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# TEXAS REGISTER

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The *Texas Register* is printed on recycled paper

**Texas Register**

a section of the
Office of the
Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(512) 463-5561
FAX (512) 463-5569

**Secretary of State**
Antonio O. Garza, Jr.

**Director**
Dan Procter

**Assistant Director**
Dee Wright

**Circulation/Marketing**
Tamara Joiner
Jill S. Ledbetter

**TAC Editor**
Dana Blanton

**TAC Typographer**
Madeline Chrisner

**Documents Section Supervisor**
Patty Webster

**Document Editors**
Roberta Knight

**Open Meetings/Editor**
Jamie Alworth

**Production Section Supervisor**
Ann Franklin

**Production Editors/ Typographers**
Carla Carter
Roy Felps
Mimi Sanchez

**Receptionist**
Daneane Jarzombek

*Texas Register*, ISSN 0362-4781, is published semi-weekly 100 times a year except July 7, November 10, November 28, and December 29, 1995. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: one year - printed, $95 and electronic, $90; six-month printed, $75 and electronic, $70. Single copies of most issues are available at $7 per copy..
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The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Second class postage is paid at Austin, Texas.

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

## How to Use the Texas Register

**Information Available**: The 11 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules**- sections adopted by state agencies on an emergency basis

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following a 30-day public comment period.

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

**Open Meetings** - notices of open meetings.

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

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

**How to Cite**: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 19 (1994) is cited as follows 19 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations Example: on page 2 in the lower-left hand corner of the page, would be written "19 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 19 TexReg 3"

**How to Research** The public is invited to research rules and information of interest between 8 a.m and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

### Texas Administrative Code

The *Texas Administrative Code* (*TAC*) is the official compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code* Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC* West Publishing Company, the official publisher of the *TAC*, publishes on an annual basis.

The *TAC* volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience Each Part represents an individual state agency. The ***Official TAC*** also is available on WESTLAW, West's computerized legal research service, in the TX-ADC database.

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

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

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

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

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

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

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
***Part I. Texas Department of Human Services***
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The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

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

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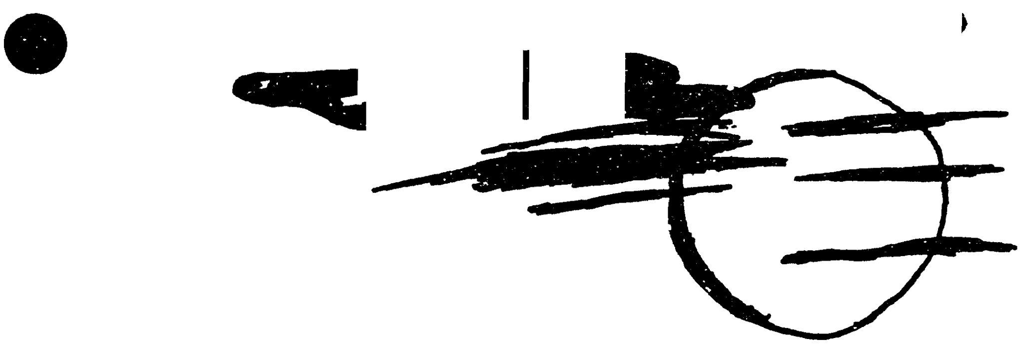
Grade: 12
School: Harlandale High School, Harlandale ISD



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Grade: 10
School: Harlandale High School, Harlandale ISD

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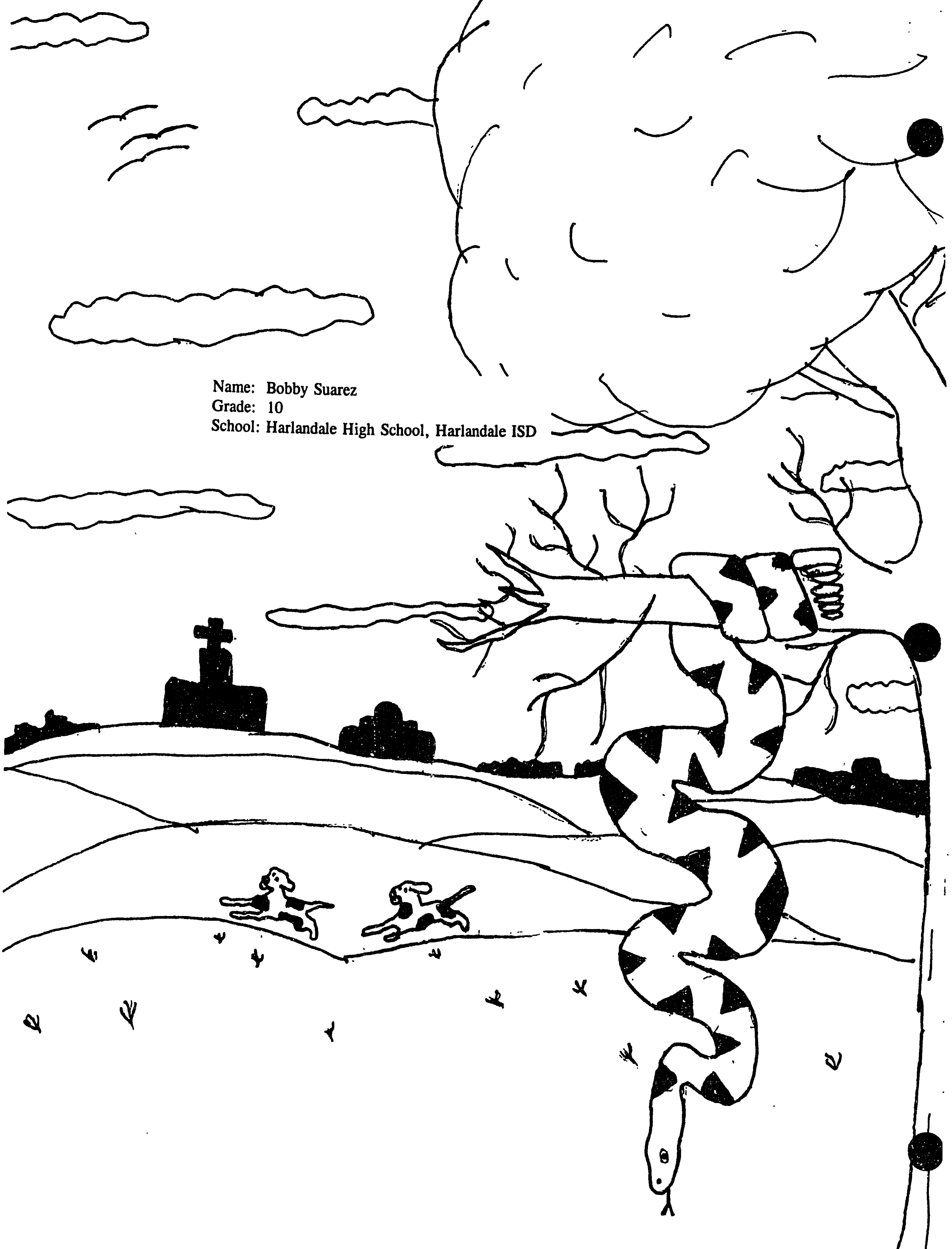
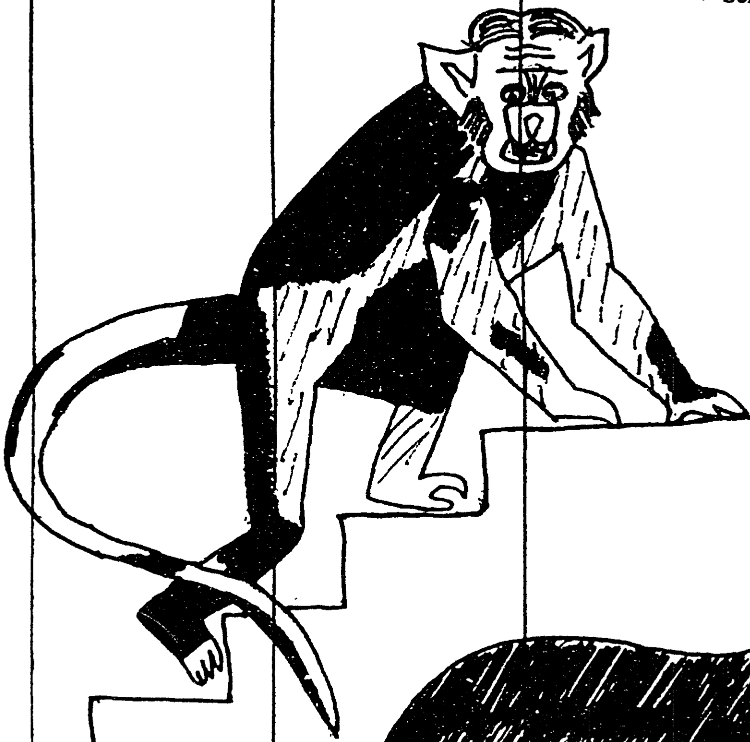
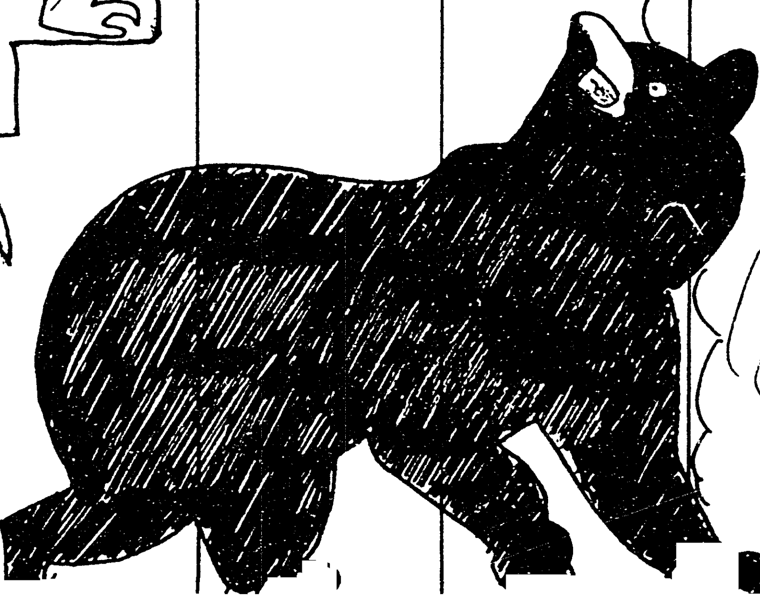
Grade: 10
School: Harlandale High School, Harlandale ISD

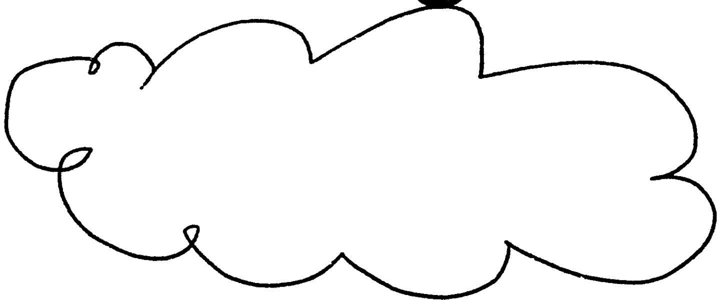


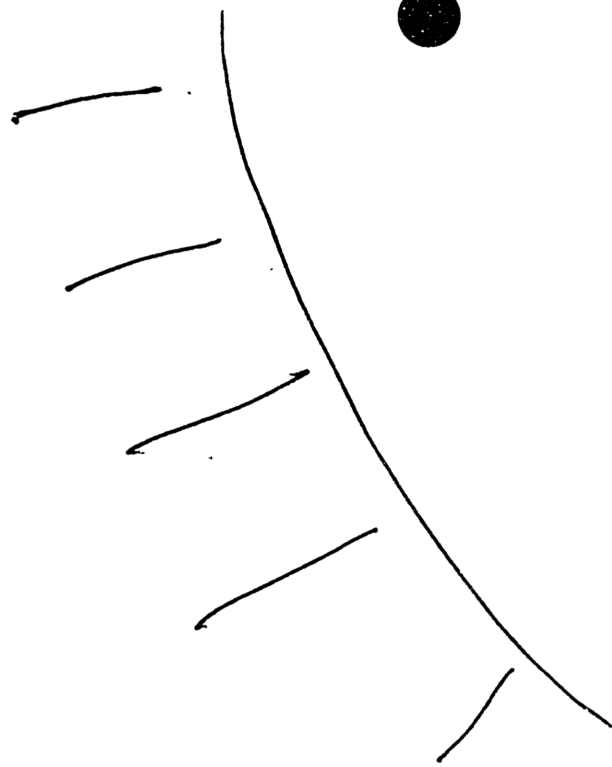
Name: Bobby Suarez
Grade: 10
School: Harlandale High School, Harlandale ISD



Name: Rick Carrillo
Grade: 12
School: Harlandale High School, Harlandale ISD







Name: Verna Barrientez
Grade: 12
School: Harlandale High School, Harlandale ISD

# The Governor

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

## Appointments Made February 8, 1995

To be a member of the **Public Safety Commission** for a term to serve at the pleasure of the Governor. Mr. Holt of Midland will be replacing Ronald D. Krist of Houston as chairman. Mr. Krist will continue serving on the commission.

To be a member of the **Texas Water Development Board** for a term to serve at the pleasure of the Governor. Mr. Madden of Dallas will be replacing Charles W. Jenness as chairman. Mr. Jenness will continue serving on the board.

## Appointments Made February 9, 1995

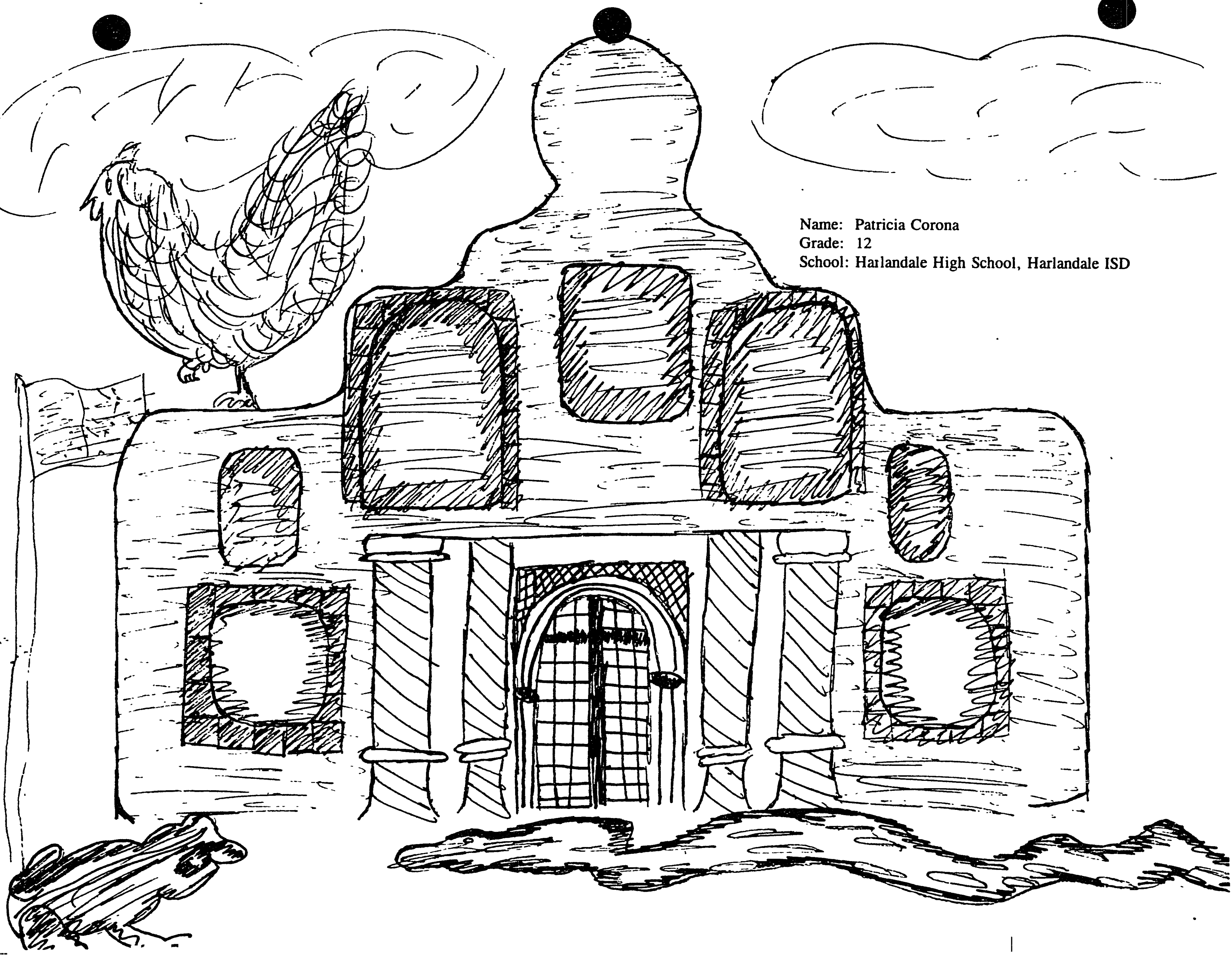
To be a member of the **University of Texas System Board of Regents** for a term to expire February 1, 2001: Thomas G. Loeffler, 203 Ridgemont, San Antonio, Texas 78209. Mr. Loeffler is being reappointed.

To be a member of the **University of Texas System Board of Regents** for a term to expire February 1, 2001: Linnet F. Deily, 5331 Bordley Drive, Houston, Texas 77056. Ms. Deily will be replacing Robert J. Cruikshank of Houston whose term expired.

To be a member of the **University of Texas System Board of Regents** for a term to expire February 1, 2001: Donald L. Evans, 411 Carol Lane, Midland, Texas 79705. Mr. Evans will be replacing Dr. Mario E. Ramirez of Roma whose term expired.

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

TRD-9501680 George W Bush
Governor of Texas



Name: Patricia Corona
Grade: 12
School: Harlandale High School, Harlandale ISD

# Attorney General

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

## Open Records Decision

**ORD-631 (RQ-589).** Request from Robert Giddings, The University of Texas System, Office of General Counsel, 201 West Seventh Street, Austin, Texas 78701-2981, concerning whether a consultant's report concerning a university's overall faculty hiring and retention policies is excepted from required public disclosure by the Government Code, §552.111 (formerly Texas Civil Statutes, Article 6252-17a, §3(a)(11)).

**Summary of Decision.** The Government Code, §552.111 may apply to information created for a governmental body by an outside consultant when the outside consultant is acting at the request of the governmental body and performing a task within the authority of the governmental body. Information created by an outside consultant for a governmental body may constitute an intra-agency memorandum that may be withheld under §552.111. Under §552.111, a governmental body may withhold information that relates to the policymaking functions of the governmental body. This information includes advice, recommendations, and opinions regarding administrative and personnel matters of broad scope that affect the governmental body's policy mission.

TRD-9501597

♦ ♦ ♦

## Opinions

**DM-313 (RQ-606).** Request from Honorable John T. Montford, Chair, Finance Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, concerning whether a county is required to accept warrantless arrestees from a municipal police department, and related questions.

**Summary of Opinion.** If a city police officer arrests a person for violating a state statute and a magistrate issues a commitment order for the prisoner, the county is required to incarcerate the prisoner. A municipal court judge is a proper magistrate to issue such an order if he holds office in the proper county for venue purposes. Should the sheriff refuse to take custody of the prisoner, the county is responsible for the prisoner's maintenance.

TRD-9501598

♦ ♦ ♦

**DM-314 (RQ-663).** Request from Rebecca Lightsey, Interim Commissioner of Insurance, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, concerning whether the Department of Insurance may, pursuant to Insurance Code, Article 3.50-6A, license noninsurance entities that offer viatical settlement agreements, and related questions

**Summary of Opinion.** Article 3.50-6A of the Insurance Code is null and void because it violates the separation of powers required by §1 of Article II of the Texas Constitution in that it provides neither standards nor a discernible objective in its delegation of regulatory authority to the Department of Insurance.

TRD-9501599

♦ ♦ ♦

**DM-315 (RQ-718).** Request from Honorable W. Keith Oakley, Chair, Committee on Public Safety, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning interpretation of §80.001 of the Human Resources Code, which concerns the duty of local law enforcement officials to perform fingerprinting services.

**Summary of Opinion.** Human Resources Code, §80.001 obliges state and local law enforcement agencies to provide free fingerprinting services to the public upon request and without additional conditions.

TRD-9501600

♦ ♦ ♦

**DM-316 (RQ-714).** Request from Honorable Garry Mauro, Commissioner, General Land Office, 1700 North Congress Avenue, Austin, Texas 78701-1495, concerning whether the state may enter into contracts to pay consideration for information about property recoverable by the permanent school fund under §403.0195 of the Government Code.

**Summary of Opinion.** The state may not enter into contracts under §403.0195 of the Government Code to pay consideration for information about property recoverable by the permanent school fund.

TRD-9501601

♦ ♦ ♦

**DM-317 (RQ-712).** Request from Honorable Gerald Alan Joy, Potter County Auditor, 601 South Taylor, Amarillo, Texas 79101, concerning whether a county may pay travel expenses of an applicant for the position of county forensic pathologist.

**Summary of Opinion.** Article III, §52 of the Texas Constitution requires that expenditures by a county be for a public purpose. The determination that such purpose is being served by an expenditure of public funds or an extension of credit rests with the governmental entity's discretion, subject to judicial review. In some cases, Article III, §52 may not preclude a county from paying the travel expenses of an applicant for the position of county forensic pathologist. Attorney General Opinion M-223 (1968) is overruled to the extent that it conflicts with this decision.

TRD-9501602

♦ ♦ ♦

**DM-318 (RQ-719).** Request from Honorable Lynn Ellison, District Attorney, Atascosa County Courthouse, Circle Drive, Number 5A, Jourdanton, Texas 78026, con-

cerning whether Articles 2.12 and 2.13, Code of Criminal Procedure, authorize peace officers to enforce city ordinances.

**Summary of Opinion.** Code of Criminal Procedure, Articles 2.12 and 2.13 do not in themselves authorize peace officers to enforce city ordinances.

TRD-9501603

♦ ♦ ♦

**DM-319 (RQ-669).** Request from Honorable O. H. "Ike" Harris, Chair, Committee on State Affairs, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, concerning whether the Local Government Code, §395.011(c) authorizes a municipality to contract to provide capital improvements to an area outside its corporate boundaries and extraterritorial jurisdiction if the area lies within the boundaries of another municipality and related questions.

**Summary of Opinion.** The Local Government Code, §395.011(c) authorizes a municipality to contract with another municipality to provide capital improvements to an area inside the corporate boundaries of the second municipality. Section 395 011(c) authorizes the municipality that wishes to provide the capital improvements to charge an impact fee within the corporate boundaries of the municipality that wishes to receive the capital improvements if the municipalities have contracted accordingly and the providing municipality complies with chapter 395 of the Local Government Code.

Section 395.011(c), in conjunction with the definition of "capital improvements plan" in §395.001(2), authorizes a municipality that contracts to provide capital improvements to an area outside its corporate boundaries and extraterritorial jurisdiction to include the area in the municipality's capital improvements plan.

TRD-9501604

♦ ♦ ♦

## Requests for Opinions

**(RQ-770).** Request from Todd K. Brown, Executive Director, Texas Workers' Compensation Commission, 4000 South IH-35, Austin, Texas 78704-7491, concerning purchase of liability insurance for state officers and employees.

**(RQ-771).** Request from Sandra C. Joseph, Open Records Counsel/Disclosure Officer, Comptroller of Public Accounts, LBJ State Office Building, Austin, Texas 78774, concerning construction of §154.073 of the Civil Practices and Remedies Code.

**(RQ-772).** Request from Ann Diamond, Assistant District Attorney, Office of the Tarrant County Criminal District Attorney, Justice Center, 401 West Belknap, Fort Worth, Texas 76196-0201, concerning whether §51.14 of the Family Code authorizes disclosure to a juvenile's attorney of records concerning the juvenile and the injuries he received while detained at the juvenile detention center.

**(RQ-773).** Request from Honorable Debra Danburg, Chair, Committee on Elections, Texas House of Representatives, Capitol Extension, E2.144, Austin, Texas 78768, concerning applicability of Texas Civil Statutes, Article 8890, §22a the Veterinary Licensing Act, to municipal corporations.

**(RQ-774).** Request from Larry A. Farrow, Executive Director, Texas Funeral Service Commission, 8100 Cameron Road, Suite 550, Austin, Texas 78754-3896, Attn: Wayne L. Goodrum, General Counsel, concerning whether the Open Records Act governs a request for records pursuant to a subpoena duces tecum.

**(RQ-775).** Request from JoAnn S. Wright, School Attorney, Arlington Independent School District, 1203 West Pioneer Parkway, Arlington, Texas 76013-6246, concerning whether a school district can deny a request for education records under the federal Family Educational and Privacy Act without seeking a determination from the attorney general under Government Code, §552.301, and related questions.

**(RQ-776).** Request from Janice Caldwell, Ph.D., Executive Director, Texas Department of Protective and Regulatory Services, 701 West 51st Street, Austin, Texas 78714-9030, concerning whether electronic mail ("e-mail") transferred between public employees is a "public record" subject to the provisions of the Texas Open Records Act.

**(RQ-777).** Request from Charles E. Griffith, Deputy City Attorney, City of Austin, P.O. Box 1088, Austin, Texas 78767, James Showen, Senior Assistant City Attorney, City of Tyler, P.O. Box 2039, Tyler, Texas 75710, concerning whether a request for all offense reports on a particular person held by a city police department implicates the common-law privacy interests of the subject of the offense reports under the Government Code, §552.101.

**(RQ-778).** Request from Honorable Rodney Ellis, Chair, Committee on Intergovernmental Relations, 905 Sam Houston Building, Austin, Texas 78711, concerning applicability to state and local governmental bodies of Title VI of the Civil Rights Act of 1964 and the Civil Rights Restoration Act of 1987, and related questions.

**(RQ-779).** Request from Leonard W. Peck, Jr., Assistant General Counsel, Legal Affairs Division, Texas Department of Criminal Justice, P.O. Box 99, Huntsville, Texas 77342-0099, concerning effect of the final judgment in Ruiz v. Estelle on the public availability of Department of Criminal Justice internal affairs investigative reports regarding allegations of employee misconduct against prison inmates and related questions.

TRD-9501596

♦ ♦ ♦

# EMERGENCY RULES

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

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

## TITLE 22. EXAMINING BOARDS

## Part XXIV. Texas Board of Veterinary Medical Examiners

### Chapter 573. Rules of Professional Conduct

#### Responsiblities to Clients

• **22 TAC §573.27**

The Texas Board of Veterinary Medical Examiners is renewing the effectiveness of the emergency adoption of amended §573.27, for a 60-day period effective February 10, 1995. The text of amended §573.27 was originally published in the October 21, 1994, issue of the *Texas Register* (19 TexReg 8329).

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

TRD-9501772

Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners

Effective date: February 10, 1995

Expiration date: April 11, 1995

For further information, please call: (512) 447-1183

### Chapter 577. General Administrative Duties

#### Staff and Miscellaneous

• **22 TAC §577.15**

The Texas Board of Veterinary Medical Examiners is renewing the effectiveness of the emergency adoption of amended §577.15, for a 60-day period effective February 10, 1995. The text of amended §577.15 was originally published in the November 4, 1994, issue of the *Texas Register* (19 TexReg 8739).

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

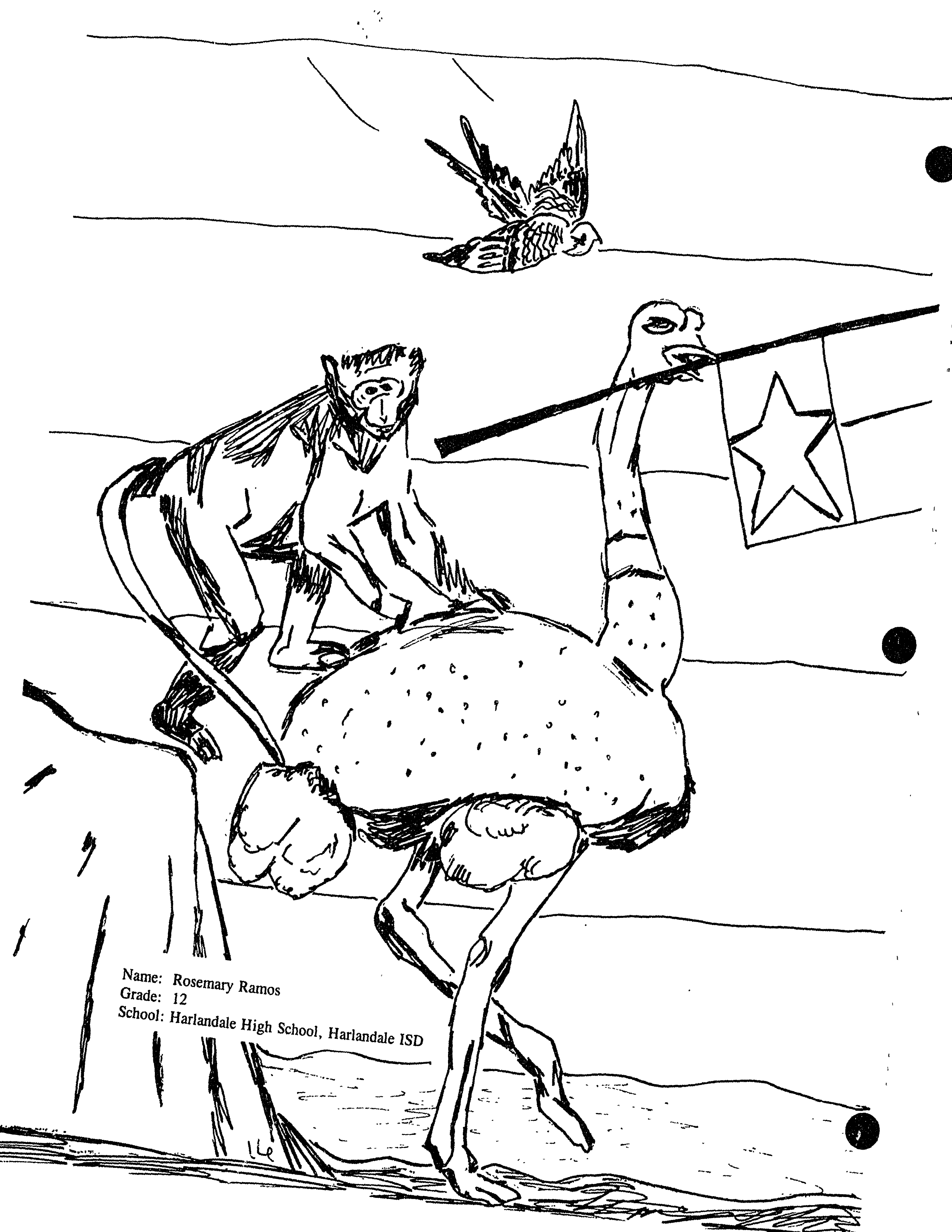
TRD-9501771

Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners

Effective date: February 10, 1995

Expiration date: April 11, 1995

For further information, please call: (512) 447-1183



Name: Rosemary Ramos
Grade: 12
School: Harlandale High School, Harlandale ISD

# PROPOSED RULES

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

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

## TITLE 22. EXAMINING BOARDS

## Part XXIII. Texas Real Estate Commission

### Chapter 535. Provisions of the Real Estate License Act

### Requirements for Licensure

**• 22 TAC §535.61, §535.66**

The Texas Real Estate Commission proposes an amendment to §535.61, concerning examinations and acceptance of courses, and to §535.66, concerning accreditation of educational programs. The proposals are part of a general revision of the agency's rules concerning education providers and the courses taken by real estate licensees or applicants for licensure.

The amendment to §535.61 modifies the caption of the section to clarify that the section also addresses the acceptance of courses by the commission. Courses completed at accredited colleges or universities, as defined by the section, would be accepted for real estate licensure if the applicant received the hours of instruction for which credit was awarded or completed satisfactory makeup in the same manner as that required for schools accredited by the commission; the amendment would ensure that applicants completing courses at either colleges or universities or at schools accredited by the commission would have attended the number of classroom hours for which credit was awarded. Restrictions on the use of classroom facilities controlled by or identified with real estate brokerage or franchise organizations would be removed. Core real estate courses completed more than ten years before the filing of an application for a license would not be accepted unless the courses were completed as part of a four-year, or higher, degree with a concentration in real estate. The amendment also would permit the commission to accept courses offered by alternative delivery methods such as computers if the courses meet the requirements established by other commission rules.

The amendment to §535.66 generally rearranges the section so that related provisions can be found more readily. A number of nonsubstantive changes also are proposed to make the section easier to read and to clarify the requirements for accreditation by the commission. The amendment would adopt by reference a series of application forms, a surety bond, and a guide for the preparation of an instructor's course manual. Wherever possible, the amendment would make the process of obtaining accreditation and the requirements for accredited schools more similar, if not identical, to those for approved providers of mandatory continuing education (MCE) established by other commission rules. The amendment removes restrictions on the use of facilities controlled by, or identified with real estate brokerage or franchise organizations. Instructors would be obligated to teach a course in substantially the same manner as represented to the commission in the instructor's manual for the course. With the exception of guest speakers who could not be used for more than three hours of a course, all instructors would have to be approved by the commission. Schools would no longer have to file their advertisements with the commission or report changes in the fees charged to students. The requirements for instructor approval would be the same as for instructors of MCE courses Schools would not have to secure formal approval to offer a course already approved for another school by the commission, although a filing of the course by subsequent providers would be required. Schools would be required to provide students with copies of written materials which were the basis for a significant portion of the course. The amendment also clarifies how a classroom credit hour is measured and provides guidelines for class breaks; at least one break must be provided every two hours. Schools would be able to offer courses using alternative delivery methods such as computers if the courses comply with requirements set by other commission rules. Advertisements by a school which contained a fee charged by the school for a course also would have to display all fees for the course in the same place and with the same degree of prominence. The application process for approval of a core real estate course would be similar to that for approval of an MCE course; an instructor's manual would be required for the course, and instructional strategies other than lecture would have to be part of the manual for the course. Required attendance would be two-thirds, rather than the current one-half of the course, with the remaining time completed by satisfactory makeup. Schools would be subject to evaluation by surveys of their students by the commission, and audit reports indicating noncompliance would be treated as written complaints against the school. Commission employees conducting audits would be authorized to enroll and attend a course without identifying themselves as employees of the commission and to file complaints against a school if a course completion roster or other document filed with the commission indicated reasonable cause to believe a violation had occurred. A provision would be added clarifying when the school's annual fee is due, and the grounds for taking disciplinary action against a school have been broadened and made consistent with those for MCE providers

Don Roose, director of education and licensing, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There is no anticipated impact on local or state employment as a result of implementing the sections.

Mr Roose also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be enhancement of the quality of education available to real estate licensees and applicants for licensure. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Don Roose, Director of Education and Licensing, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

The proposed amendments do not affect other statutes, articles, or codes.

*§535.61. Examinations and Acceptance of Courses.*

(a)-(o) (No change.)

(p) Educational programs or courses of study in real estate offered after

the effective date of this section by schools accredited by the commission or by accredited colleges and universities, as defined by these sections, shall be accepted as meeting the requirements of the Act for the successful completion of educational prerequisites for licensure upon a determination by the commission that:

(1) (No change.)

(2) for a program or course offered by a college or university, the applicant has received in a classroom presentation **the hours of instruction for which credit has been given, or has satisfactorily completed makeup, in the manner provided by §535.66 of this title (relating to Educational Programs: Accreditation)** [comparable to those required by the college or university for courses of equivalent length conferring academic credit] and qualification on a final course examination or other form of final evaluation was a requirement for successful completion of the course;

(3) for a program or course offered by an institution other than a college or university, the applicant has received in a classroom presentation the hours of instruction required by applicable commission rules, provided, however, that the program or course was not presented in the offices of[, or facilities controlled by, or identified with,] a real estate brokerage firm or franchise organization;

(4) the program or course was presented at the regular campus facilities of the school, college or university or if the program or course was presented at a location other than regular campus facilities, the program or course was not presented in the offices of[, or facilities controlled by, or identified with,] a real estate brokerage firm or franchise organization, and the program or course was a scheduled and publicized course open to enrollment by the general public;

(5) (No change.)

(q) (No change.)

(r) The commission shall evaluate credits or documents from credit or noncredit courses of instruction completed at accredited colleges, universities, and other institutions, from commission-approved courses of study offered by schools accredited by the commission and from commission-approved courses of study offered by professional trade organizations and associations. **For the purpose of this section, accredited colleges and universities means those junior/community colleges, senior colleges, and universities; and any other postsecondary educational institution established by the Texas Legislature, which are accredited by the Commission on Colleges of the Southern Association of Colleges and Schools or like commissions of other regional accrediting associations, or are candidates for such accreditation.**

(s)-(z) (No change.)

(aa) The commission **may** [shall] not accept for the educational requirements for licensure more than one course with the same course title and level or same course content and level if completed within three years of each other. **The commission may not accept core real estate courses which were completed more than ten years prior to the filing of an application for a license unless the courses were completed as part of a four-year, or higher, degree with a concentration in real estate.** The commission may accept courses repeated within three years because of significant changes in the subject matter, such as the promulgation of new contract forms, major law revisions, and major changes in real estate financing.

(bb)-(dd) (No change.)

(ee) Experiential learning credits[,] **or** credits obtained only by final course examination[, or credits obtained from alternative delivery methods such as the mass media or computers] shall not be accepted by the commission for licensure. **Credits obtained from alternative delivery methods may be accepted if the course satisfies the requirements for such a course contained in §535.71 of this title (relating to Mandatory Continuing Education: Approval of Providers, Courses and Instructors).**

(ff) (No change.)

*§535.66. Educational Programs: Accreditation.*

(a) **A person desiring** [An entity which desires] to offer educational programs or courses of study under approval of the **Texas Real Estate Commission pursuant** to [provisions of] **Texas Civil Statutes, Article 6573a, (the Act)**, §7(f), [of the Act] shall file an application **on forms adopted by the commission** [therefor] accompanied by the fee prescribed [by the commission] pursuant to §11(9) of the Act.

(b) **The Texas Real Estate Commission adopts by reference the following forms approved by the commission in 1995. These documents are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.**

(1) Form SCH 1-0, Proprietary School Application;

(2) Form SCH 2-0, Principal Information Form;

(3) Form SCH 3-0, Course Application;

(4) Form SCH 3A-0, Course Application Supplement;

(5) Form SCH 4-0, Instructor Application;

(6) Form SCH 4A-0, Instructor Application Supplement; and

(7) Form SCH 5-0, Real Estate School Bond [The application shall be made on forms provided by the commission and may be accompanied by such supplemental information as the entity may wish to submit.]

(c) (No change.)

(d) **The commission may request additional information from an applicant which the commission deems to be relevant and material to the consideration of an application.** [Information not specifically called for or submitted with the application, but which is information deemed important to consideration thereof, will be requested by the commission.]

(e) **The commission shall notify the applicant in writing of the approval or disapproval of the application. The notice will be sent by certified mail to the address provided by the applicant in the application** [Notice of approval or disapproval of the application will be directed to the entity]. If the application is disapproved, **the notice shall contain the reason for the decision** [cause thereof will be detailed].

(f) **An applicant** [entity] may appeal [from] a disapproval by **filing with the commission a written request for a hearing** [requesting a hearing thereon, in writing,] within ten days after the receipt of the notice of disapproval. **Following the hearing, the commission may sustain or withdraw the disapproval or establish conditions for the approval of a provider, course or instructor. Proceedings involving applications will be conducted in accordance with the Administrative Procedure Act, Title 10, Government Code, Chapter 2001. Venue for any hearing conducted under this section shall be in Travis County.** [In any hearing conducted, the disapproval may be continued or withdrawn or the entity given an opportunity to cure deficiencies found within a certain time period set. If deficiencies are cured, approval of the application will be issued.]

(g) (No change.)

(h) No school **may** [shall] be accredited or operate under commission approval for the sole purpose of offering courses of instruction designed to prepare its students for the state examination for **any license issued by the commission** [real estate broker or salesman licensure]. Schools approved by the commission may offer [real estate] examination preparation

courses on a non-credit basis. Before being presented, any such courses must be submitted to and approved by the commission in the same manner as courses accepted for licensure requirements.

(i) All commission-accredited schools **must** [shall] be open to the public, and may not offer courses of instruction to businesses or organizations with a closed membership, unless such courses are [in fact] publicly advertised in such a manner as to encourage an open enrollment [of such courses to the public]. **Courses** [If a brokerage firm, real estate franchise organization, or a combination thereof provides sufficient students to fill a course to maximum enrollment, the course] may not be held in the **offices of** [facilities controlled by or identified with the] brokerage **firms** [firm] or [the] real estate franchise **organizations** [organization, but instead must be held in the usual school facilities with the usual approved instructors for the course].

(j) Directors of commission-accredited programs **are** [shall be] responsible to the commission for the conduct and administration of each course presentation, and **are** [shall be held] responsible for punctuality of classroom sessions, student attendance records, instructor performance and attendance, examination administration, proper student certification, and certification of records. **Instructors must teach a course in substantially the same manner represented to the commission in the instructor's manual or other documents filed with the application for course approval.** Directors or their staff shall establish business hours during which they shall be available for public inquiry and assistance [clientele service].

(k) **Schools accredited by the commission shall select each instructor on the basis of expertise in the subject area of instruction and ability as an instructor. Except as provided by this section, schools may not utilize instructors who have not been approved by the commission. Schools shall require specialized training or work experience for instructors for specialized subjects such as law, appraisal, investments, or taxation. Guest speakers or other persons who have not been approved as instructors by the commission may not be used for more than three hours of instruction in a course.** [Printed bulletins or other promotional information must be specific with respect to the purpose of each course of instruction, the curricula, the classroom hours (or other units) , content of the course, tuition, and criteria for successful completion of the course. All advertising and promotional materials shall contain the school name. No promotional activities of any school accredited by the commission shall state or imply that its program of instruction is the sole vehicle for which the educational requirements for licensure shall be attained, nor will any promotional activity state or imply that individuals should refrain from or not seek evaluation of previous educational experience via the commission as a basis for meeting educational requirements for licensure. Annual directory ads, other than a single line entry, must be approved by the commission prior to publication Copies of all other advertising and promotional materials must be filed with the commission within two weeks after their publication or distribution.]

(l) **Schools shall provide instructor evaluation forms for completion by students in every class and establish procedures for instructional review. Student instructor evaluation reports must be tabulated and summarized by the school's director, and any comments by the school's management relevant to such reports must be filed in the school records. On demand by the commission the school shall produce student instructor evaluation forms for inspection.** [Schools or their representatives shall not promote their educational programs in such a manner as to convey a false impression of the school's size, importance, location, equipment, or facilities associated with that school.]

(m) **Instructors who are deemed inadequate by the school's administration or who do not satisfy the school's standards of quality may not be used as instructors by the school. The school shall report to the commission the identity of any instructor no longer being used.** [Schools or their representatives shall not promote their school in such manner as to state or imply that their program excels any other course of instruction.]

(n) **The application for original commission approval of an instructor must be filed on forms adopted by the commission. Requests that teaching assignments of previously-approved instructors be extended by the school must be made by letter to the commission. The commission may disapprove an application for approval of an instructor for the same reasons as it may disapprove applications for real estate licensure and may withdraw approval for the same reasons as it may suspend or revoke real estate licenses. Appeals from application disapprovals will be conducted in the manner required by the Act, §10. Proceedings for the withdrawal of instructor approval will be conducted in the manner required by the Act, §17. Each person approved as an instructor must meet the following requirements:**

(1) a college degree in the subject area or five years professional experience in the subject area; and

(2) three years experience in teaching or training; or

(3) the equivalent of paragraphs (1) and (2) of this subsection as determined by the commission after due consideration of the applicant's professional experience, research, authorship or other significant endeavors in the subject area [Schools or their representatives shall not promote their school in such a manner as to state or imply that employment earning potential will accrue its students as a result of participation in the school's educational program Except as provided by this section, no school shall promote itself directly or indirectly as a job placement agency. A school participating in a job retraining program recognized by federal, state, or local government may provide job placement services for students enrolled in the program to the extent required by the program and may advertise its participation in the program. Schools are responsible to the commission for ensuring that instructors or other persons associated with the school do not recruit or solicit prospective salesmen on the school premises ]

(o) **Core real estate courses prescribed by the Act, §7(a) and other standard courses of instruction for licensure credit offered by schools accredited by the commission must be presented in no less than 30 classroom hours of instruction. Courses must be advertised and scheduled for the full clock hours of time for which credit is awarded.** [The Real Estate Commission at any time may require that a school furnish proof of any of its advertising claims Retractions of advertising claims may be ordered by the commission, with such retractions published in the same manner as the claims themselves.]

(p) **Core real estate courses must include, but are not limited to, the statutory subject areas as found in the Act, §7(a). All statutory subject areas must be specifically listed in each core course submitted for approval. An applicant shall submit Form SCH 3-0, the first time approval is sought to offer a course. Once a course has been approved, no further approval is required for another approved provider to offer the same course. Prior to advertising or offering the course, however, the subsequent provider shall complete Form SCH 3A-0, file the form with the commission and receive written or oral acknowledgment from the commission that all necessary documentation has been filed. Providers shall submit an instructor's manual for each proposed course. The commission may require a copy of the previously approved instructor's manual to be submitted for each previously approved course the provider intends to offer. Subsequent providers shall offer the course as originally ap-**

**proved or as revised with the approval of the commission and shall use all materials required in the original or revised course. The commission adopts by reference "Guidelines for Developing an Instructor's Manual for a Proprietary School Course" approved by the commission in 1995; this form is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. Each manual must contain the following:**

**(1) course description;**

**(2) learning objectives;**

**(3) evaluation techniques;**

**(4) outline of the subject matter;**

**(5) instructional strategies in addition to lecture (at least three for each course);**

**(6) course participant handouts; and**

**(7) bibliography or source of updated subject matter.** [All fees and discounts, including tuition fees, shall be reasonable and in proportion to the quality and amount of services provided in exchange for such amounts. If additional fees are charged for supplies, materials, or books needed in course work, they shall be itemized by the school and articles shall upon payment therefor become the property of the student.]

(q) **Each course of instruction must utilize examinations approved by the commission as a component of measurement for determination of successful completion of a course of study. In the event of failure of a course final examination, no re-examination is authorized unless the student has repeated the entire course. If a school permits a student to complete the final course examination prior to completing all makeup time to satisfy attendance requirements, the school shall require the student to sign a statement acknowledging the student's awareness of the requirement that should the student fail the final examination the student will be required to repeat the entire course before testing again for credit for the course. If a school permits a student who cannot complete the final course examination at the originally scheduled time to arrange for a makeup examination, the procedure for taking a makeup examination, any time limit on makeup exams, and any added fee the school may charge for this process must be disclosed in the enrollment agreement the student signs prior to the start of the class. Makeup final examinations must be completed within 90 days of the termination of the original class or the student must be considered dropped from the class with no credit.** [Tuition fees and the consideration for them shall be stated in an agreement to be signed by the school and the student. The agreement shall expressly state the school's policy regarding the return of fees in instances when a student is dismissed or withdraws voluntarily. Any student requesting a refund as a result of withdrawal because of dissatisfaction with the quality of the course may receive a fee refund. Full details concerning the respective views on the matter shall be furnished the commission by the student and the school's director.]

(r) **The weight of examinations as the determination of successful completion of a course, and the criteria for passing of examinations, may be developed by each school based on each school's educational concepts. The commission may, however, direct alterations in examination procedures, criteria for passing, and administration. Each school shall furnish the commission with copies of its examinations with each new course submitted for approval and at any time subsequent changes are made to previously approved examinations. Schools shall revise final course examinations for active courses at least annually, and shall furnish the commission copies of all revisions. Each of the subjects required by statute for each core course must be covered in the exam of that course. An examination proctor, either school staff or faculty, must be present with the class during all regularly scheduled final course examinations.** [All commission-accredited schools shall inform the commission of their fee structure when applying for accreditation, and of any changes subsequent to accreditation.]

(s) **Each accredited school shall notify the commission in writing of the texts used in any approved course of instruction. The commission may direct that the school withdraw texts.** [The commission shall be informed of a school's tuition refund policy and shall direct changes deemed essential to an equitable refund policy.]

(t) **The school shall provide each student with copies of any printed material which is the basis for a significant portion of the course. Ample space must be provided on handouts for notetaking or completion of any written exercises.** [Within ten days following the completion of a course, each school shall provide the commission with a class roster in a format approved by the commission. The listing of students will be numbered and in alphabetical order, and after each student's name will be the final grade of either passed, failed, incomplete, or dropped, or in language or symbols that can be correlated with these categories. Any other grade will require a concise but clear explanation.]

[(1) Passed shall be limited to those students who have attended all of the scheduled classes or have completed acceptable makeup and have successfully passed the final course examination based on the school's passing standards as approved by the commission.

[(2) Failed shall be limited to those students who had acceptable classroom attendance, but who failed the final course examination.

[(3) Incomplete shall be limited to those who have met the attendance requirements, but have not taken the final course examination; those who have attended at least 50% of the scheduled course hours and have taken the final course examination but have not completed acceptable makeup; those who have attended at least 50% of the scheduled course hours, but have not completed acceptable makeup and have not taken the final course examination. If a student is reported incomplete and later completes acceptable makeup and/or the final examination, a supplemental report shall be provided the commission using the same format and course data as the original class report, giving the student's name and final grade report. A separate supplemental report shall be furnished for each individual class, but more than one student may be on the report if all were in the same original class.

[(4) Dropped shall be limited to those students who miss more than 50% of the scheduled class in which originally enrolled; those who voluntarily terminate their enrollment; or those whose enrollment is terminated by a school director for cause.]

(u) **Schools may give one hour of credit for 50 clock minutes of actual classroom session time. Schools may allow a ten minute break for every 50 minutes of classroom session time, but a break must be given at least every two hours, using all accumulated break time.** [Each school shall issue to the students successfully completing a course of instruction an official certificate which reflects the school's name, branch, course title, course numbers, and the number of classroom hours (or other recognized educational unit) involved in the course. All core course certificates must show the statutory core course title or other identification as prescribed by the commission. Certificates shall also show date of issuance and be signed by an official of the school, or if computer printed, the school logo may be substituted for the signature. Such certificate, or copies thereof, shall serve as evidence when presented to the commission, of successful completion of the course of instruction. Letters or other official communications may also be provided the student, which may be utilized by the student for submission to the commission as evidence of satisfactory completion

of the course. Such letters will fully reflect the school name, the course title and number, educational units, and be dated and signed by an official of the school, or if computer printed, the school logo may be substituted for the signature. Each school shall maintain adequate security for completion certificates and/or letters. Compliance with this requirement shall be determined by the commission during all school audits. A school may withhold a student's certificate of completion of a course until the student has fulfilled his financial obligation to the school.]

(v) **Intermediate courses and advanced courses may be developed by schools accredited by the commission and submitted to the commission for approval.** [Each accredited school shall maintain records of each student enrolled in any course for a minimum of five years. The full class file and student enrollment agreements shall be retained for at least 12 months following completion of the class. In the event that a school should cease operation for any reason, the ownership shall be responsible for maintaining said records or providing a custodian for said records acceptable to the commission. In no circumstances will the commission take custody of such records. Custodians, in order to be acceptable to the commission, must be notaries and agree to make copies of course completion certificates available to the students at the fee in effect for duplicate transcripts at the time the school ceased operation.]

(w) **A school that is planning the development of a complete program of study should base its program on the core real estate courses as prescribed in the Act, §7(a). Additional courses may be developed in subjects such as construction; ethics; taxation; office management; advertising; earnest money contracts; exchanging; real estate counseling; syndication; condominium conversions; farm and land brokerage; and other subjects approved by the commission.** [Each member of the instructional staff of a commission-accredited school shall be selected on the basis of expertise in the subject area of instruction and ability as an instructor. Except as provided by this section, schools shall not utilize instructors who have not been approved by the commission. Schools shall require specialized training or work experience for instructors for specialized subjects such as law, appraisal, investments, or taxation. A person who has not been approved by the commission as an instructor may be used as a guest instructor for no more than thirty days unless an application has been filed with the commission by the school for approval of the instructor to teach specific subject areas. If an application has been filed, the prospective instructor may continue to teach unless the commission disapproves the application.]

(x) **Each accredited school shall maintain a separate fixed office in the State of Texas. The office must be large enough for maintenance of all records, office equipment, files, telephone equipment, and office space for customer service.** [Schools shall provide instructor evaluation forms for completion by students in every class and establish procedures for instructional review. Student instructor evaluation reports shall be tabulated and summarized by the school's director, and any comments by the school's management relevant to such reports shall be filed in the school records. The school shall produce on demand student instructor evaluation forms for inspection by the commission.]

(y) **Classroom facilities and changes in classroom facilities are subject to the approval of the commission.** [Instructors who are deemed inadequate by the school's administration who do not satisfy the school's standards of quality should not be used as instructors by the school. The school should report to the commission the identity of any instructor no longer being used.]

(z) **Schools may not use classroom facilities at a trade or proprietary school not accredited by the commission unless prior approval is obtained from the commission.** [The application for original commission approval of an instructor shall be filed on commission forms. Requests that teaching assignments of previously-approved instructors be extended by the school shall be made by letter to the commission. If the commission does not disapprove the application within 30 days after the application has been received by the commission, the application shall be deemed approved. The commission may extend the time for taking action on an application, not to exceed 180 days from the date the application has received and shall give written notice to the school when the time for taking action on an application has been extended. If the commission extends the time for taking action on the application, the application shall be deemed approved if not disapproved by the end of the extended time for taking action on the application. The commission may disapprove an application for approval of an instructor for the same reasons as it may disapprove applications for real estate licensure and may withdraw approval for the same reasons as it may suspend or revoke real estate licenses. Appeals from application disapprovals shall be conducted in the manner required by the Act, §10. Proceedings for the withdrawal of instructor approval shall be conducted in the manner required by the Act, §17. To be eligible to apply for approval as an instructor, a person shall be:]

[(1) a real estate salesman or broker licensed in Texas with a minimum of three years active practice in the areas of study in which it is proposed he or she teach; or

[(2) a person holding a degree from an accredited college or university with a minimum of 12 semester credits of course work in the area of study proposed that he or she teach; or

[(3) an individual who, in the opinion of the commission, has been found to possess a background substantially equivalent to paragraph (1) or (2) of this subsection via professional or instructional experience.]

(aa) **As a part of routine audits of courses conducted by commission employees, reports will be filed concerning the adequacy of classroom facilities, and the commission may direct that the use of a facility be discontinued.** [Each school accredited by the commission shall maintain financial records sufficient to reflect at any time the financial condition of the school. A school's financial statement and balance sheets shall be available for audit by commission personnel and/or the commission may require presentation of financial statements or other financial records as deemed necessary.]

(bb) **Schools may offer a course using an alternative delivery system such as computers if the course satisfies the requirements for such a course contained in §535.71 of this title (relating to Mandatory Continuing Education: Approval of Providers, Courses and Instructors).** [The commission may place on probation, suspend operation, or withdraw the accreditation of a school should it be determined that the school's financial condition is insufficient for continuing operation.]

(cc) **Printed bulletins or other promotional information must be specific with respect to the purpose of each course of instruction, curricula, classroom hours (or other units), content of the course, tuition, and criteria for successful completion of the course. All advertising and promotional materials must contain the school name. No promotional activities of any school accredited by the commission may state or imply that the school's program of instruction is the sole vehicle by which the educational requirements for licensing can be attained, nor may any promotional activity state or imply that individuals should refrain from or not seek evaluation of previous educational experience by the commission as a basis for meeting educational requirements for licensing.** [Core real estate courses prescribed by the Act, §7(a) and other standard courses of instruction for licensure credit offered by schools

accredited by the commission shall be presented in no less than 30 classroom hours of instruction. The commission may authorize the offering of a special course of less than 30 classroom hours when the commission deems it necessary to provide immediate coverage of new or required material essential to licensees and the public. Each course syllabus and format must be submitted to and approved by the commission prior to advertising the course, enrolling students, or conducting classes.]

(dd) **A school may not promote educational programs in such a manner as to convey a false impression of the school's size, importance, location, equipment, or facilities.** [The syllabus for core real estate courses shall include, but not be limited to, the statutory subject areas as found in the Act, §7(a). All statutory subject areas shall be specifically listed in each core course syllabus submitted for approval.]

(ee) **A school may not promote itself in such a manner as to state or imply that the school's programs excel any other course of instruction.** [Each course of instruction shall utilize written examinations as a component of measurement for determination of successful completion of a course of study. In the event of failure of a course final examination, no re-examination is authorized unless the student has repeated the entire course. If a school permits a student to complete the final course examination prior to completing all makeup time to satisfy attendance requirements, the school shall require the student to sign a statement acknowledging the student's awareness of the requirement that should the student fail the final examination the student will be required to repeat the entire course before testing again for credit for the course. If a school permits a student who cannot complete the final course examination at the originally scheduled time to arrange for a makeup examination, the procedure for taking a makeup examination, any time limit on makeup exams, and any added fee the school may charge for this process must be disclosed in the enrollment agreement the student signs prior to the start of the class. Makeup final examinations shall be completed within 90 days of the termination of the original class or the student shall be considered dropped from the class with no credit.]

(ff) **A school may not promote itself in such a manner as to state or imply that its students will achieve earning potential as a result of participation in the school's educational program. Except as provided by this section, no school may promote itself directly or indirectly as a job placement agency. A school participating in a job retraining program recognized by federal, state, or local government may, however, provide job placement services to the extent the services are required by the program and may advertise its participation in the program. Schools are responsible to the commission for ensuring that instructors or other persons associated with the school do not recruit or solicit prospective salesmen on the school premises.** [The weight of written examinations as the determination of successful completion of a course, and the criteria for passing of examinations, may be developed by each school based on each school's educational concepts. However, the commission may direct alterations in examination procedures, criteria for passing, and administration when ever deemed necessary. Each school shall furnish the commission with copies of its examinations with each new course submitted for approval and at any time subsequent changes are made to previously approved examinations. Schools shall revise final course examinations for active courses at least annually, and shall furnish the commission copies of all revisions. Each of the subjects required by statute for each core course shall be covered in the exam of that course An examination proctor, either school staff or faculty, shall be present with the class during all regularly scheduled final course examinations.]

