

**Goals:** The goals of this quarterly funding process are to: deliver coordinated substance abuse education, screening, assessment, referral, and access to treatment services, including continuing care in the Central Texas Local Workforce Development area; and provide short-term job readiness, job retention, and other intervention services to support job search, participation in substance-abuse treatment, continuing employment and progress toward self-sufficiency.

**Available Funds for Competition:** There are \$317,500 available through this quarterly funding process.

**Program Period:** The program period is May 1, 2000 through June 30, 2001, which includes an initial contract period of 5-months beginning May 1, 2000 to August 31, 2000.

**Payment Mechanism:** will be cost reimbursement.

**Eligible Applicants:** Applicants must be public or incorporated private non-profit or for-profit organizations.

**Application Process and Criteria:** The application kit is available on TCADA's website at <http://www.tcada.state.tx.us>. To request a hard copy of the application kit, call the Services Procurement Department at (800) 832-9623, extension 6786. Applicants interested in applying for funds should mail an application to TCADA, Services Procurement Department, P. O. Box 80529, Austin, Texas 78708-0529 or deliver an application to TCADA, Services Procurement Department, 9001 North IH-35, Suite 105, Austin, Texas 78753. Faxed documents will not be accepted. If there are any questions please contact the Services Procurement Department at (800) 832-9623, extension 6786 or (512) 349-6786.

Application criteria and legal and financial documentation will be included in the application kit.

**Due Date:** TCADA must receive a complete application by 5 p.m. on March 30, 2000.

Issued in Austin, Texas on February 23, 2000.

TRD-200001349

Karen Pettigrew

General Counsel

Texas Commission on Alcohol and Drug Abuse

Filed: February 23, 2000



## Office of the Attorney General

### Brief Deadline Notice

The Office of the Attorney General is extending until **March 24, 2000**, the deadline to receive briefing from interested parties concerning ORQ-50.

**For further information please call Sarah Duke at (512) 936-6736.**

TRD-200001296

Elizabeth Robinson

Assistant Attorney General

Office of the Attorney General

Filed: February 22, 2000



### Texas Clean Air Act Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code. Before the State may settle a judicial enforcement action under the Health and Safety Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: Harris County, Texas and the State of Texas, acting by and through the Texas Natural Resource Conservation

Commission, a Necessary and Indispensable Party v. Terra Services, Inc. and Catahula Clearing, Inc., Case No. 1999-34782, in the 270th District Court of Harris County, Texas.

Nature of Defendant's Operations: Plaintiff's petition alleges that Defendants are engaged in illegal outdoor burning and illegally operating a trench burner. Defendants have allegedly used their trench burners improperly so that their operation was in violation of the law. Among the violations alleged are burning material without a trench burner in use, failing to have an operator remain with the trench burner at all times during its operation, emitting smoke from a trench burner in such concentration and duration as to interfere with the normal use and enjoyment of property and adding material to a trench so that it was stacked five feet above the air curtain.

Proposed Agreed Judgment: The judgment permanently enjoins both Terra Services, Inc. and Catahula Clearing, Inc. from engaging in any prohibited outdoor burning, enjoins TSI from operating a trench burner within Harris County, and prohibits CC from violating the terms of either a permit or a standard exemption if they operate in Harris County. Defendant shall pay \$40,000.00 in civil penalties and \$16,000.00 in attorney fees. Defendant shall pay court cost in the amount of \$200.00.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Terry N. Peterson, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-200001329

Elizabeth Robinson

Assistant Attorney General

Office of the Attorney General

Filed: February 22, 2000



## Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were received for the following project(s) during the period of February 10, 2000, through February 17, 2000.

### FEDERAL AGENCY ACTIONS:

Applicant: BNP Petroleum Corporation; Location: The project is located in the Laguna Madre in State Tracts 131, 132, 142, 143, 144, 145, 145A, 146, 146A, 147, 148, 155, 156, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 192, and 193 in Nueces and Kleberg counties, Texas. CCC Project No.: 00-0050-F1; Description of Proposed Action: The applicant proposes to erect and maintain structures and appurtenances to be used in the drilling of wells for the production of oil and gas. The applicant also proposes to construct moorings and markers to drive test pilings, conduct coring operations to dredge channels, perform maintenance

dredging of existing channels and construct pipelines. If fill is required, approximately 4,500 cubic yards of shell or gravel would be necessary to construct a pad approximately 100 feet by 270 feet in size to a height of 4 feet above the bottom profile. If dredging is required, the cubic yardage of sand and/or mud displaced would be dependent on existing water depth and length of the channel. If a channel is required, it would be approximately 60 feet wide and excavated to a depth of -6 feet mean low tide. Type of Application: U.S.A.C.E. permit application #21915 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403) and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Petro-Guard Production, L.L.C.; Location: The project is located in State Tract 210 to an existing production platform in State Tract 216, Espiritu Santo Bay, Calhoun County, Texas. CCC Project No.: 00-0052-F1; Description of Proposed Action: The applicant proposes to install a 6-inch condensate line, a 6-inch gas line, and a 4-inch water line from existing Well #6 in State Tract 210 to an existing production platform in State Tract 216, Espiritu Santo Bay, Calhoun County, Texas. Type of Application: U.S.A.C.E. permit application #11006(12)/060 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403) and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Petro-Guard Production, L.L.C.; Location: The project is located in State Tract 210 to a tie-in point in an existing Phoenix Pipeline in State Tract 210, Espiritu Santo Bay, Calhoun County, Texas. CCC Project No.: 00-0053-F1; Description of Proposed Action: The applicant proposes to install a 6-inch pipeline from existing Well #6 in State Tract 210 to a tie-in point in an existing Phoenix Pipeline in State Tract 210, Espiritu Santo Bay, Calhoun County, Texas. Type of Application: U.S.A.C.E. permit application #11006(12)/061 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403) and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review. Further information for the applications listed above may be obtained from Ms. Janet Fatheree, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or janet.fatheree@glo.state.tx.us. Persons are encouraged to submit written comments as soon as possible within 30 days of publication of this notice. Comments should be sent to Ms. Fatheree at the above address or by fax at 512/475-0680.

TRD-200001353

Larry R. Soward

Chief Clerk, General Land Office

Coastal Coordination Council

Filed: February 23, 2000



## East Texas Council of Governments

Request for Proposals to Update the City of Longview Fixed Route Transit Study

The East Texas Council of Governments is soliciting proposals to Update the City of Longview Fixed Route Transit Study originally prepared by McDonald Transit Associates, Inc.

A pre-proposal conference will be conducted on March 15, 2000 at 2:00 p.m. in the ETCOG Conference Room, located at 3800 Stone Rd, Kilgore, TX 75662.

Proposal Due Date is **March 30, 2000 at 2:00 p.m.** Proposals will be opened at same time. Sealed Proposal must be addressed to: Roxanne Pitts, Transportation Manager, 3800 Stone Rd, Kilgore, Texas 75662.

Persons or organizations wanting to receive a proposal packet should call Roxanne Pitts at 1-903-984-8641 or fax 903-983-1440.

