Texas Register

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In This Issue...

VOLUME 17, NUMBER 28, PART I

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Information Available: The ten 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 Sections - sections adopted by state agencies on an emergency basis

Proposed Sections - sections proposed for adoption

Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date

Adopted Sections - sections adopted following a 30-day public comment period

Open Meetings - notices of open meetings

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

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes accumulative 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 a 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 17 (1992) is cited as follows: 17 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: "17 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 17 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, Austin. Material can be found using *Texas Register* indexes, the *Texas Administration Code*, section numbers, or TRD number.

Texas Administrative Code

The *Texas Administrative Code* (TAC) is the approved, collected volumes of Texas administrative rules.

How to Cite: Under the TAC scheme, each agency 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 rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

Texas Register Art Project

This program is sponsored by the *Texas Register* to promote the artistic abilities of Texas students, grades K-12, and to help students gain an insight into Texas government. The artwork is used to fill otherwise blank pages in the *Texas Register.* The blank pages are a result of the production process used to create the *Texas Register.* The artwork does not add additional pages and does not increase the cost of the *Texas Register.*

Texas Register Publications

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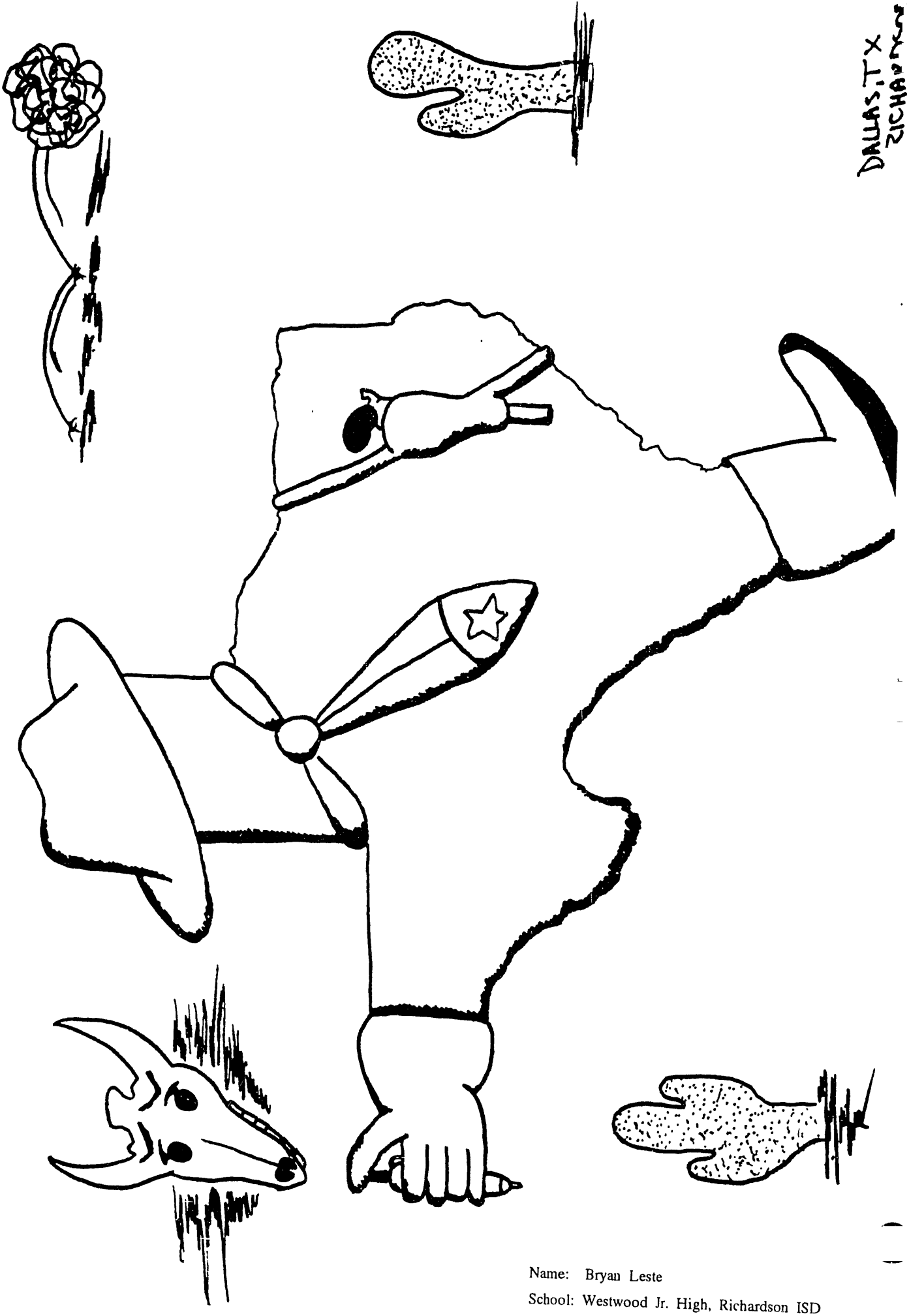
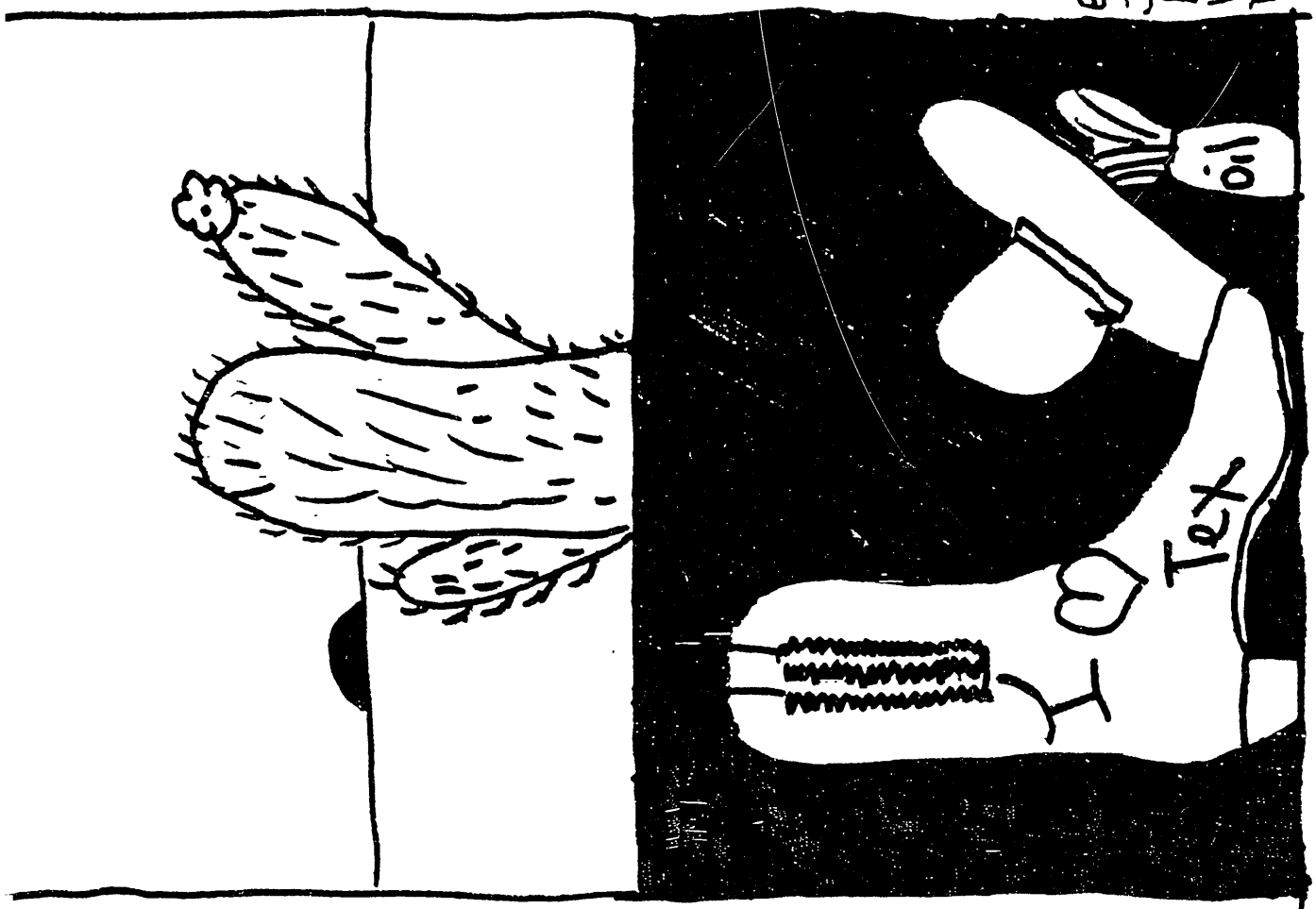
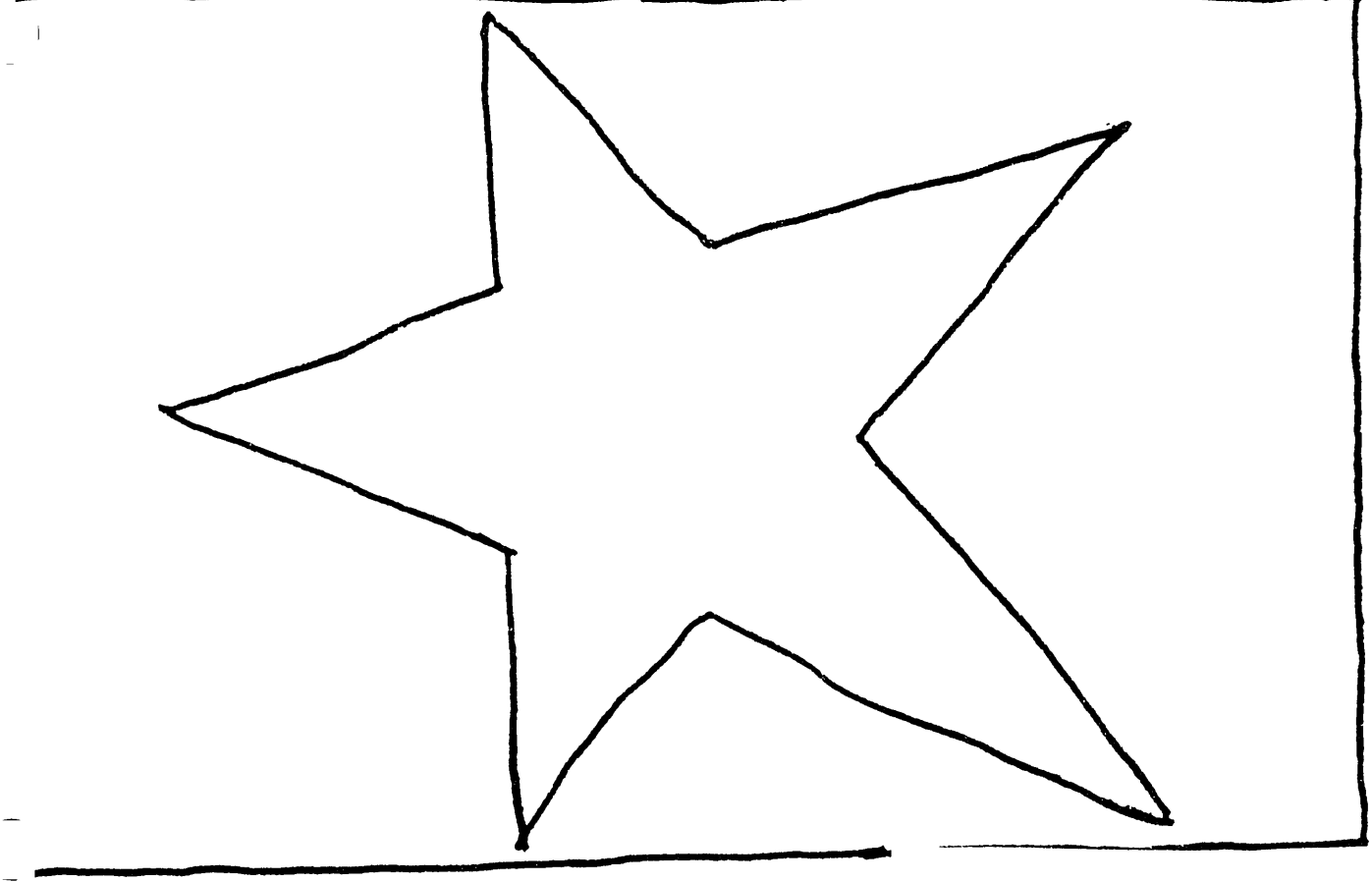