(gg) **The commission may require a school to furnish proof of any of its advertising claims and, if cause is shown for retraction of a claim, may require the school to publish the retraction in the same manner as the advertising claim was published.** [Each accredited school will identify to the commission the texts used in any approved course of instruction. The commission may direct that the school withdraw texts ]

(hh) **If a school charges fees for supplies, material, or books needed in course work, the fees must be itemized in a written statement provided to each student by the school. Any written advertisement by the school which contains a fee charged by the school must display all fees for the course in the same place in the advertisement and with the same degree of prominence.** [The school shall provide each student a printed outline of each course in which the student is enrolled. If a textbook is not required for a course, the school shall provide each student a handbook, previously approved by the commission, including printed material covered in the course].

(ii) **Tuition fees must be stated in an agreement signed by the school and the student. The agreement must contain the school's policy regarding the return of fees when a student is dismissed or withdraws voluntarily. The school shall form the commission when a student requests a refund because of a withdrawal due to the student's dissatisfaction with the quality of the course.** [Any commission-approved course of instruction is subject to audit by personnel authorized by the commission. When a course is audited, auditing personnel will file a written report with the commission headquarters in letter form which will specify strengths and weaknesses of the program. Such reports will be available to the schools subject to the specific audit and their response, if one is indicated to be in order, invited. The commission education section may, as a result of audit reports filed, direct a school to alter its curriculum, rewrite its examinations or alter or institute certain programs or policies.]

(jj) **Each school shall notify the commission in writing of the school's tuition refund policy. The commission may direct changes to achieve an equitable refund policy.** [The commission may place on probation or suspend or withdraw accreditation of a school or course offered by a school or other entity approved to offer courses for a violation of these sections or for other good cause as determined by the commission. The commission may place on probation, suspend operation, or withdraw accreditation of a school or course for the failure of the school or entity to provide within 15 days information requested by commission staff as a result of a formal or informal complaint to the commission which would indicate a violation of these sections]

(kk) **Within ten days following the completion of a course, each school shall provide the commission with a class roster in a format approved by the commission. The listing of students must be numbered and in alphabetical order, and must show after each student's name the final grade of either passed, failed, incomplete, or dropped, in language or symbols that can be correlated with these categories. Any other grade must be explained concisely but clearly.**

(1) **Passed must be limited to those students who attended all of the scheduled classes or completed acceptable makeup and who successfully passed the final course examination based on passing standards approved by the commission.**

(2) **Failed must be limited to those students who had acceptable classroom attendance but failed the final course examination.**

(3) **Incomplete must be limited to those students who met the attendance requirements, but did not take the final course examination; those who attended at least two/thirds of the scheduled course hours and took the final course examination but did not complete acceptable makeup; or those who attended at least two/thirds of the scheduled course**

hours, but did not complete acceptable makeup and did not take the final course examination. If a student is reported incomplete and later completes acceptable makeup and/or the final examination, a supplemental report must be provided to the commission using the same format and course data as the original class report, giving the student's name and final grade report. A separate supplemental report must be furnished for each individual class, but more than one student may be on the report if all were in the same original class.

(4) Dropped must be limited to those students who missed more than two/thirds of the scheduled class in which originally enrolled; those who voluntarily terminated their enrollment; or those whose enrollment was terminated for cause by a school director. [A student who attends between 50% and 100% of a scheduled course may complete makeup work to complete attendance requirements. Acceptable makeup procedures are the attendance in the corresponding class sessions in a subsequent offering of the same course; or the supervised presentation by audio or video tape of the class sessions actually missed; or specific reading of textbook material on the missed subject(s) and a substantial written report on those subjects. Records of all makeup and any required written work must be made a part of the class file to be retained for 12 months. All class makeup sessions must be completed within 90 days of the completion of the original course or the student will be considered dropped with no credit for the course. Makeup procedure shall be subject to the approval of a school staff member. A student attending less than 50% of the originally scheduled course shall automatically be dropped from the course without credit and will be reported as dropped. Dropped status cannot be changed by makeup sessions, and any hours accumulated may not be transferred to any other course. Schools may develop policies to retain an administrative fee up to $25 and to prorate the balance of the tuition fees based on the hours of classroom attendance. Attendance requirements, acceptable makeup procedures, fees that may be charged for makeup sessions, time limits for makeup sessions, and the refund policy of the school shall be clearly specified in the course enrollment agreement signed by the student prior to the start of the class.]

(ll) Each school shall issue to the students successfully completing a course of instruction an official certificate which reflects the school's name, branch, course title, course numbers, and the number of classroom hours (or other recognized educational unit) involved in the course. All core course certificates must show the statutory core course title or other identification as prescribed by the commission. Certificates also must show the date of issuance and be signed by an official of the school, or if the certificate is computer printed, the school logo may be substituted for the signature. Originals or copies of the certificates may be presented to the commission as evidence of successful completion of the course of instruction. Letters or other official communications also may be provided to students for submission to the commission as evidence of satisfactory completion of the course. Such letters must fully reflect the school name, the course title and number, educational units, and be dated and signed by an official of the school, or if the letter is computer printed, the school logo may be substituted for the signature. Each school shall maintain adequate security for completion certificates and letters. Compliance with this requirement will be determined by the commission during all school audits. A school may withhold a student's certificate of completion of a course until the student has fulfilled his financial obligation to the school. [A classroom hour shall constitute 50 clock minutes of actual classroom session time.]

(mm) Each accredited school shall maintain records of each student enrolled in any course for a minimum of five years. The full class file and student enrollment agreements must be retained for at least 12 months following completion of the class. In the event that a school should cease operation for any reason, the school shall be responsible for maintaining the records or providing a custodian for the records acceptable to the commission. In no circumstances will the commission take custody of the records. Record custodians must be notaries who will make copies of course completion certificates available to the students at the fee in effect for duplicate transcripts at the time the school ceased operation. [Intermediate courses and advanced courses may be developed by schools accredited by the commission and submitted to the commission for approval.]

(nn) Each school accredited by the commission shall maintain financial records sufficient to reflect at any time the financial condition of the school. A school's financial statement and balance sheets must be available for audit by commission personnel, and the commission may require presentation of financial statements or other financial records. [A school planning development of a complete program of study should base its program on the core real estate courses as prescribed in the Act, §7(a). Additional courses may be developed in subjects such as construction; ethics; taxation; office management; advertising; earnest money contracts; exchanging; real estate counseling; syndication; condominium conversions, farm and land brokerage; and other subjects approved by the commission ]

(oo) etb>The commission may place on probation, suspend operation, or withdraw the accreditation of a school should it be determined that the school's financial condition is insufficient for continuing operation. [Each accredited school shall maintain a separate fixed office or offices in the State of Texas which will be adequate for maintenance of all records, office equipment, files, telephone equipment, and office space sufficient for customer service.]

(pp) A student who attends at least two-thirds of a scheduled course may complete makeup work to complete attendance requirements. Acceptable makeup procedures are the attendance in the corresponding class sessions in a subsequent offering of the same course; the supervised presentation by audio or video tape of the class sessions actually missed; or specific reading of textbook material on the missed subject(s) and a substantial written report on those subjects. Records of all makeup and any required written work must be made a part of the class file to be retained for 12 months. All class makeup sessions must be completed within 90 days of the completion of the original course or the student must be considered dropped with no credit for the course. Makeup procedure must be subject to the approval of a school staff member. A student attending less than two-thirds of the originally scheduled course must automatically be dropped from the course without credit and reported as dropped. Dropped status may not be changed by makeup sessions, and any hours accumulated may not be transferred to any other course. Schools may develop policies to retain an administrative fee up to $25 and to prorate the balance of tuition fees based on the hours of classroom attendance. Attendance requirements, acceptable makeup procedures, fees that may be charged for makeup sessions, time limits for makeup sessions, and the refund policy of the school shall be clearly specified in the course enrollment agreement signed by the student prior to the start of the class. [Classroom facilities are subject to approval and changes in classroom facilities are subject to continuing commission approval.]

(qq) Any commission-approved course of instruction is subject to audit by personnel authorized by the commission. Audits will be conducted without prior notice to the school, and commission employees may enroll and attend a course without identifying themselves as employees of the commission. Commission employees also may evaluate the ef-

fectiveness of course materials or instructors through surveys of students. An audit report indicating noncompliance with these sections will be treated as a written complaint against the school or instructor concerned and will be referred to the enforcement division of the commission for appropriate resolution. Commission employees may file written complaints against providers or instructors if course completion rosters or other documents filed with the commission provide reasonable cause to believe a violation of these sections has occurred. [No classroom facilities may be used at a trade or proprietary school not accredited by the commission unless prior approval is obtained from the commission.]

(rr) Each accredited school shall pay the fee prescribed by Section 11(10) of the Act and by §535.101 of this title (relating to Fees) no later than December 31 of each year. Prior to December 31 of each year, the commission shall send a written notice to each school to pay the fee, but the school's obligation to pay the fee is not affected by any failure to receive the notice. [As a part of routine audits of courses conducted by commission authorized personnel, reports will be filed concerning the adequacy of classroom facilities, and the commission may direct that the use of a facility be discontinued.]

(ss) Complaints, investigations, and hearings involving schools accredited by the commission shall be governed or conducted in the manner required by the provisions of §535.73 of this title (relating to Compliance and Enforcement). The commission may reprimand, place on probation or suspend or withdraw accreditation of a school or course offered by a school or other person approved to offer courses when it has been determined that the school or person has been guilty of:

(1) procuring or attempting to procure approval for a school, course or instructor by fraud, misrepresentation or deceit, or by making a material misrepresentation of fact in an application filed with the commission;

(2) making a false representation to the commission, either intentionally or negligently, that a person had attended a course or a portion of a course for which credit was awarded, that a person had completed an examination, or that the person had completed any other requirement for course credit;

(3) aiding or abetting a person to circumvent the requirements for attendance established by these sections, the completion of any examination, or any other requirement for course credit;

(4) failing to provide within 15 days information requested by the commission as a result of a complaint which would indicate a violation of these sections;

(5) making a materially false statement to the commission in response to a request from the commission for information relating to a complaint against the school or instructor; or

(6) disregarding or violating a provision of these sections or of the Act. [For the purpose of this section, accredited colleges and universities means those junior/community colleges, senior colleges, and universities; and any other postsecondary educational institution established by the Texas Legislature, which are accredited by the Commission on Colleges of the Southern Association of Colleges and Schools or like commissions of other regional accrediting associations, or are candidates for such accreditation.]

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

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

TRD-9501769 Mark A. Moseley
General Counsel
Texas Real Estate Commission

Earliest possible date of adoption: March 20, 1995

For further information, please call: (512) 465-3900

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# TITLE 28. INSURANCE

## Part I. Texas Department of Insurance

### Chapter 3. Life, Accident, and Health Insurance and Accident, and Health Insurance and Annuities

### Subchapter Q. Actuarial Opinion and Memorandum

#### • 28 TAC §§3.1605, 3.1607-3.1609

The Texas Department of Insurance proposes amendments to §§3.1605, 3.1607-3.1609, concerning the adoption by reference of the Actuarial Standards of Practice of the Actuarial Standards Board. The amendments update the Actuarial Standards of Practice to October 1, 1994, from September 15, 1992. Since the adoption by reference of the Actuarial Standards of Practice of the Actuarial Standards Board as of September 15, 1992, there have been five new Actuarial Standards of Practice and two revised Actuarial Standards of Practice adopted by the Actuarial Standards Board. The new standards to be incorporated by reference as a result of amending the sections are: Actuarial Standard of Practice Number 21-"The Actuary's Responsibility to the Auditor" (April 1993); Actuarial Standard of Practice Number 22-"Statutory Statements of Opinion Based on Asset Adequacy Analysis by Appointed Actuaries for Life or Health Insurers" (April 1993); Actuarial Standard of Practice Number 23-"Data Quality" (July 1993), Actuarial Compliance Guideline Number 3-"For Statement of Financial Accounting Standards Number 106 Employers' Accounting for Postretirement Benefits Other Than Pensions" (October 1992); Actuarial Compliance Guideline Number 4-"Statutory Statements of Opinion Not Including an Asset Adequacy Analysis by Appointed Actuaries for Life or Health Insurers" (October 1993). The revised standards which will be incorporated by reference are Actuarial Standard of Practice Number 10-"Methods and Assumptions for Use in Stock Life Insurance Company Financial Statements Prepared in Accordance with GAAP" (October 1992) and Actuarial Standard of Practice Number 3-"Practices Relating to Continuing Care Retirement Communities" (July 1994). Additionally, Actuarial Standard of Practice Number 14-"When to do Cash Flow Testing for Life and Health Insurance Companies" (July 1990), was previously excluded from portions of this regulation and is now included Due to the inclusion of Actuarial Standard of Practice Number 22 and Actuarial Compliance Guideline Number 4, the department believes that sufficient guidance is now provided to allow inclusion of this standard of practice

Mike Boerner, managing actuary, actuarial division, has determined that for the first five-year period the amended sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections. Insurance Code, Article 3 28, §2A(a) requires the actuary rendering the opinion to be a member of the American Academy of Actuaries. Without this adoption by reference of these standards, the department would refer suspected violations to the American Academy of Actuaries By adopting the standards by reference the Department is able to police compliance with these standards independently of the American Academy of Actuaries. Mr. Boerner estimates no more than three apparent violations will be identified during the five-year period In the event an enforcement action is necessary, then the costs of such an action will impact the department's budget at that time

Mike Boerner, managing actuary, actuarial division, has determined that for the first five years the amended sections are in effect, the public benefit anticipated as a result of the amendments will be more efficient and effective financial regulation of the reserves established by insurance companies. Such efficiency and effectiveness is promoted by the guidance given in the Standards of Practice referenced in the proposed amendments. The amended sections provide clarification and guidance to the appointed actuaries in rendering their opinions, but the adoption of the Actuarial Standards Board standards by reference will not result in additional costs. Insurance Code, Article 3.28, §2A(a) requires the actuary rendering the opinion to be a member of the American Academy of Actuaries The Actuarial Standards Board is the rule making arm of the American Academy of Actuaries. All members of the Academy must

comply with the standards adopted by the Actuarial Standards Board, therefore the actuary rendering an opinion under these sections must comply with these standards due to their membership in the Academy.

Comments on the proposal, to be considered by the commissioner of insurance, must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to the Office of the Chief Clerk, MC 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas, 78714-9104. An additional copy of the comments should be submitted to Mike Boerner, Managing Actuary, MC 304-3A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas, 78714-9104. Request for a public hearing on this proposal should be submitted separately in writing to the Office of the Chief Clerk.

The amendments are proposed under Insurance Code, Articles 3.28 and 1.03A. The Insurance Code, Article 3.28, §2A, authorizes and requires the Commissioner of Insurance to define the specific requirements of actuarial opinions required under Article 3.28, including matters deemed to be necessary to the scope of such opinions. Article 1.03A authorizes the Commissioner to determine rules for general and uniform application for the conduct and execution of the duties and functions of the department.

Sections 3.1605, 3.1607, 3.1608 and 3.1609 affect Insurance Code, Article 3. 28.

*§3.1605. General Requirements.*

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

(d) Standards for asset adequacy analysis. The asset adequacy analysis required by this regulation:

(1) shall conform to the Standards of Practice as adopted by the Actuarial Standards Board, as of **October 1, 1994** [September 15, 1992], and any additional standards under this regulation, which standards are to form the basis of the statement of actuarial opinion in accordance with §3.1608 of this title (relating to Statement of Actuarial Opinion Based on an Asset Adequacy Analysis).

(2) (No change.)

(e) (No change.)

(f) Standards for an actuarial opinion not based on an asset adequacy analysis. The actuarial opinion rendered under §3.1607 of this title (relating to Statement of Actuarial Opinion Not Including an Asset Adequacy Analysis) shall conform to the Standards of Practice as adopted by the Actuarial Standards Board as of **October 1, 1994** [September 15, 1992, excluding Actuarial Standard of Practice Number 14], and any additional standards under this regulation.

*§3.1607. Statement of Actuarial Opinion Not Including an Asset Adequacy Analysis.*

(a) (No change.)

(b) Recommended language. The language provided in paragraphs (1)-(10) of this subsection is that which in typical circumstances would be included in a statement of actuarial opinion in accordance with this section. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary should use language which clearly expresses his or her professional judgment. Regardless of language used, the opinion shall retain all pertinent aspects of the language provided in **this section** [§3.1607 of this title (relating to Statement of Actuarial Opinion Not Including an Asset Adequacy Analysis)].

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

(6) The opinion paragraph should include the following:
In my opinion the amounts carried in the balance sheet on account of the actuarial items identified above:
are computed in accordance with appropriate actuarial standards consistently applied;
are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;
meet the requirements of the insurance law and regulations of the state of (state of domicile) and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed;
are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end (with any exceptions as noted below); and
include provision for all actuarial reserves and related statement items which ought to be established.
The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of Practice as adopted by the Actuarial Standards Board, as of **October 1, 1994**. [September 15, 1992, excluding Actuarial Standard of Practice Number 14, which standards form the basis of this statement of opinion.]

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

*§3.1608. Statement of Actuarial Opinion Based On an Asset Adequacy Analysis.*

(a) (No change.)

(b) Recommended language. The following paragraphs are to be included in the statement of actuarial opinion in accordance with this section. Language is that which in typical circumstances should be included in a statement of actuarial opinion. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary should use language which clearly expresses his or her professional judgment. However, in any event the opinion shall retain all pertinent aspects of the language provided in this section.

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

(6) The opinion paragraph should include the following:
In my opinion the reserves and related actuarial values concerning the statement items identified above:
are computed in accordance with appropriate actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;
are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;
meet the requirements of the insurance law and regulations of the state of (state of domicile) and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed;
are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end (with any exceptions as noted below); and
include provision for all actuarial reserves and related statement items which ought to be established.
The reserves and related items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts, make adequate provision, according to appropriate actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company.
The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of Practice as adopted by the Actuarial Standards Board, as of **October 1, 1994** [September 15, 1992], which standards form the basis of this statement of opinion.
This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion which should be considered in reviewing this opinion. (or)
The following material change(s) which occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion: (Describe the change or changes.) Choose whichever of

the two immediately preceding statements is appropriate.

FIGURE 1: 28 TAC §3.1608(b)(6)

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

*§3.1609 Description of Actuarial Memorandum.*

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

(c) Conformity to standards of practice. The memorandum shall include a statement with wording substantially similar to that of this subsection as follows: Actuarial methods, considerations and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as adopted by the Actuarial Standards Board, as of **October 1, 1994** [September 15, 1992], which standards form the basis for this memorandum.

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

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

TRD-9501784 Mary Keller
Senior Associate Commissioner
Texas Department Insurance

Earliest possible date of adoption: March 20, 1995

For further information, please call: (512) 463-6327

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## Subchapter GG. Minimum Reserve Standards for Individual and Group Accident and Health Insurance

### • 28 TAC §3.7002

The Texas Department of Insurance proposes an amendment to §3.7002, concerning the regulation of claim reserves for individual and group accident and health insurance policies. The amendment will more effectively regulate the minimum reserve standards for group disability insurance by authorizing an insurer to establish reserves based on its own experience when it demonstrates to the commissioner that its experience is credible.

Ted Becker, chief life actuary for the financial program, has determined that, for the first five-year period the amended section is in effect, there will be no fiscal implications for local government or small business as a result of enforcing or administering this section. There will be no effect on local employment or local economy. There will be fiscal impact on state government to the extent staff of the Texas Department of Insurance will review any insurer's plan of modification of reserve basis. Mr. Becker believes that only one or two plans of modification of reserve basis will be submitted and that the review of those plans can be performed within the agency's existing budget by deferring other activities.

Mr. Becker also has determined that, for each year of the first five years the amended section will be in effect, the public benefits anticipated as a result of enforcing the amended section will be more effective regulation of insurers. There are no anticipated costs to insurers to comply with the section since the amendment authorizes an insurer to elect a new method for calculating its group disability reserves. For an insurer that elects to seek the commissioner's approval of a plan of modification to its reserve basis for group disability claims, Mr. Becker estimates the cost of seeking such approval would not exceed $10,000.

Comments on the proposal, to be considered by the commissioner of insurance, must be submitted in writing within 30 days after publication of the proposal in the Texas Register to D. J. Powers, General Counsel and Chief Clerk , Mail Code 113-1C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Ted Becker, Chief Life Actuary-Financial Program, Mail Code 304-3A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Request for a public hearing on this proposal should be submitted separately to the Office of the Chief Clerk.

The amendment is proposed under the Insurance Code, Articles 1.03A and 3.28. Article 1.03A, provides the commissioner with the authorization to adopt rules and regulations for the conduct and execution of the duties and functions by the department. Article 3.28, §2A authorizes the commissioner to state the requirement, substance and scope of actuarial opinions in order to make sure reserves are computed appropriately and are based on assumptions which satisfy contractual provisions.

The following article of the Insurance Code is effected by this rule: Texas Insurance Code, Article 3.28.

*§3.7002. Claim Reserves.*

(a) (No change.)

(b) Minimum standards for claim reserves.

(1) Disability income.

(A) (No change.)

(B) Morbidity. Minimum standards with respect to morbidity are those specified in §3.7006 of this title,[;] except that, at the option of the insurer[.] **:**

***(i)*** **for claims with a duration from date of disablement of less than two years, reserves may be based on the insurer's experience, if such experience is considered credible, or upon other assumptions designed to place a sound value on the liabilities.**

***(ii)*** **For group disability income claims with a duration from date of disablement of more than two years but less than five years, reserves may, with the approval of the commissioner, be based on the insurer's experience for which the insurer maintains underwriting and claim administration control. The request for such approval of a plan of modification to the reserve basis must include:**

**(I) an analysis of the credibility of the experience;**

**(II) a description of how all of the insurer's experience is proposed to be used in setting reserves;**

**(III) a description and quantification of the margins to be included;**

**(IV) a summary of the financial impact that the proposed plan of modification would have had on the insurer's last filed annual statement;**

**(V) any other information deemed necessary by the commissioner.**

(C) (No change.)

**(D) Credibility. For experience to be considered credible for purposes of subparagraph (B)(ii) of this paragraph, the company should be able to provide claim termination patterns over no more than six years reflecting at least 5,000 claims terminations during the third through fifth claims durations on reasonably similar applicable policy forms. For claim reserves to reflect "sound values" and/or reasonable margins, reserve tables based on credible experience should be adjusted regularly to maintain reasonable margins. Demonstrations may be required by the commissioner based on published literature.**

(2) (No change.)

(c) (No change.)

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

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

TRD-9501785 Mary Keller
Senior Associate Commissioner
Texas Department Insurance

Earliest possible date of adoption: March 20, 1995

For further information, please call: (512) 463-6327

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# TITLE 31. NATURAL RESOURCES AND CONSERVATION

## Part II. Texas Parks and Wildlife Department

### Chapter 59. Parks

### Naming State Parks and Park Features

- **31 TAC §59.91**

*(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 Texas Parks and Wildlife Department proposes the repeal of §59.91, concerning Naming Sites and Features. The Parks and Wildlife Commission adopted a policy for naming state parks and features in 1976. The Texas Parks and Wildlife Department, Wildlife Division, has a similar practice for naming of Wildlife Management Areas. Repeal of the rules regarding naming of sites and features will allow the formulation of a new policy to provide a uniform naming system for both parks and wildlife management areas.

Dr. Bill Harvey, regulatory coordinator, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Dr. Harvey also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be consistency in the naming of state parks and state wildlife management areas. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, §2001. 022, as this agency has determined that the repeal as proposed will not impact local economies.

Comments on the proposed repeal may be submitted to Jim Riggs, Public Lands Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744, (512) 389-4904 or 1-800-792-1112, extension 4904.

The repeal is proposed under Parks and Wildlife Code, §13.001, which provides the Parks and Wildlife Commission with authority to establish a classification system for state parks and wildlife management areas.

The Parks and Wildlife Code, §13.001(b) is affected by the proposed repeal.

*§59.91. Naming Sites and Features.*

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

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

TRD-9501781 Paul M. Shinkawa
Acting General Counsel
Texas Parks and Wildlife Department

Proposed date of adoption: March 23, 1995

For further information, please call: (512) 389-4642

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### Chapter 65. Wildlife

### Subchapter A. Statewide Hunting and Fishing Proclamation

- **31 TAC §§65.1, 65.3, 65.5, 65.9, 65.11, 65.13, 65.15, 65.17, 65.19, 65.21, 65.23, 65.25-65.29, 65.31-65.33, 65.36, 65.38, 65.40, 65.42, 65. 44, 65.46, 65.48, 65.50, 65.52, 65.54, 65.56, 65.58, 65.60, 65.62, 65.64, 65. 66, 65.68, 65.70, 65.72, 65.78, 65.82, 65.91**

*(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 Texas Parks and Wildlife Department proposes the repeal of §§65.1, 65.3, 65.5, 65.9, 65.11, 65.13, 65.15, 65.17, 65.19, 65.21, 65.23, 65.25-65.29, 65.31-65.33, 65.36, 65 38, 65.40, 65 42, 65.44, 65.46, 65.48, 65.50, 65 52, 65.54, 65.56, 65.58, 65.60, 65.62, 65.64, 65.66, 65.68, 65.70, 65.72, 65 78, 65.82, and 65.91, concerning the Statewide Hunting and Fishing Proclamation. Repeal of the rules is necessary for consolidation, simplification and reformatting of new regulations.

Dr. Bill Harvey, regulatory coordinator, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Dr. Harvey also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be substantive improvements in the structure, accessibility and enforcement of the statewide hunting and fishing regulations There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, §2001. 022, as this agency has determined that the repeals as proposed will not impact local economies.

Comments on the rules as proposed may be submitted to Robert Macdonald, Wildlife Division Regulations Coordinator, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4775 or 1-800-792-1112, extension 4775.

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

The Parks and Wildlife Code, §61.052 is affected by the proposed repeals.

*§65.1. Application.*

*§65.3. Definitions.*

*§65.5. Importation of a Wildlife Resource.*

*§65.9. Open Seasons: General Rules.*

*§65.11. Means and Methods.*

*§65.13. Firearms.*

*§65.15. Archery.*

*§65.17. Hunting from Vehicle.*

*§65.19. Hunting Deer with Dogs.*

*§65.21. Falconry.*

*§65 23. Calling Devices.*

*§65.25. Nuisance Squirrels.*

*§65.26. Antlerless and Spike-Buck Deer Harvest Systems.*

*§65.27. Permits.*

*§65.28. Managed Lands Buck Permits.*

*§65 29. Antelope Permits.*

*§65.31. Antlerless Mule Deer Permits.*

*§65.32. Mandatory Deer Check Stations.*

*§65.33. Elk Permits.*

*§65.36. Open Seasons and Bag Limits for Game Animals.*

*§65.38. Antelope: Open Seasons and Bag Limits.*

*§65.40. Deer: White-tailed and Mule Deer.*

*§65.42. Javelina: Open Seasons and Bag Limits.*

*§65.44. Squirrel: Open Seasons, Bag, and Possession Limits.*

*§65.46. Desert Bighorn Sheep: Open Seasons and Bag Limits.*

*§65.48. Elk: Open Seasons and Bag Limits.*

*§65.50. Aoudad Sheep: Open Seasons and Bag Limits.*

*§65.52. Game Birds: Open Seasons and Bag Limits.*

*§65.54. Prairie Chicken: Open Seasons, Bag, and Possession Limits.*

*§65.56. Partridge: Open Seasons and Bag Limits.*

*§65.58. Pheasants: Open Seasons, Bag, and Possession Limits.*

*§65.60. Quail: Open Seasons, Bag, and Possession Limits.*

*§65.62. Turkey.*

*§65.64. Chachalacas.*

*§65.66. Migratory Game Birds.*

*§65.68. Fur-bearing Animals.*

*§65.70. Alligators.*

*§65.72. Fish.*

*§65.78. Crabs.*

*§65.82. Other Aquatic Life.*

*§65.91. Penalty for Violation.*

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

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

TRD-9501780

Paul M. Shinkawa
Acting General Counsel
Texas Parks and Wildlife Department

Proposed date of adoption: March 23, 1995

For further information, please call: (512) 389-4642

The Texas Parks and Wildlife Department proposes new §§65.1, 65.3, 65.5, 65.9, 65.11, 65.13, 65.15, 65.17, 65.19, 65.21, 65.23, 65.25-65.29, 65.31-65.34, 65.36, 65.37, 65.38, 65.40, 65.42, 65.44, 65.46, 65.48, 65.50, 65.52, 65.54, 65.56, 65.58, 65.60, 65.62, 65.64, 65.66, 65.71, 65.72, 65.78, 65.82, 65.90, and 65.91, concerning Statewide Hunting and Fishing Proclamation. The proposed new rules set the seasons, bag limits, and means and methods for taking wildlife resources in the state. The proposed new rules are based upon scientific studies and investigations conducted by the department pursuant to Parks and Wildlife Code, Chapter 61, and represent required findings of fact with respect to the relative abundance of fish and wildlife species in the state.

The proposed new rules are necessary to fulfill the department's obligation to prevent depletion and waste of the state's wildlife resources.

The proposed new rules will function by reducing the vulnerability of wildlife species to take, preventing over-harvest, equitably distributing the available harvest and, in general, preserving and enhancing existing populations while allowing for harvest according to prescribed wildlife and fisheries tenets.

The proposed new rules reorganize the various provisions for hunting and fishing in the state in order to facilitate more efficient rulemaking activities in the future, conform terminology and references, and incorporate certain substantive changes where noted in the following section-by-section synopsis.

New §65.1, concerning Application, delineates the scope of the proposed new rules.

New §65.3, concerning Definitions, stipulates the meanings of various words and terms used throughout the subchapter, and adds definitions to distinguish the different types of antlerless deer permits.

New §65.5, concerning Importation of a Wildlife Resource, specifies under what circumstances and conditions a wildlife resource may or may not be brought into the state.

New §65.9, concerning Open Seasons: General Rules, sets out the broadly inclusive stipulations concerning open seasons generally, and qualifies the meaning of antelope to specifically refer to pronghorn antelope (this reference is standardized throughout the subchapter).

New §65.11, concerning Means and Methods, delineates the legal means and methods for hunting and fishing in the state.

New §65.13, concerning Firearms, specifies lawful devices for the taking of game animals and game birds.

New §65.15, concerning Archery, sets out specific provisions for hunting by means of archery, specifies that archery hunting is not permitted during a special muzzleloader-only antlerless deer season, and prohibits the use of arrows treated with poisons, drugs, or explosives for hunting any species of wildlife resource.

New §65.17, concerning Hunting from Vehicle, addresses hunting from vehicles and refines the prohibition against taking pheasants by means of certain devices.

New §65.19, concerning Hunting Deer with Dogs, delineates the regulations with respect to the use of dogs in the hunting of deer.

New §65.21, concerning Falconry, sets out the provisions for hunting with raptors.

New §65.23, concerning Calling Devices, prohibits the use of electronic or amplified calling devices.

New §65.25, concerning Nuisance Squirrels, provides for the trapping and release of nuisance squirrels.

New §65.26, concerning Antlerless and Spike-Buck Deer Harvest Systems, delineates the three antlerless deer harvest and permitting systems, and makes minor housekeeping changes.

New §65.27, concerning Permits, delineates the necessary permits for the taking of antlerless mule deer, pronghorn antelope, elk, and antlerless white-tailed deer.

New §65.28, concerning Managed Lands Buck Permits, specifies the requirements for the taking of buck deer on managed lands.

New §65.29, concerning Pronghorn Antelope Permits, sets out the conditions for the harvesting of pronghorn antelope.

New §65.31, concerning Antlerless Mule Deer Permits, sets out the conditions under which the department may issue permits for the taking of antlerless mule deer.

New §65.32, concerning Mandatory Deer Check Stations, stipulates the procedures to be followed in counties where the department has established mandatory deer check stations.

New §65.33, concerning Elk, stipulates the conditions under which elk may be harvested.

New §65.34, concerning Migratory Game Birds, addresses the taking of migratory game bird species.

New §65.36, concerning Fur-bearing Animals, addresses the taking of fur-bearing animals.

New §65.37, concerning Alligators, addresses the taking of alligators.

New §65.38, concerning Open Seasons and Bag Limits for Game Animals, specifies the various sections of the subchapter relating to specific game animals.

New §§65.40, 65.42, 65.44, 65.46, 65.48, 65.50, 65.52, 65.54, 65.56, 65. 58, 65.60, 65.62, 65.64, and 65.66 set the open seasons, bag limits, and means and methods for the taking of pronghorn antelope, deer, javelina, squirrel, desert bighorn sheep, elk, aoudad sheep, game birds, prairie chicken, partridge, pheasant, quail, turkey, and chachalaca, respectively.

In new §65.42, concerning Deer: White-tailed and Mule Deer, the mandatory deer check

stations in Hopkins and Hunt counties are removed; in Borden County, antlerless deer may be taken during the first six days of the season or by WHHAR permit; Hansford County will have an open archery and general season; Kaufman County will have an open general season; Kinney, Medina, Uvalde (south of US Highway 90) and Val Verde (both south of US 90 and east of Spur 239/277S) counties will have a five-deer bag limit (no more than three bucks); and Collingsworth County will have an open archery and general season for mule deer.

In new §65.64, concerning Turkey, the spring season will be opened in Fayette and Lee counties; the bag composition in Val Verde County (both south of US Highway 90 and east of Spur 239/277S) will change to four turkeys, either sex; and in Brooks, Kenedy and Kleberg counties the closing date of the fall season will be extended to the last Sunday in February.

New §65 71, concerning Community Fishing Lakes and Reservoir Boundaries, designates community fishing lakes.

New §65.72, concerning Fish, specifies fees for Red Drum Tags; that the holder of an Exempt Red Drum Tag is prohibited from simultaneously possessing both that tag and a Bonus Red Drum Tag; specifies that holders of an Exempt Red Drum Tag are subject to the special regulations regarding possession of red drum over the stated maximum size limit; changes the daily bag limit, possession limit, and minimum size limit for snook; specifies that game and non-game fish may be taken only by pole and line in community fishing lakes and in reservoirs or sections of rivers within state parks; allows, under certain conditions, up to 1,200 live non-game fish not regulated by bag or size limits to be retained aboard a licensed commercial bait shrimp vessel; standardizes daily bag limits for all largemouth bass length limit exceptions, the minimum length and daily bag limit on Braunig Reservoir, the minimum length limit on Champion Creek Reservoir, and establishes length and bag limits on 90-acre Lake on the Calliham Unit of Choke Canyon State Park; changes minimum length limit for striped bass on the Red River from Denison Dam to Shawnee Creek; changes the minimum length for white bass on the Colorado River and its major tributaries from Lake Travis to the US Highway 190 bridge, on Georgetown and Canyon reservoirs, and on Lake Limestone and the Navasota River from Lake Mexia to Fort Parker State Park Lake; changes the statewide minimum length limit for channel and blue catfish, eliminates exceptions on reservoirs with a 14-inch minimum length limit and 15-fish bag limit, 14-inch/five-fish limit, and 12-inch/three-fish limit; changes statewide minimum length limit for flathead catfish, with an exception; and changes the daily bag limit for both white and black crappie on Choke Canyon Reservoir.

New §65.78, concerning Crabs, specifies the bag, possession, and size limits, and the means and methods for taking crab.

New §65.82, concerning Other Aquatic Life, sets out stipulations regarding the taking of turtles and their eggs, porpoises, dolphins, whales, and other aquatic species not specifically addressed by this subchapter.

New §65.90, concerning Effective Date, specifies the effective date of the subchapter.

New §65.91, concerning Penalty for Violation, addresses penalties for violations of the provisions of the subchapter.

Dr. Bill Harvey, regulatory coordinator, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections

Dr. Harvey 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 are recreational taking of game and fish species consistent with populations of these species. There will be minimal effects on small businesses. It is anticipated there will be no economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposed new rules may be submitted to Robert Macdonald, Wildlife Regulations Coordinator, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4775.

## General Provisions

- **31 TAC §§65.1, 65.3, 65.5, 65.9, 65.11, 65.13, 65.15, 65.17, 65.19, 65.21, 65.23, 65.25-65.29, 65.31-65.34, 65.36, 65.37**

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

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

*§65.1. Application.*

(a) This subchapter applies to all of the wildlife resources (except migratory game birds, shrimp, freshwater mussels, and oysters, and as may be noted in the following sections) in the counties of Texas.

(b) This chapter also applies to fish, crabs, and other aquatic life caught in the Exclusive Economic Zone (EEZ) and landed in this state, under the authority of the Parks and Wildlife Code, §47.019 (Federal Law also regulates species managed under a Federal Fishery Management Plan).

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

Agent-A person named in the application for antlerless permits or antlerless deer control permits by the landowner to act on behalf of the landowner for purposes of the wildlife management plan, LAMPS recommendation or Wildlife Habitat and Harvest Annual Recommendation (WHHAR).

Antlerless deer-A deer having no hardened antler protruding through the skin.

Antlerless and Spike-Buck Deer Control Permit-Permits that when attached to an antlerless or spike-buck white-tailed deer legally harvested under a wildlife management plan (see §65.26(3) of this title (relating to Antlerless Deer Harvest Systems)) allow the carcass to be possessed without the hunting license white-tailed deer tag attached.

Antlerless Deer Permit-A permit issued by the department under the provisions of a Wildlife Habitat and Harvest Annual Recommendation (WHHAR) or Landowner Assisted Management Permit System (LAMPS) that allows the taking of one antlerless deer.

Automatic firearm or fully automatic firearm-Any firearm that is capable of firing more than one cartridge in succession by a single pull or function of the trigger.

Bait-Something used to lure aquatic animal life.

Baited area-Any area where shelled, shucked or unshucked corn, wheat, or other grain, salt, or other feed is distributed so as to constitute for eastern turkey a lure, attraction or enticement to, on, or over any area where hunters are taking or attempting to take eastern turkeys.

Baiting for eastern turkey-The placing, exposing, depositing, distributing, or scattering of shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed so as to constitute for eastern turkey a lure, attraction or enticement to, on, or over any areas where hunters are attempting to take eastern turkeys

Bearded hen-A female turkey possessing a clearly visible beard protruding through the feathers of the breast.

Bow-Includes the longbow, recurved bow, or compound bow that is hand-held and hand-drawn, and that has no mechanical device built into, or attached to, that will enable the archer to lock the bow at full or partial draw. Other than energy stored by the hand-held, hand-drawn bow, no device to propel the arrow will be permitted.

Buck deer-A deer having a hardened antler protruding through the skin.

Cast net-A net which can be thrown or cast to drop over an area.

Chartered vessel (saltwater)-A boat or vessel whose captain or operator is licensed by the U.S. Coast Guard to carry paying passengers and whose passengers fish for a fee.

Chumming-To deposit into the water any fish, parts of fish, or other substances containing fish or fish parts, not attached to a hook and line, to attract fish or stimulate fish feeding activity.

Coastal waters boundary-For purposes of Texas Parks and Wildlife Code, Chapters 61 and 66, all public waters east and south of the following boundary are considered coastal waters: Beginning at the International Toll Bridge in Brownsville,

thence northward along U.S. Highway 77 to the junction of Paredes Lines Road (F.M. Road 1847) in Brownsville, thence northward along F.M. Road 1847 to the junction of F.M. Road 106 east of Rio Hondo, thence westward along F.M. Road 106 to the junction of F.M. Road 508 in Rio Hondo, thence northward along F.M. Road 508 to the junction of F.M. Road 1420, thence northward along F.M. Road 1420 to the junction of State Highway 186 east of Raymondville, thence westward along State Highway 186 to the junction of U.S. Highway 77 near Raymondville, thence northward along U.S. Highway 77 to the junction of F.M. Road 774 in Refugio, thence eastward along F.M. Road 774 to the junction of State Highway 35 south of Tivoli, thence northward along State Highway 35 to the junction of State Highway 185 between Bloomington and Seadrift, thence northwestward along State Highway 185 to the junction of F.M. Road 616 in Bloomington, thence northeastward along F.M. Road 616 to the junction of State Highway 35 east of Blessing, thence southward along State Highway 35 to the junction of F.M. Road 521 north of Palacios, thence northeastward along F.M. Road 521 to the junction of State Highway 36 south of Brazoria, thence northward along State Highway 36 to the junction of State Highway 332 in Brazoria, thence eastward along State Highway 332 to the junction of F.M. Road 2004 in Lake Jackson, thence northeastward along F.M. Road 2004 to the junction of Interstate Highway 45 between Dickinson and La Marque, thence northwestward along Interstate Highway 45 to the junction of Interstate Highway 610 in Houston, thence east and northward along Interstate Highway 610 to the junction of Interstate Highway 10 in Houston, thence eastward along Interstate Highway 10 to the junction of State Highway 73 in Winnie, thence eastward along State Highway 73 to the junction of U.S. Highway 287 in Port Arthur, thence northwestward along U.S. Highway 287 to the junction of Interstate Highway 10 in Beaumont, thence eastward along Interstate Highway 10 to the Louisiana State Line. The public waters north of the dam on Lake Anahuac in Chambers County; north and west of the junction of the north and south forks of the Guadalupe River in Calhoun and Refugio counties; the waters of Taylor Bayou and Big Hill Bayou inland from the saltwater locks on Taylor Bayou in Jefferson County; the Galveston County Reservoir on State Highway 146 in Galveston County; Lakeview City Park Lake in Corpus Christi; Lake Burke-Crenshaw in Pasadena; Galveston County Reservoir in Galveston County; Galveston State Park ponds #1-7 in Galveston County; Lake Nassau in Harris County; Fort Brown Resaca in Cameron County; Resaca de la Guerra in Cameron County; Resaca de la Palma in Cameron County; Resaca de los Cuates in Cameron County, Resaca de los Fresnos in Cameron County; Resaca Rancho Viejo in Cameron County; and Town Resaca in Cameron County are not considered coastal waters for purposes of this subchapter.

Crab line-A baited line with no hook or pole attached.

Crab measurements-Blue crabs are measured across the widest point of the body from tip of spine to tip of spine. Stone crab claws are measured by the propodus length which is that distance from the tip of the immovable claw finger to the first joint behind the claw.

Daily bag limit-The quantity of a species of game that may be taken in one day (Parks and Wildlife Code, §61.005(5)).

Day-With respect to the daily bag limit, that period of time that begins at midnight and ends at midnight.

Deer Management Plan-A written document provided to the landowner or agent and approved by a department biologist after an investigation is completed on a tract of land.

Dip net-A mesh bag suspended from a frame attached to a handle

Final destination for fish-A place either on the mainland, a peninsula, or barrier island where a fisherman finally lands his catch and does not further transport his fish by boat. Final destination does not include jetties or piers.

Final destination for all other wildlife resources-The permanent residence of the person possessing or receiving the wildlife resource, or a part of the wildlife resource, or a commercial processing plant after the carcass of the wildlife resource has been finally processed

Fish-

(A) Game fish-Blue catfish, blue marlin, broadbill swordfish, brown trout, channel catfish, cobia, crappie (black and white), flathead catfish, Guadalupe bass, king mackerel, largemouth bass, longbill spearfish, pickerel, red drum, rainbow trout, sailfish, sauger, sharks, smallmouth bass, snook, Spanish mackerel, spotted bass, spotted seatrout, striped bass, tarpon, wahoo, walleye, white bass, white marlin, yellow bass, and hybrids or subspecies of the species listed in this subparagraph.

(B) Non-game fish (rough fish and bait fish)-All species not listed as game fish, except endangered and threatened fish, which are defined and regulated under separate proclamations.

Fishing-Taking or attempting to take aquatic animal life by any means.

Fish length-The total length, which is that straight-line distance measured perpendicularly from the tip of the snout to the extreme tip of the tail (caudal fin) when the tail is squeezed together or rotated to produce the maximum overall length while the fish is lying on its side with the jaw closed.

Fish species names-The names of fishes are those prescribed by the American Fisheries Society in the most recent edition of "A List of Common and Scientific Names of Fishes of The United States and Canada. "

Fly fishing-The use of artificial wet or dry flies as a lure. Wet or dry flies are defined as lures which have a body of either synthetic or natural materials (such as foam, cork, yarn, sponge, chenille, hair, metallic tinsel or feathers) and the fly, main fishing line, or leader do not have attached any devices such as spinners, springs, or beads other than split shot or flat lead attached directly to the main line or leader for weight.

Gaff-Any hand-held pole with a hook attached.

Game animals-

(A) Mule deer, white-tailed deer, pronghorn antelope, desert bighorn sheep, gray or cat squirrels, fox squirrels or red squirrels, and collared peccary or javelina (Texas Parks and Wildlife Code, §63.001);

(B) In Armstrong, Briscoe, Donley, Floyd, Hall, Motley, Randall, and Swisher counties only, aoudad sheep are game animals (Texas Parks and Wildlife Code, §63.001);

(C) In Brewster, Culberson, Dallam, Deaf Smith, El Paso, Hartley, Hudspeth, Jeff Davis, Moore, Oldham, Pecos, Potter, Presidio, Reeves, and Terrell counties wild elk are game animals (Texas Parks and Wildlife Code, §63.001).

Game birds-Wild turkey, wild ducks of all varieties, wild geese of all varieties, wild brant, wild grouse, wild prairie chickens, wild pheasants of all varieties, wild partridge, wild bobwhite quail, wild scaled quail, wild Mearns' quail, wild Gambel's quail, wild red-billed pigeons, wild band-tailed pigeons, wild mourning doves, wild white-winged doves, wild white-fronted doves, wild snipe of all varieties, wild shore birds of all varieties, chachalacas, wild plover of all varieties, and wild sandhill cranes (Parks and Wildlife Code, §64.001).

Gear tag-A tag constructed of material as durable as the device to which it is attached. The gear tag must be legible and contain the name and address of the person using the device and the date the device was set out.

Gig-Any hand-held shaft with single or multiple points, barbed or barbless.

Gill net-A single wall of webbing held vertically in the water by a line with weights and a line with floats.

Grabble-To take or attempt to take fish with the hand.

Headboat-A vessel in saltwater that carries seven or more persons who fish for a fee.

Hoop net-A net distended by a series of hoops or frames, covered by nonmetallic netting.

Hunt-Includes take, kill, pursue, trap, and the attempt to take, kill, or trap (Parks and Wildlife Code, §61.005(1)).

Jug line-A fishing line with five or less hooks tied to a free-floating device.

LAMPS Annual Recommendation-An evaluation of the deer population and deer habitat on a tract of land derived from data collected by the landowner, provided to the department on a LAMPS application or LAMPS hunter harvest form and reviewed by the department to determine an allowable issuance of LAMPS antlerless deer permits.

LAMPS Antlerless Deer Permit-A permit issued by the department under the provisions of a LAMPS annual recommendation that allows the taking of one antlerless deer.

Migratory game birds-Wild ducks of all species, wild geese and wild brant of all species, wild coot, wild rail, wild gallinules, wild plovers, Wilson's snipe or jacksnipe, woodcock, mourning doves, white-winged doves, white-tipped (white-fronted) doves, red-billed pigeons, band-tailed pigeons, shorebirds of all varieties, and sandhill cranes (Parks and Wildlife Code, §64.021(1)).

Monofilament-A single synthetic filament.

Muzzleloader-Any firearm that is loaded only through the muzzle using black powder or Pyrodex and separate projectile(s) and is ignited by a flint or percussion mechanism.

Natural bait (saltwater)-A whole or cut-up portion of a fish or shellfish or a whole or cut-up portion of plant material in its natural state, provided that none of these may be altered beyond cutting into portions.

Noodling pole-A length of pole constructed of wood, metal, fiberglass or other material whether hollow or solid, with a hook attached and used to snag or foul-hook fish.

Per license year-The period of time for which a hunting license is valid, whether or not the taking of wildlife is permitted in one or more periods during this time.

Pole and line-A line with hook, attached to a pole. This gear includes rod and reel.

Purse seine (net)-A net with flotation on the corkline adequate to support the net in open water without touching bottom, with a rope or wire cable strung through rings attached along the bottom edge to close the bottom of the net.

Possession limit-The maximum number of a species of game, fish, or other animals that may be possessed at one time.

Sail line-A type of trotline with one end of the main line fixed on the shore, the other end of the main line attached to a wind-powered floating device or sail.

Seine-A section of non-metallic mesh webbing, the top edge buoyed upwards by a floatline and the bottom edge weighted.

Silencer or sound-suppressing device-Any device that reduces the normal noise level created when the firearm is discharged or fired.

Snagging or jerking fish-A method of taking fish with one or more hooks attached to a line or artificial lure used in a manner to foul-hook a fish. A fish is foul-hooked when caught by a hook in an area other than the fish's mouth.

Spear-Any shaft with single or multiple points, barbed or barbless, which may be propelled by any means, but does not include arrows.

Spear gun-Any hand-operated device designed and used for propelling a spear, but does not include the crossbow.

Spike-buck deer-A deer having a hardened antler or antlers protruding through the surface of the skin with no antler having a fork or branching point.

Texas Parks and Wildlife Department or department-As the context requires, the Parks and Wildlife Department, or a specifically authorized employee of the department.

Throwline-A fishing line with five or less hooks and with one end attached to a permanent fixture. Components of a throwline may also include swivels, snaps, rubber and rigid support structures.

Trammel net-A net consisting of three walls of webbing suspended from a float line and attached to a single lead line.

Trap-A rigid device of various designs and dimensions used to entrap aquatic organisms.

Trawl-A bag-shaped net which is dragged along the bottom or through the water to catch fish or other aquatic organisms.

Trotline-A nonmetallic main fishing line with more than five hooks attached and with each end attached to a fixture.

Umbrella net-A non-metallic mesh net that is suspended horizontally in the water by multiple lines attached to a rigid frame.

Upstream boundary of Sam Rayburn Reservoir on the Angelina River-The Texas Eastern Transmission Company pipeline.

Wildlife Habitat and Harvest Annual Recommendation (WHHAR) -A written document provided to the landowner or landowner's agent and approved by a department biologist after an on-site evaluation is made of the deer population and deer habitat on a tract of land.

WHHAR Antlerless Deer Permit-A permit issued by the department under the provisions of a Wildlife Habitat and Harvest Annual Recommendation (WHHAR) that allows the taking of one antlerless deer.

Wildlife Management Plan-A written document provided to the landowner or landowner's agent and approved by a department biologist of at least a CS VI level following an evaluation of wildlife habitat and populations.

Wildlife resources-All game animals, game birds, marine animals, fish, and other aquatic life (Texas Parks and Wildlife Code, §61. 005(2)).

Wounded deer-A deer leaving a blood trail.

*§65.5. Importation of a Wildlife Resource.*

(a) For definition of wildlife resource see §65.3 of this title (relating to Definitions).

(b) No person may import or possess a wildlife resource taken in another state or country without a verification document if the wildlife resource falls within one of the following categories:

(1) the wildlife resource is required to be tagged in this state;

(2) the number of wildlife resources possessed exceeds the possession limit established by this state; or

(3) the minimum and maximum size limits of the wildlife resource do not comply with those limits established by this state.

(c) A separate verification document must be completed for each species. The verification document must be legible and include the following information:

(1) the out-of-state license number or license number from country where the wildlife resource was taken;

(2) the number and the species name of wildlife resource possessed;

(3) the location where wildlife resource was taken (nearest town, county, parish, name of area such as landowner name, public hunting area name); and

(4) the signature, printed name, address, and telephone number of person verifying where wildlife resource was taken.

(d) In lieu of the verification document, a tag or permit required by another state or country to be attached to the wildlife resource is sufficient if it contains the information required in this section.

*§65.9. Open Seasons: General Rules.*

(a) Open seasons are given by their opening and closing dates, and include all days between the opening and closing dates.

(b) There is no open season on game animals or game birds on state game preserves, statutory wildlife sanctuaries,

United States wildlife refuges, and on public roads and highways, or rights-of-way of such public roads and highways, and in the state-owned riverbeds in Dimmit, Uvalde, and Zavala counties, including but not limited to the Nueces and Frio rivers.

(c) There shall be an open season on fish, game animals, and game birds on national wildlife refuges as may be provided by the state and federal laws, or rules and regulations.

(d) Seasons are closed during the hours between 1/2 hour after sunset and 1/2 hour before sunrise, except on fish.

(e) It is unlawful to take, attempt to take, or possess any of the wildlife resources except during the open season as provided in these sections.

(f) In counties where only bearded turkey (gobblers or bearded hens) are legal, the beard shall remain on the turkey until it reaches its final destination and is fully processed.

(g) It is unlawful for a person who kills a deer to fail to keep the head of the deer with the carcass or part of the carcass until it reaches the final destination. In lieu of the head, the person who killed the deer may obtain a receipt from a taxidermist for the head, or a statement from the landowner or the landowner's authorized agent containing the following information:

(1) the name of person who killed the deer;

(2) the date the deer was killed; and

(3) whether the deer was antlered or antlerless.

(h) No antlerless deer permit will be required to possess an antlerless deer taken with lawful archery equipment (see §65.15 of this title (relating to Archery)) during the archery-only open season.

(i) Every game bird or game animal wounded by hunting and reduced to possession by the hunter must be killed immediately and become a part of the daily bag limit.

(j) Each game bird, game animal, and fish taken or possessed in violation of these sections shall constitute a separate offense (Parks and Wildlife Code, §12. 409).

(k) The taking or shooting of turkey from a roost is unlawful.

(l) It is unlawful for any person to possess a pronghorn antelope or any part of a pronghorn antelope without the unskinned head, the pronghorn antelope permit, or a receipt from a taxidermist for the head accompanying the pronghorn antelope or parts of the pronghorn antelope until the pronghorn antelope has been delivered to its final destination and is fully processed.

(m) A person may give, leave, receive, or possess any species of legally taken wildlife resource, or a part of the resource, that is required to have a tag or permit attached or is protected by a bag or possession limit, if the carcass or a part of a carcass is tagged with a hunter's document by the person who killed or caught the wildlife resource, except a hunter's document is not required for a complete carcass of an antlerless white-tailed deer if an Antlerless Deer Control Permit is attached. The hunter's document shall accompany the carcass or a part of the carcass until reaching final destination and the document must contain the following information:

(1) the name and address of the person who killed or caught the resource;

(2) the name of the person receiving the resource;

(3) a description of the resource (number and type of species or parts);

(4) the date resource was killed or caught; and

(5) the location where the resource was killed or caught (name of ranch; area; lake, bay or stream; and county). It is a defense to prosecution if the person receiving the wildlife resource does not exceed any possession limit or possess a wildlife resource or a part of a wildlife resource that is required to be tagged if the wildlife resource or part of the wildlife resource is tagged.

*§65.11. Means and Methods.* It is unlawful to hunt or fish for any of the wildlife resources of this state, except by the means and methods authorized by this section; §65.13 of this title (relating to Firearms); §65.15 of this title (relating to Archery); §65.17 of this title (relating to Hunting from Vehicle); §65.19 of this title (relating to Hunting Deer with Dogs); §65.21 of this title (relating to Falconry); §65. 23 of this title (relating to Calling Devices); §65.25 of this title (relating to Nuisance Squirrels); §65.72 of this title (relating to Fish); §65.78 of this title (relating to Crabs); and §65.82 of this title (relating to Other Aquatic Life).

*§65.13. Firearms.*

(a) It is lawful to shoot game animals and game birds with a rifle, shotgun, or other legal firearm including muzzleloading weapons, except it is unlawful to shoot:

(1) prairie chickens with a rifle;

(2) migratory game birds with any firearm other than a shotgun; and

(3) turkey gobblers during spring gobbler season in Red River County with any firearm other than a shotgun.

(b) It is unlawful to use rimfire ammunition or a jet gun or rocket gun in taking or shooting, or attempting to take or shoot deer, elk, antelope, desert bighorn sheep, or aoudad sheep in Armstrong, Briscoe, Donley, Floyd, Hall, Motley, Randall, and Swisher counties.

(c) It is unlawful to hunt with a broadhead hunting point while in possession of a firearm during the archery-only seasons.

(d) It is unlawful to hunt game animals or game birds with automatic or fully automatic firearm or any firearm equipped with a silencer or sound-suppressing device.

(e) It is unlawful to use a muzzleloader smaller than .45-caliber during the muzzleloader-only deer season.

*§65.15. Archery.*

(a) It is lawful to hunt any game bird or game animal during specified open seasons for those species with a bow and arrow, except during a special muzzleloader-only antlerless deer season.

(b) Arrows that are treated with poisons, or drugs, or that contain explosives are not lawful devices for hunting any species of wildlife resource in this state.

(c) While hunting turkey and all game animals other than squirrels:

(1) the bow must have a minimum peak draw weight of 40 pounds; and

(2) the arrow must be equipped with a broadhead hunting point at least 7/8-inch in width upon impact, with a minimum of two cutting edges. The width must be demonstrable.

(d) Except as provided in subsection (e) of this section it is unlawful to use a crossbow at any time to hunt a wildlife resource as defined in this subchapter.

(e) Persons having an upper-limb handicap may use a crossbow to hunt deer and turkey during the archery-only open season, provided:

(1) no telescopic sight is attached to the crossbow;

(2) the crossbow has a minimum of 125 pounds of pull;

(3) the crossbow has a mechanical safety;

(4) the crossbow stock is not less than 25 inches in length; and

(5) the bolt conforms with subsections (a) and (b)(2) of this section.

(f) An "upper-limb handicapped person" is a person that has a permanent loss of the use of fingers, hand or arm in a manner that renders the person incapable of

using a longbow, compound bow or recurved bow. While hunting deer and turkey with a crossbow, persons handicapped in this manner must have in their immediate possession a physician's statement certifying the extent of the disability.

*§65.17. Hunting from Vehicle.*

(a) Regulations concerning hunting from vehicles are prescribed by the Parks and Wildlife Code, §62.003.

(b) It is unlawful to hunt pheasant with the aid of a cable, chain, rope, or other device connected to or between a moving object or objects.

*§65.19. Hunting Deer with Dogs.*

(a) It is unlawful to use a dog or dogs in hunting, pursuing, or taking deer in all counties.

(b) It is lawful to use not more than two dogs in trailing a wounded deer in all counties, except in Angelina, Bowie, Camp, Fannin, Franklin, Hardin, Harris, Harrison, Houston, Hunt, Jasper, Jefferson, Lamar, Liberty, Montgomery, Morris, Nacogdoches, Newton, Orange, Panola, Polk, Red River, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Titus, Trinity, Tyler, Walker, Washington, and Wood counties, where dogs shall not be used to trail wounded deer.

*§65.21. Falconry.*

(a) It is lawful to hunt and take any game bird (except Attwater's prairie chickens and migratory game birds) or game animal by means of falconry, but the hunting or taking is limited to persons holding valid permits issued by the department.