TRD-200001282

Glynn Knight

Executive Director

East Texas Council of Governments

Filed: February 18, 2000



## Finance Commission of Texas

### Request for Proposals to Perform a Comprehensive Survey and Analysis of Consumer Lending In Texas

Pursuant to the Government Code, Chapter 2254, Subchapter B, the Finance Commission of Texas (finance commission) invites consultants to provide offers of consulting services as described in and subject to the terms of the Request for Proposals (RFP) described in this notice. Interested consultants may obtain a complete copy of the RFP from the web site of the finance commission at <http://www.fc.state.tx.us/>, from the Electronic State Business Daily at <http://www.marketplace.state.tx.us/1380> or by contacting Leslie L. Pettijohn, Consumer Credit Commissioner (commissioner), 2601 North Lamar Boulevard, Austin, Texas 78705-4294, (512) 936-7640, during business hours, or by e-mail to [leslie.pettijohn@occc.state.tx.us](mailto:leslie.pettijohn@occc.state.tx.us).

This study is authorized and mandated by Finance Code, §11.305, which requires the finance commission to conduct research on (1) the availability, quality and prices of financial services, including lending and depository services, offered to agricultural businesses, small businesses, and individual consumers in this state; and (2) the practices of business entities in this state that provide financial services to agricultural businesses, small businesses, and individual consumers in this state. Due to the breadth of required research, studies are being conducted in phases. The finance commission is appropriated \$100,000 per year to perform and publish the required studies. Phase I, a study of consumer depository and cash services, was performed by Empirical Management Services and completed in December 1998. Phase II, conducted by Analytica, Inc., focused on home equity lending in Texas and a final report was issued in December 1999. Copies of the prior studies are available upon request and are published on the finance commission web site, <http://www.fc.state.tx.us>.

The selected consultant will perform the third phase of the study, a comprehensive survey and analysis of the availability, quality, and

prices of consumer loans and the practices of business entities in the state that provide consumer loans, and the final report is intended to provide results valuable to the Texas Legislature in evaluating public policy questions relating to consumer lending in Texas. Proposers should include in their written proposals the period of time required to conduct the study, but are advised that the Finance Commission expects the study to be completed and ready for distribution by December 15, 2000. This factor will be taken into consideration in the final selection.

Proposals must be received by the commissioner at the above-referenced address no later than 5:00 p.m. on March 20, 2000. Proposals received after this time and date will not be considered. All proposals will be subject to evaluation by the finance commission based on the evaluation criteria set forth in the RFP. The prior consultants are eligible to submit proposals for the Phase III study and any such proposal will be evaluated as described in the RFP, without preferential treatment. A proposer may be asked to clarify its proposal, and qualified proposers may be required to make oral presentations to the finance commission in Austin on April 27 and/or April 28, 2000. Qualified proposers may also be requested to finalize all proposed contract documentation with the commissioner prior to the meeting of April 28, 2000.

The finance commission will select the proposal which best meets the RFP criteria but could reject all proposals. If all other considerations are equal, the finance commission will, pursuant to Government Code, §2254.027, give preference to the proposer whose principal place of business is in the State of Texas or who will manage the consulting contract wholly from an office in the state.

The finance commission reserves the right to accept or reject any or all proposals submitted. The finance commission is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits the finance commission to pay for any costs incurred prior to the execution of a contract.

TRD-200001368

Everette D. Jobe

Certifying Official

Finance Commission of Texas

Filed: February 23, 2000



## Texas Department of Health

### Licensing Action for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.



NEW LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
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Arlington	Innoserv Technologies Inc	L05292	Arlington	0	02/14/00
Corpus Christi	Promed Company of the Coastal Bend	L05317	Corpus Christi	0	02/04/00
Laredo	Mercy Hospital of Laredo	L05305	Laredo	0	02/01/00

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
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Abilene	Abilene Diagnostic Clinic PLLC	L05101	Abilene	05	02/04/00
Arlington	Arlington Memorial Hospital Foundation Inc	L02217	Arlington	59	02/03/00
Austin	Seton Medical Center	L02896	Austin	54	02/01/00
Baytown	Exxonmobil Chemical Company	L03335	Baytown	26	02/01/00
Brownsville	Ohmite - Texas LP	L05241	Brownsville	01	02/02/00
Channelview	VIA NDT Engineering and Testing	L04322	Channelview	46	02/11/00
Conroe	Columbia Regional Medical Center	L01769	Conroe	53	02/04/00
Corpus Christi	Spohn Hospital	L02495	Corpus Christi	60	02/10/00
Corpus Christi	Cardiology Associates of Corpus Christi	L04611	Corpus Christi	16	02/10/00
Dallas	Columbia Hospital at Medical City Dallas	L01976	Dallas	122	02/01/00
Dallas	Columbia Hospital at Medical City Dallas	L01976	Dallas	123	02/03/00
Dallas	Physician Reliance Network Inc	L03989	Dallas	18	02/10/00
Fort Worth	Heart Center of Fort Worth LTD	L04659	Fort Worth	05	02/07/00
Freeport	Rhodia Rare Earths Inc	L02807	Freeport	29	02/03/00
Greenville	Hunt Memorial Hospital District	L01695	Greenville	31	02/09/00
Houston	University of Texas MD Anderson Cancer Center	L00466	Houston	68	02/01/00
Houston	Memorial Hermann Hospital System	L01168	Houston	54	02/04/00
Houston	Mallinckrodt Medical Inc	L03008	Houston	50	02/09/00
Houston	Richmond Imaging Affiliates LTD	L04342	Houston	30	02/01/00
Houston	Richmond Imaging Affiliates LTD	L04342	Houston	31	02/08/00
Houston	Petrochem Inspection Services	L04460	Houston	50	02/11/00
Houston	Texas Childrens Hospital	L04612	Houston	24	02/07/00
Houston	Texas Nuclear Imaging Inc	L05009	Houston	10	02/10/00
Houston	Baker Hughes Oilfield Operations Inc	L05104	Houston	03	02/09/00
Houston	Advanced Coiled Tubing	L05123	Houston	03	02/01/00
Jacksonville	Numed Imaging Centers Inc	L05225	Jacksonville	01	02/04/00
Longview	Longview Regional Hospital Inc	L02882	Longview	26	02/07/00
Longview	ADJ Services	L04142	Longview	13	02/11/00