Name: Bryan Leste

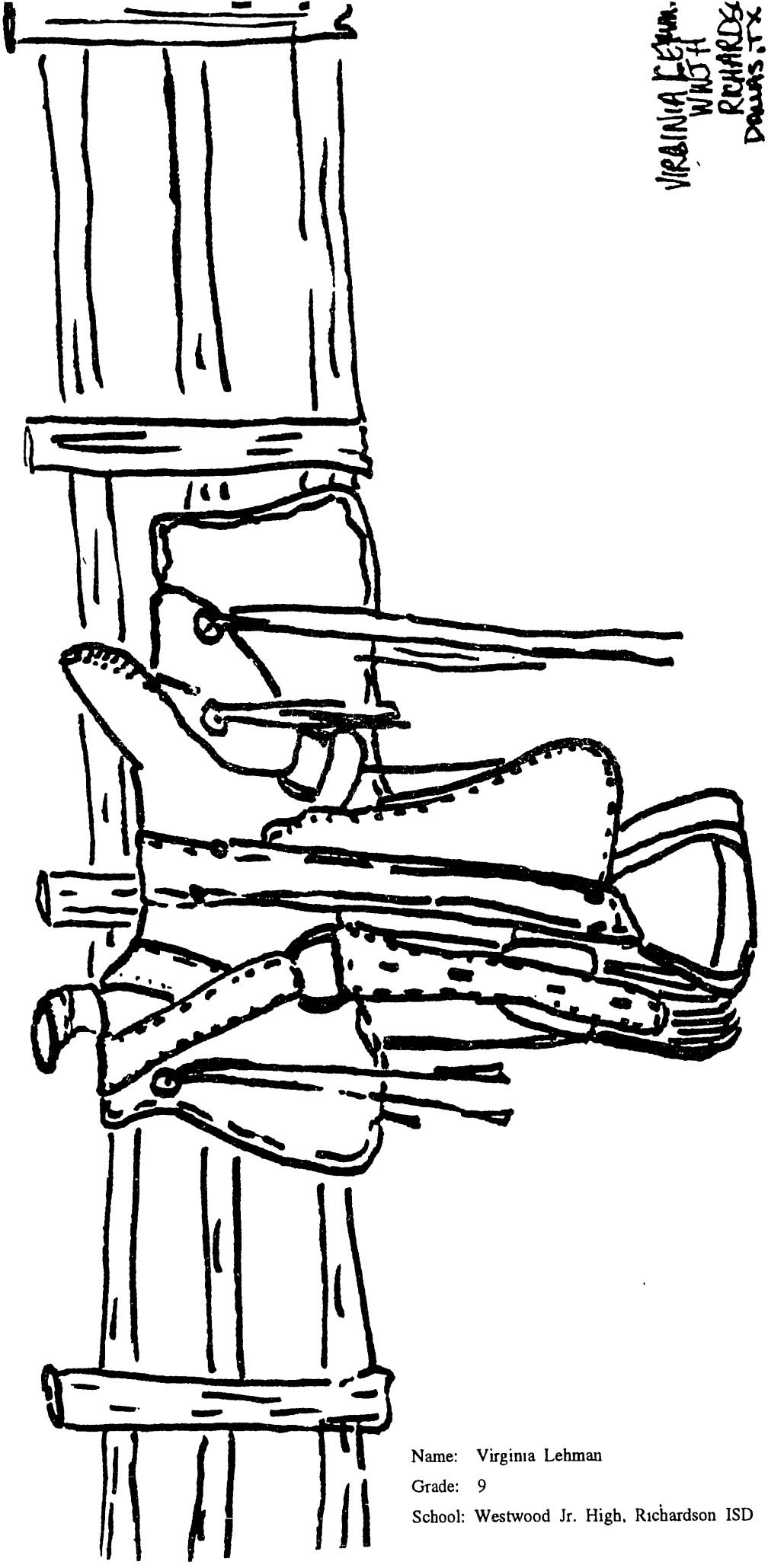
School: Westwood Jr. High, Richardson ISD





Name: Erica Jessup

School Westwood Jr. High, Richardson ISD



VIRGINIA LEHMAN
WJHS
RICHARDSON
DALLAS, TX

Name: Virginia Lehman

Grade: 9

School: Westwood Jr. High, Richardson ISD

Name Greg Price

School Westwood Jr. High, Richardson

K-9 Jr.

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) 463-1814.

Appointments Made April 6, 1992

To be **Branch Pilot for the Sabine Bar, Pass and Tributaries** for a term to expire January 18, 1996: Wayne Hamilton Parker, 4060 Highway 365 Apartment 207, Port Arthur, Texas 77642. Captain Parker is being reappointed.

To be **Branch Pilot for the Sabine Bar, Pass, and Tributaries** for a term to expire January 18, 1996: Leroy Rudolph Kurtz, 4030 Sunset, Port Arthur, Texas 77642. Captain Kurtz is being reappointed.

To be **Branch Pilot for the Sabine Bar, Pass and Tributaries** for a term to expire January 18, 1996: James Oliver Meeks, 124 Hardy, Nederland, Texas 77627. Captain Meeks is being reappointed.

To be a member of the **Texas State Board of Examiners of Psychologists** for a term to expire October 31, 1997: Lorraine E. Breckenridge, 4231 Sunset, Houston, Texas 77005. Dr. Breckenridge will be replacing Dr. Harold H. LeCrone, Jr. of Waco whose term expired.

To be a member of the **Texas Board on Aging** for a term to expire February 1, 1995: Reginald F. Garrett, 705 Woodland Hills Drive, Tyler, Texas 75701. Dr. Garrett will be filling the unexpired term of Dr. Gary R. Cook of Dallas who resigned.

Issued in Austin, Texas on April 8, 1992.

TRD-9204846 Ann W. Richards
Governor of Texas

♦ ♦ ♦

Appointments Made April 8, 1992

To be a member of the **Lamar University System Board of Regents** for a term to expire October 4, 1995: Lanny C. Haynes, P.O. Box 520, Vidor, Texas 77670-0520. Mr. Haynes will be filling the unexpired term of E. Linn Draper, Jr. of Beaumont, who resigned.

To be a member of the **Credit Union Commission** for a term to expire February 15, 1995: William Ruelle Parker, 6821 32nd Street, Groves, Texas 77619. Mr. Parker will be filling the unexpired term of Wilfred Navarro of Bastrop, who vacated this position on January 1, 1992.

To be a member of the **Texas Commission on Human Rights** for a term to expire September 24, 1997: Richard A. Solo, P.O. Box 45212, Dallas, Texas 75245. Mr. Solo will be replacing Mrs. Mallory Robinson of Houston, whose term expired.

To be a member of the **State Banking Board** for a term to expire January 31, 1993: Jane H. Macon, 230 West Elsmere, San Antonio, Texas 78205. Ms. Macon will be replacing Dr. George Willeford, III, whose term expired.

To be a member of the **State Board of Examiners of Marriage and Family Therapists** for a term to expire February 1, 1997: Leslie E. Goolishian, 1105 Harbor View Drive, Galveston, Texas 77550. Ms. Goolishian is being appointed to a new position pursuant to Senate Bill Number 181, 72nd Legislature.

To be a member of the **Texas Planning Council for Developmental Disabilities** for a term to expire February 1, 1995: Jan Reimann Newsom, 6040 Preston Haven, Dallas, Texas 75230. Ms. Newsom will be filling the unexpired term of James E. Vaughn of Humble, who vacated this position.

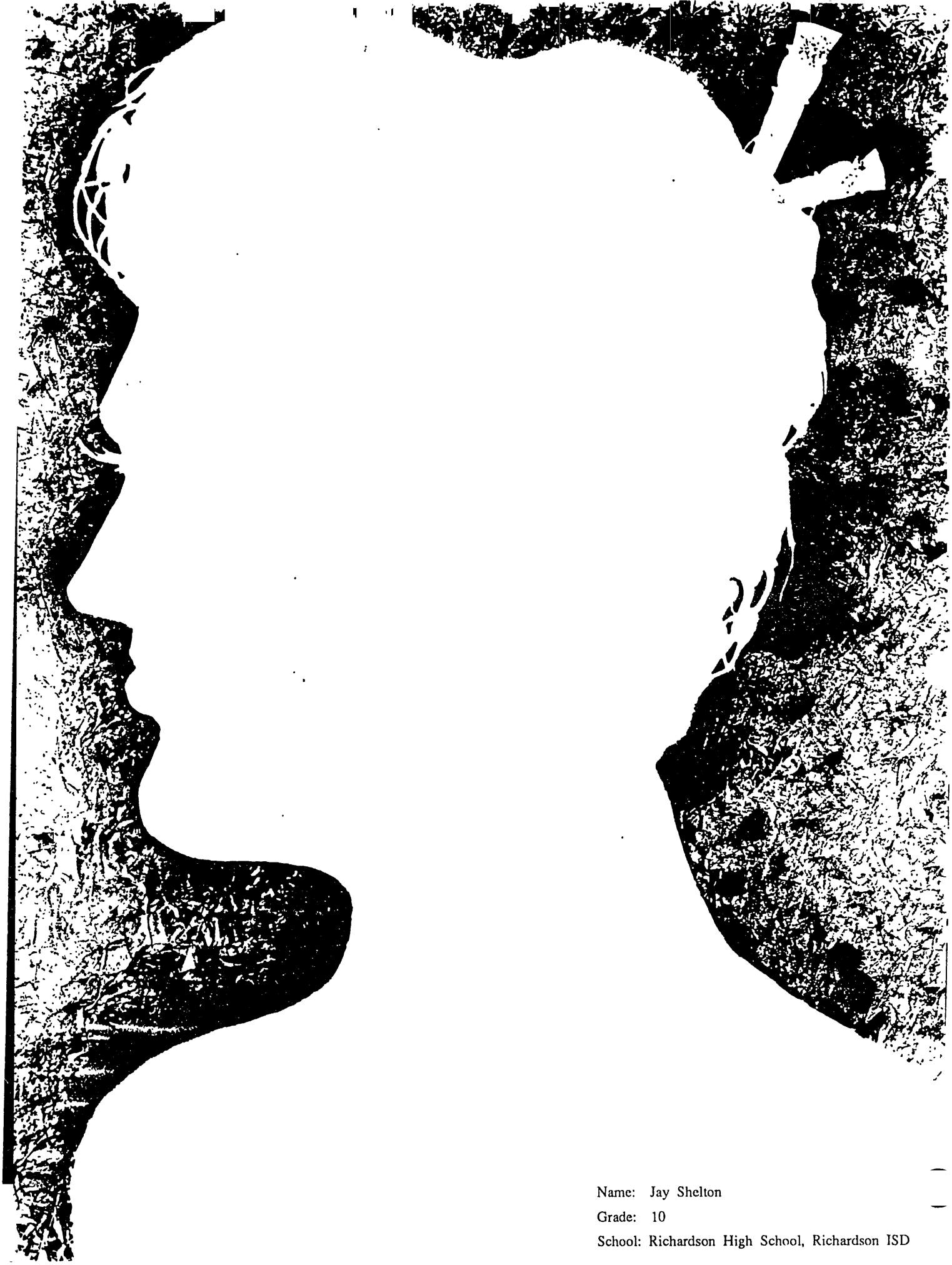
Appointments Made April 9, 1992

To be a member of the **Texas Board of Examiners of Psychologists** for a term to expire October 31, 1997: Susan S. Askanase, 5122 Glenmeadow, Houston, Texas 77096. Ms. Askanase will be replacing Lisa Saemann of Dallas, whose term expired.

Issued in Austin, Texas on April 10, 1992.

TRD-9204946 Ann W. Richards
Governor of Texas

♦ ♦ ♦



Name: Jay Shelton

Grade: 10

School: Richardson High School, Richardson ISD

Emergency Sections

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, for no more than 120 days. The emergency action is renewable once for no more than 60 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 16. ECONOMIC REGULATION

Part VIII. Texas Racing Commission

Chapter 309. Operation of Racetracks

Subchapter B. Horse Racetracks

Operations

• 16 TAC §309.196

The Texas Racing Commission adopts on an emergency basis an amendment to §309.196, concerning traffic in stable area. The amendment clarifies the individuals that are not allowed to operate motor vehicles in the stable area.

The amendment is adopted on an emergency basis to ensure that pari-mutuel racing is safe for all licensees. Unauthorized vehicular traffic in the stable area poses a safety hazard to the racehorses and to occupational licensees.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act and §6.06, which authorizes the commission to adopt rules relating to the operation of racetracks.

§309.196. Traffic in Stable Area.

(a) (No change.)

(b) This section does not apply to:

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

(3) security **or maintenance** personnel employed by the association;

(4)-(6) (No change.)

(7) **an owner or** [a] trainer;

(8) a jockey's agent at a Class 1 racetrack; [or]

(9) a farrier; **or**

(10) a jockey.

Issued in Austin, Texas, on April 3, 1992.

TRD-9204972 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: April 10, 1992

Expiration date: August 8, 1992

For further information, please call: (512) 794-8461

♦ ♦ ♦

Chapter 313. Officials and Rules of Horse Racing

Subchapter B. Entries, Declarations, and Allowances

Entries

• 16 TAC §313.103

The Texas Racing Commission has withdrawn the emergency effectiveness of the amendment to §313.103, concerning the officials and rules of horse racing. The text of the emergency amendment appeared in the March 13, 1992, issue of the *Texas Register* (17 TexReg 1850). The effective date of this withdrawal is April 10, 1992.

Issued in Austin, Texas, on April 10, 1992.

TRD-9204988 Texas Racing Commission
General Counsel
Texas Racing Commission

Effective date: April 10, 1992

For further information, please call: (512) 794-8461

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The Texas Racing Commission adopts on an emergency basis an amendment to §313.103, concerning eligibility requirements. The amendment clarifies the eligibility requirements for entering a horse in a race.

The amendment is adopted on an emergency basis to ensure that horses participating in pari-mutuel races are fit and ready to run in races currently being conducted. The failure of a horse to be fit and ready to run could result in accidents endangering the safety of jockeys, horses, and other participants in racing.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act and §6.06, which authorizes the commission to adopt rules relating to the operation of racetracks.

§313.103. Eligibility Requirements.

(a) **To be entered in a race, a horse must** [A horse may not enter a race unless]:

(1) **be** [the horse is] properly registered with the appropriate national breed registry;

(2) **be** [the horse has been] properly tattooed and the horse's registration certificate showing the tattoo number of the horse **must be** [is] on file with the racing secretary before scratch time for the race, unless the stewards authorize the certificate to be filed at a later time;

(3) **be in the care of a licensed trainer and owned by a licensed owner** [the horse is owned by a licensed owner and is in the care of a licensed trainer], except that the owner and trainer of a horse entered in a stakes race must be licensed before the horse may start in that race;

(4) **be** [the horse is] eligible to enter the race **under the conditions of the race** [and is entered for the race];

(5) **be** [the horse is] present on association grounds not later than the time prescribed by the commission veterinarian; and

(6) **have** [the horse has had] two published workouts and **be** [been] approved by the licensed starter for proficiency in the starting gate, if the horse is to start for the first time.

(b)-(e) (No change.)

(f) If a horse has started in a race in the 45-day period preceding a race, there is no workout requirement for eligibility to start. If a horse has not started in the 45-day period preceding a race, the horse must have one published workout to be eligible to start in that race. [However, if a horse has not started in the 60-day period preceding the race, the horse must have two published workouts to be eligible to start in that race.]