(b) It is lawful to take game bird wildlife resources during the period from September 1 to March 1 of each year. Game animal wildlife resources may be taken only during the regular open seasons as provided.

(c) The daily bag limit for game bird wildlife resources is one, either sex, per raptor and the possession limit is two, either sex, per raptor. The daily bag and possession limits for game animal wildlife resources is as provided under the regular seasons, bag, and possession limits for those resources.

(d) No person may possess a firearm or archery equipment or be accompanied by a person possessing a firearm or archery equipment while hunting by means of falconry.

*§65.23. Calling Devices.* It is unlawful to use recorded or electrically amplified calling devices to attract game animals and game birds.

*§65.25. Nuisance Squirrels.*

(a) Squirrels causing damage to personal property may be live-trapped, transported and released by the landowner or his agent, if local ordinances prohibit the use of the means and methods provided by §65.11 of this title (relating to Means and Methods).

(b) A permit, issued by the department, must be obtained by the landowner or his agent prior to trapping operations.

(c) The permit is valid for 30 days from the date of issuance.

(d) A report, listing the number of squirrels captured and released, the date and location of capture, and the date and location of release must be submitted to the department not later than ten days following the expiration date of the permit.

(e) Squirrels may not be released on property without the landowner's permission.

(f) Personnel of the Texas Animal Damage Control Program (Animal Plant Health Inspection Service-U.S. Department of Agriculture) may take squirrels without a permit in those areas specified by subsection (a) of this section in the fulfillment of their responsibility mandated by state laws. Squirrels taken pursuant to subsection (f) of this section must be accounted for in a report filed with the department by January 31 following the year of handling.

(g) Each device must be imprinted or tagged with owner's name, street address, city, telephone number, and the date it was set out.

*§65.26. Antlerless and Spike-Buck Deer Harvest Systems.* Antlerless and Spike-Buck Deer Harvest Systems, as they apply to §65. 42 of this title (relating to Deer: White-tailed and Mule Deer), are the three antlerless deer harvest and permitting systems as provided in this section.

(1) Wildlife Habitat and Harvest Annual Recommendation (WHHAR).

(A) A WHHAR, (see §65.3 of this title (relating to Definitions)) shall include:

(i) measurements of density, production, and sex composition of the deer population present on the property;

(ii) measurements of the number, sex, and where possible, age of the deer harvested from the property;

(iii) evaluation and appraisal of habitats determined by Texas Parks and Wildlife Department to be of significance to deer;

(iv) the number of hunters on the property and the number of days that they hunted; and

(v) descriptions of land management practices occurring on the property.

(B) A WHHAR shall specify the number of antlered and/or antlerless deer to be harvested from a given tract of land.

(C) A WHHAR, except under the provisions of subparagraphs (E) and (F) of this paragraph, shall require each antlerless deer taken to be tagged with a WHHAR antlerless deer permit that is issued by the landowner.

(D) A WHHAR will not be valid without the signature of a Wildlife Division staff member indicating the recommendation has been approved. A WHHAR shall be valid for one year following the date of signature by the Wildlife Division staff member.

(E) No WHHAR antlerless deer permit is required for a mule deer or white-tailed deer legally killed with lawful archery equipment (see §65.15 of this title (relating to Archery)) during the archery-only open season (§65.42(2) and (4) of this title).

(F) No WHHAR antlerless deer permit is required for deer legally taken during white-tailed deer general open seasons (§65.42(1) and (3) of this title) and the special (South Texas) late season, when regulations provide that antlerless white-tailed deer may be taken for the entire general open season without an antlerless deer permit.

(G) All deer taken under a WHHAR must be tagged with the appropriate tag from a valid hunting license.

(H) The bag limit for hunters on a property under a WHHAR shall be the same as established by the commission for the county or counties in which the property lies.

(I) It is unlawful to falsify ownership of land or amount of acreage owned or leased when applying for WHHAR antlerless deer permits.

(J) It is unlawful for a landowner or landowner's agent to issue a WHHAR antlerless deer permit to a hunter to hunt on a tract of land other than the

designated tract for which the permit was issued.

(K) The landowners or landowner's agents shall issue permits to individual hunters before the hunter begins hunting on the designated tract of land.

(L) It is unlawful for a hunter to use a WHHAR antlerless deer permit on a tract of land other than the designated tract for which the permit was issued.

(M) The WHHAR antlerless deer permit must be immediately filled out in a legible manner and attached to each antlerless deer taken, and shall remain attached until the carcass has reached its final destination and has been finally processed.

(N) The WHHAR antlerless deer permit will not be valid unless the date of kill, the hunter's name and the signature of the owner or agent on whose tract the deer was killed are legibly printed on the permit.

(2) Landowner Assisted Management Permit System (LAMPS).

(A) A LAMPS annual recommendation (see §65.3 of this title), shall include:

(i) estimates of deer density, production, and sex composition of the deer population present on the property;

(ii) estimates of the number, sex, and where possible, age of the deer harvested from the property;

(iii) a listing of acreages of habitats determined by Texas Parks and Wildlife Department to be of significance to white-tailed deer;

(iv) the number of hunters on the property and the number of days that they hunted; and

(v) descriptions of land management practices occurring on the property.

(B) A LAMPS annual recommendation shall specify the number of antlerless deer to be harvested from a given tract of land.

(C) A LAMPS annual recommendation, except as provided in subparagraph (D) of this paragraph, shall require each antlerless deer taken to be tagged with a LAMPS antlerless deer permit.

(D) No LAMPS antlerless deer permit is required for a deer legally killed with lawful archery equipment (see §65.15 of this title) during the archery-only open season (§65.42(2) and (4) of this title).

(E) No LAMPS antlerless deer permit is valid unless it has been issued, used, and possessed in accordance with this section.

(F) All antlerless deer taken under a LAMPS annual recommendation during the general season must be tagged immediately upon kill with the appropriate hunting license tag and the LAMPS antlerless deer permit, and both shall remain attached until the carcass has reached its final destination and has been finally processed.

(G) The bag limit for individual hunters on a property under LAMPS will be the same as established by the commission for the county or counties in which the property lies.

(H) It is unlawful to falsify ownership of land or amount of acreage owned or leased when applying for LAMPS antlerless deer permits.

(I) It is unlawful for a landowner or landowner's agent to issue a LAMPS antlerless deer permit to a hunter to hunt on a tract of land other than the designated tract for which the permit was issued.

(J) The landowners or landowner's agents shall issue permits to individual hunters before the hunter begins hunting on the designated tract.

(K) It is unlawful for a hunter to use a LAMPS antlerless deer permit on a tract of land other than the designated tract for which the permit was issued.

(L) The LAMPS antlerless deer permit will not be valid unless the date of kill, the hunter's name and the signature of the owner or agent on whose land the deer was killed are legibly printed on the permit.

(M) A LAMPS antlerless deer permit may not be issued when the total contiguous acreage described in the application is less than 200 acres.

(3) Wildlife Management Plan and Antlerless and Spike-Buck Deer Control Permits.

(A) A Wildlife Management Plan (see §65.3 of this title) shall include:

(i) measurements of density, production, and sex composition of the deer population present on the property; and

(ii) an evaluation and appraisal of carrying capacity of habitats determined by Texas Parks and Wildlife Department to be of significance to white-tailed deer and the threat of damage to deer habitat resulting from overpopulation of deer.

(B) A Wildlife Management Plan will not be valid without the signature of a Wildlife Division staff member indicating the plan has been reviewed and approved. Approved Wildlife Management Plans shall be valid for not more than one year following the date of signature by the Wildlife Division staff member.

(C) Antlerless or spike-buck deer control permits shall be issued to a landowner or landowner's agent designated on the application form for any parcel of land in any county of Texas shown to be threatened by overpopulation of deer.

(D) Antlerless and spike-buck deer control permits shall allow the taking of one antlerless or one spike-buck white-tailed deer and neither permit shall be used to take more than one deer.

(E) Antlerless and spike-buck deer control permits shall be issued only to the landowner or the landowner's agent.

(i) Antlerless and spike-buck deer control permits shall be issued only after the landowner or landowner's agent has made application for such permits to the department on a form prescribed by the department. The antlerless and spike-buck deer control permit application shall require, in part, the name, address and hunting license number of all agents who will be hunting antlerless and/or spike-buck white-tailed deer for control purposes under the wildlife management plan. The maximum number of agents allowed on one application for antlerless and spike-buck deer control permits shall not exceed one-tenth the number of antlerless deer recommended by the Wildlife Management Plan for harvest. The application shall not be accepted as complete without a department-approved Wildlife Management Plan. For the application to be considered, the wildlife management plan must recommend an antlerless harvest of greater than 20 antlerless deer and must be approved by a Texas Parks and Wildlife Department (TPWD) biologist classified not less than CS VI. Wildlife Management Plans shall be subject to departmental standards and guidelines.

(ii) The number of antlerless and spike-buck deer control permits to be issued shall be specified in the deer management plan following scientific studies that determine the number of antlerless and spike-buck deer to be harvested to lower the population in order to keep the population prudently within the carrying capacity of the habitat, thereby preventing overuse of habitat by deer. The antlerless and/or spike-buck deer control permit allocation may not be used solely as a means to alter sex ratios of deer herd on the managed property.

(iii) Antlerless and spike-buck deer control permits shall be issued only after the landowner or landowner's agent has paid to the department fees equaling $300.

(F) The antlerless and/or spike-buck white-tailed deer bag limit for each landowner or landowner's agent of the property described in the Wildlife Management Plan and Antlerless and Spike-buck Deer Control Permits (see §65. 26(3) of this title) shall not exceed 300 antlerless and/or spike-buck white-tailed deer.

(G) Antlerless and spike-buck deer control permits shall be valid only during lawful open deer seasons other than archery-only open deer seasons, within a one-year period from September 1 to the following August 31, and only during legal shooting hours as prescribed in §65.42 of this title and Texas Parks and Wildlife Code, §62.004 (relating to Hunting at Night).

(H) Deer taken with an antlerless or a spike-buck deer control permit shall be taken only from the property described in the Wildlife Management Plan.

(I) All edible parts of a deer taken under this section shall be kept in an edible condition in compliance with Texas Parks and Wildlife Code, §62.011 (Retrieval and Waste of Game).

(J) No person may possess the carcass of an antlerless or spike-buck white-tailed deer taken under a wildlife management plan at any time before the carcass has been delivered to the final destination unless there is attached to the carcass a properly executed antlerless or spike-buck deer control permit or a valid hunting license tag.

(K) It is unlawful to falsify ownership of land or amount of acreage owned or leased when applying for antlerless or spike-buck deer control permits.

(L) It is unlawful for any person to use an antlerless or a spike-buck deer control permit on a tract of land other than the designated tract for which the permit was issued.

(M) Antlerless and spike-buck deer control permits shall be filled out in a legible manner and immediately attached to the carcass upon kill and shall remain attached to the carcass until the carcass has been delivered to its final destination and is finally processed. No other tag shall be required to be attached to the carcass (Texas Parks and Wildlife Code, §42.018(c)).

(N) Antlerless and spike-buck deer control permits will not be valid unless the following information is legibly written in the proper places on it:

(i) date of kill;

(ii) the agent's name, address and hunting license number;

(iii) the landowner's name, landowner's ranch name, and location of the ranch; and

(iv) the signature of the owner or agent on whose tract the deer was killed, verifying that the permit was used in compliance with departmental regulations.

(O) An antlerless and spike-buck deer control permit harvest report form provided by the department shall be submitted to the department by the landowner or landowner's agent not later than the 14th day of February following the kill or of the year of issue and must contain the sex and date of kill for each deer tagged with a antlerless or a spike-buck deer control permit and the name, address, telephone number, and hunting license number of the landowner or landowner's agent.

*§65.27. Permits.*

(a) Except as may be otherwise provided in these rules, no person may hunt antlerless mule deer, pronghorn antelope, elk, or antlerless white-tailed deer in areas where permits are prescribed unless that person first procures a valid permit issued by the landowner or the landowner's agent. No additional antlerless white-tailed deer or spike-buck control permit is required for antlerless white-tailed deer except as specifically provided for in these rules.

(b) It is unlawful to use an antlerless mule deer, pronghorn antelope, elk, or antlerless white-tailed deer permit on more than one antlerless mule-deer, pronghorn antelope, elk, or antlerless white-tailed deer.

(c) No permit is required to hunt antlerless white-tailed deer on the Aransas National Wildlife Refuge in Aransas County, Laguna Atascosa National Wildlife Refuge in Cameron County, or Hagerman National Wildlife Refuge in Grayson County.

(d) No permit is valid unless it has been issued, used, properly executed, and possessed strictly in accordance with this section; §65.26 of this title (relating to Antlerless Deer and Spike-Buck Deer Harvest Systems); §65.29 of this title (relating to Pronghorn Antelope Permits), §65.31 of this title (relating to Antlerless Mule Deer Permits); and §65.33 of this title (relating to Elk Permits).

(e) No person may hunt or possess a spike-buck deer where spike-buck deer permits are required if not in possession of a spike-buck deer control permit.

*§65.28. Managed Lands Buck Permits.*

(a) No Managed Lands Buck Permit is valid unless it has been issued, used, properly executed, and possessed in accordance with this section.

(b) Managed Lands Buck Permits shall only be valid in counties with a one-buck bag limit and only on tracts of land where the landowner has an approved WHHAR (See §65.26(1) of this title (relating to Antlerless and Spike-Buck Deer Harvest Systems)) that specifies an antlered-buck harvest quota.

(c) All antlered deer taken on a tract of land for which Managed Lands Buck Permits have been issued shall be tagged with the Managed Lands Buck Permit. A valid Managed Lands Buck Hunting License Tag or a valid One-Buck County Hunting License Tag shall also be attached to the deer. Both shall remain attached until the carcass has reached its final destination and has been finally processed. Harvest of antlered deer within any open deer season, including archery-only open deer season, shall not exceed the number of Managed Lands Buck Permits issued for the tract of land.

(d) It is unlawful for a landowner or landowner's agent to issue a Managed Lands Buck Permit to a hunter to hunt on a tract of land other than the designated tract of land for which the permit was issued.

(e) The landowner or landowner's agent shall issue permits to individual hunters before the hunter begins hunting on the designated tract.

(f) It is unlawful for a hunter to use a Managed Lands Buck Permit to hunt on a tract of land other than the designated tract of land for which the permit was issued.

(g) The Managed Lands Buck Permit shall not be valid unless the date of kill, the hunter's name and the signature of the landowner or landowner's agent on whose tract of land the deer was killed are legibly printed on the permit.

*§65.29. Pronghorn Antelope Permits.*

(a) The department shall designate the number of pronghorn antelope to be harvested from a given tract of land, and shall issue a like number of permits to the owner or authorized agent of the tract.

(b) No person may hunt pronghorn antelope unless that person is carrying on his/her person a permit duly issued and signed by the landowner or the landowner's agent.

(c) It is unlawful to possess a pronghorn antelope which does not have attached to it a pronghorn antelope permit on which appear:

(1) the date of kill;

(2) the hunter's name; and

(3) the signature of the owner or agent of the tract on which the pronghorn antelope was killed.

*§65.31. Antlerless Mule Deer Permits.*

(a) In all counties where antlerless mule deer are to be harvested, the department may issue antlerless mule deer hunting permits, except where subsections (h) and (i) of this section apply, for designated tracts of land only to the landowners or their agents only after the owners or agents have applied in writing for the exact number of permits to be used on the designated tracts.

(b) It is unlawful to falsify ownership of land or amount of acreage owned or leased when applying for antlerless mule deer hunting permits.

(c) It is unlawful for a landowner or landowner's agent to issue an antlerless mule deer hunting perm.: to a hunter to hunt on a tract of land other than the designated tract of land for which the permit was issued.

(d) The owners or agents shall then issue permits to individual hunters before the hunter begins hunting on the designated tracts.

(e) It is unlawful for a person to possess an antlerless mule deer unless the person has been issued an antlerless mule deer hunting permit on which appear:

(1) the date of kill;

(2) the hunter's name; and

(3) the signature of the owner or agent on whose tract the mule deer was killed.

(f) It is unlawful for a hunter to use an antlerless mule deer hunting permit on a tract of land other than the designated tract of land for which the permit was issued.

(g) The permit must be attached to each antlerless mule deer taken, and shall remain attached until the mule deer has reached its final destination as defined in Texas Parks and Wildlife Code, §42.001(4).

(h) No anderless mule deer hunting permit is required for mule deer legally killed with lawful archery equipment (see §65.15 of this title (relating to Archery)) during the archery-only open season (§65.42(2) and (4) of this title (relating to Deer: White-tailed and Mule Deer)), when bag limits are designated as either sex.

(i) No antlerless mule deer hunting permit is required for mule deer legally taken during mule deer general open season (§65.42(3) of this title) when regulations provide that antlerless mule deer may be taken without an antlerless mule deer permit.

(j) No antlerless mule deer hunting permit is required for mule deer legally killed under the auspices of a WHHAR antlerless permit (§65.26(1) of this title).

*§65.32. Mandatory Deer Check Stations.*

(a) The department may establish deer check stations in any county of the state for the purpose of collecting biologic information on all deer taken in that county.

(b) The entire carcass, with head and hide attached, except that internal and sexual organs may be removed (field-dressed), of all deer taken in a county in which mandatory check stations have been established must be presented:

(1) to a designated check station agent within 24 hours of take;

(2) by the person, or legal guardian of the person, who killed the deer.

(c) Deer check stations shall be under the direction of an agent designated by the department. Agents shall:

(1) register each deer presented at a check station;

(2) issue a special possession tag, provided by the department, for each deer presented at a check station;

(3) maintain records as prescribed in the record book supplied by the department; and

(4) allow inspection of all deer check station records upon request of the department during normal working hours.

(d) A person who fails or refuses to comply with this section commits an offense and is in violation of this subchapter.

*§65.33. Elk Permits.*

(a) The department shall designate the number of elk to be harvested from a tract of land in Brewster, Culberson, Dallam, Deaf Smith, El Paso, Hartley, Hudspeth, Jeff Davis, Moore, Oldham, Pecos, Potter, Presidio, Reeves, and Terrell counties and shall issue a like number of permits to the owner or authorized agent of such tract.

(b) No person may hunt elk unless that person is carrying on his/her person a permit duly issued and signed by the landowner or the landowner's agent.

(c) It is unlawful to possess an elk taken in a county listed in subsection (a) of this section which does not have attached to it an elk permit on which appear:

(1) the date of kill;

(2) the hunter's name; and

(3) the signature of the owner or agent of the tract on which the elk was killed.

*§65.34. Migratory Game Birds.* The regulations for hunting migratory game birds are prescribed in the migratory game bird rules issued under the authority of Texas Parks and Wildlife Code, Chapter 64, Subchapter C.

*§65.36. Fur-bearing Animals.* Fur-bearing animal regulations are prescribed under the authority of Texas Parks and Wildlife Code, Chapter 71.

*§65.37. Alligators.* Alligator regulations are prescribed under the authority of Texas Parks and Wildlife Code, Chapter 65.

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

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

TRD-9501775

Paul M. Shinkawa
Acting General Counsel
Texas Parks and Wildlife Department

Proposed date of adoption: March 23, 1995

For further information, please call: (512) 389-4642

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## Seasons and Bag Limits-Hunting Provisions

### • 31 TAC §§65.38, 65.40, 65.42, 65.46, 65.48, 65.50, 65.52, 65.54, 65.56, 65.58, 65.60, 65.62, 65.64, 65.66

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

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

*§65.38. Open Seasons and Bag Limits for Game Animals.* It is unlawful to hunt a game animal at any time other than during the open seasons provided in §65.40 of this title (relating to Pronghorn Antelope: Open Seasons and Bag Limits); §65.42 of this title (relating to Deer: White-tailed and Mule Deer); §65.44 of this title (relating to Javelina: Open Seasons and Bag Limits); §65.46 of this title (relating to Squirrel: Open Seasons, Bag, and Possession Limits); §65.48 of this title (relating to Desert Bighorn Sheep); §65.50 of this title (relating to Elk: Open Seasons and Bag Limits); §65.52 of this title (relating to Aoudad Sheep: Open Seasons and Bag Limits) or to take more than the daily bag limits, or to have in possession a game animal taken at any time other than during the open season.

*§65.40 Pronghorn Antelope: Open Seasons and Bag Limits.* In all counties there is an open season for pronghorn antelope for nine consecutive days beginning the Saturday nearest October 1, and the bag limit is one pronghorn antelope per season by permit only.

*§65.42. Deer: White-tailed and Mule Deer.* Except as provided in §65 26(3) of this title (relating to Antlerless and Spike-Buck Deer Control Harvest Systems), no person may take more than the aggregate total of six deer per license year, of which no more than two may be mule deer, only one of which may be a buck mule deer; no more than three white-tailed buck deer, or more than six antlerless deer, both species combined.

(1) White-tailed deer: general open seasons, bag, and possession limits shall be as follows.

(A) In Bandera, Bexar, Blanco, Brewster, Brown, Burnet, Coke, Coleman, Comal, Concho, Crockett, Culberson, Edwards, Gillespie, Glasscock, Hays, Irion, Jeff Davis, Kendall, Kerr, Kimble, Kinney (only north of U.S. Highway 90), Llano, Mason, McCulloch, Medina (only north of U.S. Highway 90), Menard, Mills, Mitchell, Nolan, Pecos, Presidio, Reagan, Real, Reeves, Runnels, San Saba, Schleicher, Sterling, Sutton, Terrell, Tom Green, Travis, Upton (only in that southeastern portion located south of U.S. Highway 67 and east of State Highway 349), Uvalde (only north of U.S. Highway 90), and Val Verde (all that portion located north of U.S. Highway 90; and that portion located both south of U.S. 90 and west of Spur 239/277 S) counties, there is an open season for white-tailed deer.

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

(ii) Bag limit: Four white-tailed deer, no more than two bucks.

(iii) Antlerless white-tailed deer may be taken without an antlerless deer permit required by §65.27 of this title (relating to Permits).

(B) In Aransas, Atascosa, Bee, Calhoun, Cameron, Hidalgo, Live Oak, Nueces, Refugio, San Patricio, Starr, Val Verde (only in that southeastern portion located both south of U.S. Highway 90 and east of Spur 239/277S), and Willacy counties, there is an open season for white-tailed deer.

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

(ii) Bag limit: Four white-tailed deer, no more than two bucks.

(iii) Antlerless white-tailed deer may be taken without an antlerless deer permit required by §65.27 of this title.

(iv) Special (South Texas) Late Antlerless Deer Season: In the counties listed in subparagraphs (A) and (B) of this paragraph there is a special late antlerless and spike-buck only white-tailed deer season.

(I) Open season: 16 consecutive days starting with the first Saturday following the second Sunday in January.

(II) Bag limit:

(-a-) Four antlerless white-tailed deer in addition to the number of spike-buck deer authorized for take under a valid Wildlife Management Plan for Antlerless and Spike-Buck Deer Control Permits (§65.26(3) of this title) only. Antlerless white-tailed deer may be taken without an antlerless permit in compliance with clause (iii) of this subparagraph. The bag limit is not in addition to any other season bag limits.

(-b-) Spike-buck deer may be taken only by permit(s) issued under provisions of §65.26(3) of this title.

(C) In Brooks, Dimmit, Duval, Frio, Jim Hogg, Jim Wells, Kenedy, Kinney (only south of U. S. Highway 90), Kleberg, LaSalle, Maverick, McMullen, Medina (only south of U. S. Highway 90), Uvalde (only south of U. S. Highway 90), Val Verde (only in that southeastern portion located both south of U. S. Highway 90 and east of Spur 239/277S), Webb, Zapata, and Zavala counties, there is an open season for white-tailed deer.

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

(ii) Bag limit: Five white-tailed deer, no more than three bucks.

(iii) Antlerless white-tailed deer may be taken without an antlerless deer permit required by §65.27 of this title.

(iv) Special (South Texas) Late Antlerless Deer Season. In the counties listed in this subparagraph there is a special late antlerless and spike-buck only white-tailed deer season

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

(II) Bag limit:

(-a-) Five antlerless white-tailed deer in addition to the number of spike-buck deer authorized for take under a valid Wildlife Management Plan for Antlerless and Spike-Buck Deer Control Permits (§65.26(3) of this title) only. Antlerless white-tailed deer may be taken without an antlerless permit in compliance with clause (iii) of this subparagraph. The bag limit is not in addition to any other season bag limits.

(-b-) Spike-buck deer may be taken only by permit(s) issued under provisions of §65.26(3) of this title.

(D) No person may take or possess more than one white-tailed buck deer per license year from counties, in the aggregate, listed within this subparagraph, except that a second buck may be legally taken in a one-buck county if tagged with a Managed Lands Buck Permit issued in accordance with §65.28 of this title (relating to Managed Lands Buck Permits) and the Managed Lands Buck License Tag.

(i) In Bell, Bosque, Brazoria, Callahan, Comanche, Coryell, Eastland, Erath, Fort Bend, Goliad (south of

U.S. Highway 59), Grayson (only on the Hagerman National Wildlife Refuge), Hamilton, Howard, Jackson (south of U.S. Highway 59), Lampasas, Matagorda, McLennan (west of a line running along the Brazos River from the Bosque County line to its conjunction with IH-35 in Waco, then south along IH-35 to the Falls County line), Palo Pinto, Shackelford, Stephens, Taylor, Throckmorton, Victoria (south of U.S. Highway 59), Wharton (south of U. S. Highway 59), and Williamson counties, there is an open season for white-tailed deer.

(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 deer.

(III) Antlerless white-tailed deer may be taken without an antlerless deer permit required by §65.27 of this title.

(ii) In Angelina, Hardin, Jasper, Liberty (only in that northeastern portion located east of the Trinity River and north of U.S. Highway 90), Newton, Polk, and Tyler counties, there is an open season for white-tailed deer.

(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 deer.

(III) During the first 16 days of the season, antlerless deer may be taken without an antlerless deer permit unless LAMPS permits (see §65.26(2) of this title) have been issued for the tract of land. If LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. After the first 16 days, antlerless deer may be taken only by antlerless permits authorized under a WHHAR (§65.26(1)), LAMPS (§65.26(2)) or a Wildlife Management Plan for Antlerless and Spike-Buck Deer Control Permits (§65.26(3) of this title). On National Forest (except the Moore Plantation and Bannister WMA), Corps of Engineers, Sabine River Authority and Trinity River Authority lands, antlerless deer may be taken only by antlerless permits issued under a WHHAR (§65.26(1) of this title).

(iii) In Borden, Fisher (west of State Highway 70), Gray, Hemphill, Hood, Jack, Karnes, Kent (south of U.S. Highway 380), Lipscomb, Parker (west of a line along FM 51 beginning at the Wise County line southward to its junction with State Highway 171, then southward along State Highway 171 to the Hood County line), Scurry, Somervell, Wheeler, Wilson, and Young counties, there is an open season for white-tailed deer.

(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 deer.

(III) During the first six days of the general season, antlerless deer may be taken without an antlerless deer permit. After the first six days, antlerless deer may be taken only by antlerless permits authorized under a WHHAR or a Wildlife Management Plan for Antlerless and Spike-Buck Deer Control Permits (§65.26(1) and (3) of this title).

(iv) In Archer, Baylor, Clay, Cooke, Denton, Hill, Johnson, McClennan (east of the Brazos River and IH-35), Montague, Parker (east of a line along FM 51 beginning at the Wise County line southward to its junction with State Highway 171, thence southward on State Highway 171 to the Hood County line), Tarrant, and Wise counties, there is an open season for white-tailed deer.

(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 deer.

(III) During the first two days of the general season, antlerless deer may be taken without an antlerless deer permit. After the first two days, antlerless deer may be taken only by antlerless permits authorized under a WHHAR or a Wildlife Management Plan for Antlerless and Spike-Buck Deer Control Permits (§65.26(1) and (3) of this title).

(v) In Anderson, Bowie, Brazos, Burleson, Camp, Cass, Chambers, Cherokee, Colorado, Delta, Franklin, Freestone, Gregg, Grimes, Harris, Harrison, Hopkins, Houston, Jackson (north of U.S. Highway 59), Jefferson, Lamar, Lavaca, Leon, Liberty (in all that portion of the county located west of the Trinity River; and all that portion located south of U. S. Highway 90, Limestone, Madison, Marion, Montgomery, Morris, Navarro, Orange, Rains, Red River, Robertson, San Jacinto, Smith, Titus, Trinity, Upshur, Van Zandt, Walker, Wharton (north of U. S. Highway 59), and Wood counties, there is an open season for white-tailed deer.

(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 deer.

(III) Antlerless deer may be taken only by antlerless permits authorized under a WHHAR, LAMPS or a Wildlife Management Plan for Antlerless and Spike-Buck Deer Control Permits (§65.26(1) -(3) of this title).

(vi) In Hartley, Moore, Oldham and Potter counties, there is an open season for white-tailed deer.

(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 deer.

(III) Antlerless deer may be taken only by antlerless permits authorized under a WHHAR or a Wildlife Management Plan for Antlerless and Spike-Buck Deer Control Permits (§65.26(1) and (3) of this title).

(vii) In Hunt County, there is an open season for white-tailed deer.

(I) Open season: First Saturday in November for nine consecutive days.

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

(III) Antlerless deer may be taken only by antlerless permits authorized under a WHHAR or a Wildlife Management Plan for Antlerless and Spike-Buck Deer Control Permits (§65.26(1) and (3) of this title).

(viii) In Henderson County, there is an open season for white-tailed deer.

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

(II) Bag limit: Three white-tailed deer, no more than one buck and no more than two antlerless deer. Antlerless deer may be taken only by antlerless permits authorized under a WHHAR, LAMPS or a Wildlife Management Plan for Antlerless and Spike-Buck Deer Control Permits (§65.26(1)-(3) of this title).

(III) 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, shooting, or taking of deer is restricted to shotguns with buckshot or lawful archery equipment (see §65.15 of this title (relating to Archery)) and other game animals or game birds may be taken only with shotgun or lawful archery equipment.

(ix) In Nacogdoches, Panola, Rusk, Sabine, San Augustine and Shelby counties, there is an open season for white-tailed deer.

(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 deer.

(III) During the first two days of the season, antlerless deer may be taken without an antlerless deer permit unless LAMPS permits (§65.26(2) of this title) have been issued for the tract of land. If LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. After the first two days, antlerless deer may be taken only by permits for antlerless deer authorized under a WHHAR, LAMPS or a Wildlife Management Plan for Antlerless and Spike-Buck Deer Control Permits (§65.26(1)-(3) of this title). On National Forest (except Moore Plantation and Bannister WMA), Corps of Engineers, Sabine River Authority and Trinity River Authority lands, antlerless deer may be taken only by antlerless permits issued under a WHHAR (§65.26(1) of this title).

(x) In Armstrong, Austin, Bastrop, Briscoe, Caldwell, Carson, Childress, Collingsworth, Cottle, Crane, Crosby, DeWitt, Dickens, Donley, Ector, Ellis, Falls, Fannin, Fayette, Fisher (east of State Highway 70) , Floyd, Foard, Garza, Goliad (north of U.S. Highway 59), Gonzales, Guadalupe, Hall, Hansford, Hardeman, Haskell, Hutchinson, Jones, Kaufman, Kent (north of U.S. Highway 380), King, Knox, Lee, Loving, Midland, Milam, Motley, Ochiltree, Randall, Roberts, Stonewall, Swisher, Upton (all that portion located north of U.S. Highway 67; and in that area located south of U.S. Highway 67 and west of state highway 349), Victoria (north of U.S. Highway 59), Waller, Ward, Washington, Wichita and Wilbarger counties, there is an open season for white-tailed deer.

(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 deer.

(III) Antlerless deer may be taken only by antlerless permits authorized under a WHHAR or a Wildlife Management Plan for Antlerless and Spike-Buck Deer Control Permits (see §65.26(1) and (3) of this title).

(E) In Andrews, Bailey, Castro, Cochran, Collin, Dallam, Dallas, Dawson, Deaf Smith, El Paso, Gaines, Galveston, Grayson (except on the Hagerman National Wildlife Refuge), Hale, Hockley, Hudspeth, Lamb, Lubbock, Lynn, Martin, Parmer, Rockwall, Sherman, Terry, Winkler, and Yoakum counties, there is no general open season for white-tailed deer.

(2) White-tailed deer: archery-only open seasons, bag and possession limits shall be as follows.

(A) In Aransas, Atascosa, Bandera, Bee, Bexar, Blanco, Brewster, Brown, Burnet, Calhoun, Cameron, Coke, Coleman, Comal, Concho, Crockett, Culberson, Edwards, Gillespie, Glasscock, Hays, Hidalgo, Irion, Jeff Davis, Kendall, Kerr, Kimble, Kinney (only north of U. S. Highway 90), Live Oak, Llano, Mason, McCulloch, Medina (only north of U. S. Highway 90), Menard, Mills, Mitchell, Nolan, Nueces, Pecos, Presidio, Reagan, Real, Reeves, Refugio, Runnels, San Saba, San Patricio, Schleicher, Starr, Sterling, Sutton, Terrell, Tom Green, Travis, Upton (in that southeastern portion bounded on the north by U.S. Highway 67 and on the west by State Highway 349 that runs from its juncture with U.S. Highway 67 to the Crockett County line), Uvalde (only north of U.S. Highway 90) , Val Verde (all that portion located north of U.S. Highway 90; and that portion located both south of U.S. 90 and west of Spur 239/277S), and Willacy counties, there is an open season during which white-tailed deer may be taken only with lawful archery equipment (see §65.15 of this title).

(i) Open season: October 1-31.

(ii) Bag limit: Four white-tailed deer, either sex, no more than two bucks.

(B) In Brooks, Dimmit, Duval, Frio, Jim Hogg, Jim Wells, Kenedy, Kinney (only south of U. S. Highway 90), Kleberg, LaSalle, Maverick, McMullen, Medina (only south of U. S. Highway 90), Uvalde, (only south of U. S. Highway 90), Val Verde (only in that southeastern portion located both south of U.S. Highway 90 and east of Spur 239/277S, Webb, Zapata, and Zavala counties, there is an open season during which white-tailed deer may be taken only with lawful archery equipment (see §65.15 of this title).

(i) Open season: October 1-31.

(ii) Bag Limit: Five white-tailed deer, either sex, no more than three bucks.

(C) No person may take or possess more than one white-tailed buck deer per license year from counties, in the aggregate, listed within this subparagraph; except that a second buck may be legally taken in a one-buck county if the deer is tagged with a Managed Lands Buck Permit issued in accordance with §65.28 of this title (relating to Managed Lands Buck Permits) and the Managed Lands Buck License Tag. In Anderson, Angelina, Archer, Armstrong, Austin, Bastrop, Baylor, Bell, Borden, Bosque, Bowie, Brazoria, Brazos, Briscoe, Burleson, Caldwell, Callahan, Camp, Carson, Cass, Chambers, Cherokee, Childress, Clay, Collingsworth, Colorado, Comanche, Cooke, Coryell, Cottle, Crane, Crosby, Delta, Denton, DeWitt, Dickens, Donley, Eastland, Ector, Ellis, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Fort Bend, Franklin, Freestone, Garza, Goliad, Gonzales, Gray, Grayson, Gregg, Grimes, Guadalupe, Hall, Hamilton, Hansford, Hardeman, Hardin, Harris, Harrison, Hartley, Haskell, Hemphill, Henderson, Hill, Hood, Hopkins, Houston, Howard, Hunt, Hutchinson, Jack, Jackson, Jasper, Jefferson, Johnson, Jones, Kaufman, Karnes, Kent, King, Knox, Lamar, Lampasas, Lavaca, Lee, Leon, Liberty, Limestone, Lipscomb, Loving, Madison, Marion, Matagorda, McLennan, Midland, Milam, Montague, Montgomery, Moore, Morris, Motley, Nacogdoches, Navarro, Newton, Ochiltree, Oldham, Orange, Palo Pinto, Panola, Parker, Polk, Potter, Rains, Randall, Red River, Roberts, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Scurry, Shackelford, Shelby, Smith, Somervell, Stephens, Stonewall, Swisher, Tarrant, Taylor, Throckmorton, Titus, Trin-

ity, Tyler, Upshur, Upton (except in that southeastern portion bounded on the north by U.S. Highway 67 and on the west by State Highway 349 that runs from its juncture with U.S. Highway 67 to the Crockett County line), Van Zandt, Victoria, Walker, Waller, Ward, Washington, Wharton, Wheeler, Wichita, Wilbarger, Williamson, Wilson, Wise, Wood, and Young counties, there is an open season during which white-tailed deer may be taken only with lawful archery equipment (see §65. 15 of this title).

(i) Open season: October 1-31.

(ii) Bag limit: Three white-tailed deer, no more than one buck and no more than two antlerless deer.

(D) In Andrews, Bailey, Castro, Cochran, Collin, Dallam, Dallas, Dawson, Deaf Smith, El Paso, Gaines, Galveston, Hale, Hockley, Hudspeth, Lamb, Lubbock, Lynn, Martin, Parmer, Rockwall, Sherman, Terry, Winkler, and Yoakum counties, there is no archery only open season for white-tailed deer.

(E) The archery-only season bag limit is not in addition to any other open season bag limits for white-tailed deer.

(3) White-tailed deer: Muzzleloader-only open seasons, bag and possession limits shall be as follows.

(A) In Bandera, Brown, Coke, Coleman, Concho, Edwards, Gillespie, Irion, Kendall, Kerr, Kimble, Kinney (north of U.S. Highway 90), Llano, Mason, Medina (north of U.S. Highway 90), Menard, McCulloch, Mills, Real, Runnels, San Saba, Schleicher, Sterling, Sutton, Tom Green, and Uvalde (north of U.S. Highway 90) counties, there is an open season during which only antlerless white-tailed deer may be taken only with a muzzleloader.

(B) Open Season: First Saturday following the first Sunday in January for nine consecutive days.

(C) Bag Limit: Four antlerless white-tailed deer. The muzzleloader-only season bag limit is not in addition to any other open season bag limits for white-tailed deer.

(4) Mule deer: general open season, bag and possession limit shall be as follows.

(A) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Fisher, Floyd, Garza, Gray, Hall, Hartley, Hemphill, Hutchinson, Kent, King, Moore, Motley, Ochiltree, Oldham, Potter, Randall, Roberts, Scurry, Stonewall, and Swisher counties, there is an open season for mule deer.

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

(ii) Bag limit: Two mule deer, no more than one buck.

(iii) Antlerless mule deer may be taken only by Antlerless Mule Deer Permits or antlerless permits authorized under a WHHAR (see §65.31 and §65.26(1) of this title).

(B) In Brewster, Crane, Crockett, Culberson, Ector, El Paso, Hudspeth, Jeff Davis, Loving, Midland, Pecos, Presidio, Reagan, Reeves, Terrell, Upton, Val Verde, Ward, and Winkler counties, there is an open season for mule deer.

(i) Open season: Last Saturday in November for 16 consecutive days.

(ii) Bag limit: Two mule deer, no more than one buck.

(iii) Antlerless mule deer may be taken only by Antlerless Mule Deer Permits or antlerless permits authorized under a WHHAR (see §65.31 and §65.26(1) of this title).

(C) In all other counties, there is no general open season for mule deer.

(5) Mule deer: archery-only open seasons, bag and possession limits shall be as follows.

(A) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Deaf Smith, Dickens, Donley, Ector, El Paso, Fisher, Floyd, Garza, Gray, Hall, Hartley, Hemphill, Hudspeth, Hutchinson, Jeff Davis, Kent, King, Loving, Midland, Moore, Motley, Ochiltree, Oldham, Potter, Presidio, Randall, Reagan, Reeves, Roberts, Scurry, Stonewall, Swisher, Upton, Val Verde, Ward, and Winkler counties, there is an open season during which mule deer may be taken only with lawful archery equipment (see §65.15 of this title).

(i) Open season: October 1-31.

(ii) Bag limit: One buck mule deer.

(B) In Brewster, Pecos, and Terrell counties, there is an open season during which mule deer may be taken only with lawful archery equipment (see §65.15 of this title).

(i) Open season: October 1-31.

(ii) Bag limit: Two mule deer, either sex, no more than one buck.

(C) In all other counties, there is no archery-only open season for mule deer.

(D) The archery-only season bag limit is not in addition to any other lawful open season bag limits for mule deer.

(6) White-tailed Deer: national wildlife refuges. Hunting season dates may further be restricted in compliance with regulations promulgated by the U.S. Fish and Wildlife Service and published in the *Federal Register*.

*§65.44. Javelina: Open Seasons and Bag Limits.*

(a) In Andrews, Blanco, Caldwell, Calhoun, Coke, Comal, Concho, Crane, DeWitt, Ector, Gillespie, Glasscock, Goliad, Gonzales, Guadalupe, Hays, Howard, Irion, Llano, Loving, McCulloch, Martin, Mason, Midland, Mitchell, Nolan, Reagan, Refugio, Runnels, San Saba, Sterling, Taylor, Tom Green, Upton, Victoria, Ward, and Winkler counties, there is an open season on javelina.

(1) Open season: October 1 through the last Sunday in February.

(2) Bag limit: two javelina.

(3) Possession limit: two javelina.

(b) In Aransas, Atascosa, Bandera, Bee, Bexar, Brewster, Brooks, Cameron, Crockett, Culberson, Dimmit, Duval, Edwards, El Paso, Frio, Hidalgo, Hudspeth, Jeff Davis, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kerr, Kimble, Kinney, Kleberg, LaSalle, Live Oak, McMullen, Maverick, Medina, Menard, Nueces, Pecos, Presidio, Real, Reeves, San Patricio, Schleicher, Starr, Sutton, Terrell, Uvalde, Val Verde, Webb, Willacy, Wilson, Zapata, and Zavala counties, there is no closed season on javelina.

(1) Bag limit: two javelina per license year.

(2) Possession limit: two javelina.

(c) In all other counties, there is no open season for javelina.

*§65.46. Squirrel: Open Seasons, Bag, and Possession Limits.*

(a) In Austin, Brazos, Burleson, Collin, Colorado, Dallas, Ellis, Falls, Fayette, Grayson, Grimes, Jackson, Kaufman, Lavaca, Lee, Madison, Matagorda, Milam, Rockwall, Waller, Washington, and Wharton counties, there is no closed season for squirrel.

(1) Bag limit: 10 squirrels per day.

(2) Possession limit: 20 squirrels.

(b) In Anderson, Angelina, Bowie, Brazoria, Camp, Cass, Chambers, Cherokee, Delta, Fannin, Fort Bend, Franklin, Freestone, Galveston, Gregg, Hardin, Harris, Harrison, Henderson, Hopkins, Houston, Hunt, Jasper, Jefferson, Lamar, Leon, Liberty, Limestone, Marion, Montgomery, Morris. Nacogdoches, Navarro, Newton, Orange, Panola, Polk, Rains, Red River, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Titus, Trinity, Tyler, Upshur, Van Zandt, Walker, and Wood counties, there is an open season for squirrel.

(1) Open season: May 1-31 and October 1-January 15.

(2) Bag limit: ten squirrels per day.

(3) Possession limit: 20 squirrels.

(c) In Andrews, Bailey, Borden, Brewster, Briscoe, Carson, Castro, Cochran, Crane, Culberson, Dallam, Dawson, Deaf Smith, Ector, El Paso, Floyd, Gaines, Glasscock, Hale, Hansford, Hartley, Hockley, Howard, Hudspeth, Hutchinson, Jeff Davis, Lamb, Loving, Lubbock, Lynn, Martin, Midland, Moore, Oldham, Parmer, Potter, Presidio, Reagan, Reeves, Sherman, Swisher, Terry, Upton, Ward, Winkler, and Yoakum counties, there is no open season on squirrel.

(d) In all other counties, there is no closed season, and no bag limit on squirrels.

*§65.48. Desert Bighorn Sheep: Open Seasons and Bag Limits.*

(a) In Brewster, Culberson, Hudspeth, Jeff Davis, and Presidio counties, there is an open season for desert bighorn sheep.

(b) Open Season: From September 1 through August 31.

(c) Bag Limit: One desert bighorn sheep ram as specified on the permit, by permit only.

(d) Possession Limit: One desert bighorn sheep ram.

*§65.50. Elk: Open Seasons and Bag Limits.* Elk may be taken in Brewster, Culberson, Dallam, Deaf Smith, El Paso, Hartley, Hudspeth, Jeff Davis, Moore, Oldham, Pecos, Potter, Presidio, Reeves, and Terrell counties, by permit only. There is no closed season on elk and the bag limit is one.

*§65.52. Aoudad Sheep: Open Seasons and Bag Limits.* In Armstrong, Briscoe, Donley, Floyd, Hall, Motley, Randall, and Swisher counties, there is an open season for aoudad sheep.

(1) Open season: First Saturday in November through the third Sunday in January.

(2) Bag limit: One aoudad sheep.

(3) Possession limit: One aoudad sheep.

*§65.54. Game Birds: Open Seasons and Bag Limits.* It is unlawful to hunt a game bird at any time other than during the open seasons provided in §65.34 of this title (relating to Migratory Game Birds), §65. 56 of this title (relating to Prairie Chicken: Open Seasons, Bag, and Possession Limits); §65.58 of this title (relating to Partridge: Open Seasons and Bag Limits); §65.60 of this title (relating to Pheasant: Open Seasons, Bag and Possession Limits); §65.62 of this title (relating to Quail: Open Seasons, Bag, and Possession Limits); §65.64 of this title (relating to Turkey); and §65.66 of this title (relating to Chachalacas), or to take more than the daily bag limits, or to have in possession a game bird taken at any time other than during the open seasons.

*§65.56. Prairie Chicken: Open Seasons, Bag, and Possession Limits.*

(a) In Cochran, Hemphill, Hockley, Lipscomb, Ochiltree, Terry, Wheeler, and Yoakum counties, there is an open season on prairie chicken.

(1) Open season: Third Saturday in October for two consecutive days.

(2) Bag limit: Two prairie chickens per day.

(3) Possession limit: Four prairie chickens after the first day.

(b) In all other counties, there is no open season on prairie chicken.

*§65.58. Partridge: Open Seasons and Bag Limits.* The season on partridge is closed in all counties.

*§65.60. Pheasant: Open Seasons, Bag, and Possession Limits.*

(a) In Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Donley, Floyd, Gray, Hale, Hall, Hansford, Hartley, Hemphill, Hockley, Hutchinson, Lamb, Lipscomb, Lubbock, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler, and Wilbarger counties, there is an open season for pheasants.

(1) Open season: Second Saturday of December for 16 consecutive days.

(2) Bag limit: Three cock pheasants per day.

(3) Possession limit: Six cock pheasants after the first day.

(4) Special requirement: One foot or the entire plumage must remain attached to the pheasant carcass until it reaches its final destination.

(b) In Brazoria, Chambers, Fort Bend, Jefferson, Liberty, Matagorda, and Wharton counties, there is an open season for pheasants.

(1) Open season: Saturday nearest November 1 through the last Sunday in February.

(2) Bag limit: Three cock pheasants per day.

(3) Possession limit: Six cock pheasants after the first day.

(4) Special requirement: One foot or the entire plumage must remain attached to the pheasant carcass until it reaches its final destination.

(c) In all other counties, there is no open season on pheasants.

*§65.62. Quail: Open Seasons, Bag, and Possession Limits.*

(a) In all counties there is an open season for quail beginning the Saturday nearest November 1 through the last Sunday in February.

(b) Bag limit: 15 quail per day.

(c) Possession limit: 45 quail in possession.

(d) There is no open season on Mearns' quail (commonly called fool's quail).

*§65.64. Turkey.* No person may take more than four turkeys per license year.

(1) General season and bag limits:

(A) In Archer, Bandera, Bell, Bexar, Blanco, Bosque, Burnet, Calhoun, Clay, Comal, Comanche, Coryell, Erath, Gillespie, Goliad, Gonzales, Hamilton, Hays, Hood, Jack, Karnes, Kendall, Kerr,

Lampasas, Llano, McLennan, Medina (only north of U.S. Highway 90), Montague, Palo Pinto, Parker, Real, Somervell, Stephens, Travis, Wichita, Williamson, Wilson, and Young counties, there is a general open season for turkey.

(i) General open season: First Saturday in November through the first Sunday in January.

(ii) Bag limit: Four turkeys, gobblers or bearded hens.

(B) In Aransas, Atascosa, Bee, Hidalgo, Live Oak, Medina (only south of U.S. Highway 90), Nueces, Refugio, San Patricio, and Starr counties, there is a general open season for turkey.

(i) General open season: Second Saturday in November through the second Sunday in January.

(ii) Bag limit: Four turkeys, gobblers or bearded hens.

(C) In Dimmit, Duval, Frio, Jim Hogg, Jim Wells, LaSalle, Maverick, McMullen, Webb, and Zavala counties, there is a general open season for turkey

(i) General open season: Second Saturday in November through the third Sunday in January.

(ii) Bag limit: Four turkeys, gobblers or bearded hens.

(D) In Kinney (only south of U.S. Highway 90) and Uvalde (only south of U.S. Highway 90), Val Verde (only in that southeastern portion located both south of U.S. Highway 90 and east of Spur 239/277S) and Willacy counties, there is a general open season for turkeys.

(i) General open season: Second Saturday in November through the second Sunday in January.

(ii) Bag limit: Four turkeys, either sex.

(E) In Brooks, Kenedy and Kleberg counties, there is a general open season for turkeys.

(i) General open season: Second Saturday in November through the last Sunday in February.

(ii) Bag limit: Four turkeys, either sex.

(F) In Armstrong, Baylor, Borden, Briscoe, Brown, Callahan, Carson, Childress, Coke, Coleman, Collingsworth, Concho, Cottle, Crane, Crockett, Crosby, Dawson, Dickens, Donley, Eastland, Ector, Edwards, Fisher, Floyd, Foard, Garza, Glasscock, Gray, Hall, Hardeman, Hartley, Haskell, Hemphill, Howard, Hutchinson, Irion, Jones, Kent, Kimble, King, Kinney (only in that portion north of U.S. Highway 90), Knox, Lipscomb, Lynn, Martin, Mason, McCulloch, Menard, Midland, Mills, Mitchell, Moore, Motley, Nolan, Ochiltree, Oldham, Pecos, Potter, Randall, Reagan, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Sterling, Stonewall, Sutton, Swisher, Taylor, Terrell, Throckmorton, Tom Green, Upton, Uvalde (only in that portion north of U.S. Highway 90), Val Verde (all that portion located north of U.S. Highway 90 and that portion located both south of U.S. 90 and west of Spur 239/277S), Ward, Wheeler, and Wilbarger counties, there is a general open season for turkey.

(i) General open season: First Saturday in November through the first Sunday in January.

(ii) Bag limit: Four turkeys, either sex.

(2) Archery-only season and bag limits:

(A) In Aransas, Archer, Atascosa, Bandera, Bee, Bell, Bexar, Blanco, Bosque, Burnet, Calhoun, Clay, Comal, Comanche, Coryell, Dimmit, Duval, Erath, Frio, Gillespie, Goliad, Gonzales, Hamilton, Hays, Hidalgo, Hood, Jack, Jim Hogg, Jim Wells, Karnes, Kendall, Kerr, Lampasas, LaSalle, Live Oak, Llano, Maverick, McLennan, McMullen, Medina, Montague, Nueces, Palo Pinto, Parker, Real, Refugio, San Patricio, Somervell, Starr, Stephens, Travis, Webb, Wichita, Williamson, Wilson, Young and Zavala counties, there is an archery-only open season for turkey.

(i) Archery-only open season: October 1-31, during which turkeys may be taken only with lawful archery equipment (see §65.15 of this title (relating to Archery)).

(ii) Bag limit: Four turkeys, gobblers or bearded hens.

(B) In Armstrong, Baylor, Borden, Briscoe, Brooks, Brown, Callahan, Carson, Childress, Coke, Coleman, Collingsworth, Concho, Cottle, Crane, Crockett, Crosby, Dawson, Dickens, Donley, Eastland, Ector, Edwards, Fisher, Floyd, Foard, Garza, Glasscock, Gray, Hall, Hardeman, Hartley, Haskell, Hemphill, Howard, Hutchinson, Irion, Jones, Kenedy, Kent, Kimble, King, Kinney, Kleberg, Knox, Lipscomb, Lynn, Martin, Mason, McCulloch, Menard, Midland, Mills, Mitchell, Moore, Motley, Nolan, Ochiltree, Oldham, Pecos, Potter, Randall, Reagan, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Sterling, Stonewall, Sutton, Swisher, Taylor, Terrell, Throckmorton, Tom Green, Upton, Uvalde, Val Verde, Ward, Wheeler, Wilbarger, and Willacy counties, there is an archery-only open season for turkeys.

(i) Archery-only open season: October 1-31, during which turkeys may be taken only with lawful archery equipment (see §65.15 of this title).

(ii) Bag limit: Four turkeys, either sex.

(3) Spring turkey season and bag limits:

(A) In Archer, Armstrong, Bandera, Bastrop, Baylor, Bell, Blanco, Borden, Bosque, Brewster, Briscoe, Brown, Burnet, Caldwell, Callahan, Carson, Childress, Clay, Coke, Coleman, Collingsworth, Colorado, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dawson, DeWitt, Dickens, Donley, Eastland, Ector, Edwards, Ellis, Erath, Fayette, Fisher, Floyd, Foard, Garza, Gillespie, Glasscock, Gonzales, Gray, Guadalupe, Hall, Hamilton, Hardeman, Hartley, Haskell, Hays, Hemphill, Hill, Hood, Howard, Hutchinson, Irion, Jack, Jackson, Jeff Davis, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Knox, Lampasas, Lavaca, Lee, Lipscomb, Llano, Lynn, Martin, Mason, Matagorda, McCulloch, McLennan, Menard, Midland, Milam, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Pecos, Potter, Randall, Reagan, Real, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Taylor, Terrell, Throckmorton, Tom Green, Travis, Upton, Val Verde, Victoria, Ward, Wheeler, Wichita, Wilbarger, Williamson. Wise, and Young counties, there is a spring season for turkeys.

(i) Spring season: Second Saturday in April for 37 consecutive days.

(ii) Bag limit: Four turkeys, gobblers only

(B) In Aransas, Atascosa, Bee, Bexar, Brooks, Calhoun, Dimmit, Duval, Frio, Goliad, Hidalgo, Jim Hogg, Jim Wells, Karnes, Kenedy, Kinney, Kleberg, LaSalle, Live Oak, Maverick, McMullen, Medina, Nueces, Refugio, San Patricio, Starr, Uvalde, Webb, Willacy, Wilson, and Zavala counties, there is a spring season for turkeys.

(i) Spring season: First Saturday in April for 37 consecutive days.

(ii) Bag limit: Four turkeys, gobblers only.

(C) In Red River County there is a spring season for turkeys.

(i) Spring season. The Monday nearest April 20 for 14 consecutive days.

(ii) Bag limit: One turkey, gobbler only.

(iii) In Red River County no person shall take or attempt to take turkeys by the aid of baiting, on or over a baited area.

(iv) All turkeys harvested during the spring gobbler season in Red River County must be registered at designated stations within 24 hours of the time of kill. Harvested turkeys may be field dressed but must otherwise remain intact.

(4) Counties with no open turkey seasons. In all counties not listed in subsections (a), (b) or (c) of this section, there is no open season for hunting turkey.

*§65.66. Chachalacas.* In Cameron, Hidalgo, Starr, and Willacy counties, there is an open season for chachalacas.

(1) Open season: Saturday nearest November 1 through the last Sunday in February.

(2) Bag Limit: Five chachalacas per day.

(3) Possession limit: Ten chachalacas.

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

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

TRD-9501776 Paul M Shinkawa
Acting General Counsel
Texas Parks and Wildlife Department

Proposed date of adoption: March 23, 1995

For further information, please call: (512) 389-4642

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## Seasons and Bag Limits-Fishing Provisions

### • 31 TAC §§65.71, 65.72, 65.78, 65.82, 65.90, 65.91

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

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

*§65.71. Community Fishing Lakes and Reservoir Boundaries.*

(a) For the purposes of Parks and Wildlife Code, Chapters 61 and 66, the following public waters are designated as community fishing lakes.

(1) Bell County:

(A) Sammons Park;

(B) Sammons Park Number 2;

(C) Miller Park.

(2) Bexar County:

(A) Hi-Lions;

(B) Live Oak City;

(C) Millers;

(D) San Antonio River within boundaries of Brackenridge and Espada Parks.

(3) Bowie County: Spring Lake Park.

(4) Brazos County:

(A) Cy Miller Park;

(B) Gabbards Park.

(5) Cameron County:

(A) Dixieland;

(B) Fort Brown Resaca;

(C) Harlingen City;

(D) Harlingen Sports Complex.

(6) Collin County:

(A) Bethany Parks A, B, and C;

(B) Bob Woodruff;

(C) Shawnee Park;

(D) Towne.

(7) Dallas County:

(A) Kidd Springs Park;

(B) Lakeside (Duncanville);

(C) Mesquite City;

(D) Northwest Park (Irving);

(E) O'Bannon (Garland);

(F) Palos Verdes;

(G) Samuel Farm Ponds A, numbers 1, 4 and 5.

(8) Denton County:

(A) Flower Mound Rheudasil;

(B) North Lake Park (Denton);

(C) South Lake Park (Denton).

(9) Ector County: Comanche Trails.

(10) Fort Bend County:

(A) Missouri City American Legion Park;

(B) Missouri City Community Park.

(11) Grayson County:

(A) Pickens;

(B) Waterloo.

(12) Gregg County: Teague Park.

(13) Harris County:

(A) Bane Park;

(B) Burke-Crenshaw;

(C) Burroughs Park;

(D) Challenger VII Memorial Park;

(E) Eisenhower City Park;

(F) Hermann Park;

(G) Tom Bass III.

(14) Hopkins County: Sulphur Springs City Park.

(15) Lubbock County:

(A) Canyon Lake Project 1;

(B) Maxey Park.

(16) Montgomery County: Albert Sallas County Park.

(17) Nueces County: Waldron Park.

(18) Orange County: Claiborne West Park.

(19) Potter County:

(A) Medical Center North;

(B) Medical Center South.

(20) Randall County: Southeast Park.

(21) Smith County:

(A) Bellwood;

(B) Camp Tyler A, B, and C.

(22) Tarrant County:

(A) Bedford Boys Ranch;

(B) Como;

(C) Echo;

(D) French;

(E) Hurst Chisholm Park;

(F) Oakland.

(23) Taylor County: Nelson Park.