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
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Lubbock	Texas Tech University Health Sciences Center	L01869	Lubbock	63	02/03/00
Lufkin	Memorial Medical Center of East Texas	L01346	Lufkin	64	02/03/00
Mcallen	Cardiovascular Consultants of McAllen PA	L05126	McAllen	08	02/01/00
Mesquite	Mesquite Community Hospital LP	L02733	Mesquite	28	02/02/00
Mesquite	Physician Reliance Network Inc	L04914	Mesquite	06	02/10/00
Nederland	Tenet Healthcare LTD DBA Mid Jefferson Hospital	L01756	Nederland	35	02/08/00
Odessa	Medical Center Hospital	L01223	Odessa	64	02/02/00
Pasadena	Pasadena Bayshore Hospital Inc	L00153	Pasadena	66	02/04/00
Rio Grande City	Star Regional Imaging Center LLC	L04928	Rio Grande City	03	02/09/00
Round Rock	Columbia/ST Davids Healthcare System LP	L03469	Round Rock	24	02/10/00
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	98	02/01/00
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	99	02/03/00
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	100	02/10/00
San Antonio	Methodist Healthcare System of San Antonio LTD	L02266	San Antonio	70	02/01/00
San Antonio	Northeast Methodist Hospital	L03810	San Antonio	22	02/02/00
Sherman	Wilson N Jones Memorial Hospital	L02384	Sherman	24	02/14/00
Snyder	Cogdell Memorial Hospital	L02409	Snyder	19	01/31/00
Temple	Kings Daughters Hospital	L00666	Temple	38	02/07/00
The Woodlands	Montgomery County Cardiovascular Association	L05151	The Woodlands	06	02/11/00
Through out Texas	Stork Southwestern Laboratories Inc	L00299	Houston	107	02/03/00
Through out Texas	El Paso Natural Gas Company	L00308	El Paso	34	02/03/00
Through out Texas	Celanese LTD Technical Center	L00409	Corpus Christi	62	02/04/00
Through out Texas	Bonded Inspections Inc	L00693	Garland	57	02/11/00
Through out Texas	Schlumberger Technology Corporation Dowell Division	L00764	Sugarland	82	02/15/00
Through out Texas	All American Maintenance	L01336	San Antonio	34	02/14/00
Through out Texas	Sivalls Inc	L02298	Odessa	27	02/03/00
Through out Texas	Mcbride Ratcliff & Associates Inc	L02346	Houston	18	02/04/00
Through out Texas	Non Destructive Inspection Corporation	L02712	Lake Jackson	71	02/03/00
Through out Texas	Emcon Baker Shiflet Inc	L02906	Fort Worth	20	02/07/00
Through out Texas	Metco	L03018	Houston	92	02/04/00
Through out Texas	Baker Oil Tools	L03272	Houston	23	02/04/00
Through out Texas	Petroleum Industry Inspectors	L04081	Houston	68	02/16/00
Through out Texas	Wilson Inspection X-Ray Services Inc	L04469	Corpus Christi	40	02/09/00
Through out Texas	Jones Brothers Dirt & Paving Contractors	L04783	Odessa	05	02/05/00
Through out Texas	Kohutek Engineering & Testing Inc	L04857	Georgetown	03	02/11/00
Through out Texas	Arias & Kezar Inc	L04964	San Antonio	10	02/07/00
Through out Texas	Escot NDE Inc DBA Basin Industrial X-Ray	L05002	Corpus Christi	09	02/07/00
Through out Texas	Conam Inspection	L05010	Pasadena	22	02/09/00
Tomball	Tomball Hospital Authority	L02514	Tomball	21	02/07/00
Webster	CHCA Clear Lake LP	L01680	Webster	45	02/10/00
Webster	Diagnostic Systems Laboratories Inc	L03084	Webster	26	02/03/00

RENEWALS OF EXISTING LICENSES ISSUED:

Amend- Date of

Location	Name	License#	City	ment #	Action
Arlington	D Harris Consulting	L04845	Arlington	03	02/04/00
Decatur	Decatur Community Hospital	L02382	Decatur	13	02/11/00
Houston	Tejas Tubular Processing Inc	L04852	Houston	01	02/11/00
Irving	Abbott Manufacturing Inc	L04841	Irving	04	02/14/00
Midland	Herndon Inspection Service	L04861	Midland	05	02/07/00
Through out Texas	Midwest Inspection Services	L03120	Perryton	54	02/11/00
Through out Texas	Texarkana Asphalt Inc	L04790	Texarkana	03	02/11/00

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Duncanville	Millennium Diagnostic Imaging LLC	L03717	Duncanville	36	02/03/00
Laredo	Key Energy Services-South Texas Inc	L05223	Laredo	01	02/14/00

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with 25 TAC, Chapter 289 in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by Agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation

Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, from 8:00 a.m. to 5:00 p.m. Monday-Friday (except holidays).

TRD-200001358  
 Susan K. Steeg  
 General Counsel  
 Texas Department of Health  
 Filed: February 23, 2000



Notice of Emergency Cease and Desist Order - Maria Alba Garcia-I, D.D.S.

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Maria Alba Garcia-I, D.D.S. (registrant-R23745) of Dallas to cease and desist performing dental intra-oral x-ray procedures with the Weber x-ray unit (Model Number 6R; Serial Number 6R735) until the exposure at skin entrance meets the Texas radiation requirements. The bureau determined that continued radiation exposure to patients in excess of that required to produce a diagnostic image constitutes an immediate threat to public health and safety, and the existence of an emergency. The order will remain in effect until the bureau authorizes the registrant to perform the procedure.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200001363  
 Susan K. Steeg  
 General Counsel  
 Texas Department of Health  
 Filed: February 23, 2000



Notice of Emergency Cease and Desist Order - Showtech Productions

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Showtech Productions (registrant-unregistered) of Grand Prairie to cease and desist operating any source of laser radiation in Texas that is not exempted under 25 Texas Administrative Code, §289.301. The bureau determined that continued operation of open-beam sources of laser radiation without a federal variance and valid certificate of registration constitutes an immediate threat to public health and safety, and the existence of an emergency. The order will remain in effect until Showtech Productions has received a certificate of registration and a federal variance.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Monday- Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200001367  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: February 23, 2000



Notice of Emergency Impoundment Order - Aero NDE and Threading Corporation

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Aero NDE and Threading Corporation (licensee-L03581) of Snyder to immediately surrender to the bureau for impoundment all sources of radiation possessed by the licensee. The bureau determined that the sources had previously been impounded in-place at unauthorized storage areas and the licensee has continued to possess radioactive material without a valid license. The possession and storage of sources of radiation that may pose a threat to public health and safety and the environment constitute an immediate threat to public health and safety, and the existence of an emergency. The order will remain in effect until the bureau has rescinded the order.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Monday- Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200001362  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: February 23, 2000



Notice of Emergency Impoundment Order - Capitan Corporation

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Capitan Corporation (licensee-L04211, revoked) of Odessa to immediately surrender to the bureau for impoundment all sources of radiation possessed by the licensee. The bureau determined that the licensee had failed to comply with the requirements of the Revocation Order and the Emergency Cease and Desist Order issued by the bureau. Continued possession of unauthorized sources of radiation without a valid license, and failure to comply with the Revocation Order and the Emergency Cease and Desist Order constitute an immediate threat to public health and safety, and the existence of

an emergency. The order will remain in effect until the bureau has rescinded the order.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Monday- Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200001366  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: February 23, 2000



Notice of Emergency Impoundment Order - Daniel N. Metzger, D.O.