(g) For a horse to be eligible to start in a race, an original certificate indicating a negative Coggin's test for the horse during the 12-month period preceding the race must be attached to the horse's registration papers not later than:

(1) scratch time, for a race for which there are "also eligible" horses; and

(2) one hour before post time for the first race of that day, for a race which there are not "also eligible" horses.

(h) To be entered in a race around a turn, a quarter horse must be approved by the clocker, the outrider and, if the horse is worked from the gate, the starter.

Issued in Austin, Texas on April 3, 1992.

TRD-9204973 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: April 10, 1992

Expiration date: August 8, 1992

For further information, please call: (512) 794-8461

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• 16 TAC §313.111

The Texas Racing Commission has withdrawn the emergency effectiveness of the amendment to §313.111, concerning the officials and rules of horse racing. The text of the emergency amendment appeared in the March 13, 1992, issue of the *Texas Register* (17 TexReg 1851). The effective date of this withdrawal is April 10, 1992.

Issued in Austin, Texas, on April 10, 1992.

TRD-9204989 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: April 10, 1992

For further information, please call: (512) 794-8461

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The Texas Racing Commission adopts on an emergency basis an amendment to §313.111, concerning age restrictions. The amendment deletes the age limitation for racing a maiden horse.

The amendment is adopted on an emergency basis to ensure that the supply of horses for pari-mutuel races is maximized. An inadequate supply of horse for pari-mutuel racing results in races of poor quality and can result in races being cancelled due to short fields.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act and §6.06, which authorizes the commission to adopt rules relating to the operation of racetracks.

§313.111. Age Restrictions.

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

[(d) A maiden may not start in a pari-mutuel race in this state if the maiden:

[(1) during 1990, is 13 years old or older;

[(2) during 1991, is seven years old or older; or

[(3) during 1992, and thereafter is six years old or older.]

(d)[(e)] A horse that is more than 12 years of age may not start in a pari-mutuel race on the flat in this state.

Issued in Austin, Texas on April 3, 1992.

TRD-9204974 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: April 10, 1992

Expiration date: August 8, 1992

For further information, please call: (512) 794-8461

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Subchapter C. Claiming Races

• 16 TAC §313.304

The Texas Racing Commission adopts on an emergency basis an amendment to §313.304, concerning claim irrevocable. The amendment clarifies the status of a claim of a horse that is excused before it is a starter.

The amendment is adopted on an emergency basis to ensure that pari-mutuel claiming races are conducted fairly and honestly, to avoid defrauding the wagering public.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act and §6.06, which authorizes the commission to adopt rules relating to the operation of racetracks.

§313.304. Claim Irrevocable.

(a) (No change.)

[(b) If the stewards excuse a horse before it is a starter, a claim for that horse is invalid.]

(b)[(c)] If the stewards declare a claiming race a "no race," all claims for that race are invalid.

Issued in Austin, Texas on April 3, 1992.

TRD-9204971 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: April 10, 1992

Expiration date: August 8, 1992

For further information, please call: (512) 794-8461

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Chapter 319. Veterinary Practices and Drug Testing

Subchapter B. Treatment of Horses

• 16 TAC §319.110

The Texas Racing Commission adopts on an emergency basis an amendment to §319.110, concerning Coggins test and health certificate. The amendment clarifies the health documentation requirements for a horse to be admitted to an association's grounds.

The amendment is adopted on an emergency basis to ensure that the potential for spreading certain equine diseases is minimized.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act and §6.06, which authorizes the commission to adopt rules relating to the operation of racetracks.

§319.110. Coggins Test and Health Certificate. **To be admitted on to an association's grounds,** [(a) except as otherwise provided by this section,] a horse **must** [that arrives on an association's grounds shall] have:

(1) a valid negative agar gel immunodiffusion test for equine infectious anemia (Coggins test) issued in the **12-month** [six-month] period preceding the horse's arrival; and

(2) (No change.)

[(b) The stable superintendent may permit a horse without a health certificate to be admitted to association grounds, provided:

[(1) the horse is admitted only to an isolated stall; and

[(2) the trainer of the horse files a health certificate with the commission veterinarian not later than 24 hours after arrival.

[(c) The stable superintendent may permit a horse without a Coggins test to be admitted to association grounds, provided a Coggins test is drawn not later than 24 hours after arrival.

[(d) A horse is ineligible to start in a race if the horse does not have on file with the commission veterinarian a certificate, indicating a negative Coggins Test, issued by a testing laboratory in the six-month period preceding the date of the race.]

Issued in Austin, Texas on April 3, 1992.

TRD-9204975 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: April 10, 1992

Expiration date: August 8, 1992

For further information, please call: (512) 794-8461

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TITLE 22. EXAMINING BOARDS

Part I. Texas Board of Architectural Examiners

Chapter 5. Interior Designers

Subchapter A. Scope; Definitions

• 22 TAC §§5.1-5.18

The Texas Board of Architectural Examiners is renewing the effectiveness of the emergency adoption of new §§5.1-5.18, for a 60-day period effective April 9, 1992. The text of new §§5.1-5.18 was originally published in the December 20, 1991, issue of the *Texas Register* (16 TexReg 7411).

Issued in Austin, Texas on April 7, 1992.

TRD-9204757 Joyce M. Franke
Administrative Technician II
Texas Board of
Architectural Examiners

Effective date. April 9, 1992

Expiration date: June 8, 1992

For further information, please call: (512) 458-1363

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Subchapter B. Registration

• 22 TAC §§5.31-5.39

The Texas Board of Architectural Examiners is renewing the effectiveness of the emergency adoption of new §§5.31-5.39, for a 60-day period effective April 9, 1992. The text of new §§5.31-5.39 was originally published in the December 20, 1991, issue of the *Texas Register* (16 TexReg 7412).

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Administrative Technician II
Texas Board of
Architectural Examiners

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For further information, please call: (512) 458-1363

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Subchapter C. Examinations

• 22 TAC §§5.51-5.60

The Texas Board of Architectural Examiners is renewing the effectiveness of the emergency adoption of new §§5.51-5.60, for a 60-day period effective April 9, 1992. The text of new §§5.51-5 60 was originally published in the December 20, 1991, issue of the *Texas Register* (16 TexReg 7414).

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TRD-9204759 Joyce M. Franke
Administrative Technician II
Texas Board of
Architectural Examiners

Effective date: April 9, 1992

Expiration date: June 8, 1992

For further information, please call: (512) 458-1363

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Subchapter D. Certification and Annual Registration

• 22 TAC §§5.71-5.80

The Texas Board of Architectural Examiners is renewing the effectiveness of the emergency adoption of new §§5.71-5.80, for a 60-day period effective April 9, 1992. The text of new §§5.71-5.80 was originally published in the December 20, 1991, issue of the *Texas Register* (16 TexReg 7414).

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TRD-9204760 Joyce M. Franke
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Texas Board of
Architectural Examiners

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For further information, please call: (512) 458-1363

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Subchapter E. Fees

• 22 TAC §§5.91-5.99

The Texas Board of Architectural Examiners is renewing the effectiveness of the emergency adoption of new §§5.91-5.99, for a 60-day period effective April 9, 1992. The text of new §§5.91-5.99 was originally published in the December 20, 1991, issue of the *Texas Register* (16 TexReg 7415).

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Expiration date: June 8, 1992

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Subchapter F. The Interior Designer's Seal

• 22 TAC §§5.111-5.114

The Texas Board of Architectural Examiners is renewing the effectiveness of the emergency adoption of new §§5.111-5.114, for a 60-day period effective April 9, 1992. The text of new §§5.111-5.114 was originally published in the December 20, 1991, issue of the *Texas Register* (16 TexReg 7416).

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TRD-9204762 Joyce M. Franke
Administrative Technician II
Texas Board of
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Effective date: April 9, 1992

Expiration date: June 8, 1992

For further information, please call: (512) 458-1363

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Subchapter G. Titles and Firm Names

• 22 TAC §5.131, §5.132

The Texas Board of Architectural Examiners is renewing the effectiveness of the emergency adoption of new §5.131 and §5.132, for a 60-day period effective April 9, 1992. The text of new §5.131 and §5.132 was originally published in the December 20, 1991, issue of the *Texas Register* (16 TexReg 7417).

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TRD-9204763 Joyce M. Franke
Administrative Technician II
Texas Board of
Architectural Examiners

Effective date: April 9, 1992

Expiration date: June 8, 1992

For further information, please call: (512) 458-1363

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Subchapter H. Rules of Conduct

• 22 TAC §§5.151-5.156

The Texas Board of Architectural Examiners is renewing the effectiveness of the emergency adoption of new §§5.151-5 156, for a 60-day period effective April 9, 1992. The text of new §§5.151-5.156 was originally published in the December 20, 1991, issue of the *Texas Register* (16 TexReg 7417).

Issued in Austin, Texas on April 7, 1992.

TRD-9204764 Joyce M. Franke
Administrative Technician II
Texas Board of
Architectural Examiners

Effective date: April 9, 1992

Expiration date: June 8, 1992

For further information, please call: (512) 458-1363

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Subchapter I. Charges Against Interior Designers: Action

• 22 TAC §§5.171-5.187

The Texas Board of Architectural Examiners is renewing the effectiveness of the emergency adoption of new §§5.171-5 187, for a 60-day period effective April 9, 1992 The text of new §§5.171-5 187 was originally published in the December 20, 1991, issue of the *Texas Register* (16 TexReg 7418).

Issued in Austin, Texas on April 7, 1992.

TRD-9204765 Joyce M Franke
Administrative Technician II
Texas Board of
Architectural Examiners

Effective date: April 9, 1992

Expiration date: June 8, 1992

For further information, please call: (512) 458-1363

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Subchapter J. Violations By Unregistered Persons

• 22 TAC §§5.201-5.205

The Texas Board of Architectural Examiners is renewing the effectiveness of the emergency adoption of new §§5.201-5.205, for a 60-day period effective April 9, 1992. The text of new §§5.201-5.205 was originally published in the December 20, 1991, issue of the *Texas Register* (16 TexReg 7419).

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TRD-9204766 Joyce M. Franke
Administrative Technician II
Texas Board of
Architectural Examiners

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Expiration date: June 8, 1992

For further information, please call: (512) 458-1363

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 281. Applications Processing

• 31 TAC §§281.2, 281.3, 281.5, 281.17, 281.18, 281.21

The Texas Water Commission (TWC) adopts on an emergency basis amendments to §§281.2, 281.3, 281.5, 281.17, 281.18, and 281.21, concerning the processing applications for new, amended, or renewed municipal solid waste permits. These sections are being adopted on an emergency basis in order to implement the provisions of Senate Bill 2, First Called Session, 72nd Legislature, which transferred the jurisdiction over municipal solid waste management from the Texas Department of Health (TDH) to TWC effective March 1, 1992. TWC proposes to add these amendments to the existing Chapter 281 to allow the orderly processing of applications for new, amended, or renewed municipal solid waste permits.

TDH's existing rules pertaining to municipal solid waste have been transferred to TWC through recodification. However, TWC has determined that several of TDH's procedural rules should not be recodified as they conflict with the TWC's current procedural rules. It is TWC's intention that its existing procedural rules apply to the newly transferred program.

The amendments are adopted on an emergency basis under the Texas Water Code, §5.103, and §26.011, which gives the Texas Water Commission the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. These sections are also adopted under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361 (Vernon) which gives the Texas Water Commission the authority to regulate industrial, hazardous, and municipal solid wastes and to adopt rules and promulgate rules consistent with the general intent and purposes of the Act.

§281.2. Applicability. These sections are applicable to the processing of:

(1)-(7) (No change.)

(8) applications for weather modification permits and licenses; [and]

(9) applications for new or amended certificates of convenience and necessity; **and** [.]

(10) applications for new, amended, or renewed municipal solid waste permits.

§281.3. Initial Review.

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

(c) For applications involving hazardous waste under the Texas Solid Waste Disposal Act, **Texas Health and Safety Code, Chapter 361 [Texas Civil Statutes, Article 4477-7], applicants for existing hazardous waste management facilities shall have 30 days from receipt of notice of deficiency in a Part A permit application to respond to the notification and to explain or cure the alleged deficiency in the Part A application. Applicants shall be afforded this opportunity to cure the deficiencies before the executive director may pursue enforcement action concerning deficient applications.**

§281.5. Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste Hazardous Waste, and Industrial Solid Waste Management Permits. Applications for wastewater discharge, underground injection, municial solid waste hazardous waste and industrial solid waste management permits **must** include:

(1) complete application form(s), signed and notarized, and appropriate copies provided;

(2) the payment of fees, **if applicable;**

(3)-(7) (No change.)

§281.17. Notice of Receipt of Application and Declaration of Administrative Completeness.

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

(d) Other applications. Upon receipt of an application described in §281.2(2) **or** [and] **(5)-(10)** [(5)-(9)] of this title (relating to Applicability) which contains the information and attachments required by §§281.5-281.7 and 281.16 of this title (relating to Application for Wastewater Discharge; **Applications for Solid Waste Manaqement Permits;** Applications for Plan Approval of Reclamation Projects; Applications for Weather Modifications Permits; and Applications for Certificates of Convenience and Necessity), the executive director or his designee shall assign the application a number for identification purposes, and prepare a statement of the receipt of the application and declaration of administrative completeness which is suitable for publishing or mailing and shall forward that statement to the chief clerk. Upon receipt of an application for a new, amended, or renewed injection well permit, except those filed pursuant to §331.8 of this title (relating to Application Required for Existing Wells) for a new, amended, or renewed industrial solid waste permit or for a new or amended compliance plan as described in §281.2(3) and (4) of this title (relating to Applicability), the executive director or his designee shall assign the application a number for identification purposes and prepare a statement of the receipt of the application which is suitable for publishing or mailing and shall forward that statement to the chief clerk. The chief clerk shall notify every person entitled to notification of a particular application under the rules of the commission.