(24) Tom Green County:

(A) North Concho River from the O.C. Fisher Reservoir stilling basin downstream to the dam at Bell Street in San Angelo;

(B) South Concho River from the dam at Avenue K downstream to the dam at Bell Street in San Angelo.

(25) Travis County: Searight Park Lake number 1.

(26) Van Zandt County: Canton City.

(27) Wichita County:

(A) Kid's Pond;

(B) Plum;

(C) Williams Park.

(28) Williamson County:

(A) Round Rock City Park;

(B) Taylor City Lakes numbers 1, 2, and 4.

(b) Reservoir boundaries for bag, possession, and length limits.

(1) Buchanan Reservoir in Burnet, Lampasas, Llano and San Saba counties comprises all impounded waters of the Colorado River from Lake Buchanan dam upstream to the U.S. Highway 190 bridge.

(2) Caddo Lake in Marion and Harrison counties comprises all impounded waters of Big Cypress Bayou from the Texas-Louisiana border upstream to the State Highway 43 bridge.

(3) Canyon Reservoir in Comal County comprises all impounded waters of the Guadalupe River from the Canyon dam upstream to the U.S. Highway 281 bridge.

(4) Cooper Lake in Delta and Hopkins counties comprises all waters within the Corps of Engineers lands on Cooper Lake upstream from State Highway 19/154 and downstream from F.M. Road 71.

(5) Inks Lake in Burnet and Llano counties comprises all impounded waters of the Colorado River from the Roy Inks dam (Inks Lake dam) upstream to the Lake Buchanan dam.

(6) Lake Conroe in Montgomery and Walker counties comprises all impounded waters of the West Fork of the San Jacinto River from the Lake Conroe dam upstream to F.M. Road 1790 bridge.

(7) Lake O' the Pines in Camp, Marion, Morris, and Upshur counties comprises all impounded waters of Big Cypress Creek from Ferrell's Bridge dam (the Lake O' the Pines dam) upstream to U.S. Highway 259 bridge.

(8) Lake Georgetown in Williamson County comprises all impounded waters of the North Fork of the San Gabriel River from the Lake Georgetown dam upstream to U. S. Highway 183 bridge.

(9) Lake Limestone in Leon, Limestone, and Robertson counties comprises all impounded waters of the Navasota River from the Lake Limestone dam upstream to the Fort Parker State Park Lake dam.

(10) Lake Livingston in Leon, Houston, Madison, Polk, San Jacinto, Trinity, and Walker counties comprises all impounded waters of the Trinity River from the Lake Livingston dam upstream to the lock and dam near State Highway 7.

(11) Lake Lyndon B. Johnson in Burnet and Llano counties comprises all impounded waters of the Colorado River from the Alvin Wirtz Dam (Lake Lyndon B. Johnson dam) upstream to the Roy Inks dam (Inks Lake dam) including the Llano River upstream to the State Highway 16 bridge and Sandy Creek upstream to the State Highway 71 bridge.

(12) Lake Marble Falls in Burnet County comprises all impounded waters of the Colorado River from the Max Starcke dam (Lake Marble Falls dam) upstream to the Alvin Wirtz dam (Lake Lyndon B. Johnson dam).

(13) Lake Palestine in Anderson, Cherokee, Henderson, Smith, and Van Zandt counties comprises all impounded waters of the Neches River from the Blackburn Crossing dam (the Lake Palestine dam) upstream to F.M. Road 279 bridge including Kickapoo and Flat Creeks in Henderson County.

(14) Lake Somerville in Burleson, Lee, Milam, Roberston, and Washington counties comprises all impounded waters of Yegua, East Yegua, and Middle Yegua Creeks upstream from the Lake Somerville dam.

(15) Lake Travis in Burnet and Travis counties comprises all impounded waters of the Colorado River from the Mansfield dam (Lake Travis dam) upstream to the Max Starcke dam (Lake Lyndon B. Johnson dam) including the Pedernales River upstream to the Hammetts Crossing-Hamilton Pool Road bridge.

*§65.72. Fish.*

(a) General rules.

(1) It is unlawful to take or attempt to take, or possess fish within a protected length limit, in greater numbers, by other means, or at any time or place, other than as permitted under this subchapter.

(2) It is unlawful for any person to use game fish or any part thereof as bait.

(3) It is unlawful for any person to possess a finfish of any species, except broadbill swordfish, shark or king mackerel, taken from public water that has the head or tail removed until such person has reached his final destination.

(4) Under this subchapter there are no public waters closed to the taking or retaining of fish, except that: at the Toledo Bend Reservoir Dam in Newton County,

the area within 500 feet of the power plant water intake is closed to fishing from July 1 through September 30 of each year.

(5) Finfish tags: Prohibited Acts.

(A) No person may purchase or use more finfish (red drum or tarpon) tags during a license year than the number and type authorized by the commission, excluding duplicate tags issued under Parks and Wildlife Code, §46.006.

(B) It is unlawful for any person to:

(i) use the same finfish tag for the purpose of tagging more than one finfish;

(ii) use a finfish tag in the name of another person;

(iii) use a tag on a finfish for which another tag is specifically required;

(iv) take a finfish required to be tagged and fail to immediately attach and secure a properly executed tag to the finfish at the narrowest part of the finfish tail, just ahead of the tail fin;

(v) have in possession both a Red Drum Tag and a Bonus Red Drum Tag issued to the same license or saltwater stamp holder; or

(vi) have in possession both an Exempt Red Drum Tag or a Duplicate Exempt Red Drum Tag and a Bonus Red Drum Tag issued to the same Exempt Red Drum Tag holder, or Duplicate Red Drum Tag holder.

(b) Prohibited acts in all public waters.

(1) In addition to any prohibition or provision of these rules it is unlawful for any person to take or attempt to take fish by:

(A) snagging or jerking;

(B) the use of a hand-operated device held underwater, other than a spear gun and spear;

(C) the use of yo-yos and other spring-loaded reeling devices;

(D) grabbling;

(E) the use of a noodling pole;

(F) the use of explosives, poisons or other substances or things deleterious to fish and prohibited under the authority of the Texas Parks and Wildlife Code, §66.003;

(G) the use of any device that uses or produces electricity or sound to stun or kill fish; and

(H) the use of airboats or jet-driven devices to pursue and harass or harry fish.

(2) It is unlawful for any person to release into the public waters of this state a fish with a device or substance implanted or attached that is designed, constructed or adapted to produce an audible, visual, or electronic signal used to monitor, track, follow, or in any manner aid in the location of the released fish. It is unlawful to have in possession while on or fishing in the public waters of this state any device designed or adapted to receive a signal from a substance or device implanted or attached to a fish.

(3) It is unlawful for a person to catch or possess fish listed as exotic harmful or potentially harmful without a permit if the intestines of the fish are not removed.

(c) Bag, possession, and length limits.

(1) It is unlawful for any person while fishing on or in public waters to have in his possession fish in excess of the daily bag limit or fish within a protected length limit as established for those waters.

(2) The possession limit does not apply to fish in the possession of or stored:

(A) by a person who has an invoice or sales ticket showing the name and address of the seller, number of fish by species, date of the sale, and other information required on a sales ticket or an invoice;

(B) in a cold storage plant if the fish or container holding the fish are tagged with the owner's name, address, numbers of fish by species, and the date placed in storage (Parks and Wildlife Code, §62.029); or

(C) at a person's permanent residence for personal consumption.

(3) It is unlawful for the captain and/or crew of a vessel that is licensed or required to be licensed as a commercial fish boat to possess on board or land billfish, except swordfish.

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

(A) Statewide daily bag, possession, and length limits shall be as follows:

Figure 1: 31 TAC §65.72(c)(4)(A)

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

(i) >Figure 2: 31 TAC §65.72(c)(4)(B)(i)

(ii) Bag and possession limits for black drum, sheepshead and flounder do not apply to the holder of a valid Commercial Finfish Fisherman's License.

(d) Freshwater devices, means and methods.

(1) It is unlawful for any person to fish with more than 100 hooks on all devices combined.

(2) It is unlawful for any person to take, attempt to take, or possess fish caught by any device, means, or method other than as authorized in this subchapter.

(A) Pole and line (includes rod and reel).

(i) Game and non-game fish may be taken by pole and line, except that in the Guadalupe River in Comal County between the first concrete dam (weir) below the easternmost State Highway 306 bridge and the Little Ponderosa bridge, freshwater trout may not be retained when taken by any method except fly fishing. It is an offense to possess rainbow and brown trout while fishing with any other device in that part of the Guadalupe River defined in this paragraph.

(ii) Game and non-game fish may be taken only by pole and line in community fishing lakes and in reservoirs or sections of rivers lying totally within boundaries of a state park.

(B) Trotline. Non-game fish, channel catfish, blue catfish, and flathead catfish may be taken by trotline. It is unlawful for any person to use a trotline:

(i) with a mainline length exceeding 600 feet;

(ii) with invalid gear tags. Gear tags must be attached within three feet of the first hook at each end of the trotline and are valid only for 30 days after the date set out;

(iii) with the hook interval less than three horizontal feet;

(iv) with metallic stakes;

(v) with the main fishing line and attached hooks and stagings above the water's surface;

(vi) with more than 50 hooks; or

(vii) in Gibbons Creek Reservoir in Grimes County, Lake Bastrop in Bastrop County, Fayette County Reservoir in Fayette County, Pinkston Reservoir in Shelby County, Lake Burke-Crenshaw in Harris County, Archer City in Archer County, Bryan in Brazos County, Petrolia City (New) and Petrolia City (Old) in Clay County, and Bright Lake in Williamson County.

(C) Jugline. Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a jugline. It is unlawful for any person to use a jugline:

(i) with invalid gear tags. Gear tags must be attached within six inches of the free-floating device, are valid for 30 days after the date set out, and must include the number of the permit to sell non-game fish taken from public freshwater; if applicable;

(ii) for commercial purposes that is not marked with an orange free-floating device;

(iii) for non-commercial purposes that is not marked with a white free-floating device; and

(iv) in Lake Bastrop in Bastrop County, Lake Burke-Crenshaw in Harris County, Bright Lake in Williamson County, Archer City in Archer County, Bryan in Brazos County, and Petrolia City (New) and Petrolia City (Old) in Clay County.

(D) Throwline. Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a throwline. It is unlawful for any person to use a throwline in Lake Bastrop in Bastrop County, Lake Burke-Crenshaw in Harris County, Bright Lake in Williamson County, Archer City in Archer County, Bryan in Brazos County, and Petrolia City (New) and Petrolia City (Old) in Clay County.

(E) Shad trawl. Only non-game fish may be taken with a shad trawl. It is unlawful for any person to use a shad trawl longer than six feet or with a mouth larger than 36 inches in diameter. A shad trawl may be equipped with a funnel or throat and must be towed by boat or by hand.

(F) Seine. Only non-game fish may be taken with a seine. It is unlawful for any person to use a seine:

(i) which exceeds 60 feet in length;

(ii) with mesh exceeding 1/2-inch square; or

(iii) which is not manually operated.

(G) Dip net. It is unlawful for any person to use a dip net except:

(i) to aid in the landing of fish caught on other legal devices; or

(ii) to take non-game fish.

(H) Cast net. Only non-game fish may be taken with a cast net. It is unlawful for any person to use a cast net exceeding 14 feet in diameter.

(I) Minnow trap. Only non-game fish may be taken with a minnow trap. It is unlawful for any person to use a minnow trap exceeding 24 inches in length or with a throat larger than one by three inches.

(J) Gig. Only non-game fish may be taken with a gig.

(K) Umbrella net. Only non-game fish may be taken with an umbrella net. It is unlawful for any person to use an umbrella net with the area within the frame exceeding 16 square feet.

(L) Speargun and spear or bow and arrow. Only non-game fish may be taken with a speargun and spear or bow and arrow.

(M) Gaff. It is unlawful for any person to use a gaff except to aid in landing fish caught on other legal devices, means or methods. Fish landed with a gaff may not be below the minimum, above the maximum, or within a protected length limit.

(N) Gill nets, trammel nets, and hoop nets. It is unlawful for any person to use gill nets, trammel nets, or hoop nets in the public freshwaters of this state without a permit in compliance with §§57.377-57.386 of this title (relating to Permits to Sell Nongame Fish Taken from Public Freshwater).

(O) Chumming. It is unlawful for any person to take or attempt to take fish by chumming in the waters of Lake Texoma in Cooke and Grayson counties.

(e) Saltwater devices, means, and methods.

(1) It is unlawful to take or attempt to take saltwater fish by any means and methods other than specifically allowed in this subsection.

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

(A) Devices.

(i) Pole and line (includes rod and reel), artificial and natural baits, trotline with the main fishing line and attached hooks and stagings under the water's surface, sail line, spear gun and spear, bow and arrow, perch trap, and gig. It is unlawful to take game fish on any gear except pole and line or rod and reel, except channel, blue, and flathead catfish may be taken by trotline, and red drum, sharks, and spotted seatrout may be taken by sail line. Cast nets not exceeding 14 feet in diameter and 20-foot minnow seines may be used for taking bait. Dip nets and gaffs may be used only in aiding to land fish caught on other legal devices except that gaffs may not be used to land fish below the minimum or above the maximum size limits.

(ii) Purse seines may be used only for taking menhaden from the waters of the Gulf of Mexico within the gulfward boundary lines of Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, and Willacy Counties from the coastline of the Gulf to the gulfward limit of the territorial seas from the third Monday in April through the first day in November each year. The purse seine, not including the bag, shall not be less than three-fourths inch square mesh. Purse seines may not be used in any bay, river, pass, or tributary thereto, nor within one mile of any jetty or pass, nor within one-half mile offshore in the Gulf of Mexico.

(iii) Non-game fish taken incidental to legal shrimping operations may be retained, except that red drum and spotted seatrout may not be retained as provided under Texas Parks and Wildlife Code, §77.0191. The term "legal shrimping operations" is defined as the use of a legal trawl in places, at times, and in manners as authorized by the department. A person taking shrimp with a trawl may not retain a catch of finfish exceeding 50% of the total trawl catch by weight of aquatic products, including shrimp on a shrimping vessel, except that up to 1,200 live non-game fish not regulated by bag or size limits may be retained for bait between July 1 and August 31 aboard a vessel licensed for commercial bait shrimp fishing. A person using an individual bait shrimp trawl for recreational purposes may retain non-game fish in any amount for bait, except those species regulated by bag or size limits.

(iv) No person may use a shrimp trawl for the purpose of taking fish in any of the following waters of Galveston County at any time:

(I) Swan Lake;

(II) Moses Lake;

(III) Dollar Bay;

(IV) Clear Lake;

(V) Dickinson Bayou or Bay, west of a line from Miller's Point to April Fool Point;

(VI) water lying northwest of a line from Kemah in Galveston County to Mesquite Knoll in Chambers County;

(VII) water of East Bay lying north and east of a line from the extreme western point of Smith's Point in Chambers County to the west bank of Siever's Cut were East Bay intersects with the north bank of the Intracoastal Canal on Bolivar Peninsula in Galveston County at Siever's Fish Camp, which cut is between Elm Grove Point and Baffle Point, both points being on the north shore of Bolivar Peninsula; or

(VIII) water of West Bay lying south and west of the Galveston Causeway (Interstate Highway 45), including all adjacent bays, streams, bayous, and canals.

(B) Nets and seines.

(i) It is unlawful for any person to use any net or seine except cast nets or 20-foot minnow seines only for taking bait in the coastal waters of this state.

(ii) Any area closed to the use of nets or seines prior to September 1, 1988 remains closed.

(iii) No person may retain or possess red drum or spotted seatrout caught in any net or seine.

(C) Trotlines.

(i) Throwlines and sail lines are types of trotlines and all trotline regulations apply to each type of trotline except where noted in this subchapter.

(ii) It is unlawful for any person to use a trotline in or on the waters of the Gulf of Mexico within the jurisdiction of this state.

(iii) No person may retain or possess red drum, sharks, or spotted seatrout caught on a trotline other than a sail line.

(iv) Trotline (except sail line) ends shall be 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, or with a yellow plastic bottle of not less than one-gallon size attached to end fixtures. All trotline floats must be yellow.

(v) Metallic stakes are prohibited under the authority of the Parks and Wildlife Code, §66.206(b).

(vi) No trotline (except sail lines) shall exceed 600 feet in length.

(vii) No trotline or portions thereof shall be 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.

(viii) No trotline or trotline components, including lines and hooks, but excluding poles, may be left in or on coastal waters between the hours of 1:00 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.

(ix) No person may use any bait other than natural bait on trotlines. Sail lines are excluded from the restrictions imposed by this clause.

(x) The minimum hook interval for trotlines (except sail lines) is three horizontal feet.

(xi) All trotlines, except sail lines, must be identified by gear tags.

(xii) All hooks used on trotlines shall be a 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.

(xiii) It is unlawful to place a trotline 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.

(xiv) Sail lines.

(I) Line length shall not exceed 1,800 feet from the reel to the sail.

(II) The sail and most shoreward float must be a highly visible orange or red color.

(III) No float on the line may be more than 200 feet from the sail.

(IV) A weight of not less than one ounce shall be attached to the line not less than four feet or more than six feet shoreward of the last shoreward float.

(V) Reflectors of not less than two square inches shall be affixed to the sail and floats and shall be visible from all directions for sail lines operated from 30 minutes after sunset to 30 minutes before sunrise.

(VI) There is no hook spacing requirement for sail lines.

(VII) No more than one sail line may be used per fisherman.

(VIII) Sail lines may not be used by the holder of a commercial fishing license.

(IX) Sail lines must be attended at all times the line is fishing.

(X) Sail lines may not have more than 30 hooks and no hook may be placed more than 200 feet from the sail.

(D) Perch traps.

(i) Perch traps may be used only for taking bait.

(ii) Perch traps may not exceed 18 cubic feet.

(iii) Perch traps must be marked with floating visible orange buoy not less than six inches in height and six inches in width, or with an orange plastic bottle of not less than one gallon in size. The buoy must have a gear tag attached.

*§65.78. Crabs.*

(a) Bag, possession and size limits.

(1) It is unlawful for any person while fishing on public waters to have in his possession crabs in excess of the daily bag limit as established for those waters.

(2) There are no bag, possession, or size limits on crabs except as provided in these rules.

(3) It is unlawful for any person to:

(A) possess egg-bearing (sponge) crabs or stone crabs;

(B) possess blue crabs less than five inches in width (as measured following §65.3 of this title (relating to definitions)), except that not more than 5.0%, by number, of undersized crabs may be possessed if placed in a separate container at the time of taking;

(C) Remove or possess on board a vessel on public waters the left claw from a stone crab (each retained claw must be at least 2-1/2 inches long);

(D) fail to return immediately a stone crab to the waters where caught; or

(E) buy or sell a female crab that has its abdominal apron detached.

(b) Seasons. There are no closed seasons for the taking of crabs, except as listed within this section.

(c) Places. There are no places closed for the taking of crabs, except as listed within this section.

(d) Devices, manners, and methods.

(1) It is unlawful for any person to take, attempt to take, or possess crabs caught by devices, means, or methods other than as authorized in this subchapter.

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

(A) Crab line.

(B) Crab trap. It is unlawful for any person to:

(i) fish for commercial purposes with more than 200 crab traps at one time;

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

(iii) fish a crab trap in the fresh waters of this state;

(iv) fish a crab trap that exceeds 18 cubic feet in volume and 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 lower edge of the outside trap walls;

(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 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;

(vii) fish a crab trap in public waters without a valid gear tag that has a date that is more than 30 days old attached to the buoy;

(viii) 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;

(ix) 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;

(x) 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;

(xi) 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

(xii) 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) Umbrella net. It is unlawful for any person to use an umbrella net with the area within the frame exceeding 16 square feet.

(D) Other devices. Devices legally used for taking fresh or saltwater fish or shrimp may be used to take crab if operated in places and at times authorized by a proclamation of the Parks and Wildlife Commission or the Parks and Wildlife Code.

*§65.82. Other Aquatic Life.*

(a) It is unlawful for a person to knowingly take, kill, or disturb sea turtles or sea turtle eggs in or from the waters of the State of Texas.

(b) There is no open season on porpoises, dolphins (mammals), and whales.

(c) Any other aquatic life (except threatened and endangered species) not addressed in this subchapter may be taken only with the devices defined as lawful for taking fish, crabs, oysters, or shrimp in places and at times as provided by proclamations of the Parks and Wildlife Commission and the Parks and Wildlife Code.

*§65.90. Effective Date.* To be effective September 1, 1995, except where noted in this subchapter.

*§65.91. Penalty for Violation.* The penalties for violation of this subchapter are prescribed by the Parks and Wildlife Code.

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

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

TRD-9501777 Paul M. Shinkawa
Acting General Counsel
Texas Parks and Wildlife Department

Proposed date of adoption: March 23, 1995

For further information, please call: (512) 389-4642

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## Subchapter H. Public Hunting Lands Hunting and Fishing Proclamation

### • 31 TAC §§65.190-65.196

The Texas Parks and Wildlife Department proposes amendments to §§65. 190-65.196, concerning Public Hunting Lands Hunting and Fishing Proclamation. The proposed amendments liberalize trapping regulations; prohibit the use of dogs to hunt fur-bearers and predators during daylight within an open season; add new hunt categories; eliminate the requirement for on-site registration in special dove hunt areas; provide for antlerless-only deer hunting by annual permit on designated days on the Richland Creek Wildlife Management Area; remove the shotgun-only restriction for hunts by annual permit on White Oak Creek Wildlife Management Area; add new areas and remove areas no longer under department management; and make changes to designations, cross-references, and matters concerning clarity and simplification. The proposed amendments are necessary in order to promote public-user opportunity and prevent waste or depletion of the wildlife resources of the state.

The proposed amendments function by increasing hunter opportunity, preventing overharvest, equitably distributing the available harvest and, in general, preserving and enhancing existing populations while allowing for harvest according to prescribed wildlife and fisheries tenets.

The proposed rules are based upon scientific studies and investigations conducted by the department pursuant to Parks and Wildlife Code, Chapter 81, and represent required findings of fact with respect to the relative abundance of fish and wildlife species in the state.

Dr. Bill Harvey, regulatory coordinator, has determined that for the first five-year period the sections as proposed are in effect there will be minimal fiscal implications to state or local governments as a result of enforcing or administering the sections.

Dr. Harvey also has determined that for each of the first five years the amendments as proposed are in effect the public benefit anticipated as a result of enforcing the amendments as proposed will be increased recreational taking of fish and game animal species consistent with their populations on lands managed by the department. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

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

The amendments are proposed under the Parks and Wildlife Code, Chapter 81, which provides the Texas Parks and Wildlife Department with the authority to regulate the seasons, bag limits, means and methods, and conditions for taking wildlife resources on wildlife management areas; Chapter 12, Subchapter A, which provides that a tract of land purchased primarily for a purpose authorized by the code may be used for any authorized function of the department if the commission determines that multiple use is the best utilization of the land's resources; and Chapter 62, Subchapter D, which provides the authority, as sound biological practices warrant, to prescribe seasons, number, size, kind, sex, and means and methods to take any wildlife from state parklands.

The proposed amendments affect Parks and Wildlife Code, Chapters 12, 62, and 81.

*§65.190. Application.*

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

(c) On U.S. Army Corps of Engineer Lands (**Aquilla,** Cooper, Dam B, Granger, Pat Mayse, Ray Roberts, Somerville, White Oak Creek) designated as public hunting lands, persons other than hunters are exempt from requirements for an access permit.

(d) The provisions of this subchapter apply to all of the wildlife resources in the following areas, except as restricted herein and contingent upon execution of required agreements for leased lands:

(1) (No change.)

(2) Anderson Tract **(Old Sabine) Wildlife Management Area in Smith County.**

**(3)**[(2)] Aquilla Wildlife Management Area in Hill County.

**(4)**[(3)] Atkinson Island Wildlife Management Area in Harris County.

**(5) Big Lake Bottom Wildlife Management Area in Anderson County.**

**(6)**[(4)] Black Gap Wildlife Management Area in Brewster County.

**(7)** [(5)] Caddo Lake State Park and Wildlife Management Area in Marion and Harrison counties.

**(8)**[(6)] Candy Abshier Wildlife Management Area in Chambers County.

**(9)**[(7)] Cedar Creek Islands Wildlife Management Area:

(A) Big Island Unit in Kaufman County.

(B) Bird Island Unit in Henderson County.

(C) Telfair Island Unit in Henderson County.

**(10)**[(8)] Chaparral Wildlife Management Area in Dimmit and LaSalle counties.

**(11)**[(9)] Cooper Wildlife Management Area in Delta and Hopkins counties.

**(12)**[(10)] Dam B Unit (includes Angelina-Neches Scientific Area) in Jasper and Tyler counties.

**(13)**[(11)] designated units of the Las Palomas Wildlife Management Area:

(A) Adams Unit in Hidalgo County.

(B) Anacua Unit in Cameron County.

**(C) Arroyo Colorado Unit in Cameron County.**

**(D)**[(C)] Baird Unit in Hidalgo County.

**(E) Boca Chica Unit in Cameron County.**

**(F)**[(D)] Brasil Unit in Cameron County.

**(G)**[(E)] Carricitos Unit in Cameron County.

**(H)**[(F)] Champion Unit in Hidalgo County.

**(I) Chapote Unit in Hidalgo County.**

**(J) Ebony Unit in Cameron County.**

**(K)**[(G)] Frederick Unit in Willacy County.

**(L)**[(H)] Kiskadee Unit in Hidalgo County.

**(M)**[(I)] Kelly Unit in Hidalgo County.

**(N)**[(J)] La Grulla Unit in Starr County.

**(O)**[(K)] Longoria Unit in Cameron County.

**(P)**[(L)] Mac Whorter Unit in Hidalgo County.

(Q)[(M)] McManus Unit in Hidalgo County.

(R)[(N)] Ocotillo Unit in Presidio County.

(S)[(O)] Penitas Unit in Hidalgo County.

(T)[(P) ] Prieta Unit in Starr County.

**(U) Resaca de la Palma Unit in Cameron County.**

(V)[(Q)] Taormina Unit in Hidalgo County.

(W)[(R)] Tucker De-Shazo Unit in Cameron County.

(X) [(S)] Voshell Unit in Cameron County.

(14)[(12)] designated units of the Playa Lakes Wildlife Management Area:

(A) Dimmit Playa Unit in Castro County.

(B) Taylor Lakes Unit in Donley County.

(15)[(13)] designated units of public hunting lands under short term lease.

(16)[(14)] designated units of the state park system of Texas **in accordance with the classification of public land units.** [approved by the Commission as having met the following criteria:

[(A) The population level of a species, as determined by scientific investigations, could pose a threat to its own welfare, other wildlife resources or habitat conditions.

[(B) The regulated harvest of selected species can be achieved with maximum consideration for public safety.

[(C) The regulated harvest of selected species will not significantly impact unique features of the area or conventional state park use.]

(17)[(15)] Elephant Mountain Wildlife Management Area in Brewster County.

(18)[(16)] Gene Howe Wildlife Management Area **(includes Pat Murphy Unit)** in Hemphill and Lipscomb counties.

(19)[(17)] Granger Wildlife Management Unit in Williamson County.

(20)[(18)] Guadalupe Delta Wildlife Management Area in Calhoun County.

(21)[(19)] Gus Engeling Wildlife Management Area in Anderson County.

(22)[(20)] James E. Daughtrey Wildlife Management Area in Live Oak and McMullen counties.

(23)[(21)] J. D. Murphree Wildlife Management Area in Jefferson County.

(24)[(22)] Keechi Creek Wildlife Management Area in Leon County.

(25)[(23)] Kerr Wildlife Management Area in Kerr County.

(26)[(24)] lands within a desert bighorn sheep cooperative unit for the hunting of desert bighorn sheep only.

(27)[(25)] Lower Neches Wildlife Management Area in Orange County.

(28)[(26)] Mad Island Wildlife Management Area **(includes Matagorda Peninsula Unit)** in Matagorda County.

(29)[(27)] Matador Wildlife Management Area in Cottle County.

(30)[(28)] Matagorda Island Wildlife Management Area in Calhoun County.

(31)[(29)] M. O. Neasloney Wildlife Management Area in Gonzales County.

(32)[(30)] Old Tunnel Wildlife Management Area in Kendall County.

(33)[(31)] Pat Mayse Wildlife Management Unit in Lamar County.

(34)[(32)] Peach Point Wildlife Management Area **(includes Bryan Beach Unit)** in Brazoria County.

(35)[(33)] Richland Creek Wildlife Management Area in Freestone and Navarro counties.

(36)[(34)] Sheldon Wildlife Management Area in Harris County.

(37)[(35)] Sierra Diablo Wildlife Management Area in Culberson and Hudspeth counties.

(38)[(36)] Somerville Wildlife Management Area in Burleson and Lee counties.

(39)[(37)] Walter Buck Wildlife Management Area in Kimble County.

(40)[(38)] White Oak Creek Wildlife Management Area in Bowie, Cass, Morris and Titus counties.

(41)[(39)] **other** numbered units of public hunting lands:

(A) Unit 102 in Sabine County.

(B) Unit 103 in Sabine County.

(C) Unit 104 in Sabine and San Augustine counties.

(D) Unit 106 in San Augustine County.

[(E) Unit 109 in Hardin County.]

(E)[(F)] Unit 113 in Rusk and Nacogdoches counties.

(F)[(G)] Unit 114 in Trinity County.

[(H) Unit 115 in Trinity County.]

(G)[(I)] Unit 116 in Houston County.

(H)[(J)] Unit 117 in Houston County.

(I)[(K)] Unit 119 in Cherokee County.

(J)[(L)] Unit 120 in Anderson and Cherokee counties.

(K)[(M)] Unit 121 in Houston County.

(L)[(N)] Unit 122 in Newton County.

(M)[(O)] Unit 125 in Jasper County.

(N)[(P)] Unit 129 in Jasper and Orange counties.

[(Q) Unit 130 in Tyler County.

[(R) Unit 133 in Jasper County.]

(O)[(S)] Unit 135 in Anderson County.

(P)[(T)] Unit 136 in San Augustine and Sabine counties.

(Q)[(U)] Unit 137 in San Augustine and Sabine counties.

(R)[(V)] Unit 142 in San Augustine County.

(S)[(W)] Unit 143 in Newton County.

(T)[(X)] Unit 144 in Newton and Jasper counties.

(U) [(Y)] Unit 145 in Liberty County.

(V)[(Z)] Unit 146 in Angelina County.

(W)[(AA)] Unit 147 in Nacogdoches County.

(X)[(BB)] Unit 150 in Panola County.

(Y)[(CC)] Unit 151 in Panola County.

(Z)[(DD)] Unit 152 in Sabine County.

(AA)[(EE)] Unit 154 in San Augustine County.

(BB) [(FF)] Unit 155 in Sabine County.

(CC)[(GG)] Unit 156 in Shelby County.

(DD)[(HH)] Unit 157 in Shelby County.

[(II) Unit 158 in Hardin County.]

(EE)[(JJ)] Unit 159 in Sabine County.

[(KK) Unit 160 in Jasper and Newton counties.]

(FF)[(LL)] Unit 204 in Hardin and Tyler counties.

(GG)[(MM)] Unit 210 in Newton County.

(HH)[(NN)] Unit 211 in Newton and Jasper counties.

[(OO) Unit 213 in Newton and Jasper counties.]

(II)[(PP)] Unit 217 in Montgomery and Liberty counties.

(JJ)[(QQ)] Unit 218 in Hardin County.

(KK)[(RR)] Unit 223 in Jasper County.

(LL)[(SS)] Unit 224 in Shelby County.

(MM)[(TT)] Unit 301 in Newton County.

(NN)[(UU)] Unit 501 (Lake Ray Roberts Wildlife Management Area) in Cooke, Denton, and Grayson counties.

(OO)[(VV)] Unit 607 in Robertson County.

(PP)[(WW)] Unit 615 (North Toledo Bend Wildlife Management Area) in Shelby County.

(QQ)[(XX)] Unit 616 in Orange County.

(RR)[(YY)] Unit 617 (Cleavinger Tract) in Castro County.

(SS)[(ZZ)] Unit 630 in Panola and Shelby counties.

(TT)[(AAA)] Unit 712 (Blue Elbow Swamp Wildlife Management Area) in Orange County.

(UU)[(BBB)] Unit 801 in Shelby County.

(VV)[(CCC)] Unit 803 in Bowie County.

(WW)[(DDD)] Unit 901 (Caddo Wildlife Management Area) in Fannin County.

(XX)[(EEE)] Unit 902 (Moore Plantation Wildlife Management Area) in Sabine and Jasper counties.

(YY)[(FFF)] Unit 903 (Bannister Wildlife Management Area) in San Augustine County.

(ZZ)[(GGG)] Unit 904 (Alabama Creek Wildlife Management Area) in Trinity County.

(AAA)[(HHH)] Unit 905 (Sam Houston National Forest) in Montgomery, San Jacinto, and Walker counties.

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

Baiting–The placement of salt, mineral, molasses and other sugar-based products, grain, fruit, nuts, bulbs, tubers, roots, vegetative material or other food substance used as an attractant for wildlife on public hunting lands. The use of [manual] calling devices or scent lures simulating animal odors is not considered baiting.

Designated days–Specific days within an established season or period of time as designated by the executive director and identified in [the] current departmental **publications, "Public Hunting Lands Map Booklet" and/or "Applications For Drawings On Public Hunting Lands."** [publication, "Hunting Opportunities on Public Hunting Lands."]

Designated units of the state park system–Specific units of the state park system approved by the commission for application of provisions of this subchapter and identified in [the] current departmental **publications, "Public Hunting Lands Map Booklet" and/or "Applications For Drawings On Public Hunting Lands."** [publication, "Hunting Opportunities on Public Hunting Lands."]

Limited use zone–An area designated in the current publication, **"Public Hunting Lands Map Booklet"** ["Hunting Opportunities on Public Hunting Lands"], identified by boundary signs, and within which hunting and the use of firearms or archery equipment is prohibited or restricted to specified means and methods or periods of time.

**Public hunting compartment–A defined portion of the public hunting area to which an individual or group of people is assigned during a specific hunt period and within which the individual or group of people is authorized to perform public hunting activity.**

*§65.192. General Rules and Regulations.*

(a) The following rules and regulations apply to all public hunting lands unless an exception is provided in the Open Seasons and Special Regulations section for a specific area.

(1)-(8) (No change.)

(9) It is unlawful for any person to not obey regulations posted at the area or listed in **current departmental publica-**

tions, **"Public Hunting Lands Map Booklet" and/or "Applications For Drawings On Public Hunting Lands" or supplements to these publications** [the Public Hunting Lands Map Booklet], fail to comply with instructions on permits or area leaflets, or refuse to follow directives given by departmental personnel in the discharge of official duties as established by Texas Parks and Wildlife Code, §§81.401-81.404.

(10)-(11) (No change.)

(12) It is an offense if a person within the hunt area when hunting with firearms is permitted fails to visibly wear a minimum of 400 square inches of daylight fluorescent orange material with orange headwear and 144 square inches appearing on both the chest and back [when hunting is permitted on public hunting lands], except that persons hunting only the following species are exempt from this requirement:

(A)-(E) (No change.)

(13)-(16) (No change.)

(17) It is an offense for a person under 17 years of age (minor) to fail to be under the immediate supervision of a duly permitted and authorized supervising adult when hunting on public hunting lands. For a minor who has received hunter education certification, the requirement for immediate supervision is relaxed to the extent that while the minor is engaged in hunting activities, the authorized supervising adult is required **only** to [only] be present on the public hunting area.

(18) (No change.)

(19) Trapping.

(A)-(B) (No change.)

(C) The use of traps and snares for taking furbearing animals or predatory animals is an offense, except:

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

(iv) when placement of the set trap or snare is no closer than 50 yards from the nearest designated road **or public hunting lands boundary** and no closer than 400 yards from the nearest designated campsite [or public hunting lands boundary];

(v)-(vi) (No change.)

(20)-(23) (No change.)

(24) Archery.

(A) Regulations governing the use of archery equipment for hunting on public hunting lands governed by **this subchapter** [these rules] are as follows:

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

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

(25) Hunting with dogs.

(A) It is an offense to use a dog or dogs in hunting, pursuing, or taking deer, exotic mammals, pronghorn antelope, desert bighorn sheep, javelina, or turkey, except as provided in subparagraphs **(B)**[(C)] and **(C)**[(D)] of this paragraph.

[(B) It is lawful to use a dog or dogs in hunting squirrel, rabbits and hares, furbearing animals, predatory animals, or game birds other than turkey during the open season prescribed on public hunting lands.]

**(B)**[(C)] It is an offense to use more than two leashed dogs in trailing wounded deer or wounded exotic mammals.

**(C)**[(D)] It is an offense to use a dog or dogs in hunting, pursuing, or taking feral hogs on the Sam Houston National Forest Wildlife Management Area (Unit 905) other than during the period from January 15-March 15.

**(D) It is lawful to use a dog or dogs in hunting squirrel, rabbits and hares, furbearing animals, predatory animals, or game birds other than turkey during the open season prescribed on public hunting lands, except as provided in subparagraph (E) of this paragraph.**

(E) It is an offense to use a dog or dogs in hunting furbearing animals or predatory animals during daylight hours within an open season for taking deer on public hunting lands.

(26) Falconry.

(A) It is an offense to use a falcon to hunt or take migratory game birds except during the seasons provided in **this subchapter** [these rules] and in accordance with the means, methods and special restrictions as provided in **Subchapter N of this title (relating to** [the] Early Season Migratory Game Bird Proclamation) and **Subchapter O of this title (relating to** [the] Late Season Migratory Game Bird Proclamation).

(B) It is an offense to use a falcon to hunt or take any non-migratory game bird, game animal, or rabbits and hares except during the seasons provided in **this subchapter** [these rules] and in accordance with the means, methods and special restrictions as provided in **Subchapter A** [§65.21] of this title (relating to **Statewide Hunting and Fishing Proclamation** [Falconry]).

(27) Checking game, entering and exiting public hunting lands.

(A) When hunting under special or regular permit, it is an offense if a person fails to check in at a public hunt area check station prior to initiation of hunting activities, **except as provided in subparagraph (C) of this paragraph.** Unless otherwise authorized in writing by the department **or as provided in subparagraph (C) of this paragraph**, it is an offense if a person hunting under special or regular permit fails to check out at a public hunt area check station and allow inspection of the bag before leaving the area.

(B) (No change.)

**(C) The requirement for a public hunter to check in and check out at a departmental check station during hunts by regular permit may be waived for specific hunts as designated in the Public Hunting Lands Map Booklet or supplement to the Public Hunting Lands Map Booklet. Participation in such hunts where the check station requirement has been waived will be solely by annual public hunting permit.**

**(D)**[(C)] It is an offense if a person enters public hunting lands at any location other than an authorized entry location or exits public hunting lands at any location other than an authorized exit location.

**(E)**[(D)] Access for nonconsumptive use and fishing may be temporarily restricted while hunts are being conducted by special or regular permit.

**(F)**[(E)] It is an offense if a person who does not possess a valid permit enters a public hunt area at a time when access is restricted to only persons possessing a valid permit.

**(G)**[(F)] It is an offense for a person to enter an area identified by boundary signs as a limited use zone or a sanctuary and fail to obey the restrictions on public use posted at the area.

**(H)**[(G)] It is an offense for a person to enter an area identified by boundary signs as a restricted area.

**(I)**[(H)] Employees of the department may remove parts from specimens harvested on public hunting lands for scientific investigation.

(28)-(29) (No change.)

(b) The following rules and regulations apply to the taking of specific wildlife resources.

(1) Deer.

(A) Hunt categories include Archery-Only, Buck-Only or Either-Sex General, [and] Antlerless/Spike-Only General **and Youth-Only General**.

(B)-(C) (No change.)

(2)-(5) (No change.)

*§65.193. Open Seasons, Bag and Possession Limits, and Means and Methods; General Rules.*

(a) It is unlawful to take wildlife resources at any time other than during the open seasons provided in this subchapter, by means or methods not prescribed in **this subchapter** [these rules], or to take more than the daily bag limits, or to have in possession more than the possession limits, as provided in this subchapter.

(b)-(r) (No change.)

(s) Open seasons, bag and possession limits, means and methods, and special regulations for legal species and legal activities on specific areas.

(1) Alazan Bayou Wildlife Management Area.

(A) Deer: archery-during the periods of October 1-October 31 and from the first Saturday in November through the first Sunday in January; **three** [1] deer, **one buck only** (either sex during October and the first full weekend in November and buck-only thereafter); by annual public hunting permit.

(B)-(K) (No change.)

(L) Special regulations:

(i) (No change.)

(ii) It is an offense to **use** [possess] a firearm other than a muzzleloading firearm **to take or attempt to take exotic mammals** [while hunting] during the general season designated for exotic mammals.

**(2) Anderson Tract (Old Sabine) Wildlife Management Area.**

**(A) Deer:**

***(i)*** **archery-on designated days during the period from September 1-January 31; one deer (either sex); by annual public hunting permit.**

***(ii)*** **general-during the period from October 1-February 15; one deer as specified on the permit; by special permit.**

**(B) Exotic mammal:**

***(i)*** **concurrent seasons-to correspond with permit requirements, means and methods, hunt dates, and shooting hours designated for taking deer; no bag or possession limits.**

***(ii)*** **general-during the period from September 1-August 31; no bag or possession limits; by special permit.**

**(C) Waterfowl-on designated days during the waterfowl seasons established for Smith County; shooting hours end at noon; by annual public hunting permit.**

**(D) Squirrel-on designated days; by annual public hunting permit.**

**(E) Rabbits and hares-to correspond with hunt dates and shooting hours designated by squirrel hunts; no bag or possession limits; by annual public hunting permit.**

**(F) Fishing-interior impoundments, creeks, and channels are closed to fishing. Fishing from the bank in the Sabine River is permitted during daylight hours only, except the area is closed to fishing on days when hunts are conducted by special permit; annual public hunting permit required. Entry to and exit from the area for fishing is restricted to pedestrian travel from Farm Road 1804 or by boat from public waters. It is an offense if a person fishing on the area does not stay within 100 yards of the bank of the Sabine River.**

**(G) Special regulations:**

***(i)*** **Public access to the area will be restricted to specific periods of time and means as designated in the Public Hunting Lands Map Booklets.**

***(ii)*** **It is an offense for a public user to be on the area during the period from two hours after official sunset to two hours before official sunrise, except by written authorization of the department.**

***(iii)*** **It is an offense to possess a rifle or handgun of greater size than .22-caliber rimfire while hunting during the season designated for squirrel.**

***(iv)*** **The use or possession of dogs is an offense, except one dog per annual public hunting permit holder may be used when hunting waterfowl, squirrel, or rabbits and hares.**

***(v)*** **Horses, mules, burros, or other types of riding stock or pack animals may be possessed and used only in accordance with written authorization of the department for educational events sanctioned by the department.**

***(vi)*** **It is an offense to park in other than designated parking areas.**

**(3)**[(2)] Aquilla Wildlife Management Area.

(A) Deer: archery-to correspond with hunt dates established by the Statewide Hunting and Fishing Proclamation for taking deer in Hill County during the archery-only season and the general season; one [1] deer (buck only); by annual public hunting permit.

(B) Exotic mammal: concurrent seasons-to correspond with hunt dates, shooting hours, and means and methods designated for taking deer; no bag or possession limit; by annual public hunting permit.

(C) Squirrel-by annual public hunting permit.

(D) Turkey-during the spring season established by the Statewide Hunting and Fishing Proclamation for taking turkey in Hill County; **one** [1] turkey (gobbler only); by annual public hunting permit.

(E) Quail-by annual public hunting permit.

(F) Mourning dove-by annual public hunting permit.

(G) Sandhill crane-by annual public hunting permit.

(H) Waterfowl-season closed within that portion of the area designated by signs as a waterfowl sanctuary; by annual public hunting permit.

(I) Snipe-by annual public hunting permit.

(J) Rabbits and hares-no bag or possession limits; by annual public hunting permit.

(K) Fishing-no permit required.

(L) Special regulations–It is an offense to use any device other than shotguns with non-toxic shot or no larger than #4 lead shot or bow and arrow for hunting (Non-toxic shot requirements for hunting waterfowl remain in effect).

(4)[(3)] Atkinson Island Wildlife Management Area–special regulations:

(A) It is an offense to take wildlife resources other than fish.

(B) It is an offense to park a boat on the area in any place except the nonvegetated beach zone.

(C) It is an offense for a person to allow a dog, cat, or any animal to enter the area unleashed and not under the person's physical control.

**(5) Big Lake Bottom Wildlife Management Area.**

**(A) Deer:**

***(i)*** **archery–on designated days during the period from September 1-January 31; one deer (either sex); by annual public hunting permit.**

***(ii)*** **general–during the period from October 1-February 15; one deer as specified on the permit; by special permit.**

**(B) Exotic mammal:**

***(i)*** **concurrent seasons–to correspond with permit requirements, means and methods, hunt dates, and shooting hours designated for taking deer; no bag or possession limits.**

***(ii)*** **general–during the period from September 1-August 31; no bag or possession limits; by special permit.**

**(C) Waterfowl–on designated days during the waterfowl seasons established for Anderson County; shooting hours end at noon; by annual public hunting permit.**

**(D) Squirrel–on designated days; by annual public hunting permit.**

**(E) Rabbits and hares–to correspond with hunt dates and shooting hours designated for squirrel hunts; no bag or possession limits; by annual public hunting permit.**

**(F) Fishing–permitted during daylight hours only, except no fishing is permitted on days when hunts are conducted by special permit; annual public hunting permit required.**

**(G) Special regulations:**

***(i)*** **Public access to the area is only by boat from public waters or from adjacent private lands with the landowner's permission.**

***(ii)*** **It is an offense to possess a rifle of handgun of greater size than .22-caliber rimfire while hunting during the season designated for squirrel.**

***(iii)*** **The use or possession of dogs is an offense, except one dog per annual public hunting permit holder may be used when hunting waterfowl, squirrel, or rabbits and hares.**

***(iv)*** **Horses, mules, burros, or other types of riding stock or pack animals may be possessed and used only in accordance with written authorization of the department for educational events sanctioned by the department.**

(6)[(4)] Black Gap Wildlife Management Area.

(A) Deer:

(i) archery–on designated days during the period from September 1-January 31; one [1] deer (buck only); by annual public hunting permit.

(ii) general–during the period from October 1-February 15; one [1] deer as specified on the permit; by special permit.

(B) Javelina:

(i) archery: concurrent seasons–to correspond with dates and shooting hours designated for archery-only deer hunts; one [1] javelina (either sex); by annual public hunting permit.

(ii) general–during the period from September 1-March 31; one [1] javelina (either sex); by special permit.

(C) Quail–on designated days; by annual public hunting permit.

(D) Mourning dove–on designated days, by annual public hunting permit.

(E) Rabbits and hares–to correspond with hunt dates and shooting hours designated for quail and mourning dove; no bag or possession limit; by annual public hunting permit.

(F) Fishing and river-related public use. Impoundments are closed to fishing. Fishing in and public access to the Rio Grande River is permitted year-round, except on days when hunts are being conducted by special permit; annual public hunting permit required, except public users who enter and exit the area by boat are not required to possess an annual public hunting permit. Public users are required to use Maravillas Canyon and Horse Canyon roads only while going to and from the Rio Grande River. From the point where the Maravillas Canyon Road enters the Rio Grande Valley downstream to the area boundary, a river-related public user who does not possess an annual public hunting permit commits an offense if the public user does not stay within the area between the road and the river or within 300 yards of the river from the aforementioned point upstream to the area boundary.

(G) Special regulations–It is an offense if a public user fails to perform on-site registration at the area headquarters, except fishermen who enter and exit the area by boat are not required to perform on-site registration.

(7) [(5)] Caddo Lake State Park and Wildlife Management Area.

(A) Seasons and bag limits for taking wildlife resources are as provided for Marion and Harrison counties.

(B) Special Regulations:

(i) The requirement of an annual public hunting permit or a limited public use permit is waived.

(ii) Existing permanent duck blinds which were in place on October 16, 1992 may be repaired and maintained; however it is a violation to construct a new permanent duck blind or to repair or maintain a permanent duck blind which was initially constructed after October 16, 1992.

(iii) It is an offense to establish a temporary duck blind less than 300 yards from an existing duck blind.

(iv) It is an offense to discharge a firearm within that portion of the area designated by signs as a Limited Use Zone.

(8)[(6)] Candy Abshier Wildlife Management Area–special regulations:

(A) It is an offense to take wildlife resources other than fish.

(B) It is an offense to park or operate motor vehicles in an area other than the designated parking area.

(C) It is an offense to enter a restricted area, except as authorized in writing by the Department.

(D) It is an offense for a person to allow a dog, cat, or any animal to enter the area unleashed and not under the person's physical control.

**(9)**[(7)] Cedar Creek Islands Wildlife Management Area (Big Island, Bird Island, and Telfair Island Units)-special regulations:

(A) It is an offense to take wildlife resources other than fish.

(B) It is an offense to enter a restricted zone, except as authorized in writing by the Department.

(C) It is an offense to park a boat on the area in any place except the nonvegetated beach zone.

(D) It is an offense for a person to allow a dog, cat, or any animal to enter the area unleashed and not under the person's physical control.

**(10)**[(8)] Chaparral Wildlife Management Area.

(A) Deer:

(i) archery-during the period from September 1-January 31; **one** [1] deer (either sex); by special permit.

(ii) general-during the period from October 1-February 15; **one** [1] deer as specified on the permit; by special permit.

(B) Exotic mammal: concurrent seasons-to correspond with hunt dates, shooting hours, means and methods, and permit requirements for taking deer, javelina, and coyote; no bag or possession limit.

(C) Javelina:

(i) archery: concurrent seasons-to correspond with dates and shooting hours designated for archery-only deer hunts; **one** [1] javelina (either sex); by special permit.

(ii) general-during the period of September 1-March 31; **one** [1] javelina (either sex); by special permit.

(D) Quail-on designated days during the period from October-February; by regular permit.

(E) Mourning dove-on designated days by regular permit.

(F) Rabbits and hares-to correspond with hunt dates and shooting hours designated for quail and mourning dove; no bag or possession limit; by regular permit.

(G) Coyote-during the period from September 1-August 31; no bag or possession limit; by regular permit.

(H) Fishing-no open season.

**(11)**[(9)] Cooper Wildlife Management Area.

(A) Deer:

(i) archery-on designated days, **one** [1] deer (either sex during the archery-only deer season established for Delta and Hopkins counties and buck-only otherwise); by annual public hunting permit.

(ii) general-during the period from October 1-February 15; **one** [1] deer as specified on the permit; by special permit.

(B) Exotic mammal: concurrent seasons-to correspond with hunt dates, shooting hours, means and methods, and permit requirements designated for deer; no bag or possession limits.

(C) Squirrel-on designated days; by annual public hunting permit.

(D) Quail-on designated days; by annual public hunting permit.

(E) Mourning dove-on designated days; by annual public hunting permit.

(F) Waterfowl-on designated days during the waterfowl seasons established for Delta and Hopkins counties; shooting hours end at noon; by annual public hunting permit.

(G) Woodcock-on designated days; by annual public hunting permit.

(H) Snipe-on dates and shooting hours which correspond to those designated for waterfowl hunts; by annual public hunting permit.

(I) Rabbits and hares-on designated days; by annual public hunting permit.

(J) Fishing-no permit required.

(K) Special regulations-It is an offense to use any device other than shotguns with non-toxic shot or no larger than size #4 lead shot or bow and arrow for hunting, except that lawful firearms, including shotguns using only slugs, are the only legal firearm for taking deer or exotic mammals during the general season (Non-toxic shot requirements for hunting waterfowl remain in effect).

**(12)**[(10)] Dam B Wildlife Management Area.

(A) Deer:

(i) archery-**one** [1] deer (either sex); by annual public hunting permit.

(ii) general-**one** [1] deer (buck only); by annual public hunting permit.

(B) Exotic mammal: concurrent seasons-to correspond with hunt dates, shooting hours, and means and methods designated for deer; no bag or possession limit; by annual public hunting permit.

(C) Squirrel-by annual public hunting permit.

(D) Quail-by annual public hunting permit.

(E) Mourning doves-by annual public hunting permit.

(F) Waterfowl-by annual public hunting permit.

(G) Woodcock-by annual public hunting permit.

(H) King and clapper rail-by annual public hunting permit.

(I) Sora and Virginia rails-by annual public hunting permit.

(J) Gallinules-by annual public hunting permit.

(K) Snipe-by annual public hunting permit.

(L) Rabbits and hares-no closed season; no bag or possession limits; by annual public hunting permit.

(M) Furbearing animals-during the period from September 1-March 31; by annual public hunting permit.

(N) Coyotes-during the period from September 1-March 31; no bag or possession limit; by annual public hunting permit.

(O) Fishing-no permit required.

(P) Special regulations:

(i) Camping is by permit only; permits may be obtained at the U.S. Corps of Engineers office at the reservoir site.

(ii) The use of airboats is an offense.

(iii) It is an offense to use any device other than shotguns with non-toxic shot or no larger than size #4 lead shot or bow and arrow for hunting, except that lawful firearms, including shotguns using only slugs, are the only legal firearms for taking deer or exotic mammals during the general season (Non-toxic shot requirements for hunting waterfowl remain in effect).

(iv) Dogs may be used in hunting coyotes and furbearers.

(13)[(11)] Designated units of the Las Palomas Wildlife Management Area.

(A) Chachalaca-on designated days by annual public hunting permit.

(B) Mourning dove-on designated days by annual public hunting permit.

(C) White-winged dove-on designated days by regular permit, except on the Ocotillo Unit, where an annual public hunting permit is required.

(D) Fishing-no open season, except on the Ocotillo Unit, where an annual public hunting permit is required.

(E) Special regulations:

(i) It is an offense to park other than in designated parking areas, except on the Ocotillo Unit, where parking is also permitted immediately adjacent to designated roads and on the shoulder of Farm Road 170 provided that the vehicle is pulled completely off of the road so as not to block traffic or create a safety hazard.

(ii) It is an offense if a person hunting on the Ocotillo Unit fails to perform on-site registration.

(iii) The taking of wildlife resources on the Kiskadee Unit is an offense.

(iv) It is an offense for a person to enter the Kiskadee Unit during the period from May 1-August 31 unless authorized in writing by the department.

(v) It is an offense for a person to allow a dog, cat, or other animal to enter the Kiskadee Unit unleashed and not under the person's physical control.

**(14)**[(12)] Designated units of public hunting lands under short-term lease.

(A) Deer:

(i) archery:

(I) During the period from September 1-January 31; **one** [1] deer as specified on the permit; by special permit.

(II) On designated days during the period from September 1-January 31; **one** [1] deer as specified by permit; by annual hunting permit.

(ii) general:

(I) During the period from October 1-February 15; **one** [1] deer as specified on the permit; by special permit.

(II) On designated days during the period from October 1-February 15; **one** [1] deer as specified on the permit; by annual public hunting permit.

(B) Exotic animals:

(i) archery:

(I) During the period from September 1-August 31; no bag or possession limit; by special permit.

(II) On designated days during the period from September 1-August 31; no bag or possession limit; by annual hunting permit.

(ii) general:

(I) During the period from September 1-August 31; no bag or possession limit; by special permit.

(II) On designated days during the period from September 1-August 31; no bag or possession limit; by annual public hunting permit.

(C) Javelina:

(i) archery:

(I) During the period from September 1-March 31; **one** [1] javelina (either sex); by special permit.

(II) On designated days during the period from September 1-March 31; **one** [1] javelina (either sex); by annual public hunting permit.

(ii) general:

(I) During the period from September 1-March 31; **one** [1] javelina (either sex); by special permit.

(II) On designated days during the period from September 1-March 31; **one** [1] javelina (either sex); by annual public hunting permit.

(D) Squirrel:

(i) On designated days by regular permit.

(ii) On designated days by annual public hunting permit.

(E) Turkey-during the months of April and May; **one** [1] gobbler; by special permit.

(F) Quail:

(i) On designated days by regular permit.

(ii) On designated days by annual public hunting permit.

(G) Mourning dove:

(i) On designated days by regular permit.

(ii) On designated days by annual public hunting permit.

(H) White-winged dove:

(i) On designated days by regular permit.

(ii) On designated days by annual public hunting permit.

(I) Waterfowl:

(i) On designated days by regular permit; shooting hours end at noon.

(ii) On designated days by annual public hunting permit; shooting hours end at noon.

(J) Sandhill crane:

(i) On designated days by regular permit; shooting hours end at noon.

(ii) On designated days by annual public hunting permit; shooting hours end at noon.

(K) Snipe:

(i) On designated days by regular permit; shooting hours end at noon.

(ii) On designated days by annual public hunting permit; shooting hours end at noon.

(L) Rails:

(i) On designated days by regular permit; shooting hours end at noon.

(ii) On designated days by annual public hunting permit; shooting hours end at noon.

(M) Gallinule:

(i) On designated days by regular permit; shooting hours end at noon.

(ii) On designated days by annual public hunting permit; shooting hours end at noon.

(N) Woodcock:

(i) On designated days by regular permit.

(ii) On designated days by annual public hunting permit.

(O) Fishing-on designated days by annual public hunting permit; restricted to daylight hours.

(P) Special regulations:

(i) It is an offense if a public user fails to perform on-site registration **when required for specific units and hunts as designated in the Public Hunting Lands Map Booklet or supplement to the Public Hunting Lands Map Booklet.**

(ii) The use of airboats is an offense.

(iii) It is an offense to use any device other than shotguns with nontoxic shot no larger than size #4 lead shot or bow and arrow for hunting, except that lawful firearms, including shotguns using only slugs, are the only legal firearms for taking deer or exotic mammals during the general season (nontoxic shot requirements for hunting waterfowl remain in effect).

(iv) It is an offense to possess a rifle or handgun of greater size than .22-caliber rimfire while hunting during the season designated for squirrel.

(v) The use or possession of dogs is an offense, except one dog per permit-holding hunter is permitted for hunting migratory game birds, quail, pheasant or squirrel.

(vi) It is an offense to park in other than designated parking areas.

(15)[(13)] Designated Units of the Playa Lakes Wildlife Management Area.

(A) Pheasant-on designated days; by annual public hunting permit.

(B) Quail-on designated days; by annual public hunting permit.

(C) Mourning dove-on designated days; by annual public hunting permit.

(D) Waterfowl-on designated days during designated shooting hours; by annual public hunting permit.

(E) Sandhill crane-on designated days during designated shooting hours; by annual public hunting permit.

(F) Snipe-on designated days during designated shooting hours; by annual public hunting permit.

(G) Rabbits and hares-on designated days; no bag or possession limits; by annual public hunting permit.