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Daniel N. Metzger, D.O. (registrant-unregistered) of Dallas to immediately permit the bureau to impound all x-ray units. The bureau determined that Daniel N. Metzger, D.O. was using x-ray equipment without a valid certificate of registration. Operation of x-ray equipment without a valid certificate of registration and failure to properly register the x-ray equipment after repeated attempts by the bureau to obtain voluntary compliance constitute an immediate threat to public health and safety, and the existence of an emergency. The order will remain in effect until the bureau has received, reviewed, and approved the actions taken to ensure that all x-ray equipment has been properly registered with the bureau.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200001365  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: February 23, 2000



Notice of Emergency Impoundment Order - R/A Services, Incorporated

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered R/A Services, Incorporated (licensee-L03010 and L03879) of Houston to immediately surrender to the bureau for impoundment all sources of radiation possessed by the licensee at or near its Odessa location. The bureau determined that the licensee had failed to comply with the requirements of the Emergency Cease and Desist and Impoundment Order issued by the bureau. Continued possession of radiation sources may result in a threat to public health and safety, and the existence of an emergency unless they have been removed from the environment and properly disposed of and/or stored. The order will remain in effect until the bureau has rescinded the order.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Monday- Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200001360  
Susan K. Steeg  
General Counsel  
Texas Department of Health

Filed: February 23, 2000



Notice of Emergency Impoundment Order - Tracer Laboratory of Midland, Inc.

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Tracer Laboratory of Midland, Inc. (licensee-L03298, revoked) of Midland to immediately surrender to the bureau for impoundment all sources of radiation possessed by the licensee. The bureau determined that the licensee had failed to comply with the requirements of the Revocation Order issued by the bureau and the Agreed Final Judgement for Cause. Continued possession of unauthorized sources of radiation without a valid license, and failure to comply with the Revocation Order and the Agreed Final Judgement for Cause constitute an immediate threat to public health and safety, and the existence of an emergency. The order will remain in effect until the bureau has rescinded the order.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Monday- Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200001359  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: February 23, 2000



Notice of Order - D. R. Smith and Millennium Diagnostic Imaging, LLC

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered D. R. Smith and Millennium Diagnostic Imaging, LLC (registrant-M00521) of Duncanville to notify the bureau of storage locations of all records and/or films related to mammography conducted by the registrant. The registrant is further ordered to maintain control of all mammography records, and to notify all patients of the option of obtaining their mammography records or having the records forwarded to their personal physicians. A bureau investigation determined that the registrant may be storing and maintaining mammography records in storage facilities that may not ensure that the records are not spoiled or available to patients. This constitutes an immediate threat to public health and welfare, and the existence of an emergency.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Monday- Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200001364  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: February 23, 2000



Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation

Notice is hereby given that the Bureau of Radiation Control (bureau) issued a notice of violation and proposal to assess an administrative penalty to Welco, Incorporated (licensee- L04787, expired) of Lubbock. A total penalty of \$5,000 is proposed to be assessed the licensee for alleged violations of 25 Texas Administrative Code, §289.252.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200001361  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: February 23, 2000



**Texas Health and Human Services Commission**

Notice of Adopted Medicaid Provider Payment Rates

As single state agency for the state Medicaid program, the Health and Human Services Commission adopts new payment rates for the nursing facilities program operated by the Texas Department of Human Services. Payment rates are effective January 1, 2000, as follows:

Figure: Notice of Adopted Medicaid Provider Payment Rates

## NURSING FACILITY

### Rates by TILE (Texas Index for Level of Effort) Class

201	\$136.03
202	\$121.45
203	\$114.96
204	\$96.26
205	\$89.46
206	\$90.45
207	\$82.25
208	\$79.48
209	\$74.21
210	\$64.76
211	\$62.45

#### Supplemental Payments:

Ventilator - Continuous: \$73.08

Ventilator - Less than Continuous: \$29.23

Pediatric Tracheostomy: \$43.85

**Methodology and justification.** The proposed rates were determined in accordance with the rate setting methodology codified at 1 Texas Administrative Code Chapter 355, subchapter C (relating to Reimbursement Methodology for Nursing Facilities), §355.307 and subsequently adjusted in accordance with 1 Texas Administrative Code Chapter 355, subchapter A (relating to Cost Determination Process), §355.101 and §355.109.

TRD-200001283

Steve Aragón

Agency Liaison

Texas Health and Human Services Commission

Filed: February 18, 2000



## Texas Department of Housing and Community Affairs

HOME Investment Partnership Program Notice of Funding Availability

The Texas Department of Housing and Community Affairs (TDHCA), through its HOME Investment Partnerships (HOME) Program, announces the availability of funds for the development and support of decent, safe and affordable rental housing for low, very low, and extremely low-income households. TDHCA intends to make available approximately \$1 million in HOME funds for eligible applicants that apply for and receive an allocation of tax credits during the 2000 Low-Income Housing Tax Credit allocation round. These funds will be distributed according to the rules and procedures as set forth in the HOME Investment Partnership Program Policies and Procedures for Rental Project Assistance when Combined with Low-Income Housing Tax Credits. The HOME Program will give priority to multi-family projects in non-participating jurisdictions with populations not exceeding 40,000. The maximum HOME per unit subsidy is the lesser of 30% of total unit cost or \$15,000. The Department reserves the right to reduce the subsidy amount after underwriting analysis and review of subsidy layering.

#### Eligible Activities:

New Construction, Rehabilitation or Acquisition and Rehabilitation of Multifamily rental housing. Types of eligible housing include: Multifamily Apartments, Fourplex(s), Elderly Housing, Single Room Occupancy, Residential Cooperative, Transitional Housing, or other developments eligible under the HOME and Low-Income Housing Tax Credit Programs;

#### Eligible Applicants:

Nonprofit organizations;

Units of general local government;  
For-profit housing development entities; and  
Public housing agencies

Requests for HOME Rental Housing Development applications, questions or requests for additional information may be directed to the HOME Program, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, TX 78711-3941, (512) 475-3109, or visit our web-site at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us).

Applicants must submit one (1) original HOME Rental Housing Development application (attachments only) and one (1) copy of the Low-Income Housing Tax Credit application (pages 1-15 only). Applicants must submit the applications in a 3-ring binder. There is no charge for submission of the HOME Rental Housing Development application.

HOME Rental Housing Development applications must be received by TDHCA no later than 5:00 p.m., Wednesday, April 26, 2000. Applications received after this time will not be considered for funding. Applications sent by facsimile will not be accepted.

**Applications must be mailed to:**

Texas Department of Housing and Community Affairs

HOME Investment Partnerships Program

P.O. Box 13941

Austin, Texas 78711-3941

Physical address:

507 Sabine

Austin, Texas 78701

TRD-200001327

Daisy A. Stiner

Executive Director

Texas Department of Housing and Community Affairs

Filed: February 22, 2000



Notice of Administrative Hearing (MHD1998000935UI)

**Manufactured Housing Division**

**Wednesday, March 8, 2000, 1:00 p.m.**

State Office of Administrative Hearing, Stephen F. Austin Building,  
1700 North Congress, 11th Floor, Suite 1100

Austin, Texas

**AGENDA**

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the Texas Department of Housing and Community Affairs vs. Las Vegas Mobile Home dba GDD, Inc. to hear alleged violations of §4(d)(f) and §7(d) of the Act and §80.51 and §80.125(e) of the Rules regarding installation of a manufactured home without obtaining, maintaining or possessing a valid installer's license and not properly installing the manufactured home. SOAH 332-00-0418. Department MHD1998000935UI.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas, 78711-2489, (512) 475-3589.