(e) (No change.)

(f) Notice of application and draft permit. Nothing in this section shall be construed so as to waive the requirement of notice of the application and draft permit in accordance with §§305.91-305. 105 of this title (relating to Actions, Notice, and Hearing) for applications for wastewater discharge, underground injection, and hazardous waste, **municipal solid waste,** and industrial solid waste management permits.

§281.18. Applications Returned.

(a) (No change.)

(b) For applications involving industrial, **hazardous, or** [solid waste or] municipal [hazardous] waste, the executive director may extend the response time to a maximum of 270 days upon sufficient proof from the applicant that an adequate response cannot be submitted within 30 days. Unless there are extenuating circumstances, if an applicant does not submit an administratively complete application as required by this chapter, the application shall be considered withdrawn. However, if appli-

cable, the applicant is responsible for the cost of any notice provided pursuant to §281.17 of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness) and the costs of such notice shall be deducted from any filing fees submitted by the applicant prior to return of the incomplete application.

§281.21. Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary.

(a) The provisions of this section are applicable to applications for waste disposal activities conducted under the authority of the Texas Water Code, Chapters 26 and 27, and the Texas Solid Waste Disposal Act, **Texas Health and Safety Code, Chapter 361** [Texas Civil Statutes, Article 4477-7.]

(b)-(c) (No change.)

(d) The executive director shall prepare a summary which describes the comliance status of persons applying for permits issued under the Texas Solid Waste Disposal Act, **Texas Health and Safety Code, Chapter 361** [Texas Civil Statutes, Article 4477-7]; the Injection Well Act, Texas Water Code, Chapter 27; and the Water Quality Control Act, Texas Water Code, Chapter 26. For applications filed under the Texas Solid Waste Disposal Act or the Injection Well Act, the summary shall include the applicant's compliance status with respect to rules, orders, or permits issued by the Texas Water Commission under the authority of both statutes. For applications filed under the Water Quality Control Act, the summary shall include the applicant's compliance status with respect to rules, orders, or permits issued by the Texas Water Commission under the authority of the Texas Water Code. Upon completion of technical review and prior to issuance of public notice in accordance with §§305.91-305.105 of this title (relating to Actions, Notice and Hearing), the executive director shall send the compliance summary, together with the draft permit and technical summary, if applicable, to the applicant and on request, to any other person. The compliance summary shall include information relative to the site which is the subject of the current application as well as other facilities owned or operated by the applicant which are under the commission's jurisdiction whether permitted or not. The summary shall cover at least the two-year period preceding the date on which technical review is complete and shall include:

(1)-(6) (No chane.)

(e) (No change.)

Issued in Austin, Texas, on April 10, 1992

TRD-9204945 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Effective date: April 10, 1992

Expiration date: August 8, 1992

For further information, please call. (512) 463-8069

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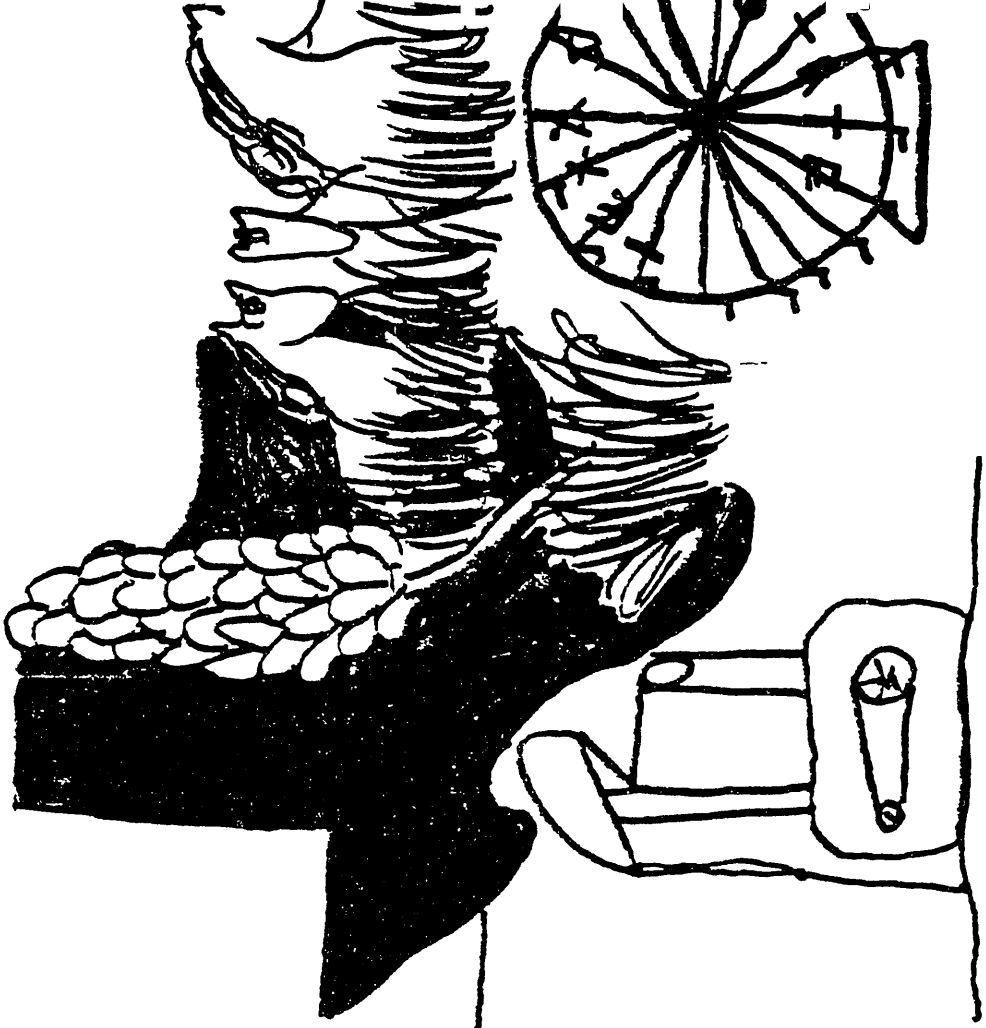

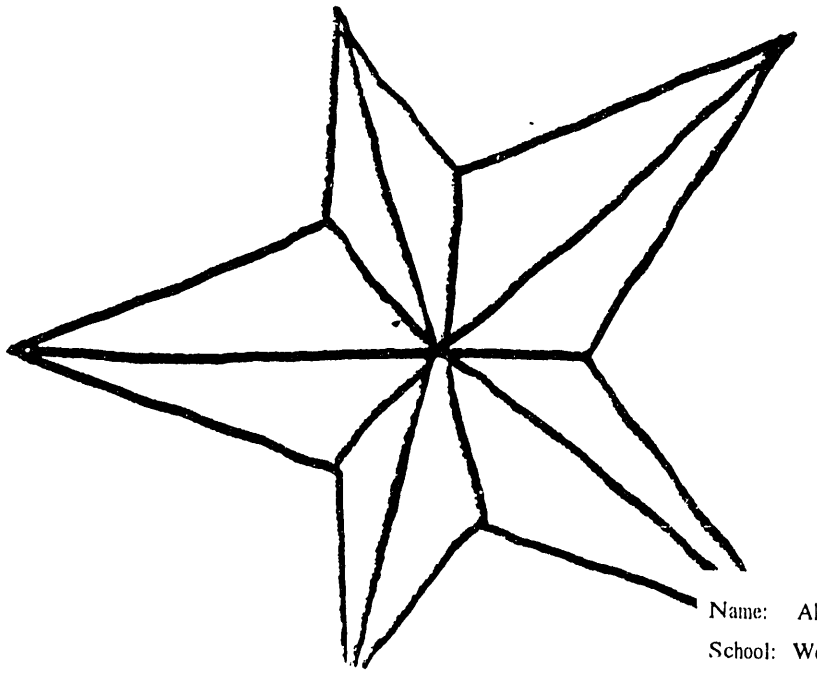

Name: Allison Kates

School: Westwood Jr. High, Richardson ISD

ALLISON KATES
WJHS
RICHARDSON ISD

Proposed Sections

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 any action may be 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 sections, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

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

TITLE 4. AGRICULTURE

Part II. Texas Animal Health Commission

Chapter 34. Veterinary Biologics

• 4 TAC §34.2

The Texas Animal Health Commission proposes an amendment to §34.2, concerning general responsibilities.

The amendment is necessary to provide that Arkansas Type Infectious Bronchitis Vaccine (AIB) may be used without restriction in Texas.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide poultry raisers in the state to have unrestricted use of Arkansas Type Infectious Bronchitis Vaccine (AIB). The industry believes it is no longer necessary to restrict the use of the vaccine. A confirmed diagnosis and written agreement between the commission and flock owners in designated areas will no longer be required. 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 Jo Anne Conner, Texas Animal Health Commission, P.O Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

§34.2. General Requirements.

(a) (No change.)

(b) Restricted biologics to control diseases.

(1) All veterinary biologics used to control or diagnose any of the following diseases are restricted:

[(A) Akansas type infectious bronchitis;]

(A)[(B)] Brucellosis;

(B)[(C)] Equine Infectious Anemia;

(C)[(D)] Equine Viral Arteritis;

(D)[(E)] Hog Cholera;

(E)[(F)] Paratuberculosis;

(F)[(G)] Laryngotracheitis;

(G)[(H)] Pseudorabies;

(H)[(I)] Salmonella arizonae;

(I)[(J)] Tuberculosis;

(J)[(K)] Vesicular Stomatitis;

(K)[(L)] Potomac Horse Fever.

(2) Restricted veterinary biologics may be purchase, administered, or otherwise used by or under the following conditions:

(A)-(B) (No change.)

(C) livestock and poultry producers; when authorized as follows:

[(i) Arkansas type infectious bronchitis vaccine upon confirmed diagnosis by an approved laboratory and upon written agreement between the commission and flock owners in a designated area.]

(i)[(ii)] Laryngotracheitis (LT), Chick Embryo Origin Vaccine upon tentative or confirmed diagnosis by an approved laboratory and written agreement between the commission and the flock owners in a designated area;

(ii)[(iii)] Salmonella arizonae bacterin in flocks where a confirmed diagnosis of Salmonella arizonae has been made by an approved laboratory and where a written permit for its use has been given by the commission.

(D)-(F) (No change.)

(c)-(f) (No change.)

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

Issued in Austin, Texas, on April 10, 1992.

TRD-9205041 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Earliest possible date of adoption: May 18, 1992

For further information, please call: (512) 479-6697

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Chapter 35. Brucellosis

Subchapter A. Eradication of Brucellosis in Cattle

• 4 TAC §35.2

The Texas Animal Health Commission proposes an amendment to §35 2, concerning general requirements.

The amendment is necessary to provide consistency in language insofar as postquarantine release testing timeframes for herds released from quarantine; and to re quire a dealer who maintains records of cattle transactions to keep the records for a minimum of two years following the completion of a transaction.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit antipicated as a result of enforcing the section will be to provide the general public with a regulation that is easier to understand.

and also for the livestock producer to know that a dealer is required to maintain records of each transaction for a definite period of time 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 Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 163, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

§35.2. General Requirements.

(a)-(k) (No change.)

(l) Requirements following classification of a dairy or a beef animal or a bison as a reactor or a suspect.

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

(5) The plan will consist of the following:

(A) Testing procedures.

(i)-(v) (No change.)

(vi) **Upon release of guarantine, the owner/caretaker shall retest** all test-eligible cattle in the herd [shall be presented for a postquarantine retest to be conducted] **in** not less than six [10] months nor more **12** [16] months **from the releasing test** [after the removal of the last reactor.]

(B) (No change.)

(m)-(s) (No change.)

(t) Requirements on dealer recordkeeping. Any dealer must maintain records of cattle that are parturient or postparturient or 18 months of age or older. Such records shall show the buyer's and seller's name and address, county of orgin, number of animals, and a description of each animal, including sex, age, color, bred, brand, and individual identification such as eartag, bangle tag, backtag, tattoo, or firebrand. Records at auctions and commission firms shall show the delivery vehicle license number. **All dealer records must be maintained for a minimum of two years after the date of the transaction.**

(u)-(v)(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 April 13, 1992

TRD-9205042 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Earliest possible date of adoption: May 18, 1992

For further information, please call: (512) 479-4497

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Subchapter B. Eradication of Brucellosis in Swine

• 4 TAC §35.41

The Texas Animal Health Commission proposes an amendment to §35.41 concerning definitions.

The amendment is necessary to add new definitions for an adjacent herd; high risk herd; infected herd retest; waste food feeding operation and a waste food feeding complex. There are amended definitions for brucellosis exposed swine; herds of swine on common premises; herd test; identification of reactor, infected herd; and swine classification for a negative, suspect and reactor herd. These definitions and changes will add clarity to the regulation by making clear the intent of certain terms and references.

Bill Hayden, director of administration, has determined that for the first five year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the section will be to provide the general public with clearly defined words and terms used throughout the swine brucellosis regulations. There will be no effect on small businesses There is no anticipated economic cost to persons required to comply with the section.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 165, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

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

Adjacent herd–A herd of swine that occupies a premise that borders a herd known to be affected. (This includes herds separated by roads or fordable streams.)

Brucellosis exposed swine–Swine that are part of a known infected herd or that have been in contact with brucellosis reactors in marketing channels for periods of 24 hours or longer, or for a period of less than 24 hours if the reactor has recently aborted, farrowed, or has a vaginal or uterine discharge. These animals are considered exposed regardless of the blood test results. Brucellosis suspect swine are also considered to be ex- posed. Brucellosis exposed swine must be placed under quarantine and restricted pending slaughter or pending **release by TAHC.** [testing after being returned to the herd of origin.]

Herd–

(A)-(B) (No change.)

(C) all swine on common premises, such as community pastures, [or] grazing association units, **or waste food feeding complexes** but owned by different persons. Other groups of swine owned by the persons involved which are located on other premises are considered to be part of this herd unless the epidemiological investigation established that swine from the affected herd have not had the opportunity for direct or indirect contacts with swine from that specific premises.