(H) Fishing-on designated days; by annual public hunting permit.

(16)[(14)] Designated units of the state park system.

(A) Deer:

(i) archery-on **designated days** during the period from September 1-January 31; **one** [1] deer (either sex); by **annual public hunting permit** or special permit.

(ii) general-during the period from October 1-February 15; **up to two** [2] deer as specified on the permit; by special permit.

(B) Exotic mammals:

(i) concurrent seasons-to correspond with hunt dates, shooting hours, and means and methods designated for deer; no bag or possession limit; by special permit.

(ii) general-during the period from September 1-August 31; no bag or possession limits; by special permit.

(C) Designated exotic mammal-during the period from September 1-August 31; designated exotic mammals of the type and number as specified on the permit; by special permit.

(D) Javelina:

(i) archery-on designated days during the period from September 1-March 31, by special permit; also concurrent with hunt dates, shooting hours, and permit requirements for designated archery deer hunts by annual public hunting permit or special permit; one javelina (either sex).

(ii) general-during the period from September 1-March 31; one javelina (either sex); by special permit.

[(D) Javelina-during the period of September 1-March 31; one javelina (either sex); by special permit.]

(E) Squirrel-on designated days by regular **or annual public hunting** permit.

(F) Turkey-during the months of April and May; **one** [1] gobbler; by special permit.

(G) Quail-on designated days during the period from October-February; by regular **or annual public hunting** permit.

(H) Mourning dove-on designated days by regular **or annual public hunting** permit.

(I) White-winged dove-on designated days by regular **or annual public hunting** permit.

(J) Waterfowl-on designated days; shooting hours end at noon; by regular **or annual public hunting** permit.

(K) King and clapper rails-on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular **or annual public hunting** permit.

(L) Sora and Virginia rails-on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular **or annual public hunting** permit.

(M) Gallinule-on dates and shooting hours which correspond to those

designated for waterfowl hunts; by regular or **annual public hunting** permit.

(N) Snipe-on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular or **annual public hunting** permit.

(O) Alligator-**One** [1] alligator as specified on the permit; means and methods as specified on the permit or attachments; by special permit.

(P) Special regulations:

(i) The use of airboats is an offense, except that airboats having a motor of no greater than ten horsepower may be used on Sea Rim State Park.

(ii) The use or possession of dogs is an offense, except one dog per permit-holding hunter is permitted for hunting migratory game birds, quail or squirrel.

(17)[(15)] Elephant Mountain Wildlife Management Area.

(A) Deer:

(i) archery-during the period from September 1-January 31; **one** [1] deer (buck only); by special permit.

(ii) general-during the period from October 1-February 15; **one** [1] deer as specified on the permit; by special permit.

(B) Javelina:

(i) archery: concurrent seasons-to correspond with dates and shooting hours designated for archery-only deer hunts; **one** [1] javelina (either sex); by special permit.

(ii) general-during the period from September 1-March 31; **one** [1] javelina (either sex); by special permit.

(C) Pronghorn antelope-during the period from September 1-October 31; **one** [1] antelope as specified on the permit; by special permit.

(D) Desert bighorn sheep-during the period from September 1-August 31; **one** [1] desert bighorn sheep ram as specified on the permit; by special permit.

(E) Quail-on designated days during the period from October-February; by annual public hunting permit.

(F) Mourning dove-on designated days by annual public hunting permit.

(G) Rabbits and hares-to correspond with hunt dates and shooting hours designated for quail and mourning dove; no bag or possession limit; by annual public hunting permit.

(H) Fishing-no open season.

(I) Special regulations:

(i) The possession and use of horses, mules, burros and other types of riding stock or pack animals during public hunts for desert bighorn sheep may be permitted in accordance with written authorization of the department.

(ii) It is an offense if a public user fails to perform on-site registration.

**(18)**[(16)] Gene Howe Wildlife Management Area **(includes Pat Murphy Unit)**.

(A) Deer:

(i) archery-on designated days during the period from September 1-January 31; **one** [1] deer (either sex); by annual public hunting permit; **no open season on the Pat Murphy Unit**.

(ii) general-during the period from October 1-February 15; **one** [1] deer as specified on the permit; by special permit.

(B) Exotic mammal: concurrent seasons-to correspond with hunt dates, shooting hours, means and methods and permit requirements for deer; no bag or possession limit.

(C) Turkey-during the months of April and May; **one** [1] gobbler; by special permit.

(D) Quail-on designated days during the period from October-February; by annual public hunting permit.

(E) Mourning dove-on designated days by annual public hunting permit.

(F) Rabbits and hares-to correspond with hunt dates and shooting hours designated for quail and mourning dove; no bag or possession limit; by annual public hunting permit.

(G) Fishing-season closed on days when hunts are conducted by special permit; annual public hunting permit required.

(H) Special regulations-It is an offense if a public user fails to perform on-site registration.

**(19)**[(17)] Granger Wildlife Management Area.

(A) Exotic mammal: archery-during the period from **September** [October] 1-**August** [May] 31; no bag or possession limit; by annual public hunting permit.

(B) Squirrel-by annual public hunting permit.

(C) Quail-by annual public hunting permit.

(D) Mourning doves-by annual public hunting permit.

(E) Waterfowl-by annual public hunting permit.

(F) Woodcock-by annual public hunting permit.

(G) Gallinules-by annual public hunting permit.

(H) Snipe-by annual public hunting permit.

(I) Rabbits and hares-no closed season; no bag or possession limits; by annual public hunting permit.

(J) Furbearing animals-during daylight hours only from September 1-March 31; by annual public hunting permit.

(K) Coyotes-during daylight hours only from September 1-March 31; no bag or possession limit; by annual public hunting permit.

(L) Fishing-no permit required.

(M) Special regulations:

(i) It is an offense to park other than in designated areas.

(ii) It is a violation to use any type of device other than a shotgun with non-toxic shot or no larger than size #4 lead shot or bow and arrow for hunting (Non-toxic shot requirements for hunting waterfowl remain in effect).

(iii) Dogs may be used in hunting coyotes and furbearers.

(20) [(18)] Guadalupe Delta Wildlife Management Area.

(A) Waterfowl–on designated days; shooting hours end at noon; by regular permit.

(B) King and clapper rails–on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(C) Sora and Virginia rails–on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(D) Gallinules–on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(E) Snipe–on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(F) Alligator–One [1] alligator as specified on the permit; means and methods as specified on the permit or attachments; by special permit.

(21)[(19)] Gus Engeling Wildlife Management Area.

(A) Deer:

(i) archery–on designated days during the period from September 1-January 31; one [1] deer (either sex); by annual public hunting permit.

(ii) general–during the period from October 1-February 15; one [1] deer as specified on the permit; by special permit.

(B) Exotic mammal:

(i) archery: concurrent seasons–to correspond with hunt dates and shooting hours designated for archery-only deer hunts; no bag or possession limits; by annual public hunting permit.

(ii) general–during the period from September 1-August 31; no bag or possession limits; by special permit.

(C) Squirrel–on designated days; by annual public hunting permit.

(D) Turkey–during the months of April and May; one [1] gobbler; by special permit.

(E) Waterfowl–on designated days; shooting hours end at noon; by annual public hunting permit.

(F) Woodcock–on dates and shooting hours which correspond with those designated for waterfowl hunts; by annual public hunting permit.

(G) Gallinules–on dates and shooting hours which correspond to those designated for waterfowl hunts; by annual public hunting permit.

(H) Snipe–on dates and shooting hours which correspond to those designated for waterfowl hunts; by annual public hunting permit.

(I) Rabbits and hares–to correspond with dates and shooting hours designated for squirrel hunts; no bag or possession limits; by annual public hunting permit.

(J) Fishing–season is closed on dates designated for hunts by special or regular permit; by annual public hunting permit.

(K) Special regulations:

(i) It is an offense if a public user fails to perform on-site registration.

(ii) It is an offense to possess a rifle or handgun of greater size than .22-caliber rimfire while hunting during the season designated for squirrel.

(iii) Individuals who participate only in the self-guided driving tour and designated nature trails need not possess a Texas Conservation Passport.

(iv) Horses, mules, burros and other types of riding stock or pack animals may be possessed and used in accordance with written authorization of the department for educational events sanctioned by the department.

(22)[(20)] James Daughtrey Wildlife Management Area.

(A) Deer:

(i) archery–during the period from September 1-January 31; one [1] deer (either sex); by special permit.

(ii) general–during the period from October 1-February 15; one [1] deer as specified on the permit; by special permit.

(B) Exotic mammal: concurrent seasons–to correspond with hunt dates, shooting hours, and means and methods established for deer hunts; no bag or possession limit; by special permit.

(C) Javelina:

(i) archery: concurrent seasons–to correspond with dates and shooting hours designated for archery-only deer hunts; one [1] javelina (either sex); by special permit.

(ii) general–during the period of September 1-March 31; one [1] javelina (either sex); by special permit.

(D) Turkey–during the months of April and May; one [1] gobbler; by special permit.

(E) Quail–on designated days during the period from October-February; by annual public hunting permit.

(F) Mourning dove–on designated days by annual public hunting permit.

(G) Waterfowl–by annual public hunting permit.

(H) Sandhill crane–by annual public hunting permit.

(I) Snipe–by annual public hunting permit.

(J) Rabbits and hares–to correspond with hunt dates and shooting hours designated for quail and mourning dove; no bag or possession limit; by annual public hunting permit.

(K) Coyote–on designated days during the period from September 1-August 31; no bag or possession limit; by regular permit.

(L) Fishing–no permit required.

(M) Special regulations–during times when hunting by special permit is being conducted on the area, it is an offense if a person without a valid special hunting permit ventures inland farther than a distance of 100 yards from the shoreline of Choke Canyon Reservoir.

(23)[(21)] J. D. Murphree Wildlife Management Area.

(A) Waterfowl-on designated days; shooting hours end at noon; by regular permit.

(B) King and clapper rails-on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(C) Sora and Virginia rails-on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(D) Gallinules-on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(E) Snipe-on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(F) Fishing-no permit required.

(i) In that portion of Keith Lake which lies within the confines of the J. D. Murphree Wildlife Management Area, fishing is permitted year-round with no daylight restrictions.

(ii) It is an offense to fish in that portion of Big Hill Bayou which lies within the J. D. Murphree Area, except during the period from the Monday following the closing of waterfowl season through October 31, both days inclusive, from 30 minutes before sunrise to 30 minutes after sunset.

(iii) In the remainder of the area, it is an offense to fish except during the period from March 1-August 31, both days inclusive, from 30 minutes before sunrise to 30 minutes after sunset, but when required by the department for the proper management of waterfowl resources, leveed wetland compartments or outside borrow ditches may be temporarily closed to fishing.

(iv) Powered skiffs, powered boats, or powered floating craft of any type with motor not to exceed 35 horsepower shall be permitted within leveed wetland compartments during the period from March 1-August 31.

(v) The use of boats, skiffs, or floating craft of any type in the ditches along the west boundary of Wetland Compartments 5-9, and the north boundary of Wetland Compartment 11 is an offense, except for travel by permitted hunters.

(vi) It is an offense to take fish within leveed wetland compartments and borrow-ditch areas other than by means of pole and line, except that gar may be taken by means of bowfishing utilizing an arrow securely attached to the bow with a line.

(vii) It is an offense for a person to leave a fishing line unattended at any time within a leveed compartment or borrow-ditch.

(viii) In that portion of Big Hill Bayou and Keith Lake which lies within the J. D. Murphree Area, the use of jug lines and seines and nets other than 20-foot minnow seines is an offense.

(G) Alligator-One [1] alligator as specified on the permit; means and methods as specified on the permit or attachments; by special permit.

(H) Special regulations:

(i) The use of airboats is an offense, except in Big Hill Bayou, Blind Bayou, and Keith Lake.

(ii) The use or possession of dogs is an offense except one dog per permit-holding hunter is permitted to retrieve dead or wounded waterfowl.

(24)[(22)] Keechi Creek Wildlife Management Area.

(A) Deer:

(i) archery-during the period from September 1-January 31; one [1] deer (either sex); by special permit.

(ii) general-during the period from October 1-February 15; one [1] deer as specified on the permit; by special permit.

(B) Exotic mammal:

(i) concurrent seasons-to correspond with hunt dates, shooting hours, and means and methods designated for deer hunts; no bag or possession limits; by special permit.

(ii) general-during the period from September 1-August 31; no bag or possession limits; by special permit.

(C) Squirrel-on designated days; by regular permit.

(D) Turkey-during the months of April and May; one [1] gobbler; by special permit.

(E) Waterfowl-on designated days; shooting hours end at noon; by regular permit.

(F) Woodcock-on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(G) Gallinules-on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(H) Snipe-on dates and shooting hours which correspond to those established for waterfowl hunts; by regular permit.

(I) Rabbits and hares-to correspond with dates and shooting hours designated for squirrel hunts; no bag or possession limits; by regular permit.

(J) Fishing-no open season.

(K) Special regulations-It is an offense to possess a rifle or handgun of greater size than .22-caliber rimfire while hunting during the season designated for squirrel.

(25)[(23)] Kerr Wildlife Management Area.

(A) Deer:

(i) archery-during the period from September 1-January 31; one [1] deer (either sex); by special permit.

(ii) general-during the period from October 1-February 15; one [1] deer as specified on the permit; by special permit.

(B) Exotic mammals:

(i) concurrent seasons-to correspond with hunt dates, shooting hours, and means and methods designated for deer hunts; no bag or possession limit; by special permit.

(ii) general-during the period from September 1-August 31; no bag or possession limit; means and methods as specified on the permit; by special permit.

(C) Javelina: archery-concurrent seasons-to correspond with dates and shooting hours designated for archery-only deer hunts; one [1] javelina (either sex); by special permit.

(D) Turkey-during the months of April and May; one [1] gobbler; by special permit.

(E) Mourning dove-on designated days; by annual public hunting permit.

(F) Rabbits and hares-to correspond with hunt dates and shooting hours established for mourning dove; no bag or possession limit; by annual public hunting permit.

(G) Fishing-no permit required; on-site registration required.

(H) Individuals who participate only in the self-guided driving tour need not possess a Texas Conservation Passport or perform on-site registration.

**(26)**[(24)] Lands within a desert bighorn sheep cooperative unit.

(A) Desert bighorn sheep-during the period from September 1-August 31; **one** [1] desert bighorn sheep ram as specified on the permit; by special permit.

(B) Special regulations-the possession and use of horses, mules, burros and other types of riding stock or pack animals during public hunts for desert bighorn sheep may be permitted on departmental lands in accordance with written authorization of the department.

**(27)**[(25)] Lower Neches Wildlife Management Area.

(A) Waterfowl-on designated days; shooting hours end at noon; by annual public hunting permit.

(B) King and clapper rails-on dates and shooting hours which correspond to those designated for waterfowl hunts; by annual public hunting permit.

(C) Sora and Virginia rails-on dates and shooting hours which correspond to those designated for waterfowl hunts; by annual public hunting permit.

(D) Gallinules-on dates and shooting hours which correspond to those designated for waterfowl hunts; by annual public hunting permit.

(E) Snipe-on dates and shooting hours which correspond to those designated for waterfowl hunts; by annual public hunting permit.

(F) Fishing-no permit required.

(i) It is an offense to take fish within the area other than by means of pole and line, except that gar may be taken by means of bowfishing utilizing an arrow securely attached to the bow with a line.

(ii) It is an offense for a person to leave a fishing line unattended at any time within the area.

(iii) It is an offense to use trotlines and juglines.

(iv) It is an offense to use crab traps in that portion of the area east of State Highway 87.

(v) In the Nelda Stark Unit and in that portion of the Old River Unit that includes the Old River Cove, the Gulf States Utilities (G.S.U.) intake canal, and 150 feet on either side of Lake Street and State Highway 87, fishing is permitted year-round without daylight restrictions.

(vi) In the portion (1,437 acres) of The Old River Unit leased from Gulf States Utilities, west of Hwy 87, it is an offense to fish except during the period from Monday following the close of waterfowl season through October 31, both days inclusive, from 30 minutes before sunrise to 30 minutes after sunset, but when required by the Department for the proper management of waterfowl resources, portions of the area may be closed to fishing for temporary periods of time.

(vii) In the remainder of the Old River Unit, it is an offense to fish except during the period from March 1-August 31, both days inclusive, from 30 minutes before sunrise to 30 minutes after sunset, but when required by the department for the proper management of waterfowl resources, portions of the area may be closed to fishing for temporary periods of time.

(G) Alligator-**One** [1] alligator as specified on the permit; means and methods as specified on the permit or attachments; by special permit.

(H) Special regulations: The use of airboats is an offense in the Old River Unit.

**(28)**[(26)] Mad Island Wildlife Management Area **(includes Matagorda Peninsula Unit).**

(A) Waterfowl-on designated days; shooting hours end at noon; **by annual public hunting permit on the Matagorda Peninsula Unit and by regular permit elsewhere.** [by regular permit.]

(B) King and clapper rails-on dates and shooting hours which correspond to those designated for waterfowl hunts; **by annual public hunting permit on the Matagorda Peninsula Unit and by regular permit elsewhere.** [by regular permit.]

(C) Sora and Virginia rails-on dates and shooting hours which correspond to those designated for waterfowl hunts; **by annual public hunting permit on the Matagorda Peninsula Unit and by regular permit elsewhere.** [by regular permit.]

(D) Gallinules-on dates and shooting hours which correspond to those designated for waterfowl hunts; **by annual public hunting permit on the Matagorda Peninsula Unit and by regular permit elsewhere.** [by regular permit.]

(E) Snipe-on dates and shooting hours which correspond to those designated for waterfowl hunts; **by annual public hunting permit on the Matagorda Peninsula Unit and by regular permit elsewhere.** [by regular permit.]

**(F) Dove-only on the Matagorda Peninsula Unit; on designated days; by annual public hunting permit.**

**(G)**[(F)] Alligator-**One** [1] alligator as specified on the permit; means and methods as specified on the permit or attachments; by special permit.

**(29)**[(27)] Matador Wildlife Management Area.

(A) Deer:

(i) archery-during the period from September 1-January 31; **one** [1] deer (buck only); by special permit.

(ii) general-during the period from October 1-February 15; **one** [1] deer as specified on the permit; by special permit.

(B) Exotic mammals: concurrent seasons-to correspond with hunt dates, shooting hours, means and methods, and permit requirements designated for deer hunts; no bag or possession limit.

(C) Turkey-during the months of April and May; one [1] gobbler; by special permit.

(D) Quail-on designated days; by annual public hunting permit.

(E) Mourning dove-on designated days; by annual public hunting permit.

(F) Waterfowl–on designated days; by annual public hunting permit.

(G) Rabbits and hares–to correspond with hunt dates and shooting hours designated for quail and mourning dove; no bag or possession limits; by annual public hunting permit.

(H) Fishing–fishing is permitted year-round, except on days when hunts are being conducted by special permit; annual public hunting permit required.

(I) Special regulations–It is an offense if a public user fails to perform on-site registration.

**(30)**[(28)] Matagorda Island Wildlife Management Area.

(A) Deer: general–during the period from October 1-February 15; **one** [1] deer as specified on the permit; by special permit.

(B) Exotic mammals.

(i) concurrent seasons–to correspond with hunt dates, shooting hours, and means and methods established for deer hunts; no bag or possession limit; by special permit.

(ii) general–during the period from September 1-August 31; no bag or possession limit; by special permit.

(C) Quail–on designated days; by regular permit.

(D) Mourning dove–on designated days; by regular permit.

(E) Waterfowl–on designated days; shooting hours end at noon; by regular permit, except within the designated marsh unit no permit is required, there is no restriction to designated hunt days, and shooting hours do not end at noon.

(F) King and clapper rails–on dates and shooting hours and permit requirements which correspond to those designated for waterfowl hunts.

(G) Sora and Virginia rails–on dates and shooting hours and permit requirements which correspond to those designated for waterfowl hunts.

(H) Gallinules–on dates and shooting hours and permit requirements which correspond to those designated for waterfowl hunts.

(I) Snipe–on dates and shooting hours and permit requirements which correspond to those designated for waterfowl hunts.

**(31)**[(29)] M O. Neasloney Wildlife Management Area.

(A) Fishing–no open season.

(B) Special regulations–access for non-consumptive use is only through prior arrangement with the department.

**(32)**[(30)] Old Tunnel Wildlife Management Area–special regulations:

(A) It is an offense to take wildlife resources.

(B) It is an offense to park or operate motor vehicles in an area other than the designated parking area.

(C) It is an offense to disturb roosting bats.

(D) It is an offense for a person to allow a dog, cat, or any animal to enter the area unleashed and not under the person's physical control.

(E) It is an offense for a person to enter that portion of the railroad bed located between the steep excavated walls of the former railroad right-of-way or into the excavated tunnel.

**(33)**[(31)] Pat Mayse Wildlife Management Area.

(A) Deer:

(i) archery–**One** [1] deer (either sex); no annual public hunting permit required.

(ii) general–during the period from October 1-February 15; **one** [1] deer as specified on the permit; by special permit.

(B) Exotic mammal: concurrent seasons–to correspond with hunt dates, shooting hours, means and methods, and permit requirements designated for deer; no bag or possession limit.

(C) Squirrel–closed on days designated for hunts by special permit; no annual public hunting permit required.

(D) Quail–closed on days designated for hunts by special permit; no annual public hunting permit required.

(E) Mourning dove–closed on days designated for hunts by special permit; no annual public hunting permit required.

(F) Waterfowl–no annual public hunting permit required.

(G) Woodcock–closed on days designated for hunts by special permit; no annual public hunting permit required.

(H) Gallinules–no annual public hunting permit required.

(I) Snipe–no annual public hunting permit required.

(J) Rabbits and hares–no closed season, except no hunting for rabbits or hares on days designated for hunts by special permit; no bag or possession limit; no annual public hunting permit required.

(K) Furbearing animals–during the period from September 1-March 31, except season closed on days designated for hunts by special permit; no annual public hunting permit required.

(L) Coyote–during the period from September 1-March 31, except season closed on days designated for hunts by special permit; no bag or possession limit; no annual public hunting permit required.

(M) Fishing–no permit required.

(N) Special regulations:

(i) It is an offense to use any device other than shotguns with non-toxic shot or no larger than size #4 lead shot or bow and arrow for hunting, except that lawful firearms, including shotguns using only slugs, are the only legal firearms for taking deer or exotic mammals during the general season (Non-toxic shot requirements for hunting waterfowl remain in effect).

(ii) Dogs may be used in hunting coyotes and furbearers.

(iii) It is an offense if a public user fails to perform on-site registration.

**(34)**[(32)] Peach Point Wildlife Management Area **(includes Bryan Beach Unit).**

(A) Waterfowl–on designated days; shooting hours end at noon; **by annual public hunting permit on the Bryan Beach Unit, and** by regular permit **elsewhere.**

(B) Exotic mammal: general–during the period from September 1-August 31; no bag or possession limit; by special permit.

(C) King and clapper rails–on dates and shooting hours which correspond to those designated for waterfowl hunts; **by annual public hunting permit on the Bryan Beach Unit, and by regular permit elsewhere.**

(D) Sora and Virginia rails–on dates and shooting hours which correspond to those designated for waterfowl hunts; **by annual public hunting permit on the Bryan Beach Unit, and by regular permit elsewhere.**

(E) Gallinules–on dates and shooting hours which correspond to those designated for waterfowl hunts; **by annual public hunting permit on the Bryan Beach Unit, and** by regular permit **elsewhere.**

(F) Snipe–on dates and shooting hours which correspond to those designated for waterfowl hunts; **by annual public hunting permit on the Bryan Beach Unit, and** by regular permit **elsewhere.**

(35)[(33)] Richland Creek Wildlife Management Area.

(A) Deer:

(i) archery–on designated days during the period from September 1-January 31; one [1] deer (either sex); by annual public hunting permit.

(ii) general–during the period from October 1-February 15; one [1] deer as specified on the permit; by special permit; **on designated days during the period from October 1-February 15 by annual public hunting permit; one deer, antlerless or spike-buck only. All deer harvested during the general season must, on the date taken, be presented for inspection at a mandatory check station located on the Richland Creek Wildlife Management Area.**

(B) Exotic mammal: concurrent seasons–to correspond with hunt dates, shooting hours, means and methods, and permit requirements designated for deer; no bag or possession limit.

(C) Squirrel–on designated days; by annual public hunting permit.

(D) Quail–on designated days; by annual public hunting permit.

(E) Mourning dove–on designated days; by annual public hunting permit.

(F) Waterfowl–on designated days; shooting hours end at noon; by annual public hunting permit.

(G) Woodcock–on dates and shooting hours which correspond with those designated for waterfowl hunts; by annual public hunting permit.

(H) Gallinules–on dates and shooting hours which correspond to those designated for waterfowl hunts; by annual public hunting permit.

(I) Snipe–on dates and shooting hours which correspond to those designated for waterfowl hunts; by annual public hunting permit.

(J) Rabbits and hares–on designated days; no bag or possession limits; by annual public hunting permit.

(K) Fishing–closed on dates designated for hunts by special permit; by annual public hunting permit, except that fishermen who enter and exit the area by boat are not required to possess an annual public hunting permit.

(L) Special regulations–It is an offense to possess a rifle or handgun of greater size than .22-caliber rimfire while hunting during the season designated for squirrel.

(36)[(34)] Sheldon Wildlife Management Area. Fishing–no permit required.

(A) It is an offense to fish except during the period from 5:00 a.m. to 9:30 p.m. each day.

(B) It is an offense to use handlines and trotlines.

(C) It is an offense to wade-fish or [and] use boats during the period November 1-February 28, both days inclusive.

(D) It is an offense to use boat motors over ten horsepower.

(37)[(35)] Sierra Diablo Wildlife Management Area.

(A) Deer:

(i) archery–during the period from September 1-January 31; one [1] deer (buck only); by special permit.

(ii) general–during the period from October 1-February 15; one [1] deer as specified on the permit; by special permit.

(B) Javelina: archery: concurrent seasons–to correspond with dates and shooting hours designated for archery-only deer hunts; one [1] javelina (either sex); by special permit.

(C) Desert bighorn sheep–during the period from September 1-August 31; one [1] desert bighorn sheep ram as specified on the permit; by special permit.

(D) Fishing–no open season.

(E) Special regulation–the possession and use of horses, mules, burros and other types of riding stock or pack animals during public hunts for desert bighorn sheep may be permitted in accordance with written authorization of the Department.

(38)[(36)] Somerville Wildlife Management Area.

(A) Deer:

(i) archery–One [1 ]deer (either sex); by annual public hunting permit.

(ii) general–during the period from October 1-February 15; one [1] deer as specified on the permit; by special permit.

(B) Exotic mammal:

(i) concurrent seasons–to correspond with hunt dates, shooting hours, means and methods, and permit requirements designated for deer; no bag or possession limit.

(ii) archery–during the period from January 15-March 15; no bag or possession limit; by annual public hunting permit.

(C) Squirrel–closed on days designated for hunts by special permit; by annual public hunting permit.

(D) Quail-closed on days designated for hunts by special permit; by annual public hunting permit.

(E) Mourning dove-closed on days designated for hunts by special permit; by annual public hunting permit.

(F) Waterfowl-closed on days designated for hunts by special permit; by annual public hunting permit.

(G) Woodcock-closed on days designated for hunts by special permit; by annual public hunting permit

(H) Gallinules-closed on days designated for hunts by special permit; by annual public hunting permit.

(I) Snipe-closed on days designated for hunts by special permit; by annual public hunting permit.

(J) Rabbits and hares-no closed season, except no hunting for rabbits or hares on days designated for hunts by special permit; no bag or possession limit; by annual public hunting permit.

(K) Fishing-no permit required.

(L) Special regulations:

(i) It is an offense to park other than in designated areas.

(ii) It is an offense to use any device other than shotguns with non-toxic shot or no larger than size #4 lead shot or bow and arrow for hunting, except that lawful firearms, including shotguns using only slugs, are the only legal firearms for taking deer or exotic mammals during the general season (Non-toxic shot requirements for hunting waterfowl remain in effect).

(39)[(37)] Walter Buck Wildlife Management Area.

(A) Deer:

(i) archery-during the period from September 1-January 31; **one** [1] deer (either sex); by special permit.

(ii) general-during the period from October 1-February 15; **one** [1] deer as specified on the permit; by special permit.

(B) Exotic mammal: concurrent seasons-to correspond with hunt dates, shooting hours, and means and methods designated for deer; no bag or possession limit; by special permit.

(C) Javelina: archery: concurrent seasons-to correspond with dates and shooting hours designated for archery-only deer hunts; **one** [1] javelina (either sex); by special permit.

(D) Turkey-during the months of April and May; one [1] gobbler; by special permit.

(E) Fishing-no open season.

**(40)**[(38)] White Oak Creek Wildlife Management Area.

(A) Deer:

(i) archery-**One** [1] deer (either sex); on designated days; by annual public hunting permit.

(ii) general-during the period from October 1-February 15; **one** [1] deer as specified on the permit; by special permit.

(B) Exotic mammal:

(i) concurrent seasons-to correspond with hunt dates, shooting hours, means and methods, and permit requirements designated for taking deer; no bag or possession limits.

(ii) general-during the period from September 1-August 31; no bag or possession limit; by special permit.

(C) Squirrel-on designated days; by annual public hunting permit.

(D) Quail-on designated days; by annual public hunting permit.

(E) Mourning dove-on designated days; by annual public hunting permit.

(F) Waterfowl-on designated days during the waterfowl seasons established for Bowie, Cass, Morris, and Titus counties; shooting hours end at noon; by annual public hunting permit.

(G) Woodcock-on designated days; by annual public hunting permit.

(H) Snipe-on dates and shooting hours which correspond to those designated for waterfowl hunts; by annual public hunting permit.

(I) Rabbits and hares-on designated days; no bag or possession limits; by annual public hunting permit.

(J) Fishing-no permit required.

(K) Special regulations-It is an offense to use any device other than shotguns with non-toxic shot or no larger than size #4 lead shot or bow and arrow for hunting, except that lawful firearms, including shotguns using only slugs, are the only legal firearm for taking deer or exotic mammals during the general season, **and rifles or handguns of no greater size than .22-caliber rimfire may be used for taking squirrel or rabbits and hares on designated hunt days** (Non-toxic shot requirements for hunting waterfowl remain in effect).

**(41)**[(39)] Units 102, 103, 104, 106, 136, 137, 142, 152, 154, 155, 159, 902 (Moore Plantation Wildlife Management Area) and 903 (Bannister Wildlife Management Area).

(A) Deer:

(i) archery-either sex; by annual public hunting permit.

(ii) general-either sex during the first two days of the general season and buck-only thereafter; by annual public hunting permit.

(B) Exotic mammal:

(i) concurrent seasons-to correspond with hunt dates, shooting hours, and means and methods designated for deer; no bag or possession limit; by annual public hunting permit.

(ii) general-only on Units 902 and 903 during the period from January 15-March 15; no bag or possession limit; by annual public hunting permit.

(C) Squirrel-by annual public hunting permit.

(D) Game birds (other than turkey)-by annual public hunting permit.

(E) Furbearers-by annual public hunting permit.

(F) Predatory animals-no closed season and no bag or possession limit; by annual public hunting permit.

(G) Rabbits and hares-no closed season and no bag or possession limit; by annual public hunting permit.

(H) Fishing, frogs and crayfish–by annual public hunting permit on areas other than Units 902 and 903.

(I) Special regulations–On Units 902 and 903, during seasons other than the Early Teal Season, it is an offense to hunt waterfowl at any time except on Wednesday, Saturday, and Sunday and only during legal shooting hours **of 30 minutes before sunrise** [in the a.m.] until noon each day during the regular seasons.

**(42)**[(40)] Units [109,] 113, 114, [115,] 116, 117, 119, 120, 121, 122, 125, 129, [130, 133,] 143, 144, 145, 146, 147, 150, 151, 156, 157, [158, 160,] 204, 210, 211, [213,] 217, 218, 223, 301, 615 (North Toledo Bend Wildlife Management Area), 616, 712 (Blue Elbow Swamp Wildlife Management Area) , 630, 801, 803, 904 (Alabama Creek Wildlife Management Area), and 905 (Sam Houston National Forest).

(A) Deer:

(i) archery–either sex; by annual public hunting permit.

(ii) general–buck only; by annual public hunting permit.

(B) Exotic mammal:

(i) concurrent seasons–to correspond with hunt dates, shooting hours, and means and methods designated for deer; no bag or possession limit; by annual public hunting permit.

(ii) general–only on Units 615, 630, 904, and 905 during the period from January 15-March 15; no bag or possession limit; by annual public hunting permit.

(C) Squirrel–by annual public hunting permit.

(D) Game birds (other than turkey)–by annual public hunting permit.

(E) Furbearer–by annual public hunting permit.

(F) Predatory animals–no closed season and no bag or possession limit; by annual public hunting permit.

(G) Rabbits and hares–no closed season and no bag or possession limit; by annual public hunting permit.

(H) Fishing, frogs and crayfish–by annual public hunting permit on areas other than 904 and 905.

(I) Special regulations–

(i) On Units 615, 904 and 905 during seasons other than the Early Teal Season, it is an offense to hunt waterfowl at any time except on Wednesday, Saturday, and Sunday and only during legal shooting hours of 30 minutes before sunrise until [12:00] noon each day during the regular season.

(ii) On the Sam Houston National Forest Wildlife Management Area (Unit 905) the use of a dog or dogs to hunt, pursue, or take feral hogs is permitted only during the period from January 15-March 15.

**(43)**[(41)] Units 135, 224, 607, and 901 (Caddo Wildlife Management Area).

(A) Deer:

(i) archery–buck only, by annual public hunting permit.

(ii) general–buck only; by annual public hunting permit.

(B) Exotic mammal: concurrent seasons–to correspond with hunt dates, shooting hours, and means and methods designated for deer; no bag or possession limit; by annual public hunting permit.

(C) Squirrel–by annual public hunting permit.

(D) Game birds (other than turkey)–by annual public hunting permit

(E) Furbearers–by annual public hunting permit.

(F) Predatory animals–no closed season and no bag or possession limit; by annual public hunting permit.

(G) Rabbits and hares–no closed season and no bag or possession limit; by annual public hunting permit.

(H) Fishing, frogs and crayfish–by annual public hunting permit on areas other than Unit 901.

(I) Special regulations–On Unit 901, during seasons other than the Early Teal Season, it is an offense to hunt waterfowl at any time except on Wednesday, Saturday, and Sunday and only during legal shooting hours of 30 minutes before sunrise until [12:00] noon each day during the regular seasons.

**(44)**[(42)] Unit 501 (Lake Ray Roberts Wildlife Management Area) .

(A) Squirrel–by annual public hunting permit.

(B) Game birds (other than turkey)–by annual public hunting permit.

(C) Rabbits and hares–no bag or possession limit· oy annual public hunting permit

(D) Frogs–by annual public hunting permit

(E) Fishing–no permit required.

(F) Special regulations:

(i) It is an offense to possess firearms and ammunition other than shotguns with shotshells containing non-toxic shot or no larger than size #4 lead shot. (Non-toxic shot requirements for hunting waterfowl remain in effect. )

(ii) It is an offense to discharge firearms except while hunting.

(iii) It is an offense to camp overnight.

(iv) It is an offense to hunt waterfowl in that portion of the Unit located north of FM Road 3002, which is designated as a waterfowl sanctuary.

(v) It is an offense to hunt on the land or water within 100 yards of state park boundaries.

**(45)**[(43)] Unit 617 (Cleavinger Tract).

(A) Pheasant–by annual public hunting permit.

(B) Rabbits and hares–concurrent with shooting hours and seasons for taking pheasant; no bag or possession limit; by annual public hunting permit.

*§65.194. Permit Required and Fees.*

(a) A Texas Conservation Passport is required of **all persons** [each individual,] **17** [seventeen] years of age or older[,] to obtain access to public hunting lands for participation in scheduled non-consumptive events conducted under the Texas Conservation Passport Program. The fee for the Texas Conservation Passport is **$25** [$25.00] and there is no charge for a duplicate (lost) Texas Conservation Passport. The Texas Conservation Passport is not required of individuals participating in hunt-

ing and fishing activities or educational programs and management demonstrations sponsored by the department.

(b) It is an offense for a person without a valid permit to be afield during hunts on public hunting lands, except:

(1) on areas or for activities where no permit is required;[.] or

(2) for a non-hunting adult who is assisting a permitted disabled person; [.] or

**(3) for a non-hunting adult who is assisting a permitted minor age participant in a hunt conducted under the Youth-Only drawn hunt category; or**

(4)[(3)] for minor age participants under the supervision of an authorized supervising adult possessing an annual public hunting permit or a limited public use permit.

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

(1) Except as provided in paragraphs (2)-(4) [(2), (3) and (4)] of this subsection, it is an offense for a person 17 years of age or older to enter or hunt on public hunting lands requiring an annual public hunting permit without having in his or her possession an annual public hunting permit or fail to display the permit, upon request, to a department employee or other official authorized to enforce regulations on public hunting lands.

(2) (No change.)

(3) The annual public hunting permit is required of each person 17 years of age or older who enters Units 901, 902, 903, 904, or 905 and possesses a centerfire **or muzzleloading rifle or handgun** [firearm], a shotgun with shot larger than #2 steel or #4 lead, [a muzzleloading firearm,] or bow and arrow 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** [these rules] and take specified legal small game provided the person possesses a limited public use permit.

(4) The permits required under paragraphs (1) and (2) of this subsection are not required for:

(A) persons who enter on United States Forest Service System lands designated as a public hunting area (Units 901, 902, 903, 904, and 905), including Caddo National Grassland, or any portion of Units 902 and 903 in Sabine and San Augustine counties for any purpose other than hunting; **or** [.]

(B) persons who enter on U.S. Army Corps of Engineers lands (Aquilla, Cooper, Dam B, Granger, Pat Mayse, Ray Roberts (Unit 501), Somerville, White Oak Creek) designated as public hunting lands for purposes other than hunting; **or** [.]

(C) persons who are authorized by, and acting in an official capacity for the department or the landowners of the public hunting lands; **or** [.]

(D) persons participating in scheduled activities sponsored or sanctioned by the department with written approval; **or** [.]

(E) persons owning or leasing land within the boundaries of public hunting lands while traveling directly to or from their property; **or** [.]

(F) (No change.)

(5)-(8) (No change.)

(d)-(e) (No change.)

(f) The department may implement a system of issuing special permits that gives preference to those applicants who have applied previously but were not selected to receive a permit, in compliance with [Texas] Parks and Wildlife Code, [§]§81.403(b).

(g) Application fee.

(1) The department may charge a non-refundable fee which may be required to accompany and validate an individual's application for a special permit as authorized by [Texas] Parks and Wildlife Code, [§]§11.027(b), provided that appropriate legislative authority is granted.

(2) (No change.)

(3) The application fee for a special permit is waived for a person under 17 years of age; however, the minor must apply in conjunction with an authorized supervising adult to whom an application fee is assessed, **except as provided in paragraph (4) of this subsection.**

**(4) The application fee for a special permit is waived for an adult who is making application to serve as a non-hunting authorized supervising adult for a minor age participant in the Youth-Only drawn hunt category.**

**(5)** [(4)] In the event an application for a special permit is received and is determined to be invalid due to duplicate application by an individual, incomplete or invalid required information, insufficient application fees, receipt after the application deadline, or other reasons, then:

(A) the application card and related application fees will be returned to the applicant for correction and resubmission, provided the error is detected prior to the time that the application information is entered into the public hunting computer;[.] or

(B) the error will be detected by the public hunting computer program resulting in disqualification of applicant(s) as appropriate and all application fees will be retained by the department.

(h) (No change.)

(i) The department shall charge a permit fee in the amount set by the commission as authorized by [Texas] Parks and Wildlife Code, §[§]81.403(c).

(j)-(n) (No change.)

*§65.195. Permit Revocation.* Any person violating this subchapter [(relating to Public Hunting Lands)] is subject to having their permit revoked under the authority of [Texas] Parks and Wildlife Code, Chapter 12, Subchapter F.

*§65.196. Refund of Permit Fees.*

(a) There is a standard no-refund policy concerning permit fees;[.] however the department will upon request refund permit fees in the event:

(1) of death of the permittee prior to the hunt; or

(2) a scheduled hunt is canceled at the discretion of the department; or

(3) (No change.)

(b) (No change.)

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

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

TRD-9501778 Paul M. Shinkawa
Acting General Counsel
Texas Parks and Wildlife Department

Proposed date of adoption: March 23, 1995

For further information, please call: (512) 389-4642

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## Subchapter N. Early Season Migratory Game Bird Proclamation

### • 31 TAC §65.314, §65.316

The Texas Parks and Wildlife Department proposes amendments to §65.314 and §65.316, concerning the Early Season Migratory Game Bird Proclamation and Extended Falconry Season. The amendment to §65.314 revises all hunting season dates for 1995-1996 to adjust for calendar shift while

retaining the same opening dates, season lengths, open areas, and season segments as 1994-1995, except for rails and gallinules. The Texas Parks and Wildlife Department also is amending §65.314 for rail and gallinule hunting seasons to create a split season that would be open to hunting concurrent with the early teal and duck seasons. Specific proposed dates are September 16-24, 1995, and November 18, 1995, through January 17, 1996. Total season length would remain the same (70 days). Last year the rail and gallinule season was 70 consecutive days (September 1-November 9). This change is proposed to allow additional hunting opportunity for rails and gallinules during waterfowl hunting season, when most potential rail and gallinule hunters are in the field. It would allow rail and gallinule hunting on state waterfowl management areas that have been closed to rail and gallinule hunting in the past. This change should increase hunter days afield and variety of species the waterfowl hunter can take. As a result of the amendment to §65.314 and §65.316, concerning Extended Falconry Season, is also amended to conform with the changes made to the provisions for taking rail and gallinule.

Dr. Bill Harvey, regulatory coordinator, has determined that for the first five-year period the rules as proposed are in effect there will be minimal fiscal implications to state or local governments as a result of enforcing or administering the new rules.

Dr. Harvey also has determined that for each of the first five years the amendments as proposed are in effect the public benefit anticipated as a result of enforcing the amendments as proposed will be increased recreational taking of migratory game species consistent with their populations. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposed rules may be submitted to Jay Roberson, Program Leader for Migratory Shore and Upland Game Birds, Wildlife Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-8011 or 1-800-792-1112, extension 8011.

The amendments are proposed under Texas Parks and Wildlife Code, Chapter 64, Subchapter C, which provides the Texas Parks and Wildlife Commission with authority to regulate seasons, means, methods, and devices for taking and possessing migratory game bird wildlife resources.

The proposed amendments implement Parks and Wildlife Code, Chapter 64.

*§65.314. Open Seasons, Shooting Hours, Bag and Possession Limits.*

(a) Rails. Statewide:

(1) Dates: September 16- [1 through] **September 24, 1995 and November 18, 1995** [9, 1994] **through January 17, 1996.**

(2)-(3) (No change.)

(b) Mourning doves.

(1) North Zone: That portion of the state north of a line beginning at the International Bridge south of Fort Hancock; thence north along FM 1088 to State Highway 20; thence west along State Highway 20 to State Highway 148; thence north along State Highway 148 to Interstate Highway 10 at Fort Hancock; thence east along Interstate Highway 10 to Interstate Highway 20; thence northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; thence northeast along Interstate Highway 30 to the Texas-Arkansas state line.

(A) Dates: September 1-October 30, [1994] 1995.

(B)-(C) (No change.)

(2) Central Zone: That portion of the state between the North Zone and the South Zone.

(A) Dates: September 1-October **17, 1995** [16, 1994] and December 26, **1995-** [1994 through] January 7, **1996** [8, 1995].

(B)-(C) (No change.)

(3) South Zone: That portion of the state south of a line beginning at the International Toll Bridge in Del Rio; thence northeast along U.S. Highway 277 Spur to U.S. Highway 90 in Del Rio; thence east along U. S. Highway 90 to Interstate Highway 10 at San Antonio; thence east along Interstate Highway 10 to the Texas-Louisiana State Line.

(A) Dates: Except in the special white-winged dove area as defined in **subsection** [§65.314](c) of this **section** [title], September **22-** [23 through] November **5, 1995** [6, 1994] and December 26, **1995-** [1994 through] January 9, **1996** [1995]. In the special white-winged dove area, the mourning dove season is September **22-** [23 through] November **1, 1995** [2, 1994] and December 26, **1995-** [1994 through] January 9, **1996** [1995].

(B)-(C) (No change.)

(c) White-winged doves. Special white-winged dove area: That portion of the state south and west of a line beginning at the International Toll Bridge in Del Rio; thence northeast along U.S. Highway 277 Spur to U.S. Highway 90 in Del Rio; thence east along U.S. Highway 90 to United States Highway 83 at Uvalde; thence south along U.S. Highway 83 to State Highway 44; thence east along State Highway 44 to State Highway 16 at Freer; thence south along State Highway 16 to State Highway 285 at Hebbronville; thence east along State Highway 285 to FM 1017; thence southeast along FM 1017 to State Highway 186 at Linn; thence east along State Highway 186 to the Mansfield Channel at Port Mansfield; thence east along the Mansfield Channel to the Gulf of Mexico.

(1) Dates: September **2, 3, 9 and 10, 1995** [3, 4, 10 and 11, 1994].

(2)-(3) (No change.)

(d) Gallinules. (Moorhen or common gallinule and purple gallinule) Statewide:

(1) Dates: September **16-** [1 through] **September 24, 1995 and** November **18, 1995-** [9, 1994] **January 17, 1996.**

(2)-(3) (No change.)

(e) Teal ducks. (blue-winged, green-winged, and cinnamon). Statewide:

(1) Dates: September **16-** [17 through] **24, 1995** [25, 1994].

(2)-(3) (No change.)

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

*§65.316. Extended Falconry Season.*

(a) (No change.)

(b) It is lawful to take rails, mourning doves, white-winged doves and gallinules by means of falconry during[:]

[(1)] **the** [The] open seasons prescribed in §65.314 of this title (relating to Opens Seasons, Bag and Possession Limits);

**(c) It is lawful to take mourning doves and white-winged doves by means of falconry during the**

[(2) The] period November **13-** [14 through] December 19 [20], 1995 and during those hours from one-half hour before sunrise to sunset.

**(d) It is lawful to take rails and gallinules by falconry during the period October 12-November 17, 1995, and during those hours from one-half hour before sunrise to sunset.**

**(e)**[(c)] The daily bag and possession limits for all permitted migratory game birds shall not exceed three and six birds respectively, singly or in the aggregate.

**(f)**[(d)] No person may possess a firearm or archery equipment or be accompanied by a person possessing a firearm or archery equipment while hunting by means of falconry.

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

Issued in Austin, Texas, on February 10, 1995

TRD-9501779 Paul M Shinkawa
Acting General Counsel
Texas Parks and Wildlife Department

Proposed date of adoption: March 23, 1995

For further information, please call: (512) 389-4642

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# Part X. Texas Water Development Board

## Chapter 363. Financial Assistance Programs

## Subchapter A. General Provisions

## Introductory Provisions

The Texas Water Development Board (board) proposes the repeal of §363.3, concerning Adoption of Memorandum of Understanding (MOU) by Reference and new §363.3, concerning Memorandum of Understanding between the Texas Water Development Board and the International Boundary and Water Commission The change is proposed to incorporate the Memorandum of Understanding and first amendment into Board rules rather than to adopt by reference. The Board previously has adopted the MOU by reference as §363 3 The board adopted an emergency amendment to §363.3 in the January 27, 1995, issue of the *Texas Register* (20 TexReg 417) to incorporate the first amendment to the MOU. That amendment is incorporated in the proposed new §363.3.

Pamela Ansboury, director of finance, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules

Ms Ansboury also has determined that for each year of the first five years that the proposed rules are in effect the public benefit anticipated as a result of enforcing the rules will be construction of a facility designed to improve the water quality of the Rio Grande. There will be no effect on small businesses. There are no anticipated economic cost to persons who are required to comply with these rules as proposed

Comments on the proposal may be submitted within 30 days from the date of the publication hereof to Gail L. Allan, Assistance General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, (512) 463-7804.

- 31 TAC §363.3

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

The repeal is proposed under Texas Water Code, §6.101 and §15.403, which requires the board to adopt rules to carry out the powers and duties of the board, under the Texas Water Code including Chapter 15, and other laws of this state.

The proposed repeal affects Texas Water Code, Chapter 15, Subchapter C.

*§363.3. Adoption of Memorandum of Understanding by Reference.*

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

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

TRD-9501731 Craig D. Pedersen
Executive Administrator
Texas Water Development Board

Proposed date of adoption: March 23, 1995

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

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The new section is proposed under Texas Water Code, §6.101 and §15.403, which requires the board to adopt rules to carry out the powers and duties of the board, under the Texas Water Code including Chapter 15, and other laws of this state.

*§363.3. Memorandum of Understanding Between the Texas Water Development Board and the International Boundary & Water Commission.*

(a) The United States of America (hereinafter "United States") and the Republic of Mexico (hereinafter "Mexico") under pertinent provisions of the Treaty for Utilization of the Waters of the Colorado and Tijuana Rivers and the Rio Grande, dated February 3, 1944 (TS 994; 59 Stat. 1219) and the implementation of Article 3 of this treaty in International Boundary and Water Commission Minute Number 261, Recommendations for the Solution to the Border Sanitation Problems, dated September 24, 1979 (TIAS 9658) signed International Boundary and Water Commission Minute Number 279, Joint Measures to Improve the Quality of the Waters of the Rio Grande at Laredo, Texas/Nuevo Laredo, Tamaulipas, in Laredo, Texas on August 28, 1989.

(1) A Minute of the International Boundary and Water Commission (hereinafter "IBWC"), approved by the two Governments, by virtue of pertinent provisions of the 1944 Water Treaty is a binding obligation of the governments of the United States and Mexico.

(2) The United States and Mexico under Minute Number 279 agreed to jointly finance the construction of an international wastewater treatment system in Nuevo Laredo, Tamaulipas.

(3) The United States and Mexico under Minute Number 279 agreed that the international treatment system in Nuevo Laredo, Tamaulipas, will be constructed, operated and maintained in a manner that will meet water quality standards stipulated in Minute Number 279, which are identical to the water quality standards adopted by the Environmental Protection Agency (hereinafter "EPA") and the State of Texas (hereinafter "Texas") for this reach of the Rio Grande.

(4) The United States and Mexico under Minute Number 279 are obligated to carry out through the IBWC programs of reviews and inspections of the principal elements of the jointly-financed project in Nuevo Laredo, Tamaulipas, which includes the international treatment plant.

(5) The United States and Mexico under Minute Number 279 are obligated to conclude another international agreement in the form of a Minute of the IBWC for the operation and maintenance of the jointly-financed project in Nuevo Laredo, Tamaulipas, which must include the division of costs, an operation and maintenance manual, and a specific program to ensure that the effluent standards specified in Minute Number 279 are met.

(6) The Government of Mexico in Minute Number 279 is obligated to assure the completion, at its expense, of construction of the jointly-financed project in the event that costs exceed the amount stipulated in Minute Number 279 and that part of the financing provided by the United States will be utilized in Mexico under applicable laws of Mexico and under the administration of the Mexican Section of the IBWC.

(b) Texas and the United States consider it desirable to arrange for a cooperative effort to finance the cost of the international wastewater treatment system in Nuevo Laredo, Tamaulipas so the effluent meets EPA and State approved water quality standards adopted for this reach of the Rio Grande.

(c) Under the practice of the IBWC, personnel of the Texas Water Development Board (hereinafter "board") and of the Texas Water Commission (hereinafter "TWC") may serve as technical advisors to the United States Section of the IBWC (hereinafter "Section").

(d) The 71st Texas Legislature, General Session, 1989, enacted Senate Bill 2 (hereinafter "S.B. 2") which amends Texas Water Code, §15.002, to include in the purpose of the Water Assistance Program the concern by the legislature with the serious health and sanitation problems that face the citizens of Texas from discharges of untreated and treated wastewater into the Rio Grande, and the intent of the Legisla-

ture to provide a means of coordinating and financing the development of wastewater treatment projects through cooperative efforts between Texas, the United States, and Mexico to improve the quality of water in the Rio Grande.

(e) S.B. 2 further amends Texas Water Code, §15.001, to include a definition for "federal agency" which allows the Section to apply to the Water Loan Assistance Program.

(f) The board administers the Water Loan Assistance Fund under the provisions of the Water Loan Assistance Program of Texas Water Code, Chapter 15, Subchapter C.

(g) The provisions of Texas Water Code, §15.107, allow the board to make financial assistance available to successful applicants in any manner that it considers economically feasible.

(h) The rules governing applications to the board for funds and subsequent action and release of funds by the board are set out in Rules Relating to Financial Programs, Texas Administrative Code, Title 31, Chapter 363.

(i) S.B. 2 amends Texas Water Code, §15.007, to require that the board must find that any waste treatment facility to be financed will consider cost-effective methods of treatment such as rock reed, root zone, ponding, irrigation or other nonconventional methods that may have been developed by the National Aeronautics and Space Administration or the Tennessee Valley Authority.

(j) S.B. 2 amends Texas Water Code, §15.102, to include that the loan fund may be used to provide financial assistance to federal agencies or to both political subdivisions and federal agencies acting jointly, and that a political subdivision may enter into an agreement with a federal agency to submit a joint application for financial assistance, and that the board must find that the project is designed to produce effluent that will meet United States and Texas approved water quality standards before the board may grant financial assistance under a joint application.

(k) S.B. 2 further amends Texas Water Code, §15.102, to provide that a grant or loan of financial assistance under a joint application by the federal government and a political subdivision may be made only for a project that is covered by an international agreement to which the United States is a party, and a grant or loan made under such a joint application is subject to the provisions, terms, and conditions of the international agreement to which the United States is a party.

(l) S.B. 2 amends Texas Water Code, §15.103, to provide that in an application to the board for financial assistance from the loan fund, the applicant shall include the name of the federal agency and its principal officers, a citation of the law under which the federal agency operates and was created, and a prohibition that the board may not accept an application for a loan or grant of financial assistance from the loan fund unless it is submitted in affidavit form by the chief administrator of the federal agency.

(m) S.B. 2 amends Texas Water Code, §15.104, to include the requirement that if an applicant proposes a wastewater treatment plant that is located outside of the jurisdiction of Texas and is not subject to the permitting authority of the TWC, the board must review the plans and specifications in coordination with the TWC and find that the wastewater treatment plant is capable of producing effluent that will meet United States and Texas approved water quality standards.

(n) S.B. 2 amends Texas Water Code, §15.106, to provide that the board will not require a program of water conservation to be adopted under subsection (b) of §15.106 if the project consists of construction outside the jurisdiction of Texas.

(o) S.B. 2 amends Texas Water Code, §15.114, to provide that after approval of engineering plans, a federal agency shall not make any substantial or material alterations in the plans without authorization of the Executive Administrator of the board.

(p) The board and the Section hereby enter into this Memorandum of Understanding with the intent of clarifying the administrative rules and procedures for the Section application process and to formalize certain standards of conduct by the parties in the joint participation of the construction of a wastewater treatment facility.

(1) Application Rules.

(A) The amendments to Texas Water Code, Chapter 15, as recited herein from S.B. 2 will be binding on the parties and will control over the Rules Relating to Financial Programs of this chapter, where conflicts exist between such rules and the provisions of the statute.

(B) Portions of this chapter, which clarify requirements and facilitate the application process are described in Exhibit A entitled Application Rules, as shown in subsection (q)(10) of this section.

(C) The applicant shall submit a copy of the international agreement between the United States and Mexico which addresses the division of operating and maintenance costs as discussed in Resolution Number 8 of Minute 279 of August 28, 1989. A copy of Minute 279 is attached hereto and incorporated herein by reference as Exhibit B as shown in subsection (q)(10) of this section.

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

(A) Participating party-A governmental or private entity which is providing financial or managerial support of the planning, design, construction, or the operational phases of the project.

(B) Project-All phases of the planning, design, and construction of the wastewater treatment plant and related facilities through completion of construction to operation.

(C) Project costs-Costs that are specifically funded through appropriation by the United States Congress for the Nuevo Laredo Project and which have been approved by the board in the Section's application and which may include: Section's pre-construction consultant costs; Section's administrative costs for inspection; and actual construction costs in the building of the project.

(3) Plans and Specifications. Three sets of the plans and specifications for the project will be provided to the board. The board will be the lead agency in coordinating with TNRCC any reviews or approvals needed by TNRCC with regard to plans and specifications.

(4) Funding and Payment.

(A) The board will administer the Texas share of funding of up to 10% of the United States share of the project costs as previously addressed in Minute 279, Exhibit B (as shown in subsection (q)(10) of this section) but the Texas share will not under any condition exceed $2 million.

(B) The Section will be responsible for ensuring that the Texas funds which are paid by the board are used solely in accordance with the terms of the approved application.

(C) The board will reimburse the Section in five installments for the Texas share of project costs incurred, subject to the following conditions.

(i) That no payment shall be made by the board until after the board has adopted the Memorandum of Under-

standing and approved the application submitted by the Section.

(ii) That no payment shall be made by the board, until in cooperation with the Texas Natural Resource Conservation Commission, the board has reviewed the plans and specifications and made the finding that the proposed wastewater treatment plant is capable of producing effluent that will meet United States and Texas approved water quality standards.

(iii) That the Section will submit a State of Texas payment voucher containing documentation of incurred costs. The board reserves the right to reduce or refuse payment if a voucher is deemed insufficient.

(iv) That the first payment will consist of 10% of the cost incurred by the Section for the preparation of the facilities plan under the architect-engineer contract dated January 18, 1990, not to exceed $61,000. The second payment will consist of one-quarter of the estimated total Texas share of project costs, minus the first payment amount, and will be paid after the project's construction is 25% complete. The third payment will consist of one-half of the estimated total Texas share of project costs, minus all previous payment amounts, and will be paid after the project's construction is 50% complete. The fourth payment will consist of three-quarters of the estimated total Texas share of project costs, minus all previous payment amounts, and will be paid after the project's construction is 75% complete. The fifth payment will consist of the balance of the Texas share of project costs and will be paid after the project's construction is 100% complete.

(D) The project's construction completion percentage shall be based on the amount of project costs that are incurred, due, and payable in comparison to the total estimated, or completed, project costs. The Section is primarily responsible for determining the completion percentage but the board reserves the right to reduce or refuse payment if the quality of the construction is determined to be inadequate.