TRD-200001357

Daisy Stiner  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: February 23, 2000



**Texas Department of Human Services**

**Availability of Title XX Social Services Block Grant Funds  
Actual Expenditure Report**

The Texas Department of Human Services has published a report describing the actual expenditures of Title XX Social Service Block Grant funds for fiscal year 1999. Free copies of the report are available to the public.

**Contact Person:** To obtain a copy of this report, write Bobby Halfmann, Chief Financial Office, Texas Department of Human Services, W-421, P. O. Box 149030, Austin, Texas 78714-9030.

TRD-200001347

Paul Leche

Agency Liaison

Texas Department of Human Services

Filed: February 22, 2000



**Texas Department of Insurance**

**Correction of Error**

The Texas Department of Insurance adopted an Exempt Filing Notification Pursuant to the Insurance Code Chapter 5, Subchapter L, Article 5.96. The adopted amendment appeared in the February 4, 2000 issue of the *Texas Register* (25 TexReg 821).

The Texas Department of Insurance inadvertently filed a draft version of the amendment. The correct version is being published in this issue of the *Texas Register*. Due to the error, the effective date has been changed.



**Notice**

The Commissioner of Insurance, or his designee, will consider approval of a rating manual request submitted by CGU Insurance proposing to use a rating manual relative to classifications and territories different than that promulgated by the Commissioner of Insurance pursuant to TEX. INS. CODE ANN. art 5.101, 3(1). They are proposing an amendment to their existing companion policy discount. The current companion policy discount provides a 5% reduction in premiums for all personal auto coverages when the named insured insures his/her home under any homeowner's policy (excluding HO-A, HO-BT, or HO-CT) issued by any of the General Accident companies. The proposed amendment extends the discount to former Commercial Union policyholders.

The wording in the current companion policy discount has been amended to allow the credit to be applied to all companies recognized as CGU Companies rather than General Accident Companies only. The exclusion in the current discount is removed so that the companion policy will apply to named insureds that have any type of homeowners policy issued by a CGU Company. CGU is the result of the merger of General Accident Insurance Companies with Commercial Union Insurance Companies.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 475-1761.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101, 3(h), is made with the Senior Associate Commissioner for Property & Casualty Program, Mr. C.H. Mah, at the Texas Department of Insurance, MC 105-5G, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

TRD-200001239  
Bernice Ross  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: February 18, 2000



#### Notice

On February 15, 2000, in order number 00-0180, the Commissioner of Insurance adopted amendments to the Texas Automobile Insurance Plan Association, Plan of Operation.

For copies of Commissioner's order number 00-0180 and the amendments to the Texas Automobile Insurance Association Plan of Operation, contact Sylvia Gutierrez at (512) 463-6327 (refer to file number A-1099-16).

TRD-200001350  
Bernice Ross  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: February 23, 2000



#### Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of DAN Services, Inc., a foreign third party administrator. The home office is Durham, North Carolina.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-200001351  
Bernice Ross  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: February 23, 2000



### **Texas Natural Resource Conservation Commission**

Notices of Minor Amendment on a Municipal Solid Waste Facility

#### APPLICATION.

The City of Weatherford, P.O. Box 255, Weatherford, TX 76086-0255, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a minor amendment to Permit No. MSW-

47 which would authorize the relocation of the site entrance. This Type I facility is located two miles southwest of the south city limits of Weatherford, and immediately south of Old Brock Road, in Parker County, Texas. The Executive Director of the TNRCC has prepared a draft permit which, if approved, will authorize a minor amendment to this permit under the terms described above.

The Executive Director of the TNRCC has prepared draft permits which, if approved, will authorize the minor amendments to these permits.

Written comments concerning these minor amendments may be submitted to the TNRCC, Chief Clerk's Office, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 telephone (512) 239-3300. Comments must be received no later than 10 days from the date this notice is mailed. Written comments must include the following: (1) your name (or for a group or association, the name of an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; and (3) the location of your property relative to the applicant's operations. Individual members of the public who wish to inquire about the information contained in this notice may contact the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040

TRD-200001294  
LaDonna Castañuela  
Chief Clerk  
Texas Natural Resource Conservation Commission  
Filed: February 22, 2000



### **North Central Texas Council of Governments**

#### Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the October 15, 1999 issue of the *Texas Register* (24 TexReg 9100). The selected consultant will conduct a Transit Needs Assessment for the City of Arlington, Texas.

The consultant selected for this project is LKC Consulting Services, Inc., 4617 Montrose Blvd., Suite C230, Houston, Texas 77006. The maximum amount of this contract is \$100,000. Work on this project began December 8, 1999, and all work will be completed in August 2000.

TRD-200001299  
R. Michael Eastland  
Executive Director  
North Central Texas Council of Governments  
Filed: February 22, 2000



### **Texas Department of Protective and Regulatory Services**

#### Correction of Error

The Texas Department of Protective and Regulatory Services (TDPRS) proposed new 40 TAC §§720.1001-720.1013, concerning the use of behavior interventions in residential child-care settings. The proposed rules appeared in the February 11, 2000, issue of the *Texas Register* (25 TexReg 1061).



The agency's submission contained an error in §720.1007(a)(1)(C) on page 1065. The subparagraph should read as follows.

(C) At times, caregivers must protect children, particularly young children, from immediate danger—for example, keeping a toddler from running into the street or coming in contact with a hot stove. Such action is not considered an escort or a personal restraint. The child's behavior is being restrained because of the external hazard. The restraint must end immediately after the danger is averted.



## Public Utility Commission of Texas

Informational Notice Filings Pursuant to Public Utility Regulatory Act §58.153

GTE Southwest Incorporated and Contel of Texas, Inc. (collectively GTE) filed Informational Notice Filings (Tariff Control Numbers 21921 and 21922 respectively) pursuant to Public Utility Regulatory Act §58.153 on January 5, 2000. The purpose of the filings was to introduce a collocation service for competitive local exchange carriers (CLECs). Notice of the filing was provided to holders of Certificates of Operating Authority (COAs), the Public Utility Commission of Texas (commission), Office of Public Utility Counsel (OPUC), and all parties having interconnection agreements with GTE, on December 28, 1999. Pursuant to a complaint filed by the commission's Office of Regulatory Affairs (ORA) concerning the new optional collocation service, the filing was referred by the commission to the State Office of Administrative Hearings (SOAH) on January 13, 2000. The matter was assigned commission Docket Number 21936 and SOAH Docket Number 473-00-0079. The commission has ordered that the Informational Notice Filing be converted to a Federal Telecommunications Act §251 proceeding to ensure that the collocation tariff establishes a single, non-discriminatory set of rates, terms, and conditions for collocations that comply with the baseline rules mandated by the Federal Communications Commission (FCC) in FCC Docket Number 98-147, *First Report and Order and Further Notice of Proposed Rulemaking*, released March 31, 1999.

The deadline for intervention is March 10, 2000. Motions to intervene should be mailed or delivered to the Public Utility Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78701, and should reference PUC Docket Number 21936. Further information may be obtained by calling the commission's Public Information Officer at 512-936-7140 or toll-free at 888-782-8477. Hearing and speech impaired individuals with text telephones may contact the commission at 512- 936-7136 or use Relay Texas at 800-735-2989 to reach the commission's toll-free number, 888-782- 8477.