Herd test–The herd test shall include all **sexually intact** [breeding] swine six months of age and older. All swine tested shall be identified with an eartag, tattoo, or other permanent identification. (All swine held for feeding purposes are exempt from herd test provided they are maintained separate and apart from the breeding herd.)

High risk herd–A herd that is epidemiologically judged by a state-federal veterinarian to have a high probability of having or developing brucellosis. A high risk herd need not be located on the same premise as an infected or adjacent herd.

Identification of reactor–Reactor swine are to be identified by placing a red serially numbered reactor tag in **the** left ear.

Infected herd–A herd of [breeding] swine in which one or more reactors has been disclosed.

Infected herd retest–A retest of an infected herd shall include all sexually intact swine of weaning age or older.

Swine classification–

(A) Negative–**An animal that is considered and judged of swine brucellosis by a state-federal veterinarian according to the guidelines found in §35.42 of this title (relating to Classification of Swine by Serological Test).** [Swine are classified as brucellosis negative:

[(i) when they are from a herd that is known to be affected or a herd of unknown status, and

[(I) a standard tube agglutination test (STT) discloses a reaction of less than complete agglutination in the blood titer dilution of 1:25, or

[(II) they have no reaction on the standard card test, or

[(ii) when they are from a Validated Brucellosis-Free herd or from a herd not known to be affected in a Validated Brucellosis-Free state, or are swine tested as part of a complete herd test in which no titer, on the STT, is greater than an incomplete reaction at the 1:100 dilution or is positive on the standard card test.]

(B) Suspect–**An animal which tests indicate may be infected with brucellosis and classified as such by a state/federal veterinarian according to the guidelines found in §35.42 of this title.** [Swine that are positive on the card test in a herd that is otherwise negative on serological or bacteriological tests and as judged by epidemiological evidence. These swine will be held under whole herd quarantine until they are subjected to additional official brucellosis tests to determine the status of the swine, that is, whether they are actually negative or reactors.]

(C) Reactor–**An animal considered and determined to be infected with swine brucellosis by a state/federal veterinarian based on testing and guidelines in §35.42 of this title.** [Swine that disclose complete STT agglutination reactions in the blood titer dilution of 1:100 or higher, or swine in a herd known to be affected or swine tested as part of an incomplete herd blood test of a herd of unknown status that have a complete agglutination in the 1:25 dilution or higher. With the exception stated in the definition of suspect, a swine is a reactor if it discloses a positive standard card test reaction, or is found to be infected by another official test or by isolating or otherwise identifying the brucella organism.]

Waste food feeding operation (garbage feeder)–A swine operation that feeds material defined as "Garbage" in Chapter 55.3, Swine Regulations.

Waste food feeding complex–A premise where more than one owner raises swine and where at least one of the owners feeds waste food to swine.

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 April 10, 1992.

TRD-9205043 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Earliest possible date of adoption: May 18, 1992

For further information, please call: (512) 479-6697

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• 4 TAC §35.42

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

The Texas Animal Health Commission proposes the repeal of §35.42, concerning classification of swine by testing blood and semen.

This section is proposed for repeal because the procedures and tests do not conform to tests currently used and their interpretations.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to propose a new section that will provide the general public with information for classifying swine which are tested for brucellosis. 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 Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The new section is proposed under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 165, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

§35.42. Classification of Swine by Testing Blood and Semen.

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 April 10, 1992.

TRD-9205044 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Earliest possible date of adoption: May 18, 1992

For further information, please call: (512) 479-6697

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The Texas Animal Health Commission proposes new §35.42, concerning classification of swine by serological test.

This section is necessary to provide standards for classifying swine using tests on the standard card, automated complement fixation, and rivanol. The semen plasma test is used as a supplemental test of boars used for artificial insemination. The section also provides for reclassification of an animal by the designated epidemiologist when consideration and evaluation of relevant bacteriologic, serologic, or epidemiologic evidence justifies the reclassification.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide the general public with information concerning classification of swine when they are tested for brucellosis. 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 Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The new section is proposed under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 165, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

§35.42. Classification of Swine by Serological Test.

(a) Semen testing.

(1) Tests on blood serum.

(A) Standard card test (SCT). Card test results are used to classify swine as positive or negative. All swine positive to the SCT should be subjected to confirmatory testing.

(B) Confirmatory test procedures. The confirmatory test procedure authorized for use is the Particle Concentration Fluoresence Immunoassay (PCFIA). Interpretation of the PCFIA result is made in accordance with the following:

[graphic]

(b) Semen plasma test. This test is approved for use as a supplemental test of boars used for artificial insemination but must be employed with other serological tests. Final classification will be based on the most reactive test procedure.

(c) Reclassification. Animals may be reclassified by the designated epidemiologist when consideration and evaluation of relevant bacteriologic, serologic, or epidemiologic evidence justifies the reclassification.

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 April 10, 1992.

TRD-9205045 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Earliest possible date of adoption: May 18, 1992

For further information, please call: (512) 479-6697

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• 4 TAC §35.43

The Texas Animal Health Commission proposes an amendment to §35.43, concerning persons authorized to conduct official tests.

The amendment is necessary to clarify that only veterinarians who are accredited by the United States Department of Agriculture, or their employees, or regularly employed representatives of this agency, or the USDA are authorized to collect blood samples from swine for the purpose of conducting tests for brucellosis.

Bill Hayden, director of administration, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the section will be to provide clarification to the general public that the amendment to this section refers to accredited veterinarians rather than to approved, recognized, and accredited veterinarians. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the the section.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 165, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

§35.43. Persons Authorized to Conduct Official Test.

(a) Collection of samples. Only [the] veterinarians who are [approved, recognized, and] accredited by the [commission and the] United States Department of Agriculture, or their employees, or regularly employed representatives of the Texas Animal Health Commission or the United States Department of Agriculture are authorized to collect blood samples for the purpose of conducting tests for brucellosis. The accredited veterinarian is responsible for all acts of his employees engaged in brucellosis testing.

(b)-(c) (No change.)

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

Issued in Austin, Texas, on April 10, 1992.

TRD-9205046 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Earliest possible date of adoption: May 18, 1992

For further information, please call:(512) 479-6697

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• 4 TAC §35.44

The Texas Animal Health Commission proposes an amendment to §35.44, concerning identification and movement of brucellosis infected and exposed swine.

The amendment is necessary to provide that swine which have been identified as reactors must be held separate and apart from other swine being held for sale to a recognized slaughter establishment.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide the general public with information that reactor swine must be held separate and apart from other swine when moving through a federally approved market for sale to a recognized slaughter establishment. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 165, which provides the commission with the authority to adopt rules and set fc. th the duties of this commission to control disease.

§35.44. Identification and Movement of Brucellosis Infected and Exposed Swine.

(a) Reactors. Reactor swine shall be identified with a red serially numbered reactor tag in the left ear and be sold to slaughter under state or federal permit (VS 1-27) within 15 days of the date they are identified as reactors. (Reactor herds under Plan 2, Chapter 35.47, may handle reactors according to recommended procedures of the plan.) Reactors must remain on the premises where they were found until the owner obtains a state or federal permit for movement to slaughter. Swine moved for immediate slaughter must go to a recognized slaughter establishment or to a state or federally approved market **and held separate and apart from other swine** for sale to a recognized slaughter establishment. Reactor swine must be slaughtered as soon as practical. The time may be extended for reasons mutually acceptable to the cooperating state and federal officials in charge.

(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 April 10, 1992.

TRD-9205047 Terry Beals
Executive Director
Texas Animal Health Commission

Earliest possible date of adoption: May 18, 1992

For further information, please call:(512) 479-6697

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• 4 TAC §35.45

The Texas Animal Health Commission proposes an amendment to §35.45, concerning procedures for handling brucellosis infected, adjacent and high risk herds of swine.

The amendment is necessary to provide that in infected herd tests all sexually intact swine above weaning age, rather than above six months of age, must be tested; infected swine herds must have three negative herd tests for release of quarantine, rather than two. The first test must be 30 days from the date of the removal of the reactors; the second test would be 60 days to 90 days after the first test and the third would be 60 days to 90 days following the second test. The provision for an adjacent and high risk herd will require a quarantine on these herds pending determination of whether the animals are infected; an infected, adjacent or high risk herd is eligible for depopulation provided a recommendation is made, funds are available and the owner concurs.

Bill Hayden, director of administration, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide the general public with information that when herds are infected they will require one additional test for release of the quarantine. Those herd tests will include younger swine as well. These added features of infected herd testing will help assure the public that infection has been identified and removed before quarantines are released. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 165, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

§35.45. Procedures for Handling Brucellosis Infected , Adjacent and High Risk Herds of Swine.

(a) Infected herds. All swine in infected herds must be confined to the premises under quarantine until the herd has been freed of brucellosis or sold for slaughter under permit. **Three** [Two] negative **infected** herd [blood] **retests** [test] are required for release of quarantine, with the first **retest** [test] occurring 30 days or more after all reactors have been removed **for slaughter** [and slaughtered]. The second **retest** [test] must **be conducted 60 to** [occur] 90 days [or more] after the first negative **retest** [test]. **A third negative infected herd retest is required 60 to 90 days following the second retest.** Herds of origin of **Market Swine Test** (MST) reactors that fail to reveal additional reactors on a **herd** test [of the entire herd] would not be required to be held under quarantine for additional testing unless there is evidence of Brucella infection or exposure to brucellosis.

(b) Adjacent and high risk herds. All swine in adjacent and high risk herds may be quarantined until an epidemiologist through testing or other epidemiolog-

ical evidence determines the herd is not infected or not at risk of becoming infected.

(c) Depopulation. Any infected, adjacent or high risk herd may be eligible for depopulation if funds are made available for indemnity purposes and a recommendation is made by the epidemiologist to depopulate the herd and the owner concurs.

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 April 10, 1992.

TRD-9205048 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

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For further information, please call: (512) 479-6697

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• 4 TAC §35.46

The Texas Animal Health Commission proposes an amendment to §35.46, concerning plans for eradicating brucellosis from infected swine herds.

The amendment is necessary to bring each of three plans offered to producers for eradicating brucellosis from their swine herds into compliance with the USDA Swine Brucellosis Eradication Uniform Methods and Rules.

Bill Hayden, director of administration, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide the livestock producers with information that three rather than two tests are required for release of the quarantine in Plans Two and Three and that gilt pigs are to be removed from the sows at 28 days rather than 42 days in Plan Two. 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 Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 165, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

§35.46. Plans for Eradicating Brucellosis from Infected Swine Herds. If infection is disclosed in swine herds, one of the following plans or one similar shall be selected for eradicating the disease [and for qualifying the herd for subsequent validated brucellosis free status, if desired. Infected herds under test for area validation status should also choose one of these plans to eradicate brucellosis from the herd] If the herd owner fails to agree to a plan to eradicate brucellosis from the herd, a plan shall be developed by the veterinarian representing the commission.

(1) Plan one. This plan is recommended for commercial herds. The following procedures should be carried out:

(A)-(B) (No change.)

(C) restock premises with animals **preferably** from validated brucellosis-free herds, placing them on ground that has been free of swine for at least 60 days.

[(D) after two consecutive negative tests not less than 60 nor more than 90 days apart, the herd is eligible for validated brucellosis-free herd status.]

(2) Plan two. This plan is recommended for use in infected purebred herds only where it is desired to retain valuable bloodlines. The following procedures should be carried out:

(A) separate **gilt** pigs from sows at **28** [42] days of age or **less** [younger] and isolate;

(B) (No change.)

(C) test the gilts to be used for the following breeding season about 30 days before breeding. Save only the gilts that are negative. Breed only to [the] negative boars;

(D) (No change.)

(E) after **three** [two] consecutive negative **infected** herd [blood] **retest** [test] the herd is eligible for release from quarantine. The first test must be at least 30 days after all reactors have been removed and slaughtered and the second test must be [at least] **60 to** 90 days after the first test. **A third test is required 60 to 90 days following the second negative retest.**

(3) Plan three. This plan is not recommended in general, but it has been found useful in herds where only a few reactors are found and where no clinical symptoms of brucellosis have been noted. Carry out the following procedures:

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

(D) after **three [two] consecutive negative infected herd retests** [tests] the herd is eligible for release from quarantine. The first test must be at least 30 days after all reactors have been removed and slaughtered and the second test must be [at least] **60 to** 90 days after the first test. **A third test of the herd is required 60 to 90 days following the second negative retest.**

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

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Executive Director
Texas Animal Health Commission

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• 4 TAC §35.48

The Texas Animal Health Commission proposes an amendment to §35.48 concerning initial validation and revalidation of individual swine herd.

The amendment is necessary to remove the requirement for market swine testing as a means of herd revalidation; and provides for increment testing for initial validation of a herd. The 60 day grace period for revalidation will be removed; swine which are added to a herd must be retested in 30 days to 60 days rather than 60 days to 90 days. Use of swine semen in validated herds must be obtained from boars in validated brucellosis free herds.

Bill Hayden, director of Administration, has determined that for the first five year period the proposed amendment is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the section will be to provide the general public with requirements for swine herd validation that are more easily understood and that comply with the United States Department of Agriculture, Swine Brucellosis Uniform Methods and Rules.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 165, which provides the commission with the authority to adopt rules and set forth

§35.48. Initial Validation and Revalidation of Individual Swine Herd.

(a) Qualifying methods. **Swine herds may be validated or revalidated** [A herd may qualify for status] as [Validated] Brucellosis-Free [Herd] by the following methods:

(1) complete herd [blood] test. Swine herds may be initially validated or revalidated when the herd [blood] test [(all breeding swine six months of age and older)] is negative;

(2)[(3)] increment testing. **Swine herds may be validated or revalidated when all breeding swine (six months of age and older) in the herd are tested negative in the 25% increments every 80 to 105 days or 10% increments every 25 to 35 days according to a specified herd testing plan with each breeding animal in the herd tested at least once during the one-year validation period. No swine may be tested twice in one year to comply with the 25% requirement or twice in 10 months to comply with the 10% requirement.**

[(A) A swine herd cannot be initially validated using increment testing.