(E) In addition to the limitations stated in paragraph (4) of this subsection, the second and subsequent payments are contingent upon:

(i) the United States share of funding for the project being authorized and the funds for federal fiscal years 1990 and 1991 being appropriated;

(ii) the submittal to and approval by the board of copies of any agreements or contracts addressed in the Application Rules, Exhibit A as shown in subsection (q)(10) of this section that were not initially filed with the application; and

(iii) the receipt of documentation, acceptable to the board, that the agreement between the United States and Mexico on the operation and maintenance is in place as addressed by Resolution Number 8, Minute 279, Exhibit B as shown in subsection (q)(10) of this section. The fourth and fifth payment is further contingent upon the United States appropriating sufficient funds for the completion of the project if the federal fiscal year 1990 and 1991 funding was insufficient. The fifth payment is further contingent upon the Section submitting to the board a final accounting of the project and a recapitulation of the actual project costs.

(5) Right of Entry and Inspection. Subject to notice to the parties, the board, through its representatives, will have right of entry and inspection during all phases of the project construction.

(6) Insurance. The international agreement in Minute Number 279 is the contractual obligation by the Governments of the United States and Mexico for the adequate and complete construction of the project in Mexico under terms specified in that agreement, including the obligation of the Government of Mexico to complete construction of all elements of the international project.

(7) Executive and Adoption. This Memorandum of Understanding shall be effective when signed by the designated representatives of the board and the Section and when adopted as a rule by the board. This Memorandum may be modified by mutual, written consent of the parties, and after publication as a rule amendment by the board.

(8) Duration. This Memorandum shall continue in full force and effect for five years after the last units of the project have commenced operations.

(9) Severance Provision. Should any one or more provisions of this agreement be held to be null, void, or for any reason without force or effect, such provision(s) shall be construed as severable from the remainder of this agreement and shall not affect the validity of all other provisions of this agreement which shall remain in full force and effect.

(q) First Amendment to Memorandum of Understanding Between Texas Water Development Board and United States Section, International Boundary & Water Commission.

(1) On August 28, 1989, the United States and Mexico signed International Boundary and Water Commission Minute Number 279, Joint Measures to Improve the Quality of the Waters of the Rio Grande at Laredo, Texas/Nuevo Laredo, Tamaulipas.

(2) Pursuant to provisions of S.B. 2 on July 19, 1990, the board entered into a Memorandum of Understanding with the Section to provide for the joint participation of the board and the Section with Mexico in the construction of a wastewater treatment facility in Nuevo Laredo, Tamaulipas, Mexico for the purpose of improving the water quality of the Rio Grande.

(3) In authorizing the appropriation, S.B. 2 (now Texas Water Code, §15.002(c)) states in relevant part that the legislature finds that serious health and sanitation problems face the citizens of this state from discharges of untreated and treated wastewater into the Rio Grande. It is the intent of the legislature to provide a means of coordinating and financing the development of wastewater treatment projects through cooperative efforts between this state, the United States, and the Republic of Mexico to improve the quality of water being discharged into the Rio Grande.

(4) Pursuant to the terms of the Memorandum of Understanding, the board would provide payments to the Section not to exceed $2 million as a 10% share of the U.S. estimated contribution to the project of $20 million

(5) In accordance with the payment provisions of the Memorandum of Understanding, the board has made a first payment to the Section of $61,000

(6) Subsection (p)(4)(E)(iii) of this section specifies that second and subsequent payments by the board are contingent upon an agreement between the U.S. and Mexico on the project's operation and maintenance, as addressed by Resolution Number 8, Minute 279, being in place.

(7) The Section has submitted a request to the board that the condition described in subsection (p)(4)(E)(iii) of this section requiring finalization of the operation and maintenance costs agreement between the U.S. and Mexico be waived for the second and third payments, and that the board immediately process the second and third payments, in the total amount of $939,000.

(8) The Section represents that the U.S. has paid all of its obligation on the project except for the balance of the Texas share that remains, and that payment by the board will allow the construction to proceed and will avoid disrupting the project.

(9) The board finds that it is in the best interests of public health and safety that construction of the project proceed without disruption, and that all other conditions for the second and third payments have been met.

(10) The Texas Water Development Board and the United States Section, International Boundary and Water Commis-

sion, agree to amend the condition described in subsection (p)(4)(E)(iii) of this section to read as follows.

*The receipt by the board of an agreement between the United States and Mexico for specific operation and maintenance criteria to ensure compliance with the discharge standards in Minute Number 279 including commitments to adopt an operations and maintenance manual and a satisfactory division of costs before the international plant is in operation as addressed by Resolution Number 8, Minute Number 279, Exhibit B, as shown in subsection (q) (10) of this section. This applies to the second and third payments. The fourth and fifth payment is further contingent on receipt by the board of the agreement addressed in Resolution Number 8 of Minute Number 279 and upon the United States appropriating sufficient funds for completion of the project, if the federal funds appropriated and the maximum contribution by Texas of $2 million are not sufficient. The fifth payment is further contingent upon the Section submitting to the board a final accounting of the project and a recapitulation of the actual project costs." Exhibit A & B is as follows.*

Figure 1: 31 TAC §363 3(q)(10)

Figure 2: 31 TAC §363.3(q)(10)

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

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

TRD-9501732 Craig D Pedersen
Executive Administrator
Texas Water Development Board

Proposed date of adoption: March 23, 1995

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

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# TITLE 34. PUBLIC FINANCE

## Part I. Comptroller of Public Accounts

### Chapter 9. Property Tax Administration

### Subchapter I. Validation Procedures

#### • 34 TAC §9.4011

The Comptroller of Public Accounts proposes an amendment to §9.4011, concerning adoption of the *Manual for the Appraisal of Timberland*. These amendments are necessary to establish for chief appraisers and property owners the methods and procedures for qualifying and appraising timberland.

The amendments discuss the methods and procedures for qualifying timberland. In addition, the manual addresses the application process, discusses the methods for determining a change of use has occurred on timberland, details the calculation of the additional tax due after a change of use determination, and establishes the procedures and methods for the productivity appraisal of timberland.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there would be no fiscal impact on the state. There could be a fiscal impact in the approximately 52 counties that have timberland. The impact on these local governments would depend upon appraisal methods used by the county appraisal districts and could result in a positive or negative fiscal impact depending upon the appraisal method currently being used.

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 the methods to be used by appraisal districts when appraising timberland. The fiscal implications for small businesses located in the 52 counties containing timberland would depend upon the appraisal methods being used by the county appraisal districts in the affected counties. There is no anticipated significant economic cost to the public.

Comments on the amendment may be submitted to Joe Vogel, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The amendments are proposed under the Tax Code, §23.73, which requires the comptroller to develop procedures for verifying that land qualifies for 1-d-1 timber appraisal and setting forth the method of appraising qualified land, and §5.03, which gives the comptroller authority to adopt rules setting forth minimum standards for administration and operation of an appraisal district.

The amendment implements the Tax Code, Chapter 23, Subchapter E.

*§9.4011. Appraisal of Timberlands.*

(a) The Comptroller of Public Accounts [State Property Tax Board] adopts [by reference] ***Manual for the Appraisal of Timberland*** ["Guidelines for the Valuation of Timberlands" to be effective May 10, 1983]. This document is published **in booklet format by and is available from the Comptroller of Public Accounts, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528** [State Property Tax Board, 9501 IH 35 North, P.O. Box 15900, Austin, Texas 78761].

**(b) Until 1979, local governments taxed Texas timberland on its market value the price a buyer would pay for it in an ordinary market transaction. Forest land owners viewed the state's property tax policies as impediments to timber production. High property taxes on timber often forced owners to harvest prematurely, and timber growers had no incentive to replant after harvest. Concerned that taxes could become so high that timber producers would be forced to abandon or strip the land, voters in 1978 approved a constitutional amendment, Article VIII, §1-d-1, permitting appraisal based on the use value of timberland (timberland-use appraisal). The new constitutional amendment took effect in 1979. In enacting the Property Tax Code that year, the Legislature adopted §§23.71-23.79, implementing §1-d-1 for timber use appraisal.**

**(c) The Property Tax Code assigns most timberland-use appraisal responsibilities to the chief appraiser. However, §23.73 and §23.75 direct the Comptroller to develop a timberland-use appraisal manual and application and distribute them to appraisal districts. Section 23.73 also directs the Comptroller to develop procedures for verifying that land qualifies for timberland-use appraisal. This manual sets out both appraisal procedures and eligibility requirements. The procedures and methods described in the manual are required; appraisal districts are required by law to follow them. However, the manual's tables and examples are for illustrative purposes only. Appraisers must use the manual's procedures and current information from authorized sources to calculate timber use values. These calculations must be made each year. Appraisal districts are not required to use these numbers unless the manual states otherwise, provided they use the manual's methods to perform the appraisal.**

**(d) Typically, the word timber describes wood used to build objects or to make other commercial products, such as paper and furniture. A forest product is made in the primary timber processing stage lumber is a forest product. Wood pulp, which is residue from the primary processing stage, is also a forest product. In this manual, the word timber includes trees in their natural state that are grown to produce forest products.**

**(1) Forest property in Texas varies in many ways. A pine plantation may have trees just over a year old, while another tract of pine may have much older trees. One owner may have abused and severely eroded a tract, while another owner may carefully manage a tract. Low-value hardwoods may be the only timber on one tract, while other tracts have valuable pine trees. Some land is naturally irrigated, while other land is dry. The degree of intensity with which timber producers manage the land also differs. Some Texas timberland receives custodial care, while other land is intensively managed. Finally, some land may require little management for a few years, then need sophisticated, intensive management for several years. For exam-**

ple, a timber growing operation that is between thinning operations needs little management, but final harvest and preparation for planting timber seedlings require intensive management. These variations among timber growing operations make determining eligibility for timberland-use appraisal a challenging task for a chief appraiser. The chief appraiser must be familiar with the timber operations in the immediate area and the forest region of which the appraisal district is a part.

(2) The Texas Constitution permits timberland-use appraisal only if the property and its owner meet specific requirements defining timber use. Land won't qualify simply because it has timber standing on it. Casual uses such as a timber growth that is principally for aesthetic or recreational purposes does not qualify. The Property Tax Code, §23.72 sets the standards for determining whether land qualifies. To qualify land for timberland-use appraisal, a property owner must show the chief appraiser that the land meets the §23.72 standard. To do so, the property owner must apply for the appraisal and give the chief appraiser the information necessary to determine if the land qualifies. The owner also must notify the chief appraiser of any changes in the land's status.

(3) This section explains each eligibility requirement for chief appraisers and property owners. Brief descriptions of each requirement appear in subparagraphs (A)-(F) of this paragraph.

(A) Timberland appraisal applies to the land and the timber standing on it, not to other property connected with the land.

(B) The land must be currently and actively devoted to timber production.

(C) The land must be used principally for timber production. The owner must have an intent to produce income.

(D) The land must be devoted to timber production to the degree of intensity that is typical in the area.

(E) The land must have been dedicated principally to agriculture or timber production for any five of the preceding seven years.

(F) The property owner must file a timely and valid application form.

(4) Timber appraisal applies only to land and the timber standing on it. It does not apply to improvements on land or to minerals. Buildings and structures such as barns, sheds, or other out buildings must be appraised separately at market value. Fences, however, are appurtenances and are not appraised separately.

(A) Land beneath outbuildings and other improvements related to timberland use qualifies for the special appraisal because the owner uses it in the timber producing operation.

(B) Oil, gas, or any hard mineral must be appraised separately at market value. Harvested timber in the owner's hands on January 1 is personal property and taxed separately from the land.

(C) Some man made alterations of, or additions to, timberland are appraised as part of the land. These appurtenances to the land canals, water wells, roads, stock tanks, and other similar reshaping of the soil are included in the value of the land and are not separately appraised.

(5) Under the Property Tax Code, land must be "currently and actively devoted to timber use to qualify for timberland-use appraisal. Unlike other types of property, the land need not qualify on January 1. If timber use is not evident on January 1, the chief appraiser should grant timberland-use appraisal if the owner can show that the land will be devoted to active timber production for the bulk of the calendar year for which he or she is applying.

(A) Determining if the owner is currently and actively devoting land to timber production is often a difficult task. Consider the following situations.

*(i)* The chief appraiser may not be able to see signs of activity when a timber operation is young, even though the owner may have spent a great deal of time, money, and effort to start the operation and is currently and actively devoting the land to timber use.

*(ii)* A chief appraiser may not be able to see management activity at the time of inspection if the owner has not harvested for some time.

*(iii)* The chief appraiser may not be able to find evidence of active devotion if the size of the tract means that management activities take place away from the roads that give the chief appraiser access to the land.

(B) The current and active use question is complicated because there are stages of timber production during which little management of the land is needed. In some cases, forest land on which timber is being allowed to grow may be currently and actively devoted to timber production.

(C) The following are some indications of current, active devotion: regular harvesting:

*(i)* a forest management plan; records showing timber management activity;

*(ii)* the owner receives TRe, (Texas Reforestation Foundation) FIP, (Forestry Incentive Program) or SIP (stewardship incentive program) or other cost sharing funds for using approved timber management practices;

*(iii)* the owner has documents showing that others have asked to purchase the timber; the owner has attempted to salvage damaged or killed timber that continues to have value;

*(iv)* the property is a Registered Tree Farm;

*(v)* the owner is a member of a county or local timber grower's association; the owner participates in forestry extension activities; and

*(vi)* the owner is working with a consulting forester.

(D) The owner of a tract that is getting little or no management should have a timber management plan signed by the preparing forester; the plan should include a recommendation to let the timber grow or to let it grow with minimum management, such as pest control. In addition, owners of very marginal tracts may not be able to afford a privately developed forest management plan or may be on the waiting list to have a plan developed by a public agency. In this case, the chief appraiser should look for other evidence of current and active devotion.

(6) Land used primarily to produce timber may qualify for timberland-use appraisal. If the owner uses the land for more than one purpose, the principal use must be growing timber. While timber production must be the primary use of the land, other compatible uses do not prevent land from qualifying if timber remains the primary use. For example, an owner may use land principally to grow timber and lease it for hunting.

(A) The chief appraiser must determine all the uses to which the owner puts the land and decide which use is the primary one. If any use is incompatible with timber production, or if it replaces timber production as the primary use of land, the land is not principally devoted to timberland use and cannot qualify for timberland-use appraisal.

(B) The primary use test is particularly important for timberland because the kind of intensive management required to grow agricultural crops is not necessary to grow timber. This less visible management activity can make finding the land's primary use a difficult job. However, most landowners who use their land primarily to produce timber engage in similar management activities. Keeping in mind that each owner will manage differently, a chief appraiser facing a primary use question should look for signs of these common activities, listed in clauses (i)-(xi) of this subparagraph:

*(i)* Is the owner able to produce records showing timber management activity? Some records that show timber management activity are documents showing the timber has been harvested, canceled checks, contracts of sale, and land leases.

*(ii)* The owner operates under a current, written forest management plan. A forest management plan must be developed for the present time. An outdated plan is of no use as a management document. The plan also should be in writing and signed by the forester who prepared it. The existence of a management plan, however, does not always mean the owner uses the land primarily for timber production. The owner should be able to show that he or she is using or intends to use the plan for timber production.

*(iii)* The owner receives TRe, (Texas Reforestation Foundation) FIP, (Forestry Incentive Program) or ACP or SIP (stewardship incentive program) cost sharing funds for using approved timber management practices. The Texas Forest Service coordinates the FIP, ACP, and SIP programs. TRe is a privately funded cost-sharing program for reforestation and timber stand improvement. Can the owner produce documents showing that others have asked to purchase the timber?

*(iv)* Has the owner attempted to salvage damaged or killed timber that continues to have value? If so, timber is likely to be the owner's principal use of the land.

*(v)* A registered tree farm is privately owned, protected, and managed timberland. Timberland must meet several qualifications for certification as a registered tree farm: private ownership, management for growth and repeated timber crop harvests, adequate protection from fire, insects, disease, and destructive grazing. In addition, the owner's harvesting practices must assure prompt reforestation with desirable trees. A registered tree farm is inspected by professional foresters before it may qualify for the program. Each registered tree farm is reinspected periodically. Most registered tree farms are easily recognized by the green diamond-shaped TREE FARM marker placed in front of the property.

*(vi)* Is the owner a member of a county or local timber growers association?

*(vii)* Does the owner participate in a forest industry landowner assistance program? Many firms in the forest products and the pulp and paper industry have entered into agreements with private timberland owners to manage their timber in exchange for first chance to buy the timber when it is ready to harvest.

*(viii)* The owner is a member of the Texas Forestry Association.

*(ix)* Does the owner participate in forestry extension activities? The Texas Agricultural Extension Service offers periodic programs for timberland owners. These programs cover forest management practices.

*(x)* If the owner engages in other land uses or activities, these are secondary to and compatible with the owner's use of the land to raise timber.

*(xi)* Has the owner contracted with or hired a private consulting forester to help manage his or her timber? What were the results of this collaboration? Is the owner operating on the written advice of a consulting forester?

(C) A chief appraiser may establish a policy to follow reasonable and carefully developed guidelines for determining primary use. Establishing guidelines requires the chief appraiser to become familiar with timber activity in the area. Guidelines, however, should serve only as a trigger for more investigation they should never be arbitrarily or automatically applied. For example, a chief appraiser whose guidelines require a management plan should never automatically deny timber appraisal to an owner who does not have a plan. Instead, the chief appraiser should use the lack of a plan as a trigger to more closely investigate the application.

*(i)* Guidelines that are applied arbitrarily or by rote can reach wrong results. For example, the property owner with no forest management plan may actually be managing the land more actively and intensely than other owners who have management plans. This land should qualify if its use meets all other qualification requirements. On the other hand, an owner who has a fully developed plan may not be following through with it. This owner's land should not qualify unless he or she shows other relevant evidence of primary use.

*(ii)* Land that has timber on it, but that is incapable of producing at least 20 cubic feet of fiber per acre per year cannot be used principally for production of timber. Experts agree that this land does not warrant management of the existing timber resources for commercial timber production or development of the land resource for timber production. The reverse, however, is not true. Land that is capable of producing 20 cubic feet of fiber per acre per year is not necessarily used principally to produce timber. That the land has this capability means only that the owner can use this land principally for timber production if the owner chooses to do so.

(7) The owner must use the land with an intent to produce income. Like the degree of intensity test, this test excludes those owners who aren't producing timber and who are trying to use productivity appraisal to avoid paying property taxes on the land's market value. Whether the owner has an intent to produce income is a fact question for the chief appraiser to decide.

(A) To qualify, the owner is not required to prove that the land has produced income in the current year. Timberland does not produce income on a regular basis because the time between harvests is long. At the time of qualification, however, the owner must show evidence of an intent to produce income. Land that does not produce income (in this context, income means net income) during the time in which a prudent manager intending to produce income would have produced income may not qualify. Further, an owner probably has no real intent to produce income if, over time, he or she has no expenses directly related to the timber operation.

(B) The chief appraiser may use expense receipts, canceled checks, or contemporaneous accounts of

expenses, labor, and income to determine the owner has expenses directly related to timber production. An owner seeking to produce income usually will keep these types of records.

(C) Evidence of intent to produce income includes: actual production of income through sale of timber; letters or other documents showing that others wish to purchase the timber; a contract of sale; receipts, canceled checks, and other evidence that the owner has had expenses or income related to the timberland's use; attempts to salvage timber that has value but that is damaged or dead; and using a consulting forester to help manage the land.

(8) To qualify for timberland-use appraisal, forest land must be used to the degree of intensity typical for the area. The degree of intensity test measures if timberland is managed in the current year to the extent typical for timber operations. The previous section described whether a particular use was primarily to produce timber. To receive a timberland-use appraisal, the land must also be used for timber purposes to the degree of intensity typical in the area. The degree of intensity test is intended to exclude from timberland-use appraisal land on which token timber activity occurs simply to get tax relief.

(A) The law doesn't set degree of intensity standards. The chief appraiser must develop standards after carefully investigating the area's typical timber operations. After thoroughly studying the area, the chief appraiser may set minimum degree of intensity standards.

(B) The chief appraiser should never apply minimum degree of intensity standards arbitrarily they are a trigger for a more careful review of the application. For example, if the minimum standards require at least ten acres of land and the applying owner has nine acres, the application should not be denied simply because the land does not meet minimum standards. The chief appraiser should instead carefully review the application and inspect the property to determine if the land qualifies.

(C) To set degree of intensity standards, the chief appraiser should analyze each type of tree farm in the area. This analysis should break down the typical steps in producing timber and attempt to specify how much time, labor, equipment, and so on is typical for each level. The sources listed in Appendix A may help the chief appraiser determine the typical input levels.

*(i)* Degree of intensity standards will vary from one timber growing area and operation to another. The degree of intensity typical for an industrial producer is usually different from that typical for a non-industrial producer. Commercial producers usually have more land, so they need to put more into the operation than a non-commercial producer. The chief appraiser's degree of intensity standards should recognize these types of differences between operations.

*(ii)* In most cases, property owners must prove that they are following the common production steps for their type of operation and putting in typical amounts of labor, management, and investment. However, a timber growing operation is not disqualified simply because it differs from the typical operation in some respect. Appraisers should not, for example, disqualify a labor-intensive tree farm because most comparable operations are capital-intensive. Nor should an owner who is clearly meeting the degree of intensity test be disqualified because the operation has some element of the degree of intensity test missing. The total effort finally determines whether a given timber growing operation qualifies, not the level of each separate "input.

*(iii)* The degree of intensity test applies to the year of the appraisal only it does not apply to the historical use (time period) requirement. Land used principally for timber for five of the preceding seven years may qualify although it was not used to the typical degree of intensity during those years. Owners must show only that they met the degree of intensity requirement for the years in which they qualify for timberland-use appraisal.

(9) The five out of seven years use requirement is self-explanatory. Use principally for timber in any five of these seven years qualifies land for timberland-use appraisal. A property owner also can point to a history of agricultural use that would qualify the land for agricultural appraisal in meeting the five-year test. Land used primarily for either timber or agricultural production during any five of the previous seven years may qualify. As long as either timber or agriculture was the principal use in the preceding years, the land qualifies although that use may not have met the degree of intensity requirement in all or some of those years.

(10) An application for timberland-use appraisal on a form provided by the appraisal district and adopted by the Comptroller is valid. The appraisal district may copy the Comptroller's form and offer it to local property owners.

(A) An appraisal district may use a form that substantially complies with the Comptroller's form that is it has the same language in the same order as the Comptroller form if the district has written approval from the Comptroller. The Comptroller will not approve an appraisal district form unless the form has the same elements and asks for the same information as the Comptroller form. The Comptroller will not approve a form that asks for any information not required by the agency's form.

*(i)* These rules do not permit appraisal districts to add additional questions to the initial application. If, however, the initial application is valid but does not contain all the information the district needs to rule on an application, the chief appraiser may require the applicant to give additional information. This procedure is described later in this section.

*(ii)* Where the district offers its own form, the applicant may choose between the Comptroller application form and the district's form. An applicant may not be denied the appraisal because he or she chooses to use the Comptroller form. The applicant must completely provide all information requested by the Comptroller form an incomplete application is not valid.

*(iii)* Property owners must file applications with the chief appraiser in the appraisal district where the land is located. Taxpayers whose land is appraised by more than one appraisal district must file an application in each district.

*(iv)* A property owner may file a single application form covering all tracts within an appraisal district. Owners need not file a separate form for each tract so long as they provide sufficient information to show that all tracts qualify under the law.

*(v)* The chief appraiser should encourage owners to file a single form if they are managing several tracts as a unit. The chief appraiser must view the entire timber growing operation as a unit not with respect to the activities on each individual parcel. The single application form notifies the appraisal district of the operation's unity.

(B) An application must be postmarked or filed no later than mid-

night, April 30. For good cause and only on the property owner's request, the chief appraiser may extend the filing deadline in individual cases for not more than 60 days. The property owner must request an extension before the filing deadline. The chief appraiser should grant an extension in writing. The Property Tax Code does not define good cause. However, it is commonly something the applicant can't control. Illness or injury and an inability transact normal business for a period that effectively prevents filing on time is usually good cause. Being out of town on business or vacation or simply forgetting about the filing deadline is not good cause.

(C) A property owner who misses the deadline may file a late application until the appraisal review board approves records for that year (usually about July 20). However, there is a penalty for late application. An application filed after April 30 is subject to a penalty equal to 10% of the difference between the tax if imposed at market value and the tax imposed at the timber productivity value. If the chief appraiser extended the deadline for that property owner, this penalty does not apply.

*(i)* Chief appraisers must note the penalty in the appraisal records. They also must send the property owner written notice of the penalty and explain the reasons. A sample form for this notice appears as Form Two, Appendix A. The tax assessor adds the penalty amount to the tax bill and collects the penalty along with the annual tax payment.

*(ii)* A lien attaches to the property until the penalty is paid. If the penalty remains unpaid on February 1 of the following year (or a later delinquency date if tax bills are mailed late), penalty and interest on the penalty amount accrue as if it were a delinquent tax.

(D) If a person does not file a valid application before the appraisal review board approves the appraisal roll, the land is ineligible for timberland-use appraisal in that tax year.

(E) Once the application is filed and approved under timberland-use appraisal requirements, the land continues to receive timberland-use appraisal every year without a new application unless the ownership changes, the land's eligibility changes, or the chief appraiser requires a new application. If the chief appraiser requires a new application, the property owner must meet the deadlines that apply to a new applicant.

(F) If the land's eligibility ends or its ownership changes, the property owner must notify the appraisal office in writing before the next May 1. If the owner fails to do so, one or more penalties will apply. If the land remains under the same ownership and the owner fails to inform the appraisal district that the land is no longer eligible for timberland-use appraisal, either because the land is no longer in timberland use or because the degree of intensity has fallen below that typical for the area, the property owner must pay a penalty equal to 10% of the difference between the taxes imposed under the timberland use and the taxes that would have been imposed under the new use. This penalty applies for each year the property received the incorrect appraisal, but for no more than ten years.

*(i)* If the property erroneously receives timberland-use appraisal because a new owner failed to file an application or because an owner's use of the land no longer qualifies, the chief appraiser must calculate the difference between the land's market value and its timberland use value. The owner must pay taxes and penalties on the difference between these values for the time that the land erroneously received timberland-use appraisal, plus a 10% penalty on these taxes. This additional tax and penalty may not cover a time period exceeding ten years. In the year the chief appraiser discovers the change, the chief appraiser should add this value to the appraisal roll as property omitted in a prior year.

*(ii)* For example, if a timber producer reduces the scale of the operation and timber is no longer the land's principal use, the land will not be eligible for timberland-use appraisal. If the landowner fails to notify the appraisal district and, therefore, receives timberland-use appraisal, the land is back assessed. For each year in question (not to exceed ten years), the owner must pay the difference between the taxes based on timberland-use appraisal and the taxes based on market value, plus a 10% penalty on that difference. Because the land has not been taken completely out of timberland use, it is not subject to rollback taxes.

*(iii)* When a penalty is imposed, the chief appraiser must notify the property owner. This notice must explain the procedures for protesting the penalty. The chief appraiser notes the penalty in the appraisal records, and the tax assessor adds the penalty to the property's annual tax bill.

(G) The chief appraiser must review each application and decide whether to: approve it and grant timberland-use appraisal; disapprove it and ask for more information; or deny the application. The chief appraiser must determine the validity of all timely filed applications before turning all appraisal records over to the district's appraisal review board. The deadline is May 15 or as soon afterward as is practicable.

*(i)* The chief appraiser usually gives the appraisal records to the appraisal review board (ARB) by May 15. Property owners who were denied timberland-use appraisal may file a protest with this board. Taxing unit officials who believe special appraisal was erroneously granted to any property owner may seek to remove that grant by filing a challenge with the review board.

*(ii)* The chief appraiser must rule on all late-filed applications before the appraisal review board approves the records for the year. The chief appraiser must notify the applicant in writing within five days of an application's denial. This notice must explain the reasons for the denial and the procedures for protest.

(H) If the initial application form is valid but does not contain all the information needed to determine if the land qualifies, the chief appraiser may request additional information. The chief appraiser may request only additional information that is necessary to determine if the land qualifies for timberland-use appraisal.

*(i)* Information contained in income statements and income tax returns, land lease rates, and lease agreements is not necessary to determine whether the land qualifies other less invasive evidence of qualification exists. If the chief appraiser asks an owner for this type of information, the request should clearly state that the owner is not required to give the information to qualify for timberland-use appraisal.

*(ii)* The applicant must provide additional information within 30 days after the date of the request or the application will be denied. If there is good cause, the chief appraiser may extend the deadline to allow additional information. An extension cannot exceed 15 days.

(I) If a chief appraiser denies an application, a notice of the denial must be delivered to the applicant within five days. The notice must explain the procedures for protesting to the appraisal review board.

(11) Even if land meets all the preceding conditions, some situations may block approval of an application.

(A) Land within the boundaries of a city often will not qualify. Land located within an incorporated city or town must meet the criteria applicable to all land and must meet one of the following: the city must not provide the land with general services comparable to those provided in other parts of the municipality having similar features and population; or the land must have been devoted principally to agricultural use continuously for the preceding five years.

(B) Property Tax Code, §23.77(2) and (3) provide that some kinds of foreign ownership make the land ineligible for timberland-use appraisal. Under the law, if the property owner is a non-resident alien (a non-U.S. citizen who does not reside in the U.S.), the land can't qualify. Similarly, the law states that a corporation can't qualify its land if a non-resident alien, foreign government, or both control the corporation.

*(i)* The Texas Supreme Court has held, however, that Property Tax Code §23.56(3), barring foreign corporate and governmental ownership from qualifying land for agricultural appraisal unconstitutionally violates the Texas Constitution's guarantee of equal protection. *See: HL Farms v. Self*, 877 S.W.2d 288 (Tex. 1994). Although the Court's opinion did not address the ineligibility of non-resident aliens (§23.56(2)), its reasons for holding subdivision (3) unconstitutional also applies to the non-resident's eligibility for agricultural appraisal.

*(ii)* *HL Farms* did not address timber appraisal, but the law making timberland-use appraisal unavailable to foreign owners is identical to the agricultural appraisal law. Property Tax Code §23.77(2) and (3) is identical to §23.56(2) and (3), Property Tax Code. Because of the similarity between the agricultural appraisal and the timberland-use appraisal sections, a court is likely to hold that *HL Farms* applies to timberland. Therefore, a chief appraiser should seek the advice of an attorney if the appraiser is confronted with an application for timber appraisal submitted by a foreign owner.

(12) In some cases, timberland qualified for productivity appraisal will not be taxed on its productivity value. A minimum floor on value was created when the legislature adopted timberland-use appraisal. Its purpose was to ensure that a taxing unit with a large amount of timberland would not suffer a serious decrease in its tax base. So, the Property Tax Code provides that the minimum taxable value of qualified timberland is the market value assigned to the land by the taxing unit in 1978.

(A) The Tax Code requires a unit's tax assessor to compare the total productivity value for the parcel with the unit's 1978 value for the parcel. If the total productivity value is less than the total 1978 value, the unit's assessor must substitute the 1978 value for the entire parcel.

(B) If the nature of the parcel has changed, the assessor must use historical value to reconstruct what the entire parcel's value would have been in 1978. For example, if a parcel includes more land in the current year than it did in 1978, the assessor may not substitute a 1978 per acre average for the new acreage. Instead, a unit's assessor must use historical data to determine what the 1978 value for the entire tract would have been for the unit.

(C) A unit that did not exist in 1978, or that did not levy an ad valorem tax in 1978 may not substitute a 1978 value for the land's productivity value. The law permits only substitution of the 1978 value "for the unit." A unit that did not exist or that had no property tax in 1978 has no market value to substitute for the productivity value.

(D) The tax assessor must determine or reconstruct a 1978 value for each unit for which the assessor collects taxes. Each unit's 1978 value must be applied separately from that of other units. The law does not provide for an average 1978 value that is applied for all units that had a 1978 value. Nor does it provide for a historical reconstruction that combines the taxing units having a value in 1978.

(13) An owner may waive his right to timberland-use appraisal. By barring the land from receiving productivity appraisal, the waiver insures that a taxing unit may depend on a certain level of tax revenue. This certainty may be critical to the survival of small taxing units or those that are in debt. A waiver is effective for 25 years. Land may not qualify for timberland-use appraisal for the duration of the waiver. A change in ownership does not revoke the waiver. An owner may file a waiver on land that does not qualify for timberland-use appraisal. A waiver may be filed with some or all the units that tax the property.

(A) A waiver filed before May 1 becomes effective when it is filed. For good cause, the chief appraiser may extend the May 1 deadline for 60 days. These waivers become effective the year following the filing year.

(B) To revoke a waiver, the owner must file an application for revocation with the governing body of each taxing unit where the waiver is effective. The unit's governing body must vote to approve the revocation and make a finding the unit's debt obligations will not be affected.

(f) The law imposes a "rollback" tax on timberland when the owner stops using it for timber. The rollback tax is a penalty for taking the land out of timber production. This penalty is commonly called a rollback because it recaptures the taxes that would have been paid had the property been taxed at market value for each year covered by the rollback. This section discusses timber rollbacks, explains what triggers a timber rollback, and shows how to calculate the rollback tax. The law imposes a rollback tax on timberland when it is taken out of timber use. The rollback tax equals the difference between the taxes the owner actually paid in the five years preceding the change in use and the taxes the owner would have paid on the property's market value. Technically, the tax is a new, additional tax imposed by law on the date the cessation or change of use occurs. It has its own delinquency date, and it does not exist until the event that triggers the rollback occurs. The property owner can trigger the rollback by ending timber operations or diverting the property to a non-timber use. Selling the property does not trigger the timber rollback. If the property owner diverts only part of a property to a non-timber use, the rollback tax only applies to the changed portion. The chief appraiser determines if and when the change of use occurs and must send the owner written notice of the determination. If the owner does not protest the determination or the appraisal review board decides the use has changed, the tax assessor will calculate the amount of the additional tax due, add the appropriate amount of interest, and send a rollback tax bill.

(1) A change of use is a physical change. The owner must stop using the land for timber production. If the owner continues to use the land for timber but does not maintain the degree of intensity typical for the area or timber is no longer the land's principal use, the land may lose its eligibility for timberland-use appraisal without suffering a rollback.

(A) Reduced intensity that results from the owner's free choice will

cause a loss of timberland-use appraisal. Reduced intensity resulting from necessity will not. If the land remains in timber use, however, neither kind of reduction will trigger a rollback. Suppose, for example, that a timber grower who has been receiving timberland-use appraisal gets tired of the operation. The grower clear cuts his land, does not plant new trees, and shows no intention of doing so. Because the owner has stopped all timber activity, timberland-use appraisal will be lost and the land will suffer a rollback. Filing documents to plat land does not trigger a rollback. Only evidence that the actual use of the land has changed triggers the rollback. Plat documents provide some evidence but must be accompanied by physical change, such as ceasing timber operations or installing utilities. Even in that case, the change of use may affect only part of the platted land.

(B) An owner who is required to reapply for timber use appraisal but who fails to do so may lose his eligibility, but will not suffer a rollback. Rollback requires an affirmative change of use. Failure to reapply alone does not signal an affirmative use change.

(C) Special situations, such as severe fires, droughts, or freezes can extend the normal time land can remain out of timber production. In such cases, the land remains eligible for timberland-use appraisal until the owner clearly shows an intent to give up timber use permanently.

(D) This principle also applies when damage is done to part of a tract. If a fire destroys 500 acres of a 3,000 acre forest, forcing the owner to stop timber use on the 500 acres, the owner should continue to receive timberland-use appraisal on the destroyed part of the tract. In years of severe drought, many timber growing operations fail. The owner invested money in the failed operation, so planting may be delayed until money to start an new operation is available. Here as well, the land should continue to qualify until the owner clearly shows that timber production will no longer take place on the land.

(E) Chief appraisers must use great care in determining when a change of use triggers a rollback. Rollback is a serious economic penalty that should not be imposed when circumstances beyond a property owner's control cause an abnormally long, but temporary, suspension of timber production. Appraisers must keep in mind that change of use issues are often unclear and require a delicate balance between fair applications of the law and good decisions based on the facts of each situation.

(F) Some changes of use do not trigger a rollback. Changing from timber use to an agricultural use that qualifies land for 1-d or 1-d-1 appraisal does not trigger a rollback use. Property condemned or sold for right of way won't be rolled back even if its use changes. Filing a waiver of special appraisal will not trigger a rollback if the use does not change.

(2) On determining either that timber use has stopped or that the land has been diverted to a non-timber use, the chief appraiser must send the owner written notice of the determination. The notice is adopted by the comptroller. The notice must explain the owner's right to protest the determination. The owner may protest the change of use decision by filing a protest with the appraisal review board within 30 days after the notice is mailed. The appraisal review board must hear a timely protest even if appraisal records have been approved for the year.

(3) If land changes to a non-qualifying use from a qualifying one after the appraisal review board has approved the appraisal records, the land is back assessed for the difference between the property's market value and its timber use value. The assessor sends a supplemental bill for taxes on the added value. This amount becomes delinquent on the same date as the original tax bill for the property. If those taxes have been paid, the supplemental bill becomes delinquent on February 1 of the year following the date the bill is mailed or the first day of the next following month that allows the property owner 21 days to pay the tax, whichever is later.

(4) The rollback covers the five calendar years preceding the current year. If the use changes in 2005, the rollback covers 2004, 2003, 2002, 2001, and 2000. The preceding years are based on the use from January through December and not on the tax collection periods. The rollback tax itself is the difference between the taxes paid under timberland-use appraisal and the total taxes that would have been paid on the market value of the land. For example:
Figure 1: 34 TAC 9.4011(f)(4)

(A) The assessor must add 7.0% annual interest on these amounts from the date they would have become due. The due date for each year is the date tax bills were mailed that year. Discounts for early payment do not apply to rollback taxes discounts apply only to ordinary property taxes.

(B) Because the assessor computes interest from the date the difference would have become due to the date the change of use occurs, some proration will be necessary. Assuming that the use changed November 1, 1999, and that the assessor mailed tax bills on October 1 each year, the interest is calculated as follows: Interest runs from October 1, 1998 to November 1, 1999, or 1 year and 32 days. The formula for calculating rollback tax interest is:
Figure 2: 34 TAC 9.4011(f)(4)(B)

*(i)* Interest runs from October 1, 1997, to November 1, 1999, or 2 years and 32 days. The formula for calculating the interest is:
Figure 3: 34 TAC 9.4011(f)(4)(B)(i)

*(ii)* Interest runs from October 1, 1996, to November 1, 1999, or three years and 32 days. The formula for calculating the interest is:
Figure 4: 34 TAC 9.4011(f)(4)(B)(ii)

*(iii)* Interest runs from October 1, 1995, to November 1, 1999, or three years and 32 days. The formula for calculating the interest is:
Figure 5: 34 TAC 9.4011(f)(4)(B)(iii)

*(iv)* Interest runs from October 1, 1994, to November 1, 1999, or three years and 32 days. The following table illustrates the formula for calculating the interest:
Figure 6: 34 TAC 9.4011(f)(4)(B)(iv)

*(v)* The total rollback tax and interest due are $2,625.01.

*(vi)* The interest can be prorated using number of days only. For example, 1995's interest runs for 1,492 days (4 years = .07 x (1,492 + 32 days from October 1 to November 1). This interest is computed by multiplying: $430 x .07 x (1,492 x 365) = $123.04.

(5) The five-year rollback period may include years when the property did not qualify for timber use appraisal. If the property had been taxed on market value in 2003, the rollback tax would have been computed for 2004, 2002, 2001, and 2000.

(6) The rollback tax is due when the rollback tax bill is mailed. It becomes delinquent if not paid before the February 1 that is at least 20 days after the tax bill is mailed. For example, if the bill is mailed on January 9, it becomes delinquent on the next February 1 because there are 20 days between February 1 and January 9. However, if the bill is mailed January 30, it becomes delin-

quent the February of the following year. On the delinquency date the entire amount begins to draw penalty and interest at the same rate as delinquent taxes.

(A) A tax lien attaches to the land on the date the use changes. The lien covers payment of the additional tax, interest, and any penalties.

(B) If land is sold at about the same time the use changes, the buyer and seller may dispute liability. Under the law, the person who has title to the property on the date the use changes is personally liable for the rollback, but the lien may be foreclosed against the land regardless of who is liable for taxes. Tax certificates on land that receives timberland-use appraisal must note the appraisal and state that the land may be subject to additional taxes.

(7) Exemptions that apply to ordinary property taxes do not apply to rollback taxes. Even if the land might be exempt from ordinary taxes in the new owner's hands, the rollback tax still becomes due if that owner takes the property out of timber use. In most cases, the owner will be personally liable for the rollback tax, and the tax lien can be enforced against the property. Where the state or a political subdivision buys the land and changes the use, the rollback will be triggered but the lien cannot be foreclosed. The tax can't be collected unless the governmental entity chooses to pay it. However, the lien against the land continues and could be enforced against a later buyer.

(g) The productivity value of an acre of timberland equals the average annual net income a prudent manager could earn from growing timber over the five-year period preceding the appraisal's effective year, divided by a statutory capitalization rate. Net income has two parts: gross income and cost of production. Gross income is calculated by computing the potential average annual quantity of timber growth per acre and multiplying this amount by timber's average annual market price for that year. This computation is performed for each year of the five-year period. The average annual cost (production cost) of producing this timber in each of the five years is subtracted from gross income to find net income for the year. Average annual net income is computed by averaging net income for each year of the five-year period. This five-year average annual net income is then divided by the statutory capitalization rate to produce the productivity value of timber.

(1) Timberland's productivity value is calculated in nine basic steps: step one: classify timberland into three forest types; step two: classify timberland into four soil types; step three: calculate average annual timber growth; step four: convert timber growth into units for calculating gross income; step five: calculate average annual timber prices; step six: calculate maximum potential average annual gross income of timber growth; step seven: calculate average annual costs of producing timber; step eight: calculate net income of timber growth; and step nine: capitalize net income by statutory rate and apply productivity values to timber acreage. This part of the manual prescribes the methodology chief appraisers are required to use to calculate timberland's productivity value. Appendix C contains tables that illustrate this methodology, and the text frequently refers to these tables. Chief appraisers must use regional data in their timber appraisals. Texas has two timber regions: northeast and southeast. Figure 11, Appendix B, contains a map of east Texas counties showing the boundaries of the northeast and southeast timber regions. Chief appraisers must use regional data that correspond to their county's location.

(2) Property Tax Code, §23.71, requires chief appraisers to use information from the United States Department of Agriculture (USDA) Forest Service, United States Geological Survey, the United States Department of Agriculture (USDA) Soil Conservation Service, the Texas Forest Service, and Texas colleges and universities to determine forest types, soil types, average growth, and timber prices.

*(i)* These sources are mandatory, however, a chief appraiser may hire a consulting forester or other timber expert to help make decisions concerning the data and the appraisal. Appendix A describes these sources.

*(ii)* Before using any published data, chief appraisers should check with the relevant agency for updates before developing timber appraisals. For example, the USDA Forest Service may periodically revises its 1992 published Texas timber survey numbers. Chief appraisers wishing to use the survey data should check with the Texas Forest Service for updates before developing timber appraisals for any given year.

(3) The sale price of timber varies, depending on the timber type. To appraise timberland properly, the chief appraiser must identify the type of trees on the land. Chief appraisers should begin the appraisal process by classifying timberland according to forest type. There are three basic forest types: pine, hardwood and mixed. Each forest type is defined as:

(A) Pine (and other commercial softwood) timberland includes all forested areas in which the trees are predominately green throughout the year. These trees, which remain green and do not lose their leaves throughout the year are called evergreens. Generally, timbered areas where pine and other commercial softwoods make up more than two-thirds of the trees free to grow are in this category. Trees free to grow are those that are not covered by brush or other trees that prevent them from getting the sunlight necessary to grow.

(B) Hardwood timberland includes all forested areas with a predominance of deciduous trees. These trees lose their leaves at the end of the frost-free season. Stands where hardwoods are more than two-thirds of the trees free to grow are usually in this category.

(C) Mixed timberland includes all forested areas where both evergreen and deciduous trees are growing and neither predominates. An area is classified as mixed when evergreen and deciduous trees each make up more than one-third of the trees.

(D) Chief appraisers may use aerial photographs and forest type maps from one of the sources listed in Appendix A to determine forest type.

(4) Property Tax Code, §23.71, requires chief appraisers to classify all timber-producing areas in their districts into four soil types. This statutory requirement does not always match available data. So, a chief appraiser must follow expert advice to derive four soil types from the data. Both the USDA Forest Service and USDA Soil Conservation Service (SCS) have developed systems for classifying soils based on their capacity to produce commercial timber. These two systems are similar. Both are reliable. There is one major, practical, difference between the two soil classification systems: the USDA Soil Conservation Service-defined soil types are mapped, while those defined by the USDA Forest Service are not.

(A) The USDA Forest Service classifies all commercial timberland into five site classes based on the land's capacity to grow commercial wood crops. The USDA Soil Conservation Service's classification system is based on the con-

cept of site index. For clarity, this part uses the term soil types to refer to both the USDA Forest Service's site classes and the USDA SCS's site index.

(B) The USDA Forest Service has defined these five soil types as follows: land capable of producing more than 165 cubic feet per acre per year; land capable of producing 121-165 cubic feet per acre per year; land capable of producing 85-120 cubic feet per acre per year, land capable of producing 50-84 cubic feet per acre per year; and land capable of producing less than 50 cubic feet per acre year.

(C) To comply with the Property Tax Code, chief appraisers using the USDA Forest Service's system must reduce these five soil types to four. The over 165 cubic feet soil type may be combined with the 121-165 cubic feet soil type to produce the mandatory four soil types. In this manual, the combined soil type is called the over 120 cubic feet soil type.

*(i)* The USDA Soil Conservation Service's classification system designates the productive capacity of a forest site based on the height of the tallest trees at an arbitrarily chosen age. For example, if the average height attained by the tallest trees in a fully stocked stand at the age of 50 years is 75 feet, the soil type is 75 feet.

*(ii)* Texas timber experts generally agree that the USDA SCS soil type data can be grouped into ranges that are roughly comparable with USDA Forest Service's soil types. See the table listed in this clause:

Figure 7: 34 TAC 9.4011(g)(4)(C)(ii)

*(iii)* The significance of this general comparability between the two soil typing systems is that the chief appraiser may use USDA Forest Service timber growth data with SCS county soil classification maps in the timber appraisal process. The two systems' similarity also is quite useful in developing soil productivity multipliers used to compute potential average annual timber growth.

*(iv)* The SCS has maps showing its soil types (site indexes) for all timberland within each county. The Texas Agricultural Extension Service at Texas A&M University has developed maps showing forest types within the four soil type ranges listed above for all timberland within each timber-producing county.

(5) The USDA Forest Service completed its most recent survey of Texas timberland in 1992. Chief appraisers may use these survey data to compute average annual growth. The 1992 survey data are available in two publications.

(A) For southeast Texas counties, see John F. Kelly, Patrick E. Miller and Andrew J. Hartsell, *Forest Statistics for Southeast Texas Counties-1992*, USDA Forest Service, Southern Forest Experiment Station, New Orleans, LA. Resource Bulletin SO-172, November 1992.

(B) For northeast Texas counties, see John F. Kelly, Patrick E. Miller and Andrew J. Hartsell, *Forest Statistics for Northeast Texas Counties-1992*, USDA Forest Service, Southern Forest Experiment Station, New Orleans, LA. Resource Bulletin SO-171, November 1992.

(C) Figure 12, Appendix B, contains summary growth data from the 1992 Texas survey. The Texas Forest Service prepared these data. The Texas Forest Service, located in College Station, maintains Texas Forest survey data collected by the USDA Forest Service. Data are presented for four forest products for each of three forest types and four soil types for each Texas timber region. Chief appraisers may calculate the average annual growth per acre by forest type within each region using these data.

(D) The following discussion centers on the computations necessary to calculate the average growth per acre of pine sawtimber in pine forests in southeast Texas. Appendix B's figures or tables reflect this focus, which is for illustration purposes only. The chief appraiser must calculate average growth per acre for each timber type in the appraisal district. The first step is in this computation is to calculate the average annual amount of pine sawtimber grown on an average acre in southeast Texas. Figure 13 (Table Two), Appendix B, uses Figure 12 (Table One) data to show how to calculate this amount. To do this first calculation, the number of plots in each soil type is multiplied by the average amount of sawtimber that grew on those plots as measured by the USDA Forest Service. Next, the result of each calculation for the four different site classes is added and the result divided by the total number of plots in all four soil types. This calculation provides the average annual amount of pine sawtimber grown on the average acre of pine forest in southeast Texas.

(E) Regardless of its forest type, the average acre of timberland in Texas grows timber that's used to make four different product types: Pine sawtimber; hardwood sawtimber; pine pulpwood; hardwood pulpwood. In other words, the average pine forest produces pine sawtimber, but it also produces some hardwood sawtimber, some pine pulpwood, and some hardwood pulpwood. So, using the same procedure used in Table 2, the chief appraiser calculates for pine land the average annual amount of hardwood sawtimber, pine pulpwood and hardwood pulpwood grown on the average acre of pine forest. The chief appraiser must calculate these product types for all forest types in this area. Figure 14 (Table 3), Appendix B, presents the results of these calculations.

(6) To determine the potential income of timber growth, the timber appraiser must multiply average sawtimber selling prices by estimated sawtimber growth. The USDA Forest Service expresses its sawtimber growth data as board feet, measured in the international 1/4 inch log rule. The Texas Forest Service expresses its sawtimber prices as board feet, measured in the Doyle log rule. So, to determine timber growth's potential income, the appraiser must convert the USDA Forest Service's board feet estimates of sawtimber growth from the international 1/4 inch log rule to the Doyle log rule.

(A) The differences in growth data measurements and selling price measurements require the chief appraiser to develop conversion factors that change one measurement into the other. A log rule conversion table helps the chief appraiser develop conversion factors.

*(i)* There are dozens of recognized log rules in the United States, and each is based on various assumptions about tree taper, lumber shrinkage, cutting methods, and waste.

*(ii)* A good discussion of numerous log rules is available in Frank Freese, *A Collection of Log Rules*, General Technical Report FPL-1, USDA Forest Service Forest Products Laboratory, Madison, Wis. no date.

(B) A log rule conversion table contains factors for converting board feet from one log rule to another by tree diameter class. Figure 15 (Table Four); Appendix B, shows how to develop a conversion factor for pine and hardwood sawtimber in southeast Texas. Those who developed this pine sawtimber conversion factor used two sources. One source was published data from the 1992 USDA Forest Service survey of Texas timber. The second source was a set of conversion factors developed by the

USDA Forest Service and based on data gathered from the southeastern regions of the United States (including Texas). Figure 15's (Table Four's) conversion factors are widely used in the southern U.S. and in Texas. These conversion factors are reproduced in Table 35 of the following publication: David L. Williams and William C. Hopkins, *Converting Factors for Southern Pine Products*. LSU Agricultural Experiment Station, Bulletin 626, May 1968, 89 pages.

(C) The first two columns in Figure 15 (Table Four) are reproduced from the USDA Forest Service 1992 survey publications. The third column, headed percent of total volume shows volume for each diameter class as a percent of total volume. For example, in diameter class 9-10.9 inches, the reported volume (2,654.10) million board feet is divided by total volume, (22,166.50) million board feet, to produce the percentage figure of 0.1197. The fourth column, headed conversion factor, is reproduced from Table 35 in Converting Factors for Southern Pine Products. The percentage and conversion factor for each of the table's diameter classes are multiplied to produce the weighted contribution shown in the fifth column. Finally, these weighted contributions are added to produce the weighted conversion factor.

*(i)* Currently, the individual conversion factors shown in Figure 15's (Table Four's) fourth column are widely recognized as reliable for Texas timber. These factors are highly likely to be appropriate for appraising all timber in Texas, and this manual strongly recommends chief appraisers use them. Chief appraisers may use other log rule conversion factors, but only if a knowledgeable timber expert advises them that another factor is more appropriate for the appraisal district than Figure 15's (Table 4's).

*(ii)* For example, the Texas Forest Service publishes sawtimber conversion factors for harvested timber. In addition, the publication referenced in this clause, Converting Factors for Southern Pine Products, contains a good discussion of conversion factors. This publication, however, does not state how each set of conversion factors is applicable to particular timber characteristics. So, an expert's advice is mandatory for the chief appraiser seeking to depart from using Figure 15's (Table 4's) conversion factors.

(D) The next step in the average annual growth conversion process is to convert sawtimber growth volumes shown in Figure 14 (Table 3) from board feet in the international 1/4 inch log rule to board feet measured in the Doyle log rule. Appraisers complete this conversion by multiplying the sawtimber volumes calculated in Figure 14 (Table 3) by the weighted conversion factors for southeast Texas found in Figure 15 (Table 4).

*(i)* The results of this calculation are shown in Figure 16 (Table 5), Appendix B. For example, the chief appraiser multiplies 316.69 board feet of pine sawtimber (from Figure 14 (Table 3)), measured in international 1/4 inch log rule, by the weighted conversion factor of 0.62068 (from Figure 15 (Table 4)) to get 196.56 board feet of pine sawtimber, measured in the Doyle log rule. Next, the appraiser multiplies 16.63 board feet of hardwood sawtimber by 0.67578 to get 11.24 board feet of hardwood sawtimber, measured in the Doyle log rule.

*(ii)* In addition, the pulpwood growth volumes shown in Figure 14 (Table 3) need to be converted from cubic feet into cords because pulpwood prices are usually reported in cords. The chief appraiser may use conversion factors provided by the Texas Forest Service in its bi-monthly publication, Texas Timber Price Trends. In the September-October, 1994 edition of Texas Timber Price Trends, the suggested conversion factors for pine pulpwood and hardwood pulpwood are 81 and 80, respectively. The results of these calculations also are presented in Figure 16 (Table 5).

(E) Step 4's last task is to convert the sawtimber board feet measurements to thousand board feet. The appraiser can complete this amount by dividing the board feet volumes by 1,000, as shown in Figure 16 (Table 5). Figure 17 (Table 6), Appendix B, is a summary of the annual average growth of an acre of pine, expressed as forest products. The average acre of pine forest land in southeast Texas, as shown by Table 6, produces annually: 0.197 MBF (thousand board feet) of pine sawtimber; 0.33 cords of pine pulpwood, 0.011 MBF of hardwood sawtimber; and 0.03 cords of hardwood pulpwood.

(F) The chief appraiser's computations for sawtimber and pulpwood in northeast Texas are identical to those required for pine.

(7) To determine the average annual potential gross income from an acre of timber, a chief appraiser multiplies the quantity of timber grown by its average annual price, or stumpage price. The chief appraiser must calculate average annual stumpage prices for each year of a five-year period for each of the four forest products.

(A) A readily available source of stumpage price data is the Texas Forest Service, located in College Station, Texas. The Texas Forest Service collects timber prices from its bi-monthly surveys of forest industries, consulting foresters, government agencies and large landowners and publishes the results in its publication *Texas Timber Price Trends*. On request, the Texas Forest Service will provide summaries of average annual stumpage prices by region. *Texas Timber Price Trends* reports stumpage price data for pine and hardwood sawtimber sales, pine and hardwood pulpwood sales and other miscellaneous sales. The publication reports stumpage price data by the two Texas timber regions, not by county.

(B) Step Five requires the chief appraiser to calculate average annual stumpage prices. The law uses the term average in a generic sense. Consequently, average annual stumpage prices may be calculated as either unweighted average prices or weighted average prices, depending on the data.

(C) Chief appraisers must consider various statistical issues before deciding whether to use weighted or unweighted average stumpage prices. These issues are:

*(i)* sample representativeness;

*(ii)* accuracy of survey responses; and

*(iii)* the relationship between timber sales prices and sales sizes.

(D) In general, stumpage price data must meet each of three basic requirements before the chief appraiser may use a weighted average to calculated average annual stumpage prices: a random sample that is representative of all potential timber transactions; a reasonable assurance that reported selling prices are not overstated or understated; stumpage prices per thousand board feet should not change in a statistically significant manner as sales sizes change.

(E) In light of these statistical issues, the chief appraiser will confront fewer problems by using unweighted average prices than by using weighted prices. Unweighted averages are probably less influenced by biases than weighted average prices. Most chief appraisers will use Texas Forest Service price data because TFS is currently the

**only source (permitted by the Tax Code) that collects prices. Analysis of TFS price data shows that use of unweighted average prices is more appropriate for the timber appraisal process than use of the weighted average. So, chief appraisers who wish to use weighted prices instead of unweighted prices should take great care to determine that the conditions for using weighted prices are met. Figure 18 (Table 7), Appendix B, contains unweighted average stumpage prices for each year of the 1988-1992 period. These averages were computed from data collected by the Texas Forest Service.**

**(8) Step Six is the process of calculating an average annual maximum potential gross income of timber growth. In Step Six, the manual refers to average annual maximum potential gross income of timber growth as gross income. The steps for calculating timber's average gross income are: computing average annual potential gross income; calculating soil productivity multipliers; using soil productivity multipliers to adjust average annual timber growth to maximum potential growth; and computing average annual maximum potential gross income.**

**(A) Step Six's first calculation requires finding gross income by multiplying the quantity of each of the four timber products produced by the product's price for each year of the five-year period. Figure 19 (Table 8), Appendix B, shows this calculation for an average acre of pine in southeast Texas. These estimates of gross income are not by themselves suitable for timber appraisal. Because soil quality affects timber growth, the chief appraiser must adjust each estimate of gross income to reflect different soil quality.**

**(B) The chief appraiser must develop productivity multipliers to adjust the average gross income of timber to match four different soil productivity types. Productivity multipliers may be computed from either USDA Forest Service data or from a combination of USDA Forest Service data and USDA SCS data. Step Six's discussion focuses on USDA Forest Service data.**

**(C) The USDA Forest Service data needed for this computation are: the most recent forest survey data for Texas; and data contained in the Boyce Study, conducted by the USDA Forest Service. The** *Boyce Study* named after one of its authors, determined in 1975 the average annual maximum amount of timber that could be produced on an acre of loblolly pine east of the Mississippi River in each of four soil productivity types. See: Stephen G. Boyce, Joe P. McClure and Herbert S. Sternitzke, *Biological Potential for the Loblolly Pine Ecosystem East of the Mississippi River*, USDA Forest Service, Southeastern Forest Experiment Station, Ashville, NC. Research Paper SE-142, October 1975.