TRD-200001328  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 22, 2000



## Notice Of Application for Amendment to Service Provider Certificate of Operating Authority

On February 15, 2000, U.S. Dial Tone, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPSCOA Certificate Number 60106. Applicant seeks to: (1) reflect the transfer of its assets to U.S. Dial Tone, L.P. and (2) change the name on its certificate to U.S. Dial Tone, L.P.

The Application: Application of U.S. Dial Tone, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 22121.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas, 78711-3326 no later than **March 8, 2000**. You may contact the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22121.

TRD-200001230  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 17, 2000



## Public Notice of Amendment to Interconnection Agreement

On February 14, 2000, Southwestern Bell Telephone Company and ClearWorks.net, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 22119. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 22119. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by **March 15, 2000**, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the

authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22119.

TRD-200001277  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 18, 2000



#### Public Notice of Amendment to Interconnection Agreement

On February 15, 2000, Southwestern Bell Telephone Company and Local Telecom Service, L.L.C., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 22123. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 22123. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by **March 15, 2000**, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22123.

TRD-200001278  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 18, 2000



#### Public Notice of Amendment to Interconnection Agreement

On February 15, 2000, Southwestern Bell Telephone Company and Ciera Network Systems, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 22125. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 22125. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by **March 15, 2000**, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or

- c) is not consistent with other requirements of state law; and  
3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22125.

TRD-200001279  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 18, 2000



#### Public Notice of Workshop Concerning Telecommunications Bill Format

The Public Utility Commission of Texas (commission) will hold a workshop to discuss a rulemaking to implement the Public Utility Regulatory Act (PURA) §55.012, Telecommunications Billing. Project Number 22130, *Rulemaking to Implement PURA §55.012, Relating to Telecommunications Bill Format* has been established for this proceeding. This project has been separated from Project Number 21423, *Amendments to §§26.21 - 26.31 Regarding Telephone Customer Service Standards*.

The workshop will be held on Tuesday, March 7, 2000, beginning at 9:00 a.m. in Hearing Room Gee on the seventh floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. A draft of potential rule language will be available on the project web site by close of business Thursday, March 2, 2000. Interested persons are welcome to submit draft rule language at the workshop. A workshop agenda will be available on the project web site on or before March 2, 2000. Copies of the agenda will also be available at the workshop.

Questions concerning Project Number 22130 may be referred to Rick Akin, Office of Policy Development, at (512) 936-7256 or via email: rick.akin@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200001295  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 22, 2000



#### Southwest Texas State University

#### Award of Contract

Southwest Texas State University (SWT), in accordance with provisions of Government Code, §2254.030, announces the awarding of a consultant contract to a consulting firm based in Washington, D.C. The solicitation for proposals was published in the December 4, 1999, issue of the *Texas Register* (24 TexReg 11037).

The consultant will represent and assist the university in developing projects deemed important to the university, assist the university in obtaining funding for university projects, and provide consulting and representation as directed by Southwest Texas State University.

Two proposals were received in response to this solicitation for proposals. The proposals were from Mr. Bobby Mills/The Advocacy Group, 1350 I Street, NW, Suite #680, Washington, D.C. 20005 and The Washington Group, Suite 400, 1401 K. St. NW, Washington, D.C. 20005.

The consultant awarded the contract was: Mr. Bobby Mills/The Advocacy Group, 1350 I Street, NW, Suite #680, Washington, D.C. 20005.

The consultant contract begins January 4 and ends December 31, 2000, with the option to renew. The fee estimate is \$52,800, excluding expenses.

Reports and documents will be submitted as required.

TRD-200001228  
William A. Nance  
Vice President, Finance and Support Services  
Southwest Texas State University  
Filed: February 16, 2000



#### Texas Department of Transportation

##### Notice of Intent to Contract for Information Logo and Major Agricultural Interest Sign Program

Transportation Code, §§391.091-391.098 requires the Texas Transportation Commission (commission) to contract with a person, firm, group, or association in the state to erect, operate, and maintain information logo signs along eligible highways and major agricultural interest signs along eligible rural highways. The commission, in implementing the information logo and major agricultural interest sign programs, has adopted rules, codified as Title 43, Texas Administrative Code, §§25.400-25.409 and §§25.700-25.708. The rules authorize the Texas Department of Transportation (department) to enter into these contracts and establish requirements relating to qualifying to bid on and be awarded a contract.

Pursuant to Transportation Code, §§391.091-391.098, and 43 TAC §§25.400-25.409, and §§25.700-25.708, the department is notifying interested persons, firms, groups and associations in the state of its intent to award a contract by low bid for the purpose of acting as the authorized agent of the department in developing, erecting, operating, and maintaining information logo signs along eligible highways and major agricultural interest signs along eligible rural highways. The contract will also require the successful bidder to re-market the information logo sign program to eligible areas and to re-execute contracts with commercial establishments and major shopping areas currently participating in the information logo program. Prospective bidders are required to prequalify by submitting an introductory letter and a statement of interest in order to be eligible to submit a bid under Transportation Code, Chapter 223.

Prequalification Requirements: Introductory letters and statements of interest must be sent by registered mail or hand delivered, and received by the department no later than 5:00 P.M., April 20, 2000. Introductory letters and statements of interest will not be accepted if submitted by facsimile message, electronic message, or telegram. Each statement of interest will be reviewed by the department and only those parties meeting the prequalification requirements prescribed by 43 TAC §§25.403 and 25.703 will be issued bidding proposal forms and invited to the pre-bid conference.

The introductory letter must be addressed to the director of the Traffic Operations Division, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701-2483, and shall contain: (1) an expression of the bidder's interest in the project; (2) a summary of the bidder's qualifications to do the work; and (3) any other summary information concerning the project team or the bidder that may be useful or informative to the department, bidders, or potential subcontractors.

The statement of interest must contain: (1) the identity of key individuals, including subcontractors, who are proposed to be part of the bidders project team together with their respective qualifications and experience on similar or related projects, the expected amount of involvement, and the time commitment for each individual and subcontractor; (2) a description of the bidder's capability to perform the work, including the types and locations of similar work performed in the last three years that best characterizes the quality and cost control of the bidder as well as the names, addresses, and phone numbers of knowledgeable individuals who can be contacted (this component must also include a discussion of the bidder's internal policies and procedures that are related to work quality, cost control, and resources, including management and organization capabilities currently available for performing the work for the project); (3) the bidder's understanding of the project, based on information available from the department, site visits by the bidder, and applicable regulations or requirements known and understood by the bidder; (4) a description of the approach or course of action by which the bidder proposes to meet the goals and objectives of the project, including potential impacts, impediments or conflicts; (5) the internal methods for schedule control, including current references that confirm the bidder's ability to timely complete the project work; (6) the location where the work will be accomplished by the bidder and any potential subcontractor, the identities of those who will be involved at each work location for the major work elements on the project, the location of the business offices, and the location where the signs will be fabricated; (7) audited financial statements as required, dated no later than the fiscal year immediately preceding the date of the introductory letter; and (8) supporting information, such as graphs, charts, photos, resumes, and references. The statement of interest must not exceed 25 pages. A page is defined as an 8.5 by 11 inch or 11 by 17 inch sheet containing text, pictures, graphs, charts, plan sheets or any other graphics. Not more than five 11 by 17 inch sheets may be used in conjunction with pictures, graphs, charts, plans and other graphics. If an 11 by 17 inch sheet contains text only, it will be counted as two pages.