[(B) Revalidation. Adult breeding swine (six months of age and older) are tested in increments as specified in an approved herd testing plan. Each breeding animal in the herd must be tested at least once during the one-year validation period.

[(2) Market swine testing (MST).

[(A) A swine herd cannot be initially validated using the MST (Market Sine Test) procedures.

[(B) Revalidation. A minimum of 20% of the adult breeding swine (six months of age and older) in the herd must be tested as part of the MST program during the validation period, with at least one-half of the testing done during the last six months of the period. The herd of origin of market swine reactors will be quarantined and the validated herd status suspended until a herd test is conducted. The herd blood test shall be conducted within 30 days of finding the market reactor.]

(b) Conditions for validating the herd.

(1) Size of unit. Validated free herd status applies [only] to **entire** [individual] herds and includes all offspring [including specific pathogen free pigs].

(2) Duration of status. A herd is validated for 12 months. **There is no grace period.**

(3) Testing period.

(A) For initial validation, a herd can be validated based on the results of one negative herd [blood] test **or through increment testing on a quarterly or monthly basis.**

(B) For revalidation a herd must:

(i) have a negative **herd** [blood] test [of all breeding swine (six months of age and older)] conducted within 10 to 12 months of the last validation date. [A 60-day grace period is allowed, during which a herd may be reinstated with a single negative herd blood test;] or

[(ii) **establish that at least 20% of the adult breeding swine were tested under a market swine testing program during the one year validation period and that at least one-half of the sampling occurred during the last six months of the validation period; or,**]

(ii)[(iii)] . show that all breeding swine (six months of age and older) in the herd are tested **negative** in **25%** increments **every 80 to 105 days or in 10% increments every 25 to 35 days** according to a specified herd testing plan, with each breeding animal tested at least once during the one-year validation period. **No swine may be tested twice in one year to comply with the 25% requirement or twice in 10 months to comply with the 10% requirement.**

(4) Herd infection rate. There must be no evidence of infection at the time the herd is initially validated or revalidated.

(5) Animal infection rate. There must be no evidence of infection in individual animals at the time the herd is initially validated or revalidated.

(6) Suspects. If swine that are **classified as suspect** [positive on the Standard Card Test] are found in a herd that is otherwise serologically, bacteriologically, and epidemiologically negative, the herd may be held under quarantine until the suspects are further evaluated and their status is determined.

(7) Herd status, if infection occurs. When one or more reactors are found in a validated herd or in a herd being tested for initial validation, it will be considered infected and quarantined and the eradication procedures in this section will apply.

(A) Initial validation. A herd qualifies for initial Validated Brucellosis-Free status when it is free of infection, when all provisions for release of quarantine have been met, and when the additional provisions required under subsection (a)(1) of this section have been met.

(B) Revalidation. If a complete or partial test of a validated herd reveals reactors, herd validation status is terminated until all provisions for release of quarantine have been met, and the additional provisions for initial Validated Brucellosis-Free Herd status required under subsection (a)(1) of this section have been met.

(C) Herd retests for release of quarantine may also be used to fulfill the provisions required under subsection (a)(1) of this section.

(8) Movement of swine into Validated Brucellosis-Free Herds.

(A) Swine originating from Validated Brucellosis-Free Herds may enter without test.

(B) Breeding swine originating from nonvalidated herds [or areas] must have a negative test within 30 days prior to date of entry. These animals must be held in isolation and **be retested 30 to 60 days after arrival.** [pass an additional negative test 60 to 90 days from date of test for entry before being added to the herd.]

(C) Swine from feedlots may not be added to Validated Brucellosis-Free herds. However, swine may be consigned to feedlots on premises with Validated Brucellosis-Free Herds without testing, provided those swine are held in isolation and segregated from all breeding stock.

(D) Consignments of slaughter swine may not be added to Validated Brucellosis-Free Herds.

(9) Use [Movement] of swine semen **in** [for artificial insemination to] Validated Brucellosis-Free Herds. **All semen used must be from boars in Validated Brucellosis Free Herds.**

[(A) From purebred herds. Purebred herds which semen is collected must be validated using a herd blood test.

[(B) From commercial boar studs. Commercial boar studs from which semen is collected must be validated using both herd blood tests and herd semen agglutination tests.]

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

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TRD-9205050 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

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Chapter 39. Scabies

• 4 TAC §39.1

The Texas Animal Health Commission proposes an amendment to §39.1, concerning cattle, sheep, and goat scabies.

The amendment is necessary to provide that cattle treated with Ivermectin must be withheld from slaughter as prescribed by the product label.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide the general public with information on use of Ivermectin in cattle destined for slaughter. Product labeling must be observed closely to assure that he Ivermectin has had ample time to be eliminated from the body tissue before the animal is slaughtered and the meat used for human consumption. It is not to be used in female dairy cattle of breeding age. 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 Jo Anne Conner, Texas Animal Health Commission, P. O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161 which provides the comm ssion with the authority to adopt rules and set forth the duties of this commission to control disease.

§39.1. Cattle, Sheep, and Goats Scabies.

(a) Psoroptic scabies

(1) (No change.)

(2) When Ivermectin is the selected treatment Ivomec Injectable shall be used and the following procedures shall apply.

(A) all cattle which are visibly infected with scabies or found infected by microscopic examination or which are part of a diseased herd shall be treated in accordance with the directions on the label of the drug under the supervision of the commission, United States Department of Agriculture, Veterinary Services or an accredited veterinarian. Treated cattle may be released from quarantine not less than 14 days from date of treatment provided they have been kept physically separated for 14 days from all cattle not part of the group treated.

(B) Ivermectin shall not be used to treat [cattle within 35 days prior to slaughter, or] female dairy cattle of breeding age. **Cattle treated with Ivermectin must be withheld from slaughter as prescribed by the product label.**

(b) Sarcoptic scabies

(1) (No change.)

(2) When Ivermectin is the selected treatment, Ivomec Injectable shall be used and the following procedures shall apply.

(A) All cattle which are visibly infected with scabies or found infected by microscopic examination or which are part of a diseased herd shall be treated in accordance with the directions on the label of the drug under the supervision of the Commission, United States Department of Agriculture, Veterinary Services or an accredited veterinarian. Treated cattle may be released from quarantine not less than 14 days from date of treatment provided they have been kept physically separated for 14 days from all cattle not part of the group treated.

(B) Ivermectin shall not be used to treat [cattle within 35 day prior to slaughter, or] female dairy cattle of breeding age. **Cattle treated with Ivermectin must be withheld from slaughter as prescribed by the product label.**

(c) Cattle and sheep exposed to psoroptic and sarcoptic scabies.

(1) (No change.)

(2) When Ivermectin is the selected treatment, Ivomec Injectable shall be used and the following procedures shall apply.

(A) All cattle which are exposed to sarcoptic or psoroptic scabies shall be treated in accordance with the directions on the label of the drug under the supervision of the commission, United States Department of Agriculture, Veterinary Services, or an accredited veterinarian. Treated cattle may be released from quarantine not less than 14 days from date of treatment provided they have been kept physically separated for 14 days from all cattle not part of the group treated.

(B) Ivermectin shall not be used to treat [cattle within 35 days prior to slaughter, or] female dairy cattle of breeding age. **Cattle treated with Ivermectin must be withheld from slaughter as prescribed by the product label.**

(d)-(f) (No change.)

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

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TRD-9205051 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

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Chapter 43. Tuberculosis

Subchapter A. Cattle

• 4 TAC §43.1

The Texas Animal Health Commission proposes an amendment to §43.1, concerning cattle.

The amendment is necessary to state the correct amount of tuberculin to be injected into an animal being tested for tuberculosis using the single cervical test. The dosage has been changed from .2cc to .1cc.

Bill Hayden, director of administration, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the section will be to provide the general public with information on the correct amount of tuberculin to be used on the single cervical test for tuberculosis and assure more accurate test results. The tuberculin is injected intradermally in the center of the clipped area of the neck. 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 Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agri-

culture Code, Texas Civil Statutes, Chapters 161 and 162, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

§43.1. Cattle.

(a)-(f) (No change.)

(g) Procedure for injection.

(1) (No change.)

(2) Single cervical. The injection site is the preclipped side of the neck in the middle third of the distance between the point of the shoulder and the angle of the jaw, on a line parallel to the spine of the scapula. Inject .1cc [.2cc] of tuberculin intradermally in the center of the clipped area.

(3) (No change.)

(h)-(s) (No change.)

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

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Executive Director
Texas Animal Health Commission

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Chapter 51. Interstate Shows and Fairs

• 4 TAC §51.1

The Texas Animal Health Commission proposes an amendemnt to §51.1, concerning definitions.

The amendment is necessary to define an "S" Permit. An "S" Permit is any document designated by the executive director for restricted movement of cattle.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide the general public with the option of using the "S" Permit, or a VS 1-27, a New Mexico Form 1A, provided the New Mexico For 1A, or any document designated by the TAHC executive director that clearly identifies an "S" Permit and lists the market of origin of the animals and is accompanied by the purchase sheet. 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 Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

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

"S" Permit–Any document designated by the executive director for movement of cattle with restricted movement. A VS 1-27 Permit may be used for this purpose as well as the New Mexico Form 1A when it is clearly identified as an "S" Permit listing the market of origin and is accompanied by the purchase sheet.

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

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Executive Director
Texas Animal Health Commission

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• 4 TAC §51.2

The Texas Animal Health Commission proposes an amendment to §51.2, concerning general requirements.

The amendment is necessary to provide for the movement of restricted cattle and accompanied by an "S" Permit rather than limit the document to only the VS 1-27.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide the livestock producer with an option of using an "S" Permit, or a VS 1-27 Permit, or a New Mexico Form 1A so long as the New Mexico Form 1A is clearly identified as an "S" Permit and list the animal's market of origin and accompanied by the purchase sheet. 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 Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

§51.2. General Requirements.

(a) (No change.)

(b) Certificate of veterinary inspection.

(1) All nonquarantined livestock or poultry entering Texas from any state, territory, or foreign country shall have a certificate of veterinary inspection, except:

(A) (No change.)

(B) test-eligible cattle entering from other than a farm-of-origin may be moved to slaughter or to a quarantined feedlot when accompanied by **an "S" Permit** [a VS Form 1-27] on which each animal is individually identified. Brucellosis test data shall be written on the **"S" Permit** [VS Form 1-27] and include test date and results of that test.

(C)-(F) (No change.)

(2) (No change.)

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

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

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Executive Director
Texas Animal Health Commission

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Chapter 55. Swine

• 4 TAC §55.5

The Texas Animal Health Commission proposes an amendment to §55.5, concerning pseudorabies. The amendment is necessary to provide a definition for an official random sample test. This test is a sampling procedure utilizing official pseudorabies serologic tests; swine which are under quarantine will be required to be identified with a red reactor tag; the time frame to dispose of reactor animals has been reduced from 15 days to seven days; reactor animals must be accompanied by a VS 1-27 permit; a herd plan must be developed for an infected herd to include provisions for release of the quarantine; all swine herds located within 1.5 miles of an

infected swine herd will be required to be monitored by either testing all breeding swne or having a random sample test; an initial qualifying test requirement for pseudorabies free states has been added to require testing of a number of progeny under six months of age which represent 20% of the breeding herd and is included in the formula for testing an infected herd. The progeny would be selected from the older part of those pigs under six months of age; a re-qualifying test would be required on 80% of the breeding swine over six months of age; also progeny equal to 20% of the breeding swine selected similar to those in the initial qualification would be required to be tested.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide the general public with more clearly written requirements that include tests included in the herd plan and require monitoring swine within 1 1/2 miles of the infected herd. The language in the Qualif ed Herd Section will add requirements for testing some younger swine to assure infection is not in that age group. 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 Jo Anne Conner, Texas Animal Health Commission, P. O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 165, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

§55.5. Pseudorabies.

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

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

(6) Official random sample test–A sampling procedure utilizing official pseudorabies serologic tests which provides a 95% probability of detecting infection in a herd in which at least 5.0% of the swine are seropositive for pseudorabies. Each segregated group of swine on an individual premises must be considered a separate herd and sampled as follows:

(A) Less than 100 head–test 45 or entire herd whichever is the smaller;

(B) 100-200 head–test 51;

(C) 201-999 head test 57;

(D) 1,000 and over–test 59.

(7)[(6)] Recognized tests–Tests for the diagnosis of pseudorabies approved by USDA, APHIS, VS. Those tests are:

(A) microtitration serum-virus neutralization;

(B) virus isolation and identification;

(C) fluorescent antibody tissue section;

(D) Enzyme Linked Immunosorbent Assay (ELISA);

(E) latex agglutination.

(b) Quarantines.

(1) All herds suspicious of PRV will be **quarantined and** investigated [and quarantined] pending final determination. Final determination of the presence or absence of PRV in a herd shall be made by the investigating veterinarian. Official diagnosis shall be based on standard diagnostic procedures including the serum neutralization or other recognized tests. Once an animal is determined to be infected with PRV, it shall be **identified by placing a red serially numbered reactor tag in the left ear and** moved direct to slaughter within **seven** [15] days following this determination **accompanied by a VS 1-27 Permit.**

(2) Following a determination that a herd is infected, a herd plan to eradicate the disease from a swine herd will be developed. **The plan shall be developed by a state/federal veterinarian of the swine pseudorabies control program in consultation with the herd owner or caretaker and his veterinarian. The plan shall include provisions for release of quarantine as specified in this subsection. The plan developed by the commission shall be final and the owner or caretaker will be provided a copy. [between the herd owner, the accredited veterinarian (if desired by the owner) and the veterinarian representing the commission.]**

(3) (No change.)

(4) All swine herds within a 1.5 mile radius of infected premises will be monitored either by a test of all breeding swine or an official random sample test.