(D) A soil productivity class is a group of soils that have the potential to grow similar quantities of forest crops during the same time period. The soil productivity types used in the *Boyce Study* correspond roughly to the soil type ranges defined in Step Two. Soil productivity types are shown in the table listed in this subparagraph:
Figure 8: 34 TAC 9.4011(g)(8)(D)

(E) Based on the soil types classified as shown in the table above, *Boyce Study* results are shown in the table listed in this subparagraph:
Figure 9: 34 TAC 9.4011(g)(8)(E)

**(F) The potential annual timber growth classes are estimates of the maximum potential growth of an acre of loblolly pine in each soil productivity class, under ideal conditions. Figure 20 (Table 9), Appendix B, shows how the average annual maximum potential growth of an average acre of pine forest in southeast Texas is computed. The top part of the table lists acres by soil type for each county in southeast Texas. The bottom part of Figure 20 (Table 9) shows the results of multiplying the acreage in each soil type in each county by the growth potentials developed in the** *Boyce Study*. The potential of 200 shown in the bottom part of Figure 20 (Table 9), Appendix B, was extrapolated from the data in the *Boyce Study*. For example, the 174.7 acres in soil type class 120-165 in Angelina County are multiplied by 163 (the growth potential for that soil type). The result is 28, 476.1 cubic feet. This calculation is carried out for all soil types in each county. The resulting products are added to produce 898,890 cubic feet total. The total is divided by the total number of acres, 6,632.1, to generate an estimate of the average annual maximum potential timber growth of an acre of pine in southeast Texas of 135 cubic feet per acre per year. This number comes from the top part of Figure 20 (Table 9).

**(G) Figure 21 (Table 10), Appendix B, shows how to calculate soil productivity multipliers for the four productivity types for southeast Texas. Chief appraisers compute these productivity multipliers by dividing the growth potentials from the** *Boyce Study* by the growth potential for Texas. To compute the productivity multiplier for class II, for example, the chief appraiser divides 123 by 135, to generate a productivity multiplier of 0.91. If a chief appraiser is using USDA Forest Service data to compute productivity multipliers, the productivity multipliers for northeast Texas should be calculated in a similar manner.

**(H) Figure 22 (Table 11), Appendix B, shows chief appraisers how to apply productivity multipliers to the average annual maximum potential gross income estimates, developed in Figure 19 (Table 8). In 1992, for example, the potential gross annual income of $55.58 is multiplied by the productivity multiplier for each productivity class to generate an average annual maximum potential gross income for an average acre of pine growth by productivity class. Chief appraisers may use data from the USDA Soil Conservation Service to compute productivity multipliers, if these data are more appropriate for their respective counties.**

**(9) Texas law defines timber production costs as reasonable management costs and other reasonable expenses directly attributable to producing timber. The costs of producing timber are expenses related to establishing, owning, protecting, maintaining, improving, harvesting, and selling timber. These expenses cover professional services, site preparation, tree planting and seeding, timber improvement, protection again fire, insects and disease, prescribed burning, maintenance of property boundaries, road construction and maintenance, measurements of standing timber, selling costs, property taxes, equipment use, mileage traveled to/from property for timber management, and personnel supervision and administration.**

**(A) The cost of producing timber varies by forest type, soil productivity, and management intensity. It also varies by two groups of timber producers, industrial timber growers and non-industrial timber growers.**

**(B) As defined as by the USDA Forest Service, industrial timber growers are forest companies and individuals who own timberland and operate wood-using plants. Non-industrial timber growers are individuals and entities other than forest companies or farmers. Because industrial growers usually manage their forest lands more intensely, per acre management costs are often higher on industrial lands.**

(C) Chief appraisers must estimate an average annual timber cost

for the average acre in their counties for each year of the preceding five-year period. Appraisers should weight each year's average annual cost by the number of industrial and non-industrial acres in the county or school district.

*(i)* For non-industrial timber grower's cost data, chief appraisers may survey their county's non-industrial timber growers and/or use the average non-industrial timber growers' costs developed for the Comptroller's Office by the Texas Agricultural Experiment Station (TAES). TAES derived its non-industrial timber growers' costs from responses to surveys of non-industrial timber growers. These average annual costs were weighted by acreage and were computed for both northeast and southeast Texas.

*(ii)* To find cost data for industrial timber growers, chief appraisers may either survey industrial timber growers in their counties or rely on consulting foresters to estimate the appraisal district's forest-type activities and their respective costs.

*(iii)* Industrial timber acreage and non-industrial timber acreage are available by county in the USDA publications of the 1992 Texas forest survey findings. See: Table 2 in the USDA Forest Service's 1992 Texas forest survey findings publications.

*(iv)* Figure 23 (Table 12), Appendix B, shows average annual industrial timber growers' and non-industrial timber growers' costs for a hypothetical county for each year of a five-year period, along with industrial timber grower and non-industrial timber grower acreage by soil productivity class.

(D) The next task required to develop average costs per acre is to adjust this average cost estimate for each productivity class. Timber on more productive land is often managed more intensively, resulting in higher costs per acre. Adjusting average annual costs per acre for productivity classes is analogous to adjusting average annual growth per acre to productivity classes, which is discussed in Step Six above.

*(i)* There are no readily available data showing typical forest management practices and typical costs, as required by law, for each type of activity within different productivity classes. Forestry experts and forestry personnel at TAES have developed cost proration factors to reflect different costs per acre per productivity class that would result in reasonable positive net incomes for various productivity classes and forest types.

*(ii)* Current cost proration factors for forest types within productivity classes are reproduced in this clause:
Figure 10: 34 TAC 9.4011(g)(9)(D)(ii)

*(iii)* As shown in this chart, the cost proration factor for Pine III is 1.00. Pine III is considered to be fairly typical of an acre of non-industrial forest land in east Texas. Pine II is considered to be typical of an acre of industrial forest land. The other proration factors were developed to reflect productivity class cost differences relative to Pine II and Pine III.

(E) Figure 24 (Table 13) shows the results of applying the four cost proration factors for pine to the industrial and non-industrial costs shown in Table 12.

(F) To calculate the average annual net income per acre for each soil productivity class for both industrial and non-industrial growers, the appraiser must subtract the average annual cost per acre for each soil productivity class from the maximum potential average annual gross income per acre. See: Figures 22 and 24 (Tables 11 and 13), Appendix B. The results are the average annual net income for each of the four different productivity classes. Appendix B, Figure 25 (Table 14) shows these computations for a hypothetical county.

(11) To complete the timber appraisal process, chief appraisers should develop a weighted average net income for each soil productivity class, capitalize this average net income and apply the productivity values to the timber acreage in their counties. Figure 26 (Table 15) shows how this is done for a hypothetical county. In soil productivity class I, for example, the chief appraiser multiplies $33.59 per acre by 78,900 industrial acres and $35.42 per acre by 20,000 non-industrial acres. These two products are added and divided by the sum of industrial and non-industrial acreage. The resulting number is $33.96, which is weighted net income for the average acre of pine in soil productivity class 1 in southeast Texas.

(A) The productivity value of an acre of timberland is determined by dividing the weighted net income per acre for each productivity class by the capitalization rate mandated by Property Tax Code, §23.74. The law sets the capitalization rate at the interest rate specified by the Federal Land Bank of Houston (Now the Farm Credit Bank of Texas) on December 31 of the preceding year, plus 2 1/2 percentage points. Chief appraisers also may contact the Property Tax Division of the Comptroller's Office for information.

(B) Figure 26 (Table 15) also shows the results of dividing the weighted net income per acre in each soil productivity class by a hypothetical capitalization rate of 11%. The table shows these results for both industrial and non-industrial growers.

*(i)* In soil productivity class I, for example, the chief appraiser divides $33.96, the weighted net income per acre, by 0.11, the capitalization rate, to get $308.73, the productivity value of the average acre of pine forest in soil productivity class I in southeast Texas.

*(ii)* Finally, the chief appraiser multiplies $308.73 by 98, 900 acres, the total industrial and non-industrial acres in soil productivity class I. As shown in the table, the result is $30,533,397, which is the total productivity value of timberland in soil productivity class I in this hypothetical county.

*(iii)* The chief appraiser should perform these calculations for each soil productivity class in the county. These are also shown in Figure 26 (Table 15). The total value of pine forest timberland in this hypothetical county is $97,979,133. The chief appraiser also should perform identical calculations for other forest types in the county.

(h) Appendix A. Chief appraisers are solely responsible for determining timber productivity values within their respective counties. To do so, they must get information on forest types, soil types, average growth and average prices from sources listed in the Property Tax Code. While the following sources provide information on which to base determinations, it is the chief appraiser who bears ultimate responsibility for determining timberland productivity value.

(1) The SCS is the federal agency charged with inventorying and classifying the nation's soils. This agency has comprehensive information about the productive capacity of soils that is helpful when defining soil productivity classes. Much of this information is plotted on aerial photographs.

(A) The SCS has detailed soil surveys of most Texas timber counties. The SCS classifies forested regions of the country based on their suitability for timber production. In addition, the SCS develops several measures that are helpful in evaluating an area for potential timber growth.

(B) A state agency, the Texas Forest Service (TFS) has branch offices throughout the state's timber region. TFS foresters help timber growers prepare management plans, giving priority to those with long-term timber production goals who are interested in using approved management practices, including cost-sharing. TFS headquarters are located in College Station, where the agency publishes a bi-monthly report of timber stumpage prices, called *Texas Timber Price Trends*. In addition, TFS publishes an annual report of timber harvests called *Harvest Trends*. This publication shows harvest information for each product and for each timber-producing county in Texas. Finally, the TFS has data about timber growth that the agency develops in cooperation with the United States Department of Agriculture Forest Service.

*(i)* The TFS publishes a list of consulting foresters approved by the TFS for referral to the public. The lists are titled Professional Management's Service Referral List and Stewardship Plan Referral List. These foresters provide professional forest management services to timber owners. They are all graduate foresters who have cooperated with the TFS in its efforts to implement forest management practices through their consulting services. They do not purchase timber or forest land for any forest industry. They charge a fee for their services, usually either a set rate or a percentage of timber sale proceeds.

*(ii)* A chief appraiser may use a consulting forester to help sort through and analyze the data required for timber appraisal. The chief appraiser's primary sources of information must be the statutory sources listed in this manual. However, the chief appraiser may use a consulting forester to help resolve issues involving these statutory, primary data sources.

(2) The USDA Forest Service is a branch of the United States Department of Agriculture. This agency has helpful information about average timber growth and soil types. The Forest Service periodically surveys east Texas timber to develop growth information. Summaries of these data at the county level are published. USDA Forest Service survey data are also maintained by the Texas Forest Service.

(3) The United States Geological Survey periodically publishes land use/land cover maps, which classify forest types in a format useful for timberland appraisal. The agency has negatives of panchromatic (showing all colors in the visible color spectrum) aerial photographs and positive transparencies of color-infrared aerial photographs. Chief appraiser should be sure these maps are up-to-date before relying on them.

(4) Local college and university agricultural departments often have information not available from the above sources.

(i) Appendix B contains Figures 12-26 (Tables 1-15).

Figure 11: 34 TAC 9.4011(i)
Figure 12: 34 TAC 9.4011(i)
Figure 13: 34 TAC 9.4011(i)
Figure 14: 34 TAC 9.4011(i)
Figure 15: 34 TAC 9.4011(i)
Figure 16: 34 TAC 9.4011(i)
Figure 17: 34 TAC 9.4011(i)
Figure 18: 34 TAC 9.4011(i)
Figure 19: 34 TAC 9.4011(i)
Figure 20: 34 TAC 9.4011(i)
Figure 21: 34 TAC 9.4011(i)
Figure 22: 34 TAC 9.4011(i)
Figure 23: 34 TAC 9.4011(i)
Figure 24: 34 TAC 9.4011(i)
Figure 25: 34 TAC 9.4011(i)
Figure 26: 34 TAC 9 4011(i)

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

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

TRD-9501812 Martin Cherry
Chief, General Law
Comptroller of Public Accounts

Earliest possible date of adoption: March 17, 1995

For further information, please call: (512) 463-4028

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# TITLE 40. SOCIAL SERVICES AND ASSISTANCE

## Part I. Texas Department of Human Services

### Chapter 27. Intermediate Care Facilities for the Mentally Retarded (ICFs-MR)

The Texas Department of Human Services (DHS) proposes the repeal of §§27.401, 27.403, 27.405, 27.407, 27.409, 27.419, and 27.421; proposes an amendment to §§27.411; and proposes new §§27.401, 27.403, 27.405, 27.407, 27.409, 27.423 and 27.425, concerning reimbursement methodology, in its Intermediate Care Facilities for the Mentally Retarded (ICFs-MR) chapter. The purpose of the repeals, amendments, and new sections is to establish cost determination rules that are consistent across programs, provide explicit guidelines for auditors, provide specific instructions concerning cost reporting, provide guidelines in areas of documentation and allocation methods, and clarify current methodology practices.

Rules in Chapter 20 referenced in this proposal were published as proposed in the December 30, 1994, issue of the *Texas Register* (19 TexReg 10496).

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

Mr. Raiford also has determined that for each year of the first five years the proposal is in effect the public benefit anticipated as a result of enforcing the proposal will be a single set of guidelines to facilitate financial accountability relating to service delivery. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposal.

Questions about the content of this proposal may be directed to Pam Robers at (512) 450-4051 in DHS's Rate Analysis Department. Written comments on the proposal may be submitted to Nancy Murphy, Media and Policy Services-204, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*. Contact Kathy Hall in Austin at (512) 450-3702 or a local DHS office for copies of the proposed rules.

#### Subchapter D. Reimbursement Methodology

- **40 TAC §§27. 401, 27.403, 27.405, 27.407, 27.409, 27.419, 27.421**

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

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

The repeals implement the Human Resources Code, §§22.001-22.024 and §§32.001-32.040.

*§27.401. General Reimbursement Information.*

*§27.403. Cost Reporting Procedures.*

*§27.405. Allowable and Unallowable Costs.*

*§27.407. List of Allowable Costs.*

*§27.409. List of Unallowable Costs.*

*§27.419. Chart of Accounts for Large Level V and Large Level VI Providers.*

*§27.421. Chart of Accounts for Level I Providers, Small Level V and Small Level VI Providers, and Level VIII Providers.*

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

Issued in Austin, Texas, on February 13, 1995.

TRD-9501808 Nancy Murphy
Section Manager, Media and Policy Services
Texas Department of Human Services

Earliest possible date of adoption: March 20, 1995

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

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## • 40 TAC §§27.401, 27.403, 27.405, 27.407, 27.409, 27.411, 27.423, 27.425

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

The new sections and amendment implement the Human Resources Code, §§22.001-22.024 and §§32.001-32.040.

*§27.401. General Reimbursement Information.* Providers must comply with §20.101 of this title (relating to Introduction).

*§27.403. Cost Reporting Procedures.* Providers must comply with §27.425 of this title (relating to Cost Report Requirements).

*§27.405. Allowable and Unallowable Costs.* Providers must comply with §27.423 of this title (relating to Allowable and Unallowable Costs).

*§27.407. List of Allowable Costs.* Providers must comply with §27.423 of this title (relating to Allowable and Unallowable Costs).

*§27.409. List of Unallowable Costs.* Providers must comply with §27.423 of this title (relating to Allowable and Unallowable Costs).

*§27.411. Cost Finding Methodology.*

(a) Exclusion of and adjustments to certain reported expenses. **Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursement.** [Providers must eliminate unallowable expenses from the cost report.]

(1) **Individual cost reports may not be included in the data base used for reimbursement determination when** [DHS excludes from the rate base any unallowable expenses included in the cost report and makes adjustments to expenses reported by providers to ensure that the rate base reflects costs that]:

(A) **there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported;** [are reasonable and necessary for the provision of client care,]

(B) **there is reasonable doubt that a provider entity reflected economic and efficient operation and long term viability, due to low utilization or operation for less than a full fiscal year; or** [represent economic and efficient use of resources, and]

(C) **an auditor determines that reported costs are not verifiable** [are consistent with federal and state Medicaid regulations].

(2) **The Texas Department of Human Services (DHS) excludes from reimbursement determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers. Adjustments include, but are not necessarily limited to, the following:** [When there is reasonable doubt about the accuracy or allowability of a significant part of the information reported, DHS may eliminate individual cost reports from the rate base. These adjustments include, but are not necessarily limited to, the following.]

(A) Revenue offsets. [DHS offsets against reported expenses certain types of nonoperating revenues, after reasonable allowances for overhead costs. Types of revenues offset against costs include: income from beauty and barber shop operations, prior year overpayments, vending machine proceeds, gift shop receipts, and payment for meals by employees and guests. Interest income is used to offset working capital interest expense, not to exceed total interest costs. An exception is interest income from funded depreciation accounts or qualified pension funds, which is not treated as a revenue offset item. For facilities reporting central office overhead expenses, interest income is offset against interest expenses before the allocation of central office costs to individual ICFs-MR.]

***(i)*** **For rates calculated using 1993 cost report data, DHS offsets against reported expenses certain types of operating revenues, after reasonable allowances for overhead costs. Types of revenues offset against costs includes payments for meals by employees or guests; income from rentals, barber and beauty shop operations, and vending machines; canteen and gift shop receipts; miscellaneous revenues; and revenues from medical supplies, therapies, and other services. Interest income is used to offset working capital interest expense, not to exceed total interest costs. An exception is interest income from funded depreciation accounts or qualified pension funds, which is not treated as a revenue offset item. For facilities reporting central office overhead expenses, interest income is offset against interest expenses before the allocation of central office costs to individual ICFs-MR.**

***(ii)*** **Effective beginning with rates calculated using 1994 cost report data, this section is replaced by §20.103 and §20.104 of this title (relating to Specifications for Allowable and Unallowable Costs, and Revenues).**

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

(F) Costs exceeding two standard deviations. **Allowable costs are divided by the total days of service for the reporting period and then totalled by cost center to determine the per diem cost. For each class of service, DHS ranks from low to high all providers' projected per diem costs in each cost center. Any contracted provider's per diem cost which exceeds two standard deviations above or below the mean cost of each cost area may be excluded from each cost center array. The per diem reimbursement for each cost center is then determined in accordance with §27.413 of this title (relating to Rate Setting Methodology).**

(b)-(e) (No change.)

*§27.423. Allowable and Unallowable Costs.* The Intermediate Care Facilities for the Mentally Retarded (ICFs-MR) program follows the definitions and requirements of allowable and unallowable costs set forth in

§20.102 and §20.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs). The ICFs-MR program follows the procedures for informal reviews and formal appeals set forth in §20.110 of this title (relating to Informal Reviews and Formal Appeals). In addition, the following definitions and requirements apply to costs for the ICFs-MR program.

(1) Voucherable Costs. Any expenses directly reimbursable to the provider through a voucher payment system are unallowable costs. Any expenses in excess of the limit, or ceiling, for a voucher payment system are unallowable costs.

(2) Preferred Items. Revenues from and costs for preferred items which are billed to the recipient, responsible party, or the recipient's family are not allowable on the cost report.

(3) Medical costs. Expenses for medical services not provided to Medicaid clients are not allowable on the cost report. Allowable medical costs are delineated in 25 TAC §406.251(f) and §406.252(b) (relating to Personal Finances and Funds). To be considered allowable, these costs must comply with the general definition of allowable costs as stated in §20.102 of this title (relating to General Principles of Allowable and Unallowable Costs).

(4) Minimum useful lives for domestic quality furnishings and equipment for residential use. In addition to the minimum useful lives specified in §20.103 of this title (relating to Specifications for Allowable and Unallowable Costs), the following minimum useful lives are assigned to domestic quality furnishings and equipment for residential use. These minimum useful lives are applied to any single item (or multiple similar items purchased within a six-month time period) valued at $1, 000 or more and having a useful life of more than one year at the time of purchase.

(A) Domestic quality furnishings and equipment for residential use. If the provider can document that the furnishing or equipment purchased was of domestic (household, noncommercial) quality and used in a residential setting, the provider may depreciate the value of the furnishing or equipment using the useful life specified in this section.

(i) Sofas, couches, and chairs-useful life of five years.

(ii) Beds and mattresses-useful life of five years.

(iii) Washing machines and clothes dryers-useful life of four years.

(iv) Carpet-useful life of four years.

(B) Previously-owned (used) domestic quality furnishings and equipment. If the provider can document that the furnishing or equipment listed in subparagraph (A) of this paragraph was previously-owned (used) and document the age of the item at the time of the provider's purchase, the estimated life of the used furnishing or equipment is the number of years remaining in the furnishing's or equipment's depreciable life. If the provider cannot document that the furnishing or equipment was previously-owned (used) or cannot document the age of the item at the time of the p ·ider's purchase, the estimated life of the furnishing or equipment is the number of years specified in subparagraph (A) of this paragraph.

(5) Surrogate decision-making costs. Reasonable and necessary costs related to Surrogate Consent Committee are allowable costs.

(6) Expenses for pre-vocational training.

(A) Definitions. Pre-vocational training is defined as training which is part of the active treatment of the individual which may involve the instruction and practice of dexterity skills, social skills, punctuality, following direction, and attention to tasks. In contrast, vocational training is defined as any training that is included in the Individual Program Plan that assists individuals in preparing for, finding, and maintaining specific individual employment.

(B) Allowable pre-vocational training costs. When pre-vocational training services are provided jointly to a variety of individuals in such a way that they may be classified as pre-vocational training or active treatment for some individuals and as vocational training for others, the allowable portion of the expenses is the portion that qualifies as active treatment. The allowable portion must be determined on a pro rata resident-day-of-service basis. It includes the cost of buildings, utilities, supplies, and staff utilized in the provision of such services.

(7) Chaplaincy or pastoral services. Expenses for chaplaincy or pastoral services are allowable costs.

(8) Financial and compliance audits. Financial and compliance audits required by TDMHMR as a condition of the provider's contract with TDMHMR are an allowable cost.

*§27.425. Cost Report Requirements.* Except where specific exceptions are noted herein, the Intermediate Care Facilities for the Mentally Retarded (ICFs-MR) program follows the cost report requirements as set forth in §20.105(b)-(c) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(1) Cost reports for Medicaid decertified facilities. If a provider has been Medicaid decertified for more than 30 consecutive days during its fiscal year, a cost report must be prepared to reflect the activities of the provider for the portion of its fiscal year prior to decertification. The provider must submit this cost report to the Texas Department of Human Services (DHS) no later than 90 days following the provider's decertification date. If the provider is recertified, the provider must prepare a cost report to reflect the activities of the provider during the remainder of the provider's fiscal year following recertification. The cost report pertaining to the fiscal year subsequent to recertification must be submitted to DHS as described in §20.105(c) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(2) Providers excused from cost-report submission. DHS may excuse providers from the requirement to submit a cost report. Requests to be excused from submitting a cost report must be received by DHS before the due date of the cost report. In instances when providers are excused from cost report submission, the payment to the provider is made in accordance with §27.413 (relating to Rate Setting Methodology).

(A) Providers are excused from cost report submission if the provider delivered services for 30 consecutive days or less during the provider's fiscal year. If the provider is a new provider, the 30 consecutive days of services begin with the first resident served.

(B) DHS may excuse providers from the requirement to submit a cost report if DHS determines that circumstances beyond the control of the provider made cost report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider's custody by a governmental entity.

(3) Final cost reports for change of ownership. Except when excused from the requirement to submit a cost report as described in paragraph (2) of this section, when a facility changes ownership the seller must submit a completed cost report reflecting the facility's activities from the beginning of the seller's cost report fiscal year until the ownership change effective date. The seller's vendor payments may be held until DHS receives an acceptable final cost report.

(4) Requirements for cost report completion. In addition to the definition of completed cost report specified in §20.105(b) (4)(A) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures) a completed ICFs-MR cost report must:

(A) have a property appraisal from a local taxing authority attached. DHS may excuse the provider from the requirement to submit a property appraisal from a local taxing authority if the provider is exempt from ad valorem taxation.

(i) In lieu of the property appraisal, the exempted facilities must attach documentation from the local taxing authority certifying exemption from ad valorem taxation.

(ii) Government-owned facilities not receiving certification of exemption from ad valorem taxation from the local taxing authority are excused from attaching such certification;

(B) not report figures for days of service and number of beds that reflect occupancy of greater than 100%;

(C) have a management contract attached, if relevant; and

(D) have a lease agreement attached, if relevant.

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

Issued in Austin, Texas, on February 13, 1995.

TRD-9501809 Nancy Murphy
Section Manager, Media and Policy Services
Texas Department of Human Services

Earliest possible date of adoption: March 20, 1995

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

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## Subchapter D. Reimbursement Methodology

### • 40 TAC §27.413

The Texas Department of Human Services (DHS) proposes an amendment to §27.413, concerning rate setting methodology, in its Intermediate Care Facilities for the Mentally Retarded (ICFs-MR) chapter. The purpose of the amendment is to develop a special rate class for state operated six-bed ICFs-MR and to describe rate setting methodologies for Level V alternative children's facilities in the Texas ICFs-MR program. The first methodology for the children's facilities is a temporary methodology effective beginning October 1, 1994, to remain in effect until December 1, 1994. The second methodology for the children's facilities is to be in effect for 18 months beginning December 1, 1994, and is based on the facility having a capacity reduction plan. The plan and any subsequent modifications to the plan must be acceptable to the Texas Department of Mental Health and Mental Retardation (TDMHMR) Office of Medicaid Administration and the Health and Human Services Commission State Medicaid Office.

Rules in Chapter 20 referenced in this proposal were published as proposed in the December 30, 1994, issue of the *Texas Register* (19 TexReg 10496).

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposed amendment will be in effect concerning development of a special rate class for state operated six-bed ICFs-MR there will be fiscal implications as a result of enforcing or administering the amendment. The effect on state government for the first five-year period the amendment will be in effect is an estimated reduction in cost of $1,345,295 for fiscal year 1995; $1,333,199 for fiscal year 1996; $1,331,833 for fiscal year 1997; $1,331,833 for fiscal year 1998; and $1,331,833 for fiscal year 1999. There will be no fiscal implications for local government as a result of enforcing or administering the amendment.

Mr. Raiford also has determined that for the first five-year period the proposed amendment will be in effect concerning the Level V alternative children's facilities' rate setting methodologies there will be fiscal implications as a result of enforcing or administering the amendment The effect on state government for fiscal years 1995 and 1996 will be an estimated additional cost of $148,675 for fiscal year 1995 and $348,778 for fiscal year 1996. The effect on state government for fiscal years 1997, 1998, and 1999 will be an estimated reduction in cost of $309,348 for fiscal year 1997; $309, 588 for fiscal year 1998; and $309,588 for fiscal year 1999. There will be no fiscal implications for local government as a result of enforcing or administering the amendment.

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the amendment will be development of a special rate class which will allow Texas to receive federal matching funds that would otherwise be unavailable, and increased availability of community-based services closer to the homes of children currently being served in an institutional setting. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Questions about the content of the proposal may be directed to Pam Robers at (512) 450-4051 in DHS's Rate Setting Department. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Services-204, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*. Contact Kathy Hall in Austin at (512) 450-3702, or a local DHS office for copies of the proposed rules.

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

The amendment implements the Human Resources Code, §§22.001-22.024 and §§32.001-32.040.

*§27.413. Rate Setting Methodology.*

(a) (No change.)

(b) Classes of service. A separate set of reimbursement rates corresponding to classes of service is determined within each provider class. The classes of service for state schools are **ICFs-MR I, ICFs-MR V, ICFs-MR VI, small facility ICFs-MR V, and small facility ICFs-MR VI** [ICF-MR I, ICF-MR V, and ICF-MR VI]. The classes of service for community-based providers are **ICFs-MR I, large ICFs-MR V, small ICFs-MR V, large ICFs-MR VI, small ICFs-MR VI, and small ICFs-MR VIII** [ICF-MR I, large ICF-MR V facilities, small ICF-MR V facilities, large ICF-MR VI facilities, small ICF-MR VI facilities, and small ICF-MR VIII facilities]. Large facilities are those with more than six Medicaid-contracted beds. Small facilities are those with six or fewer Medicaid-contracted beds.

(c) Rate determination. The Texas Board of Human Services determines *reimbursement in accordance with §§20.101-20.111 of this title (relating to Cost Determination Process)* [general reimbursement rates for medical assistance programs for Medicaid recipients under the provisions of Chapter 24 of this title (relating to Reimbursement Methodology). The Texas Board of Human Services determines particular reimbursement rates for each class of **ICFs-MR** [ICF-MR] provider by class of service based on consideration of Texas Department of Human Services (DHS) staff recommendations]. **These rates are uniform, determined prospectively, cost-related, and determined annually.** To develop a separate set of reimbursement rate recommendations for each class of service within each provider class, DHS staff apply the following procedures.

(1) For each class of service, a cost component for each cost center is calculated at the adjusted per diem expense corresponding to the provider delivering the median day of service. (In calculating the median day of service, days of service delivered by each provider included in the rate

base are summed cumulatively in the order which corresponds to the array of adjusted per diem costs, from lowest to highest.) **If cost reports covering less than a full fiscal year of operation are used in reimbursement determination, costs and other data are not annualized for purposes of determining per diem costs and reimbursement.**

(2) (No change.)

(3) Alternate children's facility reimbursement rates for selected children's facilities are determined as follows, effective January 1, 1992.

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

(E) Temporary method for determination of **ICFs-MR** [ICF-MR] Level V alternative children's facility rates for the period beginning **October 1, 1994** [May 1, 1994]. An eligible children's facility is reimbursed in the following manner:

(i) Rates are based on projected per diem costs, not to exceed the **ICFs-MR Level V alternative children's facility rate as of September 30, 1994** [current ICF-MR/RC-VIII base rate, including the estimated per diem cost of augmentative communication devices, plus the single highest supplemental rate amount, as specified under §27.415(c) of this title (relating to ICF-MR/RC VIII Experimental Class)]. The cost-based rates will not include a mark-up or incentive factor.

(ii) **Reimbursement for fixed capital assets is in the form of a use fee. The use fee will be paid in lieu of building and building equipment depreciation, land and leasehold amortization, mortgage interest, and/or building and building equipment lease expense**[. The annual use fee is] **calculated as 14% of the appraised value of buildings, improvements,** and land, as determined by local taxing authorities. If such an appraisal [by local taxing authorities] is unavailable, the appraised value of the property is determined as the square footage of the facility devoted to the **ICFs-MR** [ICF-MR] services multiplied by the statewide median value per square foot of facilities in the large facility Level V class of service. The per diem use fee is calculated by dividing the annual use fee by anticipated facility days of service.

(iii) **In calculating the project costs,** [Projected costs may be calculated by using pro forma estimates based on] historical costs are adjusted to reflect anticipated expenses related to resident care, active treatment, health and safety, or other areas deemed necessary by the Texas **Department of Mental Health and Mental Retardation (TDMHMR) to deliver quality service** [DHS for the particular children's population served].

(iv)-(v) (No change. )

(vi) This temporary method remains in effect until **December 1, 1994** [September 30, 1994, or until formally replaced or modified through a State Plan amendment, whichever comes first].

**(F) Method for determination of ICFs-MR Level V alternative children's facility rates for the period beginning December 1, 1994. A facility must have an acceptable facility capacity reduction plan approved by the TDMHMR Office of Medicaid Administration and the Texas Health and Human Services Commission (THHSC) to remain eligible for payment at the ICFs-MR Level V alternative children's facility rates after December 1, 1994. Any extensions or modifications to this plan must be approved by TDMHMR, DHS and THHSC. An eligible children's facility is reimbursed in the following manner:**

***(i)* Rates are based on projected allowable cost-based expenses not to exceed the aggregate cost for services the facility provides as of September 30, 1994. Projected costs will be calculated by using pro forma estimates based on historical costs adjusted to reflect the anticipated expenses related to resident care, active treatment, health and safety, or other areas deemed necessary by TDMHMR for the particular children's population served. The cost-based rates will not include a mark-up or incentive factor.**

***(ii)* Fixed capital assets are reimbursed in the form of a use fee. The use fee will be paid in lieu of building and building equipment depreciation, land and leasehold amortization, mortgage interest, and/or building and equipment lease expense. The annual use fee is calculated as 14% of the appraised value of buildings, improvements, and land, as determined by local taxing authorities. If such an appraisal is unavailable, the appraised value of the property is determined as the square footage of the facility devoted to ICFs-MR services multiplied by the statewide median value per square foot of facilities in the large facility Level V class of service. The use fee will include only that part of the building square footage that is used in the provision of ICFs-MR residential services. The per diem use fee is calculated by dividing 25% of the annual use fee by anticipated facility days of service during a fiscal quarter.**

***(iii)* Any Medicaid payments not expended on Medicaid allowable costs will be recouped by the state.**

***(iv)* This temporary method remains in effect only as long as the facility continues to reduce the certified capacity in compliance with the capacity reduction plan described in this subparagraph.**

**(4) Alternate state operated small facility rates effective September 3, 1994.**

**(A) Description of rate class. The state operated small facility rate class consists of Level V and VI group homes with six or fewer Medicaid-contracted beds that are operated by TDMHMR.**

**(B) Determination of state operated small facility rates. Eligible state operated small facilities are reimbursed in the following manner:**

***(i)* Rates are based on projected costs of the respective ICFs-MR Level V or Level VI community-based facilities as described in §27.411 of this title (relating to Cost Finding Methodology) with additional adjustments for wages and benefits paid by the state.**

***(ii)* DHS will continue to set rates for this class in this manner until enough Medicaid cost report data become available to determine rates on the basis of cost reports.**

***(iii)* Cost reports from facilities in the class will not be included in the cost arrays that are used to determine reimbursement rates for other classes of providers.**

(d) (No change.)

(e) Supplemental reimbursement rate determination. The reimbursement rate for community based ICFs-MR VI individuals whose needs require a significantly greater than normal amount of care is supplemented on an individual client basis when the appropriate score is indicated for all of the six criteria on the level-of-care assessment form.

(1) The level-of-care assessment form must indicate the client meets the qualifying criteria by having the following scores on all of the items indicated:
Figure 1: 40 TAC §27.413(e)(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 authority to adopt.

Issued in Austin, Texas, on February 13, 1995.

TRD-9501805

Nancy Murphy
Section Manager, Media and Policy Services
Texas Department of Human Services

Earliest possible date of adoption: March 20, 1995

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

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# Part IX. Texas Department on Aging

## Chapter 251. Support Documents

### • 40 TAC §§251.6, 251.7, 251.10, 251.12

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

The Texas Department on Aging proposes the repeal of §§251.6, 251.7, 251.10, and 251.12, concerning reporting systems, carryover policy and memorandums of agreement with various state agencies as these sections are no longer applicable to the operations of the Department.

Ann Ammons, director of field operations, Texas Department on Aging, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Ms. Ammons also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be better understanding and access to the rules governing the operations of the Department by incorporating new language and simplifying previous language in the proposed new section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Ann Ammons, Director of Field Operations, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

The repeals are proposed under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

Human Resources Code, Chapter 101, is affected by these proposed repeals.

*§251.6. Reporting System-Older Americans Act, Title III.*

*§251.7. Carryover Policy-Older Americans Act, Title III.*

*§251.10. Memorandum of Understanding with State Agencies.*

*§251.12. Memorandum of Understanding between Texas Commission for the Deaf and the Texas Department on Aging.*

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

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

TRD-9501721 Mary Sapp
Executive Director
Texas Department on Aging

Earliest possible date of adoption: March 20, 1995

For further information, please call: (512) 444-2727

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## Chapter 254. Operation of the Texas Department on Aging

### • 40 TAC §254.7

The Texas Department on Aging proposes an amendment to §254.7, relating to the operation of the Citizens Advisory Council of the Texas Department on Aging.

The purpose of this amendment is to revise the procedure for selection of members and the length of time each member shall sit on the advisory council.

Ann Ammons, director of field operations, Texas Department on Aging, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Ammons also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a greater understanding of the role, responsibility, and mission of the Department. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Ann Ammons, Director of Field Operations, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

The amendment is proposed under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

The Human Resources Code, Chapter 101, relating to the operation of the Texas Department on Aging, is affected by this proposed amendment.

*§254.7. Advisory Councils.* The Board of the Department shall appoint advisory councils and/or committees as required by law or needed to accomplish a specific task for the Department. All members of advisory councils and committees shall serve at the pleasure of the Board.

(1) Citizens Advisory Council.

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

(D) Selection of Members.

(i) There shall be six representatives for each of the four groups as specified in §254.5(9)(A) of this title (relating to Geographic Area Representation). One area agency from each group shall not be represented each term of advisory council appointments. The six represented agencies will be selected by alphabetical order from within their group of seven area agencies and will rotate representation. The area agency not represented shall be selected the next term. No area agency shall go more than one time without representation in the group [every seven years].

(ii) Each area agency advisory council shall elect a set of three nominees from its local advisory council to be submitted to the Board on Aging for consideration. The Board shall select one of the three nominees from each of the six sets submitted from the four major groups. A citizens advisory council member selected by the Board shall serve a **one year term** [a maximum of three years]. Initial terms shall expire on August 31, 1995, and thereafter on August 31 of each year.

(E)-(J) (No change.)

(2) (No change.)

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

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

TRD-9501722 Mary Sapp
Executive Director
Texas Department on Aging

Earliest possible date of adoption: March 20, 1995

For further information, please call: (512) 444-2727

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### • 40 TAC §254.22

The Texas Department on Aging proposes new §254.22, relating to public hearing policies of the Texas Department on Aging.

The purpose of this rule is to relocate previous rules to a new section of the Texas Administrative Code and to clarify language and procedures by which the Department meets the responsibilities established by Federal and State requirements.

Ann Ammons, director of field operations, Texas Department on Aging, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Ammons also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a greater understanding of the role, responsibil-

ity, and mission of the Department. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Ann Ammons, Director of Field Operations, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

The new section is proposed under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

The Human Resources Code, Chapter 101, relating to the operation of the Texas Department on Aging, is affected by this proposed new section.

*§254.22. Public Hearing Procedures for the Texas Department on Aging.*

(a) The Texas Department on Aging shall:

(1) conduct public hearings on the State Plan and/or funding formula at strategic geographic locations to ensure public comment from the largest number of older persons, service providers, elected officials and the general public as can be managed;

(2) give adequate notice of the times, dates, and locations of the public hearings to older persons, service providers, elected officials and the general public to give interested parties reasonable opportunity to be present and provide comment;

(3) make public notices and news releases available in English and Spanish to increase the opportunity for input from older Texans of limited English-speaking ability;

(4) maintain documentation of the public hearing proceeding by registration of the participants and the issues presented by persons attending the hearings.

(b) State plan hearings shall be coordinated between the Department and area agencies on aging to optimize participation of all interested parties. Area agencies will be furnished all particulars sufficiently in advance to permit a reasonable time to notify their service provider, public officials and the elderly of the hearing time, date, and location.

(c) Additional public hearings on the State Plan shall be conducted only when there is a change in scope of services, new or revised Federal or State statutes or regulations, or a material change in any law, organization, policy or state agency operation.

(d) Records information and input from the hearings shall become a matter of public record and retained on file in accordance with State records management requirements. This information shall be used in the preparation of the State Plan and the development of programs and policies for the period covered by that Plan, as feasible, taking into consideration the available funding for the Plan period.

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

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

TRD-9501723 Mary Sapp
Executive Director
Texas Department on Aging

Earliest possible date of adoption: March 20, 1995

For further information, please call: (512) 444-2727

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## Chapter 260. Area Agency on Aging Administrative Requirements

### • 40 TAC §260.14

The Texas Department on Aging proposes new §260.14, relating to corporate elder care policies to be followed by Area Agencies on Aging when providing this service.

The purpose of this rule is to renumber and relocate it to conform to the revised scheme developed for publication of Department rules in the Texas Administrative Code.

Ann Ammons, director of field operations, Texas Department on Aging, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Ammons also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section a greater understanding of the role, responsibility, and mission of the Department. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Ann Ammons, Director of Field Operations, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

The new section is proposed under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

The Human Resources Code, Chapter 101, is affected by this proposed new section.

*§260.14. Corporate Eldercare.* This policy applies to all Area agencies on Aging who engage in agreements, contractual, and/or commercial relationships with any business to provide Corporate Eldercare services to its employees.

(1) Legal Authority. In accordance with AOA-PI-90-06, issued April 10, 1990, (relating to Corporate Eldercare) the Texas Department On Aging (TDOA) is called upon to develop and implement State policies concerning Corporate Eldercare, including specific guidelines for AAAs' involvement in this area. While the AOA Program Instruction focuses exclusively on Corporate Eldercare, it acknowledges that the State Unit On Aging is empowered to promulgate policy related to other programs and services rendered by AAAs under contract to the private sector. The 1992 Reauthorization of the Older Americans Act enacted additional provisions relating to Corporate Eldercare under §301(a)(2)(E) and §306(a)(13)(A) to (16) which require additional provisions in the state policy.

(2) Policy Objective. The purpose of this policy is to set forth criteria which will ensure compliance with the law, prevent conflicts of interest, and assure compatibility between the statutory mission of the Area Agency on Aging and any Corporate Eldercare activities in which the Area Agency On Aging may engage.

(3) Definition. Corporate Eldercare is any service provided to a business on behalf of its employees who have responsibilities for caring for older relatives or friends.

(4) Program Purpose. The purpose of engaging in Corporate Eldercare is to enhance the scope and quality of the system of services available to older persons in a planning and service area.

(A) Corporate Eldercare contracts help with outreach by providing access to the workplace, and the workforce caring for the elderly.

(B) Such contracts increase support and access to services by those providing care to older relatives and friends and thus meet the needs of the elderly relative or friend.

(C) The purchase of services by businesses provides an additional source of funds which enable provision of service to more elderly in need.

(5) Program Components.

(A) The scope of Corporate Eldercare involves contracting with a business to provide that business certain eldercare services for the benefit of its employees for a specified fee. Any service provided to a business should be provided on a contracted fee for service basis. While

Title III services provided by an AAA are offered free of charge to any individual in need in the PSA, expanded or specialized services tailored to the needs of a corporate or business client can be included in a contractual arrangement for which the Area Agency should receive reimbursement. Corporate Eldercare often includes a form of enhanced information and referral but may extend to other types of services and/or programs. Such other services can include, but are not limited to designing and conducting needs surveys of staff, seminars/workshops/forums, initiating support groups, subcontracting to provide Employee Assistance Services, contributing to or providing newsletters, providing information resources, training for managers regarding eldercare, pre-retirement and retirement planning programs, and case-management.

(B) If the AAA elects to provide Corporate Eldercare to its grantee agency this will be considered a Commercial Relationship. The grantee shall be considered a Company or business. The AAA must comply with all terms and provisions of this policy, with the exception of the requirement to enter into a written contract. In addition to all other terms of the policy, this explicitly requires the AAA to maintain records which provide all the information specified in paragraph (7)(G) of this section (relating to confidentiality of information), and to release such information to the Department and AOA. Since there may not be a written contract, in the case of an AAA providing Corporate Eldercare to its grantee agency, the word contract in this policy is to be substituted with the term "Corporate Eldercare Program" as appropriate.

(C) Delivery of the service requires the area agency to provide this service directly for the business. Area Agency staff, paid by the contract, provide or arrange the services based on the terms of the contract.

(D) The Texas Department On Aging encourages all Area Agencies On Aging to engage in appropriate agreements with employers in the development and implementation of Corporate Eldercare programs as part of the development of a comprehensive and coordinated system of services for all older persons. All Area Agencies On Aging are eligible to engage in Corporate Eldercare activities, provided such activities comply with all the provisions of this policy. TDOA recognizes that an AAA may elect to join with other AAAs and/or the Texas Association of Area Agencies On Aging in such contracts. These types of arrangements are permissible, provided that the provisions of this policy are followed.

(6) General Provisions.

(A) All Area Agencies are required to describe in their Area Plan all activities of the area agency on aging, whether funded by public or private funds.

(B) AAAs electing to enter into Corporate Eldercare contracts, agreements, or commercial relationships with any business, shall include in their Area Plan, and amendments thereto, strategies describing the area agency's plans for, and/or current involvement with Corporate Eldercare, and services to be rendered to older persons, or those providing care to older relatives or friends, as a consequence of said agreements or contracts.

(C) The Area Plan must include assurances that:

(i) assure that the AAA's activities conform with the responsibilities of the AAA as set forth in the Older Americans Act, §301(a) (2)(E) and §306(a);

(ii) assure the AAAs activities conform with the laws, regulations, and policies of the state;

(iii) assure that in all agreements, contracts and commercial relationships, the AAA will not compromise the integrity or public purpose of Title III services or service providers;

(iv) assure that the AAA will disclose to AOA and TDOA the identity of each entity with which such agency has an agreement, contract or commercial relationship relating to the provision of any service to older individuals or those providing care to older relatives or friends; and the nature of such agreement, contract or relationship;

(v) assure that the AAA will demonstrate that a loss or diminution in the quantity or quality of the services provided or to be provided by such agency has not resulted and will not result from such agreement, contract or relationship;

(vi) assure that the AAA will demonstrate that the quantity or quality of the services to be provide by such agency will be enhanced as a result of such agreement, contract or relationship;

(vii) assure that the AAA will, on request from AOA or TDOA, for the purpose of monitoring, disclose all sources and expenditures of funds such agency receives or expends to provide services to the older individuals or those providing care to older relatives or friends.

(viii) assure payment by a private contract, agreement, or commercial relationship will fully cover the cost of services provided, and that Title III funds will not be used to pay any part of a cost, including administrative costs, incurred by the AAA to carryout a contract or commercial relationship that is not carried out to implement Title III (unless a public/private partnership is established whereby the state or federal governments agree to subsidize the costs of Corporate Eldercare);

(ix) assure that preference in receiving services under Title III will not be given to particular elderly as a result of a contract or commercial relationship that is not carried out to implement Title III;

(x) assure the AAA will focus on serving older persons in accordance with their need for services, with particular attention to individuals with greatest economic or social need, including low-income minority persons.

(D) This section does not constrain the AAA from using OAA Title III-B funds to develop new resources and coordinate services to develop Corporate Eldercare in its PSA, as long as such activity is in compliance with TDOA Program Development policy. This complies with the statutory mission of AAAs by fostering the development of comprehensive and coordinated systems of services for all older persons, which includes all types of services and resources, both public and private, which are available to serve older persons or those providing care to older relatives or friends. Area Agencies must avoid any activity, however, which may have the appearance of subordinating their public purpose mission to either organizational self interest or to the private interests of particular individuals or organizations.

(7) Requirements for contracts between AAAs, employers and other public or private companies. The business must enter into a written agreement or contract with the Area Agency On Aging which clearly states:

(A) the name of the business or company, the services to be provided, the fee to be paid for the services defined, and the term of the contract;

(B) the AAA can not execute an agreement or contract that demands exclusivity. An AAA must be free to negotiate other similar agreements, contracts, or commercial relationships;

(C) the AAA cannot enter into an agreement or contract that obligates it to be identified with or to promote the company or its products, or places it in a conflict of interest with its public mission;

(D) the AAA has the right to refuse services to a company or its employees or clients in the event that there is a potential conflict of interest for the AAA, as identified by the AAA or the TDOA. Such interpretations should be documented and kept on file for monitoring purposes;

(E) a contract must provide that an AAA has the right to reveal its findings, plans and recommendations to the client, regardless of whether or not the company makes a final decision regarding client eligibility and/or services provided, and regardless of what that decision is;

(F) a contract must provide that all information, as to personal facts and circumstances, obtained by the AAA shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of the individual receiving the services, his/her attorney, or his/her legal guardian, except as is required by TDOA for the purposes of monitoring for compliance with the provisions of this policy, or as directed by the court. However, nothing prohibits the disclosure of information in summary, statistical or other form which does not identify particular individuals. All AAA personnel having access to information pertaining to individuals receiving services shall complete and sign a nondisclosure agreement;

(G) the contract must further provide that the information obtained through the performance of the contract be treated as confidential information. The AAA shall not use any information, obtained in the performance of the contract in any manner except as necessary for the proper discharge of its obligations;

(H) a contract must hold the AAA and TDOA harmless when they are party to the contract, and defend them in any actions brought against them on the basis of the companies' policies or decisions regarding benefits and services;

(I) provisions of the contract may not require the withholding of information or otherwise limit the ability of the AAA to judge or act in the public interest; or restrict the ability of TDOA to exercise appropriate oversight of the AAA in fulfillment of its public mission and responsibilities;

(J) a Corporate Eldercare contract must cover all the costs of providing the services, including administrative costs. Any and all AAA staff providing Corporate Eldercare services must be paid from the funds received from the company. No Title III funds are to be used to pay any part of a cost incurred by the AAA to carry out a Corporate Eldercare contract or commercial agreement.

(8) Fiscal Requirements.

(A) The AAA is required to establish and implement appropriate fiscal controls to govern the separate accountability of private contract or other Corporate Eldercare revenues and expenditures. Corporate Eldercare revenues will be accounted for separately from all other federal, state, and local funds awarded or obtained for services under the Area Plan contract.

(B) Public funds, obtained for the purpose of implementing Title III OAA programs, may not be used to supplement and/or pay any part of a cost, including administrative costs, incurred by an AAA to carry out a Corporate Eldercare contract, agreement, or commercial relationship (unless a public/private partnership is established whereby the state or federal governments agree to subsidize the costs of Corporate Eldercare).

(C) An AAA that enters into a Corporate Eldercare contract, agreement or commercial relationship, shall have available, and shall produce upon request, documentation to assure that the payment under the contract or agreement covers the complete costs of providing the service.

(9) Monitoring. TDOA through its program monitoring activities shall periodically assess AAAs compliance through the following actions.

(A) Review and approval of the AAA Area Plan (annually and more frequently for modifications as submitted) including:

(i) strategies describing the area agency's plans for and/or current involvement with Corporate Eldercare, their relationships with private corporations, and services to be rendered to older persons as a consequence of said agreements or contracts;

(ii) signed statement of assurances of compliance with this policy;

(iii) any additional supporting documents submitted at the option of the AAA;

(iv) related data in the Area Plan budget.

(B) Annual review of financial audits and records. TDOA will review and, as appropriate, act upon:

(i) adequacy of AAA financial system to maintain separate accounting for different funds, including private contracts;

(ii) adequacy of AAA financial control system; and

(iii) adequacy of AAA support documents (including time sheets) to justify costs to each funding source.

(iv) audit results and findings regarding each of the provisions listed in clauses (i)-(iii) of this subparagraph.

(C) Periodic field visits and assessments of AAA activities. TDOA field staff conduct a continuous program of field visits to AAAs on a rotating basis. The field assessment will include review for compliance with:

(i) this State policy on Corporate Eldercare;

(ii) the General Provisions of this policy as referred to in paragraph (6) of this section;

(iii) requirements for contracts as specified in paragraph (7) of this section; and

(iv) fiscal requirements as specified in paragraph (8) of this section.

(D) Where necessary and appropriate, TDOA will issue requirements for corrective actions, special conditions to the TDOA/AAA contract, or withhold or deny approval of the Area Plan where there is a finding that the AAA is out of compliance with the provisions of the Corporate Eldercare policy. The standard Hearing process of such actions is outlined in 40 TAC §254.17 of this title (relating to Appeal Procedures for Service Providers and Applicants).

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

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

TRD-9501724 Mary Sapp
Executive Director
Texas Department on Aging

Earliest possible date of adoption: March 20, 1995

For further information, please call: (512) 444-2727

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## • 40 TAC §260.19

The Texas Department on Aging proposes new §260.19, relating to direct purchase of services by area agencies on aging.

The purpose of this rule is to provide policies and guidance on the use of the purchase of services process.

Ann Ammons, director of field operations, Texas Department on Aging, has determined

that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Ammons also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a greater understanding of the role, responsibility, and mission of the Department. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Ann Ammons, Director of Field Operations, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

The new section is proposed under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

The Human Resources Code, Chapter 101, relating to the operation of the Texas Department on Aging, is affected by this proposed new section.

*§260.19. Direct Purchase of Services.*

(a) Direct Purchase of Services (DPS). DPS is a method to purchase services on a client-by-client basis as determined by an assessment of the individual's service need, conducted in accordance with information and assistance, case management, benefits counseling or other access and assistance program requirements described in §260.3, relating to Access and Assistance Program; §260.5, relating to Information and Assistance Service; §260.7, relating to Case Management Service, and §260.9, relating to Legal Awareness/Legal Assistance Services. It is used in lieu of annualized or fixed sum contracting for the purposes described in subsection (b) of this section (relating to Purposes).

(b) Purposes. DPS provides flexibility and effective management of resources, and is used for the following purposes:

(1) to facilitate an individual's access to services which could not otherwise be obtained by or for the person;

(2) to target limited resources to those in greatest need;

(3) to allow multiple providers to participate in the Title III reimbursement program through agreements for potential purchase of service;

(4) to allow access and assistance staff to directly monitor client satisfaction and client impact of the purchased service;

(5) to enhance the capacity of the area's access and assistance program to achieve its outcomes;

(6) to reduce the unit cost of purchased services through reduction of contracting agencies' administrative expenses.

(c) DPS Components. A DPS process must provide for the following:

(1) a method for, and one or more access and assistance staff members designated by the area agency to be responsible for, determining the individual's need for the service, prior to its authorization, including a determination of the amount, frequency, and duration of the service to be purchased;

(2) a method, and one or more access and assistance staff members designated by the area agency to be responsible for, authorization of the service;

(3) a purchase agreement or contracting structure following applicable grantee procurement procedures, (such as sole source, spot purchase or other appropriate method) which permits purchase of service units based on individual assessment of client's need for services;

(4) vendor selection criteria or pre-qualification processes to permit rapid identification and procurement of needed services;

(5) a vendor or vendors willing to provide services as required;

(6) maintenance of current DPS vendor list, which is communicated to those staff members designated to authorize services for individual clients; and

(7) a method for internal control of, tracking of, and accounting for, expenditures from the DPS "pool" of budgeted funds.

(d) When to Use DPS Procurement Methodology. Designated access and assistance staff may use DPS to obtain home delivered meals, demand response transportation, personal assistance, homemaker, respite care, emergency response, legal assistance, health maintenance, and other supportive services, based on individual assessment of need. It is not intended for the authorization of established Title III congregate meals or senior center operations services.

(e) Additional Requirements.

(1) Area agency grantees using the DPS methodology shall be required to meet an overall 10% non-federal match of all Older Americans Act funding for services within the grantee's planning and service area.

(2) Program income generated by a DPS vendor shall be forwarded to the area agency monthly, shall be accounted for in accordance with OMB requirements, and shall be considered match for purposes of paragraph (1) of this subsection (relating to match).

(3) The only allowable vendor-produced match for the DPS methodology is program income. Non-vendor service providers may provide adequate overmatch within the PSA to meet the requirements in paragraph (1) of this subsection (relating to match). In the event that the required 10% non-federal match is not received through this source, the area agency grantee shall provide sufficient additional match to meet the match requirements in paragraph (1) of this subsection.

(4) USDA cash earned from vendor provided meals must be used for purchase of meals by the area agency on aging or grantee aging program.

(5) Services procured under the DPS process shall meet or exceed the General Service requirements and the requirements established for specific services as promulgated in the Texas Administrative Code. Requests for bids shall be written to conform to these standards.

(f) Monitoring. Monitoring of DPS service vendors shall be accomplished through reassessment and other follow-up activities with the client and through area agency required monthly reports from the vendor. Satisfactory performance in the following areas shall be used to determine whether a vendor is selected for further service delivery:

(A) the vendor is meeting the provision and/or frequency of the service as authorized for the client;

(B) the vendor is performing those duties specified when the service was authorized;

(C) the client indicates that the services provided are satisfactory.

(D) the quality and cost of services are satisfactory.

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

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

TRD-9501714

Mary Sapp
Executive Director
Texas Department on Aging

Earliest possible date of adoption: March 20, 1995

For further information, please call: (512) 444-2727

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## • 40 TAC §260.21

The Texas Department on Aging proposes new §260.21, relating to public hearing policies of Area Agencies on Aging.

The purpose of this rule is to relocate previous rules to a new section of the Texas Administrative Code and to clarify language and procedures by which area agencies on aging meet the responsibilities established by Federal and State requirements.

Ann Ammons, director of field operations, Texas Department on Aging, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section

Ms. Ammons also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a greater understanding of the role, responsibility, and mission of the Department. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Ann Ammons, Director of Field Operations, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

The new section is proposed under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

The Human Resources Code, Chapter 101, relating to the operation of the Texas Department on Aging, is affected by this proposed new section.

*§260.21. Public Hearing Procedures for Area Agencies on Aging.*

(a) Area Agency Responsibilities. Area Agencies on Aging shall:

(1) conduct public hearings on the area plan at strategic geographic locations in their planning and service area to ensure public comment from the largest number of older persons, service providers, elected officials and the general public as can be managed;

(2) give adequate notice of the times, dates, and locations of the public hearings to older persons, service providers, elected officials and the general public to give interested parties reasonable opportunity to be present and provide comment;

(3) make public notices and news releases available in English and Spanish to increase the opportunity for input from older Texans of limited English-speaking ability;

(4) maintain documentation of the public hearing proceedings by registration of the participants and the issues presented by persons attending the hearing.

(b) Coordination. Area agencies shall furnish all particulars regarding date, time, and location to the Department and to interested individuals and entities within their regions sufficiently in advance to permit a reasonable time to permit their service providers, public officials and the elderly of their region the optimum opportunity to attend.

(c) Supplemental hearings. Additional public hearings on the area plans shall be conducted when there is a change in scope of services, new or revised Federal or State statutes or regulations affecting service delivery have been published or a material change in any law, organization, policy or state agency operation occurs.

(d) Hearings Required for Direct Services. Hearings will be conducted by area agencies prior to their request to provide direct services not currently authorized. The hearing procedures will be the same as listed for area plan hearings.

(e) Hearings Required for Evaluation of Outreach Effectiveness. Area agencies shall conduct a hearing to evaluate the effectiveness of outreach conducted under the Older Americans Act, §306(C)(6).

(f) Records. Information and input from the hearings shall become a matter of public record and retained on file in accordance with standard records management requirements. This information shall be used in the preparation of the area plan and the development of programs and policies for the period covered by that plan.

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

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

TRD-9501715 Mary Sapp
Executive Director
Texas Department on Aging

Earliest possible date of adoption: March 20, 1995

For further information, please call: (512) 444-2727

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# Chapter 263. Interest Earned on Aging Funds

## • 40 TAC §263.1

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

The Texas Department on Aging proposes the repeal of §263.1, concerning policies and procedures of grantee area agencies on aging as necessary to track and report accumulation of interests on aging funds to relocate these rules in the Texas Administrative Code.