Bidding Requirements: To be considered for award of a contract, a prequalified bidder must file with the director of the Traffic Operations Division a sealed bid proposal in a form prescribed by the department. Submission of the bid proposal must comply with the location, date, and time requirements of the bidding proposal form. The bids will be open at a public hearing conducted by the director of the Traffic Operations Division or his designee. The hearing will held at 1:15 P.M., May 18, 2000. All bidders may attend; however, attendance is not mandatory. All bids shall be opened in the presence of all

bidders attending. All bid proposals received by the director of the Traffic Operations Division will be tabulated and forwarded to the commission. The work items comprising the information logo sign program and the work items comprising the major agricultural interest sign program will be calculated separately and then factored together to result in a single lowest bidder. In the event that the contractor submitting the lowest responsive bid for the major agricultural interest work items is a contractor other than the lowest overall responsive bidder, the lowest bidder for the major agricultural interest work items will be given the right to perform those work items as a separate contract. If the lowest bidder on the major agricultural interest portion of the work, other than the lowest overall responsive bidder, declines to perform the work as a separate contract, the entire contract will be awarded to the lowest overall bidder. The commission may accept or reject all bids, and if accepted, award the contract to the lowest bidder. The department will notify the contractor(s) by certified mail of the award of the sign programs contract within 10 calendar days of the date of the award. To accept the award, the contractor(s) must execute a contract with the department within 30 calendar days of the award. The contract(s) shall be in a form prescribed by the department and shall, at a minimum, include all terms and conditions prescribed by 43 TAC §§25.400-25.409 and §§25.700-25.708.

Agency Contact: For information concerning the introductory letter and statement of interest, including the required financial statement, the department's bidding proposal form, submitting bids, the information logo and major agricultural interest sign programs, and requirements of 43 TAC §§25.400-25.409 and §§25.700-25.708, contact the department's project engineer, Wade Odell, P.E., by telephone at (512) 416-3142. This information, along with copies of prequalification forms and instructions for filing these forms with the department, and copies of plans and specifications, may also be obtained by writing the department's project engineer at this address:

**Director of Traffic Operations Division**  
**Texas Department of Transportation**  
**Attention: Wade Odell, Project Engineer**

**125 E. 11th Street**  
**Austin, Texas 78701-2483**

Information and forms may also be obtained in person at the following department office:

**Texas Department of Transportation**  
**Traffic Operations Division**  
**Riverside Annex, 118 E. Riverside Drive**  
**Austin, Texas 78704**

TRD-200001354  
Bob Jackson  
Deputy General Counsel  
Texas Department of Transportation  
Filed: February 23, 2000

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**Texas Turnpike Authority Division of the Texas Department of Transportation**

Notice of Intent/86-RFP5008

Pursuant to the authority granted under the Texas Transportation Code, Chapter 361, the Texas Turnpike Authority Division of the Texas Department of Transportation ("TTA") is issuing this notice of

intent to issue a request for qualifications ("RFQ") for qualified firms interested in providing design/development procurement management services ("P-M Services") for the TTA. The P-M Services the TTA seeks will include advising on the provisions to be included in RFQs, managing documents, reviewing submittal qualifications and proposals, providing technical and pricing evaluations, and serving as procurement advisors to the TTA, all as related to the solicitation of qualifications and proposals from private entities to enter into exclusive development agreements with the TTA to design, develop, operate, and maintain the proposed US 183-A and SH 130 turnpike projects (collectively, the "Turnpikes") in central Texas.

These services will not include management of the design and construction of the Turnpikes. The entity selected and retained to perform the P-M Services will not be eligible to participate on any teams or consortia proposing to develop the US 183A and SH 130 Turnpikes through an exclusive development agreement.

Through this notice, the TTA is seeking letters of request ("LOR") from firms interested in receiving a RFQ. The TTA anticipates issuing the RFQ, receiving and analyzing the RFQ responses, possibly conducting interviews with a short-listed group of respondents, and selecting a single qualified P-M to provide the P-M Services through a contractual agreement with the TTA.

**Release of RFQ and Response Deadline.** The TTA currently anticipates that the RFQ will be available on or about March 6, 2000. Copies of the RFQ will be mailed or provided on or about that date to those parties who have submitted a LOR and will be mailed or provided to others as LORs are received. The TTA is under no obligation to mail RFQs to parties submitting LORs after the deadline stated below. Responses to the RFQ will be due on March 27, 2000. Additional details will be contained in the RFQ.

**Deadline for Letters of Request.** A LOR notifying the TTA of a firm's request for a copy of the RFQ will be accepted by fax at (512) 936-0970 (Attention: Robert B. Daigh, P.E.) or by mail, hand-delivery, or overnight courier at: Texas Turnpike Authority Division of the Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701, Attention: Crystal Hansen. LORs must identify contact person and an address to which the RFQ should be sent. LORs will be received until 4:45 p.m. C.S.T., March 17, 2000.

TRD-200001348

Phillip Russell

Director

Texas Turnpike Authority Division of the Texas Department of Transportation

Filed: February 23, 2000



## Texas Water Development Board

### Applications Received

Pursuant to the Texas Water Code, §6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

City of Brady, 101 East Main, Brady, Texas, 76825, received January 27, 2000, application for financial assistance in the total amount of \$9,405,000 consisting of \$6,115,000 loan and \$3,290,000 in loan forgiveness from the Drinking Water State Revolving Fund - Disadvantaged Community Program.

Big Foot Water Supply Corporation, P.O. Box 85, Big Foot, Texas, 78005, received February 1, 2000, application for financial assistance

in the amount of \$145,000 from the Drinking Water State Revolving Fund.

Canyon Regional Water Authority, 850 Lakeside Pass, New Braunfels, Texas, 78130, received January 31, 2000, application for financial assistance in the amount of \$10,000,000 from the Texas Water Development Funds.

Tarkington Special Utility District, RR 4, Box 1002F, Cleveland, Texas, 77327, received February 3, 2000, application for financial assistance in the amount of \$1,000,000 from the Texas Water Development Funds.

Sunbelt Fresh Water Supply District, 410 West Gulf Bank, Houston, Texas, 77037, received February 2, 2000, application for financial assistance in the amount of \$5,310,000 from the Clean Water State Revolving Fund.

Post Wood Municipal Utility District, 23203 Pine Post, Spring, Texas, 77373, received February 3, 2000, application for financial assistance in the amount of \$815,000 from the Texas Water Development Funds.

City of Vernon, 1725 Wilbarger, Vernon, Texas, 76384, received January 25, 2000, application for financial assistance in the amount of \$5,665,000 from the Drinking Water State Revolving Fund.