(5)[(4)] Swine showing clinical signs of PRV shall not be removed from the premises. Swine on a quarantined premise not showing clinical signs of PRV may be moved only directly to a slaughter plant and accompanied by a permit issued by a state or federal inspector, or may be shipped directly to a slaughter plant in an official sealed vehicle, when accompanied by a permit.

(6)[(5)] Vehicles used for slaughter delivery of quarantined swine will be cleaned and disinfected immediately after unloading and prior to loading with other livestock.

(7)[(6)] Quarantines will be released in the following instances:

(A) when all reactor animals have been removed from the premise;

(B) when there have been no clinical signs of PRV on the premises after removal of the reactor swine; and

(C) when all exposed swine **over six months of age along with a number of progeny equal to 20% of the breeding swine selected from the oldest portion of swine under six months of age** [which remain] **remaining** in the herd have withstood two consecutive negative herd tests. [,] **The** [the] first **of these must be conducted** [being] not less than 30 days from removal of last infected animals and the second test coming not less than 30 days from the first test. Herd additions must be tested negative prior to being added to the herd, remain on the premises 30 or more days, and be retested negative; or

(D) **when** [thirty days after] all swine on the premises are depopulated; [and] the premises are cleaned and disinfected [and] under the direction of state or federal personnel **and 30 days have passed with no swine on the premises following cleaning and disinfecting.**

(c) (No change)

(d) Qualified pseudorabies negative herd.

(1) Qualified PRV negative herd status is attained by 100% testing of the adult breeding herd over six months of age **plus a number of progeny equal to 20% of the breeding swine population in the herd and finding them negative** to an official pseudorabies serologic test [and finding all swine so tested negative]. **Progeny shall be randomly selected from the oldest swine in the herd less than six months of age.** The herd must not have been a known infected herd within the past 30 days. A minimum of 90% of the swine in the herd must have been on the premises and part of the herd for at least 60 days prior to the qualifying official pseudorabies

serologic test, or have entered directly from another qualified pseudorabies negative herd.

(2) Qualified pseudorabies negative herd status is maintained by **conducting an official pseudorabies serologic test on at least 80% of the** [subjecting all] swine over six months of age **and on a number of progeny equal to 20% of the breeding swine population of the herd** [in the herd to an official pseudorabies serologic test] at least once each year. **All swine tested shall be randomly selected and in the case of adult swine, representative of all age groups on the premises. This** [(this] must be accomplished by testing 25% of the **required breeding** swine **and progeny** [over six months of age] every 80 to 105 days and finding all swine so tested negative, or by testing 10% of the **required breeding** swine **and progeny [over six months of age] each month and finding all swine so tested negative**[)].

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

(e) -(f) (No change.)

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

Issued in Austin, Texas, on April 10, 1992.

TRD-9205055 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Earliest possible date of adoption: May 18, 1992

For further information, please call: (512) 479-6697

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• 4 TAC §55.6

The Texas Animal Health Commission proposes an amendment to §55.6, concerning entry requirements.

The amendment is necessary to allow nonvaccinated swine from vaccinated herds to enter the state provided they are tested negative prior to entry and meet other entry requirements; a 30-day post entry pseudorabies test for feeder swine imported for the stated purpose of later showing in shows, fairs, and exhibitions is required; breeding swine will be allowed to enter Texas from a validated brucellosis free state without a brucellosis test; the requirement for a leptospirosis test or vaccination of breeding swine has been removed; the requirement for an entry permit for swine consigned direct to slaughter and from a premises of origin to a specifically approved market has been removed.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide the general public with more freedom for entering Texas with swine form other states while placing added post-entry tests on swine brought in for later show purposes. There will be no effect on small business. 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 Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 165, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

§55.6. Entry Requirements.

(a) Swine imported into Texas for feeding, breeding, or exhibition purposes shall be accompanied by a certificate of veterinary inspection certifying that:

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

(3) swine [originate from herds that] have not been vaccinated for pseudorabies;

(4) (No change.)

(b) The certificate of veterinary inspection will also certify that swine have met the following pseudorabies entry requirements.

(1) All breeding swine entering the state **and those feeder swine entering for the stated purpose of feeding them for show, fair, or exhibition purposes** shall be held in isolation and under quarantine on the premise where first unloaded and **re-tested** [tested] for PRV in not less that 30 nor more than 60 days after arrival. **Such** [Breeding] swine not known to be infected with or exposed to pseudorabies may enter provided they:

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

(2) (No change.)

(c) Additionally, breeding swine shall have a negative brucellosis test within the previous 30 days or originate from a validated brucellosis free herd **or state** [and shall be tested negative for leptospirosis within the previous six months or vaccinated within the previous six months with the strain or strains approved by the Texas Animal Health Commission].

(d) Exhibition swine originating in Texas entered in terminal shows are exempt from brucellosis [, leptospirosis] and pseudorabies requirements.

(e) (No change.)

(f) Entry permits are not required for swine consigned from out-of-state direct to slaughter or from an out-of-state premise of origin to a Texas livestock market specifically approved under the Code of Federal Regulations, Part 76.

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 April 10, 1992.

TRD-9205056 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Earliest possible date of adoption: May 18, 1992

For further information, please call: (512) 479-6697

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• 4 TAC §55.8

The Texas Animal Health Commission proposes an amendment to §55.8, concerning dealer recordkeeping.

The amendment is necessary to require a dealer to maintain records on swine sales for a minimum of two years after the completion of a transaction.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide the livestock producer with information that a dealer is required to maintain records of each transaction for a definite period of time. 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 Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 165, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

§55.8. Dealer Recordkeeping.

(a) (No change.)

(b) Requirements of dealer recordkeeping. Any dealer, auctioneer, or commission firm must maintain records of swine handled. Such records shall show the seller's and buyer's name and address,

county of origin, number of animals, breed, and sex with some form of individual identification numbers. Records at auctions and commission firms shall show the delivery vehicle license number. **All dealer records must be maintained for a minimum of two years after the date of the transaction.**

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 April 10, 1992.

TRD-9205057 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Earliest possible date of adoption: May 18, 1992

For further information, please call:(512) 479-6697

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• 4 TAC §55.9

The Texas Animal Health Commission proposes new §55.9, concerning feral swine.

The new section is necessary to provide movement requirements for feral swine. Feral swine are required to be tested for brucellosis and pseudorabies for movement to a game preserve; the animals can move direct to slaughter without restrictions and they may move to markets for sale to slaughter provided they are held in isolation at the market and moved directly to slaughter with a VS 1-27 permit.

Bill Hayden, director of administration, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state of local government as a result of enforcing or administering the section.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide the general public with assistance in preventing exposure of domestic swine to feral swine. 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 Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The new section is proposed under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 165, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

§55.9. Feral Swine.

(a) Definitions. Feral swine are swine that have lived any part of their lives free-roaming. Feral swine may be reclassified as domestic swine by a negative official brucellosis test and a negative official pseudorabies test conducted after at least 60 days' confinement separate and apart from any infected or free-roaming swine.

(b) Movement. Feral swine may be:

(1) moved from the premise where they were trapped to a game preserve, provided they are negative to an official test for brucellosis and pseudorabies within 30 days prior to movement; or

(2) moved directly from the premise where they were trapped to a slaughter facility; or

(3) moved directly from the premise where they were trapped to a livestock market for sale only to slaughter. Feral swine delivered to a livestock market shall be penned in isolation under quarantine until moving directly to slaughter from the market accompanied by a VS 1-27 Permit.

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

Issued in Austin, Texas, on April 10, 1992.

TRD-9205058 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Earliest possible date of adoption: May 18, 1992

For further information, please call: (512) 479-6697

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Chapter 57. Poultry.

General

• 4 TAC §57.10

The Texas Animal Health Commission proposes an amendment to §57.10, concerning definitions.

The amendment is necessary to provide that the definition of Arkansas Infectious Bronchitis Vaccine (AIB) be amended to allow this vaccine to be used without restriction in this state. The Texas Poultry Federation recommends and supports this amendment and has worked very closely with this agency.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide the poultry raisers with information as to unrestricted use of the AIB vaccine in Texas. 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 Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

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

Vaccine–A suspension of attenuated or killed microorganisms administered for the prevention or treatment of an infectious poultry disease and approved for use by USDA and the commission. The following is a list of approved vaccines:

(A) (No change.)

(B) infectious bronchitis without restriction [or Arkansas-type upon confirmed diagnosis by an approved laboratory and upon written agreement between the commission and flock-owners in a designated area for Arkansas-type infectious bronchitis];

(C)-(N) (No change.)

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

Issued in Austin, Texas, on April 10, 1992.

TRD-9205059 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Earliest possible date of adoption: May 18, 1992

For further information, please call: (512) 479-6697

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Part III. Texas Feed and Fertilizer Control Service

Chapter 61. Feed

Labeling

• 4 TAC §61.21, §61.22

The Texas Feed and Fertilizer Control Service proposes amendments to §61. 21 and §61.22 concerning labeling and labeling of commercial feed. The amendments delete the prohibition of negative labeling, redundant requirement relying on 15 United States Code §1415, requirement for vitamin statement in ingredients statement; delineates conditions under which declaration of contents can be made in the ingredient statement, sets forth requirements for determining net weights, expands methods allowed for statement of min-

eral content, specifies conditions under which microorganisms must be listed; changes requirements for feeds containing more than 16% sugar, conformance to standards of identity, declaration of microorganism, moisture; standardizes state requirements for labeling vitamins and minerals with national standard.

George W. Latimer, Jr., Texas State Chemist, 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. Latimer also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that it allows manufacturer wider latitude in providing comparative labeling while standardizing conditions under which ingredient statement can have specific information. Simplication of labeling requirements may save money for small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to George W. Latimer, Jr., Texas State Chemist, P.O. Box 3160, College Station, Texas 77841-3160.

The amendments are proposed under the Texas Agriculture Code, Chapter 141, §141.004, which provides the Texas Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial feeds.

§61.21. General Label Restrictions.

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

(d) **No declaration of content shall appear in the ingredient statement or other part of a proprietary feed unless the declaration is made for each and all ingredients, except:**

(1) when required by law; or

(2) when necessary to conform to good manufacturing or feeding practices. [Negative labeling is prohibited except as required by a specific provision of the Act or this title.]

(e) (No change.)

[(f) Specialty products packaged or marketed in containers weighing one pound or less may bear a declaration of the net contents of the container made in conformity with the United States Fair Packaging and Labeling Act, 15 United States Code, §1415 et seq. and regulations promulgated thereunder.]

§61.22. Labeling of Commercial Feed. Commercial feed shall be labeled with the information prescribed in the Texas Commercial Feed Control Act (Act) and this title on the principal display panel of the product with the following general format, unless otherwise specifically provided.

(1) Net weight.

(A) Packages, dry, and liquid bulk shall be determined directly from scales or for bulk liquids only as calculated from volume and specific gravity/density.

(B) Conformance to weight guarantee shall be judged solely by use of certified scale defined in accordance with Texas Department of Agriculture standards.

(C) Dip-sticks, uncertified/uncalibrated meters or sight gauges shall not be used to estimate volume. Scales not certified in accordance with the Texas Department of Agriculture standards shall not be used for net weights.

(2) Product name and brand name, if any.

(A) The brand **and** [or] product name **shall** [must] be appropriate for the intended use of the feed and must not be misleading. If the name indicates the feed is made for a specific use, the character of the feed must conform therewith.

(B)-(G) (No change.)

(H) Unless otherwise specified, single ingredient feeds shall have a product name which comports with the ingredient name assigned to such product by the Association of American Feed Control Officials in its official publication, adopted by reference in §61.1 of this title (relating to Definitions) [.] **and, shall meet the standard of identity and, where required, list the guarantees of that standard.**

(3) Drug additives, **when present** [if any].

(A)[(i)] The word "medicated" **shall be placed** directly following and below the product name in type size no smaller than one-half the size of the product name.[;]

[(A) When drug additives are present in a commercial feed, the label shall include:]

(B)[(ii)] The purpose of the medication (claim statement),[;] **shall be stated.**

(C) [(iii)] **The label shall state** any warning or cautionary statement relating to such drug additive required by paragraph (6) of this section, or reference to where such warning or cautionary statement may be found. [: and]

(D)[(iv)] **The label shall display** an active drug ingredient statement listing:

(i)[(I)] each drug ingredient by its common or usual name; and

(ii)[(II)] the amount of each ingredient stated in terms of percent by weight, except that:

(I)[(-a-)] antibiotics present at less than 2,000 grams per ton (total) of commercial feed shall be stated in grams per ton (total) of commercial feed;

(II)[(-b-)] antibiotics present at more than 2, 000 grams per ton (total) of commercial feed shall be stated in grams per pound of commercial feed;

(III)[(-c-)] labels for commercial feeds containing growth promotion and feed efficiency levels of antibiotics which are to be fed continuously as the sole ration are not required to make quantitative guarantees, except as specifically noted in the Code of Federal Regulations, Title 21;

(IV)[(-d-)] the amount of a drug or antibiotic may be expressed in terms of milligrams per pound where the dosage given in the feeding directions is given in milligrams.

[(B) Drug additives may not be included on the label of a feed, except customer-formula feed, not registered with the Service in accordance with §61.11 of this title (relating to Application for Registration).]

(4) Guaranteed analysis of the feed.

(A) The guaranteed analysis of the feed shall include the following items in the following order, unless exempted in accordance with subparagraph (E) of this paragraph.

(i) **The amount** [minimum] of crude protein **shall be expressed as a minimum percentage.**[;]

(ii) **The** percentage of equivalent protein from non-protein nitrogen, **shall be** guaranteed as follows:

(I) Complete feeds, supplements, and concentrates containing

more than 5.0% protein from natural sources shall bear the following statement of guarantee: "Crude protein, minimum ___% (This includes not more than ___% equivalent protein from non-protein nitrogen.)"

(II) Mixed feed concentrates and supplements containing less than 5.0% protein from natural sources may bear the following statement of guarantee: "Equivalent crude protein from non-protein nitrogen, minimum ___%."

(III) Ingredient sources of non-protein nitrogen, such as urea, diammonium phosphate, ammonium polyphosphate solution, ammoniated rice hulls, or any other basic non-protein nitrogen ingredient shall bear the following statement of guarantee: "Nitrogen, minimum ___%. Equivalent crude protein from non-protein nitrogen, minimum ___%."

(IV) Liquid feed supplements shall bear the following statement of guarantee: "Crude protein not less than ___% (This includes not more than ___% equivalent protein from non-protein nitrogen.)"

(iii) The [minimum] percentage of crude fat **shall be expressed as a minimum.**[;]

(iv) The [maximum] percentage of crude fiber **shall be expressed as a maximum.**[;]

(v) **The guarantees for** minerals **shall be expressed as follows:**[;]

(I) commercial feeds containing **a total of** 6.5% or more [mineral elements] **calcium, phosphorus and/or salt** shall include a guaranteed analysis of the following minerals in the following order:

(-a-) minimum and maximum percentage of calcium (Ca);

(-b-) minimum percentage of phosphorus (P);

(-c-) minimum and maximum percentages of salt (NaCl), if added; and

(-d-) such other minerals as may be required by subclause (iv) of this clause;

(II) minerals, except salt, shall be guaranteed in terms of percentage of the element:

(-a-) guarantees for minimum potassium, magnesium and maximum fluoride shall be stated in terms of percentage;

(-b-) other minimum mineral guarantees shall be stated in percentage when the concentration is 1.00% (10.000 ppm) or greater, below 10. 000 ppm these guarantees may be expressed either in percentage or in ppm as long as the system used is consistent among these minerals on a given product label and among the product labels;

(III) when calcium and/or salt guarantees are given in the guaranteed analysis, such guarantees shall conform to the following:

(-a-) when the minimum is 5.0% or less, the maximum shall not exceed the minimum by more than one percentage point;

(-b-) when the minimum is above 5.0% the maximum shall not exceed the minimum by more than 20% and in no case shall the maximum exceed the minimum by more than five percentage points;

(IV) naturally occurring mineral phosphatic materials for feeding purposes shall be labeled with a guaranteed analysis of the minimum and maximum percentage of calcium (when present), the minimum percentage of phosphorus, and the maximum percentage of fluorine.

(vi) **The guarantees for** vitamins **shall be expressed as follows.**

(I) **If made,** guarantees for minimum vitamin content of commercial feeds and feed supplements[, when made,] shall be stated on the label in milligrams per pound of feed, except that:

(-a-) vitamin A, other than precursors of vitamin A, shall be stated in International or USP Units per pound;

(-b-) vitamin D[sub]3[sub], in products offered for poultry feeding, shall be stated in International Chick Units per pound;

(-c-) vitamin D, for other uses, shall be stated in terms of International or USP Units per pound;

(-d-) vitamin E, shall be stated in International or USP Units per pound; [and]

(-e-) **vitamin B_{12} shall be stated in milligrams or micrograms per pound;**

(-f-)[(e)] oils and premixes containing vitamins A_2 [or vitamin] D, **and/or E** may be labeled to show vitamin content in terms of units per gram.

(II) **If made,** [Guarantees] **guarantees** for vitamin content on the label of a commercial feed shall state the guarantees [as true vitamins, not compounds, with the exception of the following compounds:] **as menadione, riboflavin, d-pantothenic acid, thiamine, niacin, vitamin B_6, folic acid, choline, biotin, d-pantothenic acid, thiamine, niacin, vitamin B_6, folic acid, choline, biotin, inositol, p-amino benzoic acid, ascorbic acid and/or carotene.**

[(-a-) pyridoxine hydrochloride;

[(-b-) choline chloride;

[(-c-) thiamine; and

[(-d-) d-pantothenic acid.]

(vii) **The analysis shall include the** total sugars as invert on [dried molasses products or] products being sold [primarily] for their molasses content[.] **or products containing more than 16% sugars.**

(viii) **The analysis shall include the** maximum **percent** moisture [content] on liquid feed supplements and liquid ingredients [expressed as a percentage.] **containing more than 20% moisture.**

(ix) Micro-organisms **need not be guaranteed when the commercial feed is intended for a purpose other than to furnish these substances and no other specific label claims are made. When guaranteed, the units shall be colony forming units (CFU) per gram if directions for use are in grams or in CFU per pound when directions for use are in pounds.**

(B)-(C) (No change.)

(D) Commercial, registered brand, or trade names are not permitted for use in a statement of guarantee, unless followed by a parenthetical statement giving the technical name of the ingredient.

(E) Exemptions **are as follows.**

[(i) Guarantees for minerals are not required when the commercial feed contains less than 6.5% mineral element and no specific label claims are made for minerals.]

(i)[*(ii)*] Guarantees for vitamins are not required for commercial feed which is neither formulated nor in any manner represented as a vitamin supplement.

(ii)[(iii)] Guarantees for crude protein, crude fat, and crude fiber are not required for commercial feed not intended to furnish these substances, or for feeds in which these substances are of minor significance to the primary purpose of the product (e.g., drug premixes, mineral or vitamin supplements, or molasses) .

(iii)[(iv)] Liquid ingredients need not be guaranteed to show maximum moisture content when moisture is the difference between the guarantee element and 100% or when the moisture content of the ingredient is less than 20%.

(iv)[(v)] Whole feedgrain, unprocessed in any manner save mechanical blending or mixing with other batches of the same whole kernel feedgrade grain, need not provide guarantees for protein, fat, and fiber.

(5) Feed ingredients.

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

(D) Tentative definitions for feed ingredients shall not be used until adopted as an official definition by the Association of American Feed Control Officials, unless no official definition exists or the ingredient has a commonly accepted name that requires no definition (e.g., sugar).

(E) **All names of all ingredients must be in type of the same size and all guaranteed analyses must be in the same size and style, but not necessarily in the same size and style as the ingredients. Both names and guarantees must be of a size easily read by the average person under ordinary conditions.** [No declaration of vitamin content shall appear in the ingredient statement or any other part of the label of a proprietary feed except in accordance with paragraph (4)(A)(vi) of this section.]

(F)[(G)] The sources of **added** vitamins **may** [shall] be stated in the ingredients statement.

[(F) The names of all ingredients must be in letters or type of the same size as that of the guaranteed analysis and must be of a size easily read by the average person under ordinary conditions.]

(G)[(H)] No reference to quality or grade of an ingredient shall appear in the ingredients statement.

(H)[(I)] The term "dehydrated" may precede the name of any product that has been artificially dried.

(I)[(J)] When the term "iodized" is used in connection with a feed ingredient, the ingredient shall contain not less than 0.007% iodine uniformly distributed.

(J)[(K)] Exemptions.

(i) Carrier ingredients in products used solely as drug and vitamin premixes need not be named in the ingredients statement if:

(I) any changes in the carrier will not affect the purposes of the **premix** [product]; [and]

(II) the carrier ingredient is recognized by the service as being safe; [.]

(III) the carrier will not affect the safety, potency or efficacy of the finished product.

(ii) Single ingredient feeds are not required to have an ingredient statement.

(6) Directions for use and cautionary statements.

(A) All feeds containing additives (including drugs, special purpose additives, or nonnutritive additives) shall have included on their label directions for use and cautionary statements which shall:

(i) be adequate to enable safe and effective use of the product for its intended purposes by users with no special knowledge of the purposes and use of such articles; and

(ii) include, but not limited to, all information prescribed by the Code of Federal Regulations, Title 21.

(B) All feeds supplying particular dietary needs or for supplementing or fortifying the diet or ration with any vitamin, mineral, or other dietary nutrient or compound shall have included on their label adequate directions for use and any cautionary statement necessary for their safe and effective use.

(C) Feeds containing urea or other non-protein nitrogen products.

(i) All **mixed** feeds containing urea or other non-protein nitrogen products shall have included on their label:

(I) the parenthetical statement: "(For Ruminants Only)" printed directly below the brand or product name for the feed; [and]

(II) [if the equivalent protein from non-protein nitrogen in the feed exceeds one-third of the total crude protein, or more than 8.75% of the equivalent protein is from non-protein nitrogen,] the statement "Warning: (or "Caution:") Use as Directed" followed by adequate directions for the safe use of the feed **if the equivalent protein from non-protein nitrogen in the feed exceeds one-third of the total crude protein, or more than 8.75% of the equivalent protein is from non-protein nitrogen; and**

(III) a separate maximum guarantee for non-protein nitrogen originating from the addition of a mineral.

(ii) All directions for use required by this subparagraph shall be printed in a size of type such [as to render it likely] that the directions will be read and understood by ordinary persons under customary conditions of purchase and use.

(iii) This subparagraph shall apply to all invoiced, labeled customer-formula and registered brand labeled feeds.

(iv) Feeds, such as medicated feeds, which are required to be labeled with adequate feeding directions and cautionary statements irrespective of the provisions of this subparagraph, shall not be required to bear duplicate feeding directions or cautionary statements on their labels if such statements as are otherwise required are sufficient to ensure the safe and effective use of the product due to the presence of nonprotein nitrogen.

(D) Fluorine bearing phosphatic materials shall have included on their label the statement: Caution–Mix at the rate to not raise the fluorine content in a total ration (exclusive of roughage) above the following levels:

(i) 0.004% for breeding and dairy cattle;

(ii) 0.009% for slaughter cattle;

(iii) 0.006% for sheep;

(iv) 0.01% for lambs;

(v) 0.015% for swine; and

(vi) 0.03% for poultry."

(7) **The name** [Name] and principal mailing address of the manufacturer or person responsible for distributing the feed.

(A) The principal mailing address shall include the street address, city, state, and zip code; provided, however, that the street address may be omitted if the address is listed in a current city directory or telephone directory.

(B) The labeling may bear the name of the purchaser as well as the manufacturer, provided the product is for in-plant use and not for resale.

(C) The labeling may bear the name of the distributor as well as the manufacturer, provided that the guarantor of the product is specifically stated.

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 College Station, Texas on April 8, 1992.

TRD-9204901 George W. Latimer, Jr.
Texas State Chemist
Texas Feed and Fertilizer Control Service

Earliest possible date of adoption: May 18, 1992

For further information, please call: (409) 845-1121

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TITLE 7. BANKING AND SECURITIES

Part VI. Credit Union Department

Chapter 91. Chartering, Operations, Mergers, Liquidations

Organization Procedures

• 7 TAC §91.206

The Credit Union Department proposes an amendment to §91.206, concerning organizational procedures. The section establishes the conditions under which the commissioner has the authority to approve and make available to credit unions standard bylaw amendments.

John R. Hale, commissioner, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Hale also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the standardization of the wording of like amendments and thereby provide, not only clarity, but also a reduction in the time required of a credit union to develop such an amendment. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed is considered to be insignificant.

Comments on the proposal will be submitted to Harry L. Elliott, Staff Services Officer, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendment is proposed under Texas Civil Statutes, Article 2461-11.07, which provide the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of the Texas Credit Union Act.

§91.206. Amendments to Articles of Incorporation and Bylaws.

(a)-(i) (No change.)

(j) The commissioner may approve and make available to credit unions standard bylaw amendments, if:

(1) the commissioner determines that the amendment is consistent with the purposes of the Act and does not violate the Act or the rules adopted under the Act; and

(2) the subject matter of the amendment is of a type which can be applied to credit unions uniformly.

(k) The commissioner shall consider approving a standard bylaw amendment pursuant to subsection (j) of this section if a request for a uniform amendment is made by 25 or more state chartered credit unions or an association with at least 25 state chartered credit unions as members.

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 April 3, 1992.

TRD-9204708 John R. Hale
Commissioner
Credit Union Department

Earliest possible date of adoption: May 18, 1992

For further information, please call: (512) 837-9236

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Powers of Credit Unions

• 7 TAC §91.402

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Credit Union Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Credit Union Department proposes the repeal of §91.402, concerning the retention of records. The current requirements have become somewhat obsolete and need to be updated to accommodate current statutory and regulatory requirements, as well as new technology available for copying documents.

John R. Hale, commissioner, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Hale 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 that records retention requirements will be updated to meet statutory and regulatory requirements. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will likely not be greater than presently required.

Comments on the proposal will be submitted to Harry L. Elliott, Staff Services Officer, 914 East Anderson Lane, Austin, Texas 78752--1699.

The repeal is proposed under the provisions of Texas Civil Statutes, Article 2461-11.07, which provide the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of the Texas Credit Union Act.

§91.402. Permanent Records.

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 April 9, 1992.

TRD-9204924 John R. Hale
Commissioner
Credit Union Department

Earliest possible date of adoption: May 18, 1992

For further information, please call: (512) 837-9236

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Loans

• 7 TAC §91.708

The Credit Union Department proposes new §91.708, concerning loans. The new section specifically addresses late charges for delinquent loan payments.

John R. Hale, commissioner, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Hale 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 that sufficient controls will be established to ensure the reasonableness of late charges on delinquent loan payments. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be immaterial.

Comments on the proposal will be submitted to Harry L. Elliott, Staff Services Officer, 914 East Anderson Lane, Austin, Texas 78752-1699.

The new section is proposed under the provisions of Texas Civil Statutes, Article 2461-11.07, which provide the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of the Texas Credit Union Act.

§91.708. Late Charges. A credit union may assess charges for loan payments more than 10 days delinquent, subject to the following limitations.

(1) Charges for single-payment loans or balloon payments may not exceed . 5% of the payment due.

(2) Only one late charge may be assessed for a particular loan payment.

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 April 3, 1992.

TRD-9204714 John R. Hale
Commissioner
Credit Union Department

Earliest possible date of adoption: May 18, 1992

For further information, please call: (512) 837-9236

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Chapter 95. Texas Share Guaranty Credit Union

General

• 7 TAC §95.3

The Credit Union Department proposes an amendment to §95.3, concerning general. The amendment specifically