Ann Ammons, director of field operations, Texas Department on Aging, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Ammons also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be better understanding and access to the rules governing the operations of the Department by incorporating new language and simplifying previous language in the proposed new section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Ann Ammons, Director of Field Operations, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

The repeal is proposed under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

The Human Resources Code, Chapter 101 is affected by this proposed repeal.

*§263.1. Standards Governing Interest Earned on Aging Funds.*

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

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

TRD-9501716 Mary Sapp
Executive Director
Texas Department on Aging

Earliest possible date of adoption: March 20, 1995

For further information, please call: (512) 444-2727

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# Chapter 270. General Service Requirements

## • 40 TAC §270.2

The Texas Department on Aging proposes an amendment to §270.2, concerning Services Definitions.

The purpose of this amendment is to add additional definitions as a result of publication of additional rules governing services delivery under the Older Americans Act.

Ann Ammons, director of field operations, Texas Department on Aging, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Ammons also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a greater understanding of the role, responsibility, and mission of the Department. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Ann Ammons, Director of Field Operations, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

The amendment is proposed under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

The Human Resources Code, Chapter 101, is affected by this proposed amendment.

*§270.2. Services Definitions.*

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

**Acquisition-As it pertains to the federal reversionary policy means obtaining ownership of an existing facility in fee simple or by lease.**

**Adult Day Care-A structured, comprehensive program that is designed to meet the needs of adults with functional impairments through an individual plan of care by providing health, social, and related support services in a protective setting.**

**Adult Day Care Unit of Service-A unit of service is defined as half a day. One unit of service constitutes three hours but less than six hours of covered services provided by the facility. Six hours or more of service constitutes two units of service. Time spent in approved transportation provided by the facility shall be counted in the unit of service. (Non-DHS Title XIX funded programs refer to the Department's procedure).**

**Assistive devices-Any of a broad category of health related support services equipment such as wheelchairs, walkers, prostheses, and other medical equipment.**

**Center facility-A senior center of a multipurpose senior center.**

[(1)] Congregate meal-The hot or other appropriate meal served to an eligible person which meets §270.5 of this title (relating to Nutrition Service Requirements) and which is served at a congregate meal site.

[(2)] Congregate meal site-The generic term for a facility and/or a minimum level of service within a facility that may be either a nutrition site, a senior center, or multipurpose senior center. As a minimum level of service, it refers to the provision of meals, nutrition education, and nutrition outreach to eligible persons and their spouses, the cost of which is supported in whole or in part by Older Americans Act funds.

[(3)] Congregate nutrition service provider-An agency that is awarded a subgrant or subcontract from an area agency on aging to provide congregate nutrition services and which may include meal preparation.

[(4)] Congregate nutrition services-The provision of services at a congregate meal site in accordance with requirements established in §270.5, Nutrition Service Requirements, of this chapter.

**Construction-As it pertains to the federal reversionary policy means building a new facility to be used as a center facility, including the costs of land acquisition and architectural and engineering fees, or making modifications to or in connection with an existing facility which are in excess of double the square footage of the original facility and all physical improvements.**

[(5)] Consultant-An individual on contract full-time or part-time to perform professional services.

[(6)] Contact-A unit for measuring the provision of services. One contact is recorded each time a participant receives a service. For group activities, each participant counts as one contact.

[(7)] Demand response-Refers to the transportation service where a passenger request a ride from a specific location to another specific location at a certain time. Can also be called "dial-a-ride." Usually these services require advanced reservations.

**Dental care-Services to promote oral health which include prevention, treatment, and/or improved access to care.**

**Department-The Texas Department on Aging.**

**Disease prevention-Services that defend an individual or group against specific illness or injury. Included are immunization, early detection of disease or injury, restoration to a previous state of health and prevention of further deterioration and/or disability.**

**Emergency Response Service Unit of Service-The unit of service for ERS is one calendar month. The provider agency is eligible for payment for a full month of service if the client receives services for any part of the month.**

[(8)] Elderly-Those persons age 60 and over.

[(9)] Fixed route-Refers to transportation services where vehicles run on regular, pre-designated, pre-scheduled, posted and advertised routes, with no deviation.

**Focal point-A highly visible multipurpose senior center where anyone in a community can obtain information about and access to services for older adults. For purposes of these rules, focal points are so designated by the area agency on aging.**

**Health counseling-Services that offer personal or group consultation in which the counselor helps individuals resolve their medical or health problems.**

**Health education-Provision of information concerning health disorders and preventive health practices to groups or individuals living in the community.**

**Health maintenance-The provision of services, prescription and medications, and/or other assistive devices which will prevent, alleviate, and/or cure the onset of acute or chronic illness, increase awareness of special health needs, and/or improve the emotional wellbeing of older individuals.**

**Health promotion-Programs which encourage healthy behaviors, reduce the risk for chronic and preventable disease, and maintain or improve the functioning of older adults.**

**Health promotion unit of service-The unit of service for health screening, health maintenance, or mental health services is one contact. In the case of caregivers of frail older adults, the family is counted as one contact per category of service.**

**Health screening-Investigation or analysis by a medical or health professional to determine the need for a health service. May include routine tests for blood pressure, hearing and vision impairment, or diabetes. May also include periodic checking and monitoring of a known condition such as monthly blood pressure checks for hypertension, and the application of fairly simple procedures for detection of unrecognized disease in apparently well individuals.**

**Health services-For the purposes of this Department, any of an array of services authorized by the Older Americans Act as amended, Part F, §§361, 362, and 363, 42 USC 3030, subparagraphs M, N, and O respectively.**

**Hearing care-Screening, prevention, treatment, purchase of hearing aids, and/or improved access to services which improve hearing.**

[(10)] Homebound-Unable to leave the home without assistance due to illness, incapacitating disability, or frailty.

[(11)] Home delivered meal-A hot **or otherwise appropriate meal which meets all requirements in §270.5, of this title (relating to Nutrition Service Requirements) served to an eligible person in his/her place of residence.** [meal delivered to an eligible homebound person which meets requirements established in §270.5, of this title (relating to Nutrition Service Requirements).]

[(12)] Home delivered nutrition service provider–An agency that is awarded a subgrant or contract from an area agency on aging or a contract from a nutrition service provider to provide home-delivered nutrition services and which may include meal preparation.

[(13)] Home delivered nutrition services–The provision of services to a homebound elderly person in his place of residence in accordance with requirements established in §270.5, of this title (relating to Nutrition Services Requirements).

**Home injury control services–Screening of high risk home environments, and provision of educational programs on injury prevention (including fall and fracture prevention) in the home environment.**

**Homemaker service–A service provided by trained and supervised homemakers involving the performance of housekeeping, home management, meal preparation and/or escort tasks, provided to individuals who need assistance with these activities in their place of residence.**

**Homemaker Unit of Service–The unit of service is one hour of services provided directly to the client and does not include travel time unless it is directly related to the client's care plan, (such as essential shopping or escorting). It also does not include time spent for personal breaks, training, evaluations, or reassessments.**

[(14)] Meal carrier–A container designed and used to transport bulk containers of food or individually packaged meals, to include picnic chests with lids, thermal envelopes, and thermal bags that maintain safe temperatures.

[(15)] Meal cost–The total service unit cost. For contracted services, includes food and administration costs and delivery costs, and costs for nutrition education, outreach and nutrition consultation. Delivery costs should be included for home-delivered meals. Direct purchase of service costs do not include nutrition consultation, outreach or nutrition education costs.

[(16)] Meal packaging–Permanent or disposable trays or cups with lids or seals, and bags or boxes which are designed and used for delivery of individual servings of food for a meal.

[(17)] Meal provider–An agency or organization that is awarded a subgrant or contract from the area agency on aging or a congregate or home delivered nutrition service provider to provide meals. A meal provider does not have to be the same entity as a service provider.

**Medication assistance–A program to ensure that undesirable side affects are minimized and that medication is being taken as prescribed. Can include screening, monitoring, consultation by a health professional, and/or purchase of prescriptions.**

**Mental health services–Services provided to individuals who have mental illnesses, or severe emotional and social disabilities and require support and treatment. Support may include education, prevention or intervention.**

[(18)] Menu cycle–A preplanned written sequence of daily menus for a minimum of four weeks.

**Multipurpose senior center–A center facility which is open for a minimum of six hours a day, five days a week, and provides or coordinates for participants a nutritious meal and a variety of services such as, but not limited to, transportation, nutrition education, health screening, information and referral, health maintenance, exercise/physical fitness and volunteer activities.**

[(19)] Nutrition consultation services–Activities **usually** performed by a **service provider** [qualified dietitian] that may be either contracted separately **with a qualified dietitian** [by the service provider] or provided as a direct service by the area agency on aging. Such activities do not include area agency on aging responsibilities for monitoring.

[(20)] Nutrition education–The provision of information to participants to promote nutritional well-being.

[(21)] Nutrition outreach–To seek out and identify, on an ongoing basis, hard-to-reach, isolated, and withdrawn eligible individuals.

[(22)] Nutrition participants–Those older persons age 60 years or older and their spouses, or other eligible persons who receive one or more Older Americans Act services.

[(23) Nutrition site–See congregate meal site.]

**Nutrition site–A facility whose primary purpose is the delivery of congregate meal services and does not offer other services.**

[(24)] Nutrition unit of service–A meal which meets **one third of the required daily allowance as** [all the requirements established in 40 TAC §270.5] **established by the Food and Nutrition Board of the National Academy of Sciences-National Research Council.**

**Personal assistance unit of service–The unit of service is one hour and does not include travel time unless it is directly related to the client's care plan, such as escorting the client to a doctor's appointment. Travel to and from the client's residence is not part of the unit of service.**

**Physical fitness–Exercise and/or other physical activities which sustain and/or improve physical and mental health, and may include exercises to increase endurance, (cardiovascular and muscular), strength, flexibility, balance, and/or coordination/agility.**

[(25)] Potentially hazardous food–Any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does not include clean, whole, uncracked, odor-free shell eggs or foods which have a Ph level of 4.5 or below or a water activity (Aw) value of 0.85 or less.

[(26)] Qualified dietitian–An individual who is one of the following: a registered dietitian with the Commission on Dietetic Registration, or a licensed or provisionally licensed dietitian with the Texas State Board of Examiners of Dietitians.

[(27)] Qualified dietary manager–An individual who is certified by the Dietary Managers Association to have completed a dietary managers course and a minimum of 100 hours of on-the-job training in a supervisory position in the food service department of a health care facility.

**Renovation–As it pertains to the federal reversionary policy means making modifications to or in connection with an existing facility which are necessary for its effective use as a senior center. These may include renovation, repair, or expansion which is not in excess of double the square footage of the original facility and all physical improvements.**

**Senior center–A center facility whose primary focus is the delivery of services (including meals) to participants, but does not remain open a set number of hours a day.**

**Subrecipient–Is an entity that receives Federal assistance passed down from the prime recipient. The subrecipient's responsibility is to help the recipient meet the requirements of the assistance award. A subrecipient's performance would be measured against meeting the objectives of the Federal assistance award.**

[(28)] Therapeutic medical diet–Meals that are altered to meet the specific requirement of a diagnosed disease or metabolic disorder, to correct nutritional deficiencies, and/or to support attainment of ideal body weight.

[(29)] Transportation service for the elderly–The act or process of transporting a person 60 years of age or older from one location to another.

[(30)] Transportation unit of service–A one-way trip.

**Vendor–Is an entity that receives a procurement contract for goods or services from a recipient which will be paid for from Federal assistance funds. The vendor's responsibility is to meet the requirements of the procurement contract/agreement.**

**Vision care–And array of services designed to promote eye health which includes screening, prevention, treatment, purchase of eyeglasses, and/or improved access to services.**

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

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

TRD-9501717 Mary Sapp
Executive Director
Texas Department on Aging

Earliest possible date of adoption: March 20, 1995

For further information, please call: (512) 444-2727

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## Chapter 281. Public Hearing Procedures for TDoA and AAA's

### Statutes and Regulations

### • 40 TAC §§281.1-281.15

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

The Texas Department on Aging proposes the repeal of §§281.1-281.15, concerning public hearing procedures for Texas Department on Aging and Area Agencies on Aging as necessary to revise and relocate these rules in the *Texas Register.*

Ann Ammons, director of field operations, Texas Department on Aging, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Ms. Ammons also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be better understanding and access to the rules governing the operations of the Department by incorporating new language and simplifying previous language in the proposed new section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Ann Ammons, Director of Field Operations, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

The repeals are proposed under the Human Resources Code, §101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

The Human Resources Code, Chapter 101, is affected by these proposed repeals.

*§281.1. Title III, Older Americans Act, Public Hearing Procedures.*

*§281.2. Texas Department on Aging Responsibilities.*

*§281.3. Making Public Comment.*

*§281.4. Coordination Requirements.*

*§281.5. Hearing Officers.*

*§281.6. Use of Information.*

*§281.7. Amendments to the State Plan.*

*§281.8. Area Agency on Aging Responsibilities.*

*§281.9. Public Comment Procedures.*

*§281.10. Scheduling Public Hearings.*

*§281.11. Hearing Officer.*

*§281.12. Use of Hearing Information.*

*§281.13. Hearings on Amendments.*

*§281.14. Hearings Required for Direct Services.*

*§281.15. Hearings Required for Waivers.*

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

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

TRD-9501718 Mary Sapp
Executive Director
Texas Department on Aging

Earliest possible date of adoption: March 20, 1995

For further information, please call: (512) 444-2727

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## Chapter 294. Corporate Eldercare

### • 40 TAC §294.1

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

The Texas Department on Aging proposes the repeal of §294.1, concerning corporate eldercare policies and procedures of area agencies on aging to relocate these rules in the Texas Administrative Code.

Ann Ammons, director of field operations, Texas Department on Aging, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Ammons also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be better understanding and access to the rules governing the operations of the Department by incorporating new language and simplifying previous language in the proposed new section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Ann Ammons, Director of Field Operations, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

The repeal is proposed under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

The Human Resources Code, Chapter 101, is affected by this proposed repeal.

*§294.1. Corporate Eldercare.*

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

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

TRD-9501719 Mary Sapp
Executive Director
Texas Department on Aging

Earliest possible date of adoption: March 20, 1995

For further information, please call: (512) 444-2727

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## Chapter 297. Homemaker I Service Standards

### • 40 TAC §§297.1, 297.3, 297.5, 297.7, 297.9, 297.11, 297.13, 297.15, 297.17

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

The Texas Department on Aging proposes the repeal of §§297.1, 297.3, 297.5, 297.7, 297.9, 297.11, 297.13, 297.15, and §297.17, concerning Homemaker I Service Standards as necessary to revise and relocate these rules in the *Texas Register.*

Ann Ammons, director of field operations, Texas Department on Aging, has determined that for the first five-year period the repeals

are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Ms. Ammons also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be better understanding and access to the rules governing the operations of the Department by incorporating new language and simplifying previous language in the proposed new section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Ann Ammons, Director of Field Operations, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

The repeals are proposed under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

The Human Resources Code, Chapter 101, is affected by these proposed repeals.

*§297.1. Homemaker I Service Standards.*

*§297.3. Service Activities.*

*§297.5. Location of Service.*

*§297.7. Access to Services.*

*§297.9. Delivery Characteristics.*

*§297.11. Staffing and Training Requirements.*

*§297.13. Prohibited Service Activities.*

*§297.15. Administrative Requirements.*

*§297.17. Effective Date.*

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

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

TRD-9501720 Mary Sapp
Executive Director
Texas Department on Aging

Earliest possible date of adoption: March 20, 1995

For further information, please call: (512) 444-2727

## Texas Department of Insurance Exempt Filing

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

*(Editor's Note: 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.)*

The Commissioner of Insurance, at a public hearing under Docket Number 2140 scheduled for 1:00 p.m., March 20, 1995 in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal filed on behalf of the Texas Automobile Insurance Service Office (TAISO). TAISO's petition proposes amendments to the Texas Automobile Rules and Rating Manual (the Manual). These amendments were proposed in a petition (Reference Number A-1294-30), filed by TAISO on December 15, 1994.

Amendments are proposed to the following in the rule portion of the Manual: Rules 6, 13, 15, 26, 42, 49, 73, 74, 75, and 135. None of the proposed changes are substantive, and many of them merely change the current wording, Texas Automobile Insurance Plan to Texas Automobile Insurance Plan Association in conformity with the Insurance Code, Article 21.81.

Amendments are also proposed to the following in the rate portion of the Manual: Rules 24, 129, 134, and 135. These proposed changes are also non-substantive.

Current Endorsement 544B is proposed to be redesignated 544C, and is proposed to be renamed, Texas Automobile Insurance Plan Association.

There are no substantive amendments proposed in the entire petition, and the changes other than those concerning the new name of the Texas Automobile Insurance Plan Association are described in the following five paragraphs.

The proposed change to Section VII-Rule 135 adds the phrase Rates-Refer to Rate Section VII to the end of this rule's Section II, subsection H. This change directs users to the proper section for rating information relating to optional inflation coverage. The proposed change is necessary to add uniformity to this section of the Manual and to clarify that Rate Section VII applies to subsection H as well as subsections F, G, and I.

The proposed changes to Rate Section II-Rule 24 redesignate Section B, paragraphs 1., 2., and 3. relating to Liability Coverages as Section B, paragraphs 2., 3., and 4. respectively. Section C relating to Premium Computation is also redesignated as Section B, paragraph 6. The proposed changes are necessary to make the rating provisions correspond with the classification and numerical system utilized in Section II-Rule 24 of the Manual.

The proposed change to Rate Section VII-Rule 129 deletes the separate reference to Section B, paragraph 1.b. relating to medical payments and personal injury protection. The substance of the provision remains without specific identification. The proposed change is necessary to make the rating provision correspond with the classification currently found in Section VII-Rule 129 of the Manual. This change further adds uniformity to the related provision and prevents unnecessary confusion.

The proposed change to Rate Section VII-Rule 134 deletes the parentheses from Section D, paragraphs 5.b. and c. This change is merely an editorial correction.

The proposed change to Rate Section VII-Rule 135 capitalizes the "s" in the word specified in the chart outlined in this rule's Section I, paragraph C. 5. This change is merely an editorial correction.

A copy of the petition containing the full text of these proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 322-4147; refer to (Reference Number A-1294-30).

The staff and the Commissioner request that written comments to these proposed amendments be submitted prior to the public hearing on March 20, 1995. The written comments should be directed to Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-1C, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Deputy Commissioner, Property and Casualty Insurance Lines, Texas Department of Insurance, P.O. Box 149104, MC 104-5A, 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.

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

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

TRD-9501783 Mary Keller
Senior Associate Commissioner
Texas Department of Insurance

For further information, please call: (512) 463-6328

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# ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

## TITLE 16. ECONOMIC REGULATION

## Part IX. Texas Lottery Commission

### Chapter 402. Bingo Regulation and Tax

**• 16 TAC §402.567**

The Texas Lottery Commission adopts new §402.567, concerning the bingo advisory committee. The new section is adopted with changes to the proposed text as published in November 22, 1994, issue of the *Texas Register* (19 TexReg 9260).

The new section creates the bingo advisory committee. The language in subsection (b) of §402.567 concerning the composition of the bingo advisory is changed to reduce the number of members representing the general public, from three members to two members. In this same subsection, the number of members representing commercial lessors is increased from one member to two members. Those changes are made in response to comments received that expressed concerns of overrepresentation of the general public and underrepresentation of commercial lessors. Also, the language in subsection (e) is changed to make clear that committee meetings shall be open meetings in accordance with the Texas Open Meetings Act.

The new section sets out guidelines for the purpose, structure, and functions of the bingo advisory committee. The purpose of the bingo advisory committee is to advise the Texas Lottery Commission on the needs and problems of the state's bingo industry; report to the Commission on the committee's activities; and perform other duties as determined by the Commission. The bingo advisory committee is composed of nine members who are appointed by the Commission.

The agency received comments on the proposed rule. Many commenters supported the creation of the bingo advisory committee. One commenter suggested that each category of bingo licensees select its own representative. For example, commercial lessors should select a commercial lessor to be a member of the committee. One commenter suggested that bingo players be represented by having three members. One commenter indicated that the phrase "general public" contained in subsection (b) is too broad and urged the inclusion of a definition. One commenter suggested that the number of general public members should be reduced from three members to one member, the number of commercial lessors members should be increased from one member to two or three members, and the number of bingo distributors/manufacturers should be increased from one member to two members. One commenter suggested the rule state that the bingo advisory committee receive public comment, either through correspondence or in person at committee meetings.

The groups or associations that commented in favor of adoption of the section are: For: Kiowa Tribe #33, Pomo Tribe #32, CenTex Humane Society, La Societe De Femme, Youth Benefit, Inc., Wanonah Council #3, Dakota Council 22, C. R. Clements Boys Club, Inc., Sharm, Incorporated, Amvets Post 91, Omega Tribe #38, Voiture Locale 377, 40/8, West Texas Bingo, Inc, Thompson Allstate Bingo Supply, Inc.

No group or association that commented expressed opposition to adoption of the rule.

The agency disagrees with the commenter who suggested that each group of bingo licensees select its own representative since the statute authorizing the creation of a bingo advisory committee requires the Texas Lottery Commission appoint the members of the bingo advisory committee. To follow this suggestion would narrow the pool of candidates, delay the process of appointing members, and frustrate the purpose of the statute. The agency disagrees with the commenter who suggested that bingo players have three members on the bingo advisory committee because the agency believes the class of bingo players falls within the category of "general public" and, as such, is represented. The agency disagrees with the comment that stated the phrase "general public" is too broad and should be defined since the statute authorizing the creation of bingo advisory committee uses this phrase and does not define the phrase. As a result, the agency believes the phrase "general public" should remain undefined and be interpreted in the broadest sense. One commenter suggested the number of general public members be reduced from three to one, the number of commercial lessor members be increased from one to two or three, and the number of distributor/manufacturer members be increased from one to two. The agency agrees, in part, with this comment. As a result, the number of general public members is reduced from three to two and the number of commercial lessor members is increased from one to two. The agency believes that a reduction of general public members from three to one would provide inadequate representation but believes that a reduction from three to two would still provide adequate representation. The agency disagrees with that portion of the comment desiring an increase in the number of distributor/manufacturer members because even though the statute does not identify this group as a category the agency believes this group should be represented with at least one member. Finally, one commenter suggested the bingo advisory committee should receive public comment, either through correspondence or in person at committee meetings. The agency believes the rule, as proposed, accommodates this suggestion if the members of the bingo advisory committee desire to receive public comment but agrees that language in the rule be revised to make clear that the committee meetings shall be held in accordance with the Texas Open Meetings Act.

The new section is adopted under Texas Revised Civil Statutes, Article 179d, §43, which provide the Texas Lottery Commission with the authority to adopt rules to govern the operations of the bingo advisory committee.

*§402.567. Bingo Advisory Committee.*

(a) Purpose. The purpose of the bingo advisory committee is to advise the Commission on the needs and problems of the state's bingo industry; report to the Commission on the committee's activities; and perform other duties as determined by the Commission.

(b) Composition. The following appointments shall be made representing a balance of interests: General Public-2; Charities that operate bingo games-3; Lessor, Charity-1; Lessor, Commercial-2; Distributor/Manufacturer-1. A total of nine members will be appointed by the Commission. Each member will be appointed for a one-year term and will serve at the pleasure of the Commission.

(c) Officers Annually, the Commission shall appoint a Chair. Also, the Commission will appoint a vice-chair. The chair

will conduct meetings and general business. The vice-chair will conduct meetings and general business in the absence of the chairperson.

(d) Reports. The Committee will report, at a minimum, quarterly to the Commission on the Committee's activities, and, more frequently as deemed appropriate and necessary by the committee chairperson.

(e) Meetings. The committee shall meet quarterly or at the call of the Commission. All committee meetings shall be held at the Texas Lottery Commission headquarters in Austin and be open meetings in accordance with the Open Meetings Act, Texas Government Code Annotated Chapter 551. The committee shall keep minutes of each meeting. The minutes shall be approved at the next following meeting, shall reflect all formal action taken by the committee, and shall be filed, upon approval, with the Executive Director, who is the custodian of all Commission records.

(f) Attendance. The failure by any committee member to attend two consecutive regular quarterly meetings, for any reason, may be cause for removal by the Commission. No proxy voting shall be allowed. A member may not substitute another person in his/her absence.

(g) Criminal History Review. All committee members must meet the criminal history standards set out in Texas Revised Civil Statutes, Article 176d, §13(c)(2) ("Bingo Enabling Act") to be qualified for appointment to the committee. A member who fails to meet such criminal history standards will be disqualified from serving on the committee and will be removed from the committee.

(h) Compensation and Travel Expenses. A member of the committee is entitled to reimbursement for reasonable expenses. Reasonable expenses shall be limited to those expenses set out in the current Appropriations Act and shall be reimbursed in accordance with the current Appropriations Act. Committee members shall submit expenses on a form provided by the Commission and shall be accompanied by appropriate receipts. Expenses, other than expenses incurred as a result of attending the four quarterly meetings, must be submitted to the Commission for prior approval.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 13, 1995.

TRD-9501811 Kimberly L. Kiplin
General Counsel
Texas Lottery Commission

Effective date: March 6, 1995

Proposal publication date: November 22, 1994

For further information, please call: (512) 323-3791

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# TITLE 25. HEALTH SERVICES

## Part II. Texas Department of Mental Health and Mental Retardation

## Chapter 401. System Administration

### Subchapter B. Interagency Agreements

**• 25 TAC §401.59**

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §401.59, concerning Interagency Agreements, with changes to the proposed text as published in the October 4, 1994, issue of the *Texas Register* (19 TexReg 7873). Changes have been made to the text of the memorandum of understanding (MOU) between TDMHMR, the Texas Department of Criminal Justice (TDCJ), and representatives of local mental health and/or mental retardation authorities which is adopted in the section as Exhibit P, subsection (a).

The MOU complies with the Texas Health and Safety Code, §614.013, which requires the signatories to describe their respective responsibilities for establishing a continuity of care and service system for offenders with mental impairments in the criminal justice system.

In section one of the MOU, language has been added specifying that the provisions of the MOU are to be implemented using funds appropriated by the legislature for that purpose; similar language in section 2(k) has been deleted. In section two language relating to the MOU being required as set forth in statute has been deleted as redundant; similar language already is included in section one. In item 2(b) of the MOU, language has been deleted which specified that this agency's definitions of mental illness and mental retardation were to be followed by all signatories in matters relating to provisions of the MOU; similar language already appears in the introduction to the MOU. In addition, language in item 2(b) relating to the exchange of information without the consent of the individuals involved was deleted. The language in item 2(k) of the MOU was deleted and moved to section one. New language was added as item 2(l) which requires the signatories to provide technical assistance and professional consultation regarding services and eligibility requirements.

Language was added in section 3(a) which states that in addition to specific information which is required by the MOU to be included an information base designed by TDCJ that any other types of information which may be deemed necessary by the signatories may be included.

In section 4 of the MOU, language was added clarifying that TDMHMR will include a provision in contracts with community MHMR authorities and/or centers and in department rules that state funding can include screening and assessment within local jails.

Language in item 5(f) has been modified to clarify that community MHMR authorities or centers shall enter into good faith negotiations with local and state criminal justice entities to contract for criminal justice system funding for persons who are not included in the TDMHMR priority population.

A technical revisions in item 6(b) in which a reference to the Texas Council on Offenders with Mental Impairments is revised to read simply Council consistent with prior usage in the MOU.

The MOU is required by Senate Bill 252, 73rd Legislature, as codified in the Texas Health and Safety Code, §614.013, and concerns Continuity of Care for Offenders with Mental Impairments.

A public hearing was held on October 26, 1994, in Austin; testimony was presented by Advocacy, Inc., Austin. During the public comment period, written comments were received from Andrews Center, Tyler; Central Plains Center for Mental Health, Mental Retardation and Substance Abuse, Plainview; Denton County MHMR Center, Denton; Life Management Center for MH/MR Services, El Paso; Riceland Regional Mental Health Authority, Wharton; and Texas Mental Health Consumers, Austin.

Two commenters disputed the fiscal impact statement in the proposal preamble which stated that there will be no significant fiscal impact on state government as a result of implementing the MOU. One of the commenters questioned why the fiscal note did not address the impact on local government. The department affirms the validity of the fiscal impact statement and responds that language has been added to the MOU in items 1(b), 4(f), and 5(f) reiterating that the services described are to be provided with any funds that may be appropriated by the legislature for that purpose. The department also notes that language pertaining to local government from the fiscal note was an unintentional oversight; Ms. Rose's finding was that there would be no significant fiscal impact on either state or local government as a result of implementing the MOU.

Another commenter stated that there will be hidden time and resource demands on community centers which conduct assessments of persons who have not pled guilty or been tried and convicted. The department responds that the MOU specifies that these services are only to be performed with funds appropriated for that purpose, so there cannot be any hidden time or resource demands.

Two commenters stated that the appropriate community center should be involved in discharge and aftercare planning when an individual is first admitted to a TDCJ facility and that contact should be maintained with that individual throughout incarceration to insure true continuity of care. The department responds that the intention of the MOU is to

provide for exactly these kinds of interactions to ensure continuity of care.

One commenter questioned whether TDCJ psychologists who make determinations of mental retardation will conduct the proper research to substantiate the onset before age 18. The department responds that the Texas Health and Safety Code, §593.004 requires that all physicians and psychologists who make determinations of mental retardation must do so using forms developed by the department. Those forms are attached to the applicable department rule, Chapter 405, Subchapter D of this title (relating to Determination of Mental Retardation for Admission to Mental Retardation Services).

One commenter suggested that the MOU should address the situation of those inmates currently residing in county jails who are the responsibility of TDCJ, noting that the existence of these inmates in county jails continues to be a burden to the counties and that without specific provisions the operational aspects of this MOU may default to become a financial burden for local authorities. The department responds that these suggestions will be taken into account in the implementation phase of this MOU, but that language specifically addressing this issue is beyond the scope and intention of this MOU.

A commenter questioned what type of community center staff should be anticipated to provide liaison, assessment, and aftercare services. The department responds that the training, education, and assignments of community center staff necessary to implement the continuity of care service system are expected to be very similar to that of the staff who currently provide services to a community centers clientele.

Three commenters questioned who is to determine eligibility for community center services and correct diagnosis. The department responds that the purpose of the MOU is to establish a continuity of care system for this population which includes a system which provides necessary assessments and diagnostics. Nothing in this MOU requires centers to provide services to persons outside the priority population unless funds are provided by the TDCJ for that purpose. Item 5(e) of MOU requires that community centers receive referrals only for those persons who meet the priority population definition and are in need of treatment services Additional clarifying language has been added in (f) of that item.

A commenter suggested that local MHMR authorities should be permitted to make changes in the model statement of understanding. The commenter further suggested that local MHMR authorities should negotiate with their local TDCJ counterparts. The department responds that the MOU is not a model statement but rather is a statewide and systemwide agreement between two service delivery systems. Therefore, changes may not be made on a piecemeal basis by local MHMR authorities. Regarding the second suggestion, the department notes that the statute requires that the two agencies should enter into a single MOU in concert with representatives of local MHMR authorities to develop a single, statewide continuity of care system.

A commenter stated that the MOU is inconsistent and potentially misleading in that it indicates no additional expense will be incurred as a result of implementing its provisions. The commenter further stated that the MOU assumes that community centers have excess provider capacity and then compel the MHMR authorities to seek federal funds. The department responds that both this agency and TDCJ are aware that the implementation of the provisions will require additional funding and note that, in fact, the statute acknowledges that the continuity of care system is to be operated with funds appropriated for that purpose (Texas Health and Safety Code, §614.013(e)(i)). However, no such funds were appropriated by the legislature. In addition, the requirement to seek federal grants or funds for operating of the system applies equally to TDMHMR and TDCJ, as well as the local MHMR authorities.

One commenter expressed concern about the provision of appropriate support systems for this population to assure better medical followup, especially as it relates to the administration of medication. The department responds that the express purpose of this MOU is to design a continuity of care system for offenders with mental impairments so that better support systems may be developed.

A commenter suggested that the MOU should clearly delineate whether the provisions apply to local jails and law enforcement agencies. The department responds that the local jails and local law enforcement agencies were not included by statute in this MOU, but that the Texas Council for Offenders with Mental Impairments (TCOMI) shall serve as the dispute resolution mechanism in the event that conflicts with the local level arise.

A commenter recommended that to avoid confusion the language in the second bullet of item 1(a) be changed consistent with the statutory language in the Texas Health and Safety Code, §614.013(b)(2). The department responds that the potential for ambiguity is approximately equal with either word choice and that the wording of the MOU is less colloquial. Therefore, the department declines to make the change.

A commenter asked what additional funding sources will be available to assist in the tracking, monitoring, and eventual provision of services under the MOU. The department responds that, at present, no additional funding has been provided by the legislature through either TDMHMR or TDCJ. Language has been added in items 1(b), 4(f), and 5(f) of the MOU to clarify that the requirements of the MOU are to met with any additional funding which may be appropriated by the legislature for that purpose.

A commenter stated that item 2(a) repeats information contained in section 1 and should be deleted. The department agrees and has deleted the provision as requested.

Two commenters suggested that in item 2(b) the fact that a person is incarcerated does not justify the exchange of information without the individual's consent. They also noted that in (e) and (g) of that same section the language promoting a streamlined process for obtaining consent to release information was inconsistent with the agencies' stated intent of changing the consent statutes. The department responds that the provision merely directs the agencies to seek a statutory change which would facilitate the exchange of information. The reference in proposed 2(b) to the exchange of information without consent has been deleted. TDMHMR, TDCJ, and the Texas Council on Offenders with Mental Impairments will take the comments into consideration and the appropriate advocacy and consumer organizations will be consulted as the revised statutory language is developed.

Regarding the same provisions, a third commenter suggested adding language to item 2(b) and (g) to specify that exchange of information without the mentally impaired offender's consent would be permissible only if the individual had been convicted and only in psychiatric/medical emergencies. The department responds that this suggestion also will be taken into consideration as the revised statutory language is developed.

One commenter recommended that the language in items 2(c) and (d) should be incorporated into item 2(k) so that it is clear that the those provisions are to be carried out "with funds appropriated for that purpose. The department recognizes the commenter's concern and has chosen to address the issue by deleting item 2(k) and incorporating the "funds appropriated for that purpose" language into new item 1(b).

A commenter recommended that the standardized release of information form referenced in item 2(g) should be completed immediately upon the admission and again upon release of the individual from the services of each agency. The department responds that this suggestion will be taken into account in the implementation phase of this MOU.

A commenter stated that the provisions of item 2(d), (j), (k), and (l), as well as of section 5(e) ignore or minimize the fact that accurately identifying persons with mental illness in this population is challenging and time-consuming and that no simple or inexpensive means exists of differentiating malingering and other forms of distortion from true mental illness. In addition, the commenter stated that the most experienced and best trained staff, whose time is the most expensive to bill, should be used to accurately assess a population with an obvious motivation to fake mental impairments. This, the commenter asserted, constitutes a hidden cost that is inevitable if such assessments are done carefully and properly. The department acknowledges that this process will be neither simple nor inexpensive, that there will be no hidden costs because the MOU specifically states that these functions will be performed with funds appropriated for that purpose.

A commenter suggests that the contact listed required in 2(e) should include the name, address, and phone number of the contact staff by agency and county. The department agrees.

A commenter suggested that the training seminar and/or educational information required in item 2(f) should be a collaborative effort in both the development of the materi-

als as well as the actual training. The commenter further suggested that the agencies consider the use of teleconferencing technology when providing the training to result in the most effective use of funding and staff time. The department acknowledges the suggestion.

One commenter stated that the "funds appropriated for that purpose," as described in item 2(k) of the MOU, need to be identified along with who is responsible for the funds and the purpose for which the funds are to be expended. The department responds that, as was explained in the response immediately preceding this one, the legislature did not appropriate any funds to implement the provisions of the MOU but did require that the continuity of care system was to be operated "with funds appropriated for that purpose." When and if funds are appropriated, it will be obvious who is responsible for expending them.

A commenter commented that in item 2(m) the MOU avoids the issue of whether offenders should be prioritized for assessment and treatment by community centers, adding that the issue is particularly thorny when the mental impairment does not place the offender in the department's priority population. The department responds that the MOU specifically states that persons in the priority population are to be placed on waiting lists for services. Persons who are not in the priority population may only be served under contract with TDCJ funding.

A commenter suggested that in item 3(a) the information base should break out the number of offenders by county. The department responds that the second bullet in item 3(a) does require inclusion in the information base of "the county of residence to which these individuals reside or will return to upon release from incarceration." Another commenter recommended adding language to this provision requiring that the information base contain information about the entity responsible for services in the community, suggested treatment modalities, actual services provided, the number of individuals who were offered services and refused to participate. The department responds that a fifth bullet has been added to item 3(a) requiring the inclusion of any other information deemed by TDCJ to be necessary to implement the continuity of care system.

A commenter requested that a statement be included in section 4 which places the funding responsibility for the activities in this section on TDMHMR and requires the department to reimbursement the local authorities for any expenses they may incur for these activities. The department responds that language has been added in section 1 which applies to all provisions of contained in the MOU and which states that the requirements and activities described in the MOU are to be carried out with funds appropriated for that purpose.

A commenter stated that waiting lists as described in items 4(e) and 5(c) and (e) for persons on parole are not acceptable as individuals in this group are more at risk and should be prioritized. The department responds that funds were not appropriated by the legislature to either TDMHMR or TDCJ for the purpose of providing services to this population. As for the suggestion that mentally impaired offenders be given priority status the department responds that at this point no statutory authority exists for prioritizing this population over other persons in TDMHMR's priority population. Another commenter questioned how community centers are to track the incarceration of individuals on their waiting lists as required by item 5(c). The department responds that the logistics of the implementation of the MOU will vary depending upon the situation in each local system.

A commenter recommended that the requirements in items 5(a), (b), and (c) should be the responsibility of TDMHMR and TDCJ and that the two agencies should devise some method to electronically cross-reference the information. The department responds that the crucial information referenced in the three items is in the hands of the local authorities not the two agencies, and therefore, declines to make the suggested change. The commenter further stated that for local authorities to accomplish the requirements in these three sections would necessitate changes in workload for staff, report formats, MIS and other records management that are budget neutral. The department responds that these, as is true with all other provisions of the MOU, are to be accomplished with funds appropriated for those purposes.

A commenter stated that in item 5(f) TDCJ funding for services to mentally impaired offenders who do not meet the priority population criteria should be mandatory. The department responds that while the legislature required the development of an MOU to describe the responsibilities of TDMHMR, TDCJ, and the local MHMR authorities in establishing a continuity of care system for mentally impaired offenders (Texas Health and Safety Code, §614.013), it did not appropriate funds to implement the system. In addition, the department notes that paragraph (e)(1) of the legislation states that the system is to be operated "with funds appropriated for that purpose." Paragraph (e)(2) of the legislation directs the entities to "actively seek federal grants or funds." Language has been added in items 1(b) and 4(f) and existing language modified in item 5(f) to clarify that continuity of care services are to be provided with any funds that may be appropriated for that purpose.

Also regarding item 5(f) a commenter suggested that the language in that provisions be revised to say "engage in good faith negotiations" instead of "accept contracts from" while a second commenter suggested substituting the more permissive "receive and review" or "entertain request for." The department agrees and has modified the language to clarify that community MHMR authorities or centers shall engage in good faith negotiations

Two commenters suggested in relation to 6(a) that advocates, family members, and the offenders should have a role along with the two agencies and the community centers in monitoring the implementation of the continuity of care system and should be kept informed of the outcome of the monitoring process. The department responds that language was added to the MOU specifying that the TCOMI will serve as the dispute resolution mechanism for the implementation of this MOU. Advocates, family members and offenders have open access to TCOMI meetings at which they may provide input.

A commenter stated that item 6(b) is another provision which is not revenue neutral since the staff time required to collect, review, and analyze information and to prepare status reports translates into expense for the local authorities. The commenter further observed that the TDMHMR Central Office should be able to make the connection between the amount of paper produced via information gathering, analysis, and reporting and the dollars paid to produce it. The commenter suggested that this activity also be included under the statutory structure of "funds appropriated for that purpose. " The department agrees that time is money and is made aware on a daily basis that there is a connection between the paper produced in reports and the dollars necessary to produce it. Language has been added in the first section of the MOU referencing "funds appropriated for that purpose.

The new section is adopted under the Texas Health and Safety Code, §532. 015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; §614.013 of the code which requires the department to adopt the MOU by rule; and Texas Civil Statutes, Article 4413(502), §15 provides THHSC with the authority to review all proposed rules of health and human service agencies.

*§401.59. Continuity of Care System for Offenders with Mental Impairments.*

(a) The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the following Exhibit P a memorandum of understanding (MOU) with the Texas Department of Criminal Justice and local mental health and/or mental retardation authorities concerning a continuity of care system for offenders with mental impairments.
Figure 1: 25 TAC §401.59(a)

(b) The MOU is required by the Texas Health and Safety Code, §614.013.

(c) Copies of the MOU are filed in the Office of Policy Development, Texas Department of Mental Health and Mental Retardation, 4405 North Lamar Boulevard, Austin, Texas 78756, and may be reviewed during regular business hours.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9501767 Ann Utley
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation

Effective date: March 3, 1995

Proposal publication date: October 4, 1994

For further information, please call: (512) 206-4516

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# Chapter 406. ICF/MR Programs

## Subchapter B. Contracting Requirements

### • 25 TAC §406.62

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts an amendment to §406.62, concerning contracting requirements, without changes to the proposed text as published in the December 30, 1994, issue of the *Texas Register* (19 TexReg 10413).

The amendment reflects technical revisions. The section now directs that a request for an appeals hearing is to be submitted to the commissioner or designee instead of the deputy commissioner for management and support. In addition, references to TXMHMR are revised to read TDMHMR.

A public hearing was held in Austin on January 10, 1995, to accept oral and written testimony from the public concerning the amendments and new sections. No testimony was provided concerning the amendment. No written comments were received in response to the proposal.

The amendment is adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and under the provisions of Texas Civil Statutes, Article 4413(502), §16, which provide the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9501766 Ann Utley
Chair, Texas MHMR Board
Texas Department of
Mental Health and
Mental Retardation

Effective date: March 3, 1995

Proposal publication date: December 30, 1994

For further information, please call: (512) 206-4516

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## Subchapter E. Eligibility and Review

### • 25 TAC §406.210

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts an amendment to §406.210, concerning eligibility and review, without changes to the proposed text as published in the December 30, 1994, issue of the *Texas Register* (19 TexReg 10420).

The amendment reflects technical revisions which modify the procedure by which the department will reconsider requests for payment when level-of-care documentation is not current for a ICF/MR resident who is eligible for services and has received those services. The section now specifies that payment will be considered only for services delivered after January 1, 1994, and then only if the request is submitted no later than 12 months after the date the services were delivered. In addition, references to TXMHMR are revised to read TDMHMR or its agent, and a reference to rules of the Texas Department of Human Services has been revised to reference TDMHMR rules governing contracting requirements.

A public hearing was held in Austin on January 10, 1995, to accept oral and written testimony from the public concerning the amendments and new sections. No testimony was provided concerning the amendment. No written comments were received in response to the proposal.

The amendment is adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and under the provisions of Texas Civil Statutes, Article 4413(502), §16, which provide the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9501765 Ann Utley
Chair, Texas MHMR Board
Texas Department of
Mental Health and
Mental Retardation

Effective date: March 3, 1995

Proposal publication date: December 30, 1994

For further information, please call: (512) 206-4516

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# Chapter 407. Internal Facilities Management

## Public Records

### • 25 TAC §§407.151-407.159

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts new §§407.151-407.159, concerning public records. Section 407.153 and §409.156 are adopted with changes to the proposed text as published in the October 18, 1994, issue of the *Texas Register* (19 TexReg 8279). Sections 407.151, 407.152, 407.154, 407.155, and 407.157-407.159 are adopted without changes and will not be republished.

The new sections fulfill the requirements of the Texas Civil Statutes, Article 6252-17a, §9A(b). (Section 5 of Acts 1993, 73rd Legislature, Chapter 428, effective August 30, 1993, adds §9A to Texas Civil Statutes, Article 6252-17a, without reference to the repeal of said article by Acts 1993, 73rd Legislature, Chapter 268, §46(1).) These sections direct each state agency to adopt rules specifying the charges the agency will make for copies of public records.

The definition of "readily available information" in §407.153 has been modified to exclude information that already exists on microfiche or microfilm. Minor clarifying language has been added to §407.156(a)(2)(E).

The department received one public comment from Hunt County Family Services, a community mental health and mental retardation center in Greenville. The commenter expressed concern that language meant to prohibit an activity, (i.e., "may not") could be misinterpreted as permissive. The department stresses that the term "may not" was not intended to be permissive and should not be interpreted as such. (The term "may" by itself (without "not") indicates permissiveness.) For guidance, the department relies on the *Texas Legislative Council Drafting Manual*, Section 7.60, at 7-37 (1985), which states: "Use 'may not' to denote a prohibition."

The new sections are adopted under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking authority.

*§407.153. Definitions.* The following words and terms, when used in this undesignated head, have the following meanings, unless the context clearly indicates otherwise.

Department–The Texas Department of Mental Health and Mental Retardation.

Nonstandard-size copy–A copy of public information that is made available to a requestor in any format other than a standard-size paper copy. Microfiche, microfilm, diskettes, magnetic tapes, CD-ROM, and nonstandard-size paper copies are examples of nonstandard-size copies.

Readily available information–Information that already exists in printed form, or information that is stored electronically and is ready to be printed or copied without requiring any programming. Information that requires a substantial amount of time to locate or prepare for release is not readily available information.

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

*§407.156. Charges for Providing Copies of Public Information.*

(a) Copy charge.

(1) Standard-size copy. The charge for standard-size paper copies reproduced by an office machine copier or a computer printer is $.10 per page.

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

(A) diskette-$1.00 each;

(B) computer magnetic tape-$10 each;

(C) VHS video tape cassette-$2.50 each;

(D) audio cassette-$1.00 each; and

(E) paper copy (any size larger than 8 1/2 by 14 inches)-$.50 each.

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

(b) Personnel charge.

(1) The charge for personnel costs incurred in processing a request for public information is $15 an hour. Where applicable, the personnel charge should be prorated to recover the cost for personnel time spent to take requests, locate documents, and reproduce requested information.

(2) A personnel charge may not be billed in connection with complying with requests that are for 50 or fewer pages of readily available information in standard-size form.

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

(A) to determine whether the department will raise any exceptions to disclosure of the requested information under Subchapter C of the Open Records Act; or

(B) to research or prepare a request for a ruling by the attorney general's office pursuant to Subchapter G of the Open Records Act.

(c) Overhead charge.

(1) In response to a request either for information that is not readily available or for information in excess of 50 pages of readily available information, the department may include in the charges direct and indirect costs, in addition to the personnel charge. This overhead charge covers such costs as depreciation of capital assets, rent, maintenance and repair, utilities, and administrative overhead and is made in accordance with the methodology described in paragraph (3) of this subsection.

(2) An overhead charge may not be made for requests for copies of 50 pages or less of readily available information in standard-size form.

(3) The overhead charge is computed at 20% of the charge made to cover personnel costs associated with a particular request. For example, if one hour of personnel time is expended to respond to a particular request, the personnel charge would be $15 and the overhead charge would be $3.00.

(d) Microfiche and microfilm charge.

(1) Actual copies of the fiche or film. If the department has available copies of the requested information on fiche or film, then the charge to the requestor is the same as what the department paid to have that copy made. If the department does not have copies available, and the information that is on the fiche or film can be released in its entirety, then the department may have a copy of the fiche or film made and charge the requestor the cost of having that copy made.

(2) Paper copies of fiche or film. If a master copy of information in microform is maintained, the charge is $.10 per page for standard-size paper plus a charge to cover any personnel time spent in making the paper copies.

(e) Remote document retrieval charge.

(1) Due to limited on-site capacity of storage of documents, it is frequently necessary to store information that is not in current use at remote storage locations. To the extent that the retrieval of documents results in an actual charge to the department in order to comply with a request, then the department may recover the costs of such charge.

(2) Such charge shall be waived if the request is for 50 pages or fewer of readily available information in standard-size form.

(f) Computer resource charge.

(1) The computer resource charge is a utilization charge for computers based on the amortized cost of acquisition, lease, operation, and maintenance of computer resources, which might include, but is not limited to, some or all of the following:

(A) central processing units (CPUs);

(B) servers;

(C) disk drives;

(D) local area networks (LANs);

(E) printers;

(F) tape drives;

(G) other peripheral devices;

(H) communications devices;

(I) software; and

(J) system utilities.

(2) Utilizing the following charges, the department shall determine which category of computer type most closely fits the one used to provide the requested information.

(A) Mainframe-$17.50 per minute.

(B) Midrange-$3.00 per minute.

(C) Client/Server-$1.00 per minute.

(D) PC or LAN-$.50 per minute.

(3) The charge made to recover the computer utilization cost is the actual time the computer takes to execute a particular program multiplied by the applicable rate. The CPU charge is not meant to apply to programming or printing time; rather, it is solely to recover costs associated with the actual time required by the computer to execute a program. This time frame most frequently will be a matter of seconds. If programming is required to comply with a particular request, the appropriate charge that may be recovered for programming time is set forth in subsection (g) of this section. No charge may be made for computer print-out time. For example, the computer resource charge for a request that takes 20 seconds to execute on a mainframe system would be $5.83.

(g) Programming time. If a particular request requires a programmer to enter data in order to execute an existing program or to create a new program so that the requested information may be accessed, the department may charge $26 an hour for the

programmer's time. Any charge for programming time shall be prorated. Only programming services shall be charged at this hourly rate. Any personnel time spent in performing services other than programming should be charged at the rate specified for personnel as described in subsection (b) of this section.

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

(i) Postal and shipping charges. The department may add any related postal or shipping expenses which are necessary to deliver the reproduced information to the requesting party.

(j) Fax charge. The charge for a fax transmitted locally is $.10 per page. The charge for long distance transmission is $.50 per page for a fax sent within the sender's area code, and $1.00 per page for a fax transmitted to a different area code.

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9501761 Ann Utley
Chair, Texas MHMR Board
Texas Department of
Mental Health and
Mental Retardation

Effective date: March 3, 1995

Proposal publication date: October 18, 1994

For further information, please call: (512) 206-4516

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# Chapter 409. Medicaid Programs

## Subchapter B. Contract Appeals

### • 25 TAC §409.31

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts the repeal of §409.31, concerning contract appeals, without changes to the proposed text as published in the January 3, 1995, issue of the *Texas Register* (20 TexReg 11).

The section is repealed to permit of the adoption of a new section concerning general specifications which is adopted contemporaneously in this issue of the *Texas Register.*

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and under the provisions of Texas Civil Statutes, Article 4413(502), §16, which provide the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9501763 Ann Utley
Chair, Texas MHMR Board
Texas Department of
Mental Health and
Mental Retardation

Effective date: March 3, 1995

Proposal publication date: January 3, 1995

For further information, please call: (512) 206-4516

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The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts new §409.31, concerning contract appeals, without changes to the proposed text as published in the January 3, 1995, issue of the *Texas Register* (20 TexReg 11). The repeal of existing §409.031 concerning the same matters, is published contemporaneously in this issue of the *Texas Register.*

The new section applies the provisions of the subchapter to all Medicaid programs administered by the Texas Department of Mental Health and Mental Retardation.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Health and Safety Code, §532. 015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and under the provisions of Texas Civil Statutes, Article 4413(502), §16, which provide the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9501764 Ann Utley
Chair, Texas MHMR Board
Texas Department of
Mental Health and
Mental Retardation

Effective date: March 3, 1995

Proposal publication date: January 3, 1995

For further information, please call: (512) 206-4516

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## Subchapter D. Home and Community-based Services

### • 25 TAC §409.101, §409.103

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts amendments to §409.101 and §409.103, concerning home and community-based services (HCS), without changes to the proposed text as published in the December 30, 1994, issue of the *Texas Register* (19 TexReg 10446)

The amendments to §409.101 and §409.103 respond to clarifications by the Health Care Financing Administration regarding written approval of individual plans of care; implement state laws requiring refinancing of residential services, incorporate changes for waiver renewal that permit reimbursement for adaptive aids and minor home modifications and to simplify the consumer enrollment process.

A public hearing was held in Austin on January 10, 1995, to accept oral and written testimony from the public concerning the amendments and new sections. No testimony was provided concerning these amendments No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Health and Safety Code, §532. 015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and under the provisions of Texas Civil Statutes, Article 4413(502), §16, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9501762 Ann Utley
Chair, Texas MHMR Board
Texas Department of
Mental Health and
Mental Retardation

Effective date: March 3, 1995

Proposal publication date: December 30, 1994

For further information, please call: (512) 206-4516

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# TITLE 28. INSURANCE

## Part I. Texas Department of Insurance

### Chapter 3. Life, Accident, and Health Insurance and Accident, and Health Insurance and Annuities

### Subchapter M. Minimum Valuation Standards For Plans with Varying Nonforfeiture Benefits

**• 28 TAC §§3.1201-3.1204**

The Texas Department of Insurance adopts amendments to §3.1201 and §3. 1202, and new §3.1203 and §3.1204. Section 3.1203 is adopted with changes to the proposed text as published in the October 18, 1994, issue of the *Texas Register* (19 TexReg 8282). Sections 3.1201, 3.1202 and 3.1204 are adopted without changes and will not be republished.

The amendments change the reserve requirement for certain annuity contracts which provide for the waiver of surrender charges if the annuitant is disabled or is confined in a nursing home or hospital. The changes clarify the section. None of the changes introduce new subject matter nor enlarge the scope of the proposal as originally published

The amendments and new sections clarify the application of Subchapter M, Minimum Valuation Standards For Plans with Varying Nonforfeiture Benefits to certain annuity products with surrender charges that can be waived if the annuitant becomes disabled or is confined in a nursing home or hospital, and reduce the reserve requirements for these products. Subchapter M restricts reduction of reserves relating to surrender charges to assure the maintenance of adequate reserves. These products lack the characteristic that would allow a substantial number of policyholders to surrender their policies at the same time, therefore such products do not need to be reserved on the same basis as those that do have the characteristic that would allow all policyholders to surrender at once. Section 3.1203 has been reformatted and clarified to explain when the reduction in reserves is available to a company and to state the dates when a company must be in compliance with the new section's requirements for uniform policy form provisions as a condition to using the reduced reserve requirement.

The amendment to §3.1201 improves clarity. The publication of the proposed text did not reflect "...or a portion of it ..." in subsection (a)(1) as new language. Section 3.1202 is amended to limit its application to life insurance contracts. New §3.1203 allows the reserves for annuity contracts or annuity riders attached to life insurance contracts with a provision waiving surrender charges to be calculated at a lesser amount than required by new §3.1204, provided that certain characteristics are met. It also requires existing, approved policy forms to be amended by June 30, 1995, and new policy forms to comply with the section by March 30, 1995. New §3.1204 requires reserves for annuity contracts or annuity riders attached to life insurance contracts within the scope of §3.1201, but under which not all the characteristics described in §3.1203 are met, to be computed on the assumption that the cash surrender value at every duration is the maximum guaranteed amount specified under the contract.

One comment in favor of the amendments was received.

Lutheran Brotherhood, a fraternal insurance company, commented.

The amendments and new sections are adopted under the Insurance Code, Articles 3.28 and 1.03A. Article 3.28, §11, authorizes the Commissioner to adopt regulations for the computation of reserves consistent with the Standard Valuation Law when any plan of life insurance or annuity is of such a nature that the minimum reserves cannot be determined by the methods described in the Insurance Code, Article 3.28, §§6, 7 or 10. Article 1.03A authorizes the Commissioner to determine rules for general and uniform application for the conduct and execution of the duties and functions of the department.

*§3.1203. Minimum Valuation Standards for Certain Annuity Contracts and Annuity Riders.*

(a) Reserves for annuity contracts or for annuity riders attached to life insurance contracts that have been approved by the department prior to December 31, 1994, and that contain a provision waiving surrender charges only on the condition that the annuitant becomes disabled or is confined in a hospital or nursing home for not less than 30 days, may be calculated with a reduction for such surrender charges by establishing a separate additional reserve for the waiver of surrender charge based on tables of disability, morbidity or mortality appropriate for determining liability for the benefits provided. Such disability, morbidity or mortality tables shall be certified as appropriate by a member of the American Academy of Actuaries and approved by the department under the Insurance Code, Article 3.28, §(3)(g). The insurer shall file with the department the basis of reserves for any annuity contract or annuity rider attached to a life insurance contract providing for a waiver of surrender charge along with such annuity contract or annuity rider to be considered under this section.

(b) Reserves for annuity contracts or for annuity riders attached to life insurance contracts that contain a provision waiving surrender charges only on the condition that the annuitant becomes disabled or is confined in a hospital or nursing home for not less than 30 days, may be calculated with a reduction for such surrender charges by complying with paragraphs (1)-(4) of this subsection.

(1) A separate additional reserve for the waiver of surrender charge is established and is based on tables of disability, morbidity or mortality appropriate for determining liability for the benefits provided. Such disability, morbidity or mortality tables shall be certified as appropriate by a member of the American Academy of Actuaries and approved by the department under the Insurance Code, Article 3.28, §(3)(g). The insurer shall file with the department the basis of reserves for any annuity contract or annuity rider attached to a life insurance contract providing for a waiver of surrender charge along with such annuity contract or annuity rider to be considered under this section.

(2) The terms "disability," "nursing home," or "hospital," as applicable, are defined in the annuity contract or annuity rider. "Nursing home" may be defined to include a convalescent nursing home, a residential care or intermediate nursing facility. Each definition shall be at least as restrictive as the corresponding definitions in §3.129 of this title (relating to Acceleration of Benefits).

(3) The title of the provision for the waiver of surrender charges in the annuity contract or annuity rider (when it is based solely on the annuitant's disability or confinement in a hospital or nursing home) must uniquely describe the coverage provided by the annuity contract or annuity rider.

(4) The annuity contract or annuity rider shall clearly and concisely describe the requirements for disability, the conditions of care or confinement, and the proof required to substantiate eligibility for waiver of the surrender charge.

(c) Previously approved forms for annuity contracts or annuity riders attached to life insurance contracts must be amended to comply with subsection (b) of this section by June 30, 1995.

(d) Forms for annuity contracts or annuity riders attached to life insurance contracts that are submitted to the department for approval after March 30, 1995, must comply with subsection (b) of this section.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9501786 Mary Keller
Senior Associate Commissioner
Texas Department of Insurance

Effective date: March 3, 1995

Proposal publication date: October 18, 1994

For further information, please call: (512) 463-6327

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