City of San Benito, 485 North Sam Houston, San Benito, Texas, 78586, received September 28, 1999, application for grant assistance in the amount of \$446,500 from the Water Loan Assistance Fund.

Military Highway Water Supply Corporation, P. O. Box 250, Progreso, Texas, 78580, received February 10, 2000, application for grant assistance in the amount of \$76,200 from the Water Loan Assistance Fund.

Brazos River Authority, P.O. Box 7555, 4400 Cobbs Drive, Waco, Texas, 76714-7555, received February 18, 2000, application for grant assistance in an amount not to exceed \$450,000 from the Research and Planning Fund.

TRD-200001356

Gail L. Allan

Director of Project-Related Legal Services

Texas Water Development Board

Filed: February 23, 2000



## Texas Workforce Commission

### An Initial Evaluation of the School-to-Careers Initiative in Texas

The Texas Workforce Commission invites proposals on the topic: An Initial Evaluation of the School-To-Careers Initiative In Texas.

#### A. AUTHORIZATION OF FUNDING

Public Law 103-239 School-to-Work Opportunities Act of 1994 authorizes funds for this project. TWC is the lead agency in Texas for School-to-Careers/School-to-Work.

#### B. PROJECT OBJECTIVES

At the midpoint of its five-year, \$61.3 million School-to-Work Opportunities Grant, the Texas Workforce Commission is seeking an independent, initial evaluation of the status of the state's School-to-Career (STC) initiative. This evaluation should produce findings and recommendations that will enable Texas' 27 STC partnerships to improve service delivery and allow interested parties to judge the initiative's impact.

### C. PROJECT DESCRIPTION

Develop an evaluation research design to address and answer the following questions, and generate pertinent recommendations based upon the research findings.

1. What are the major successful program-related accomplishments of STC partnerships? Will these accomplishments endure as STC funding declines and ends?
2. In what program-related areas do STC partnerships need major improvement?
3. Have STC partnerships successfully identified priority activities upon which to focus limited funding as they begin year four on September 1, 2000? What are the chances for these activities to succeed as STC funding declines and ends?
4. Given the level of funding available, have STC partnerships used their funds effectively to encourage widespread implementation of STC initiatives in school districts and postsecondary institutions?
5. Have STC partnerships been effective in aligning activities and funding with other initiatives and organizations?
6. Have local workforce development boards and STC partnerships developed cooperative working relationships that enhance the delivery of workforce education programs?
7. Do STC partnership governance structures impact the delivery of STC services? If so, how and to what extent?
8. Has state-level technical assistance met the major needs of STC partnerships?

### D. ELIGIBLE APPLICANTS

Eligible applicants include public, private, and/or non-profit or for-profit entities or consortia of entities with offices located in Texas. Attendance at the March 23, 2000 bidders' conference is mandatory for all applicants.

### E. AVAILABLE FUNDING

Eligible applicants may apply for up to \$100,000.

### F. FUNDING RESTRICTIONS

The applicant(s) selected must provide assurances that they will use allotted funds in accordance with PL 103-239 and use necessary fiscal control and fund accounting controls for the proper disbursement of and accounting for these funds.

### G. LENGTH OF CONTRACT

The project period is eight months.

### H. REQUESTING THE APPLICATION

Interested entities may obtain a copy of the complete RFP by contacting Isa Rodriguez, Program Administrator, in the School-to-Careers office of the Texas Workforce Commission, Room 420-T, 101 East 15th Street, Austin TX 78778-0001, (512) 936-3267; faxing a written request to (512) 463-6689; or emailing a request to isa.rodriguez@twc.state.tx.us.

### I. BIDDERS CONFERENCE AND ASSISTANCE FOR APPLICANTS

A bidders' conference will be conducted from 1:00-3:00 p.m. on Thursday, March 23, 2000, in Room 304-B-T of the Texas Workforce Commission's Trinity Building, located at 1117 Trinity Street in Austin, Texas.

Attendance at the bidders' conference is mandatory for all applicants. This bidders' conference will be the applicants' sole opportunity to ask questions and receive answers concerning any aspect of the five proposal topics. Questions will not be answered before or after this conference.

Those attending the bidders' conference will be required to register on site and provide information regarding the organization being represented. No advance registration is required.

### J. SELECTION CRITERIA

Applicants must meet eligibility requirements to be considered for funding.

All eligible proposals will be reviewed and ranked by members of a review team comprised of state agency personnel with related knowledge and experience. They will follow the point allocation procedure given below.

– 55 points: Ability to perform the work described in the work statements and deliverables.

– 30 points: Capacity of the organization and assigned staff to complete project successfully.

– 15 points: Degree to which the applicant can present a reasonable budget with accompanying narrative and related budget attachments explaining the proposed use of funds in relation to the work statements and deliverables.

– 5 points: Additional consideration shall be used in making the final selection, in the form of five additional evaluation points to certified Historically Underutilized Businesses (HUBs) or organizations that subcontract with certified HUBs. HUBs currently certified by the General Services Commission of the State of Texas must attach a copy of such certification with the proposal when requesting additional consideration in the evaluation of such proposal.

### K. SELECTION, NOTIFICATION, AND NEGOTIATION PROCESS

Successful applicants will be notified of their awards approximately three weeks after submission. Applicants who are not funded will be notified by mail of the funding decision.

Negotiations will be conducted by TWC as deemed necessary. TWC reserves the right to vary any provisions of this RFP prior to the execution of any contracts and to execute amendments to contracts when TWC deems such variances and/or amendments are in the best interest of the State of Texas. In addition, TWC reserves the right to refuse to fund any proposals submitted if such action is deemed in the best interest of the State of Texas.

### L. DUE DATE AND AGENCY CONTACT

No proposals will be accepted later than **5:00 p.m., on Friday, April 14, 2000**. Proposals must be received in the School-to-Careers Office by that time; *postmark dates will not be considered*. Failure of overnight delivery services or any other cause for late delivery is the responsibility of the applicant. Submit eight (8) complete stapled or bound copies, including one copy with original signatures, to:

Ruth Burrell, Program Administrator, School-to-Careers, Texas Workforce Commission, Room 420-T, 101 East 15th Street, Austin, TX 78778-0001.

**No facsimile proposals will be accepted.**

### M. TWC'S OBLIGATIONS

TWC obligations under this RFP are contingent upon the actual receipt by TWC of funds from the U.S. Department of Labor. If adequate funds are not available to make payments under this grant, TWC shall terminate its contractual obligations and will not be liable for failure to make payment under this RFP.

Contract # 4090TX.

TRD-200001355

J. Randel Hill  
General Counsel  
Texas Workforce Commission  
Filed: February 23, 2000



## 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.

**Review of Agency Rules** - notices of state agency rules review.

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

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 24 (1999) is cited as follows: 24 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 "23 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 23 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document format) version through the Internet. For 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 compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us>. The following companies also provide complete copies of the *TAC*: Lexis-Nexis (1-800-356-6548), LOIS, Inc. (1-800-364-2512 ext. 152), and West Publishing Company (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 8, April 9, July 9, and October 8, 1999). 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).



# *Texas Register*

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The *Texas Register* offers the following services. Please check the appropriate box (or boxes).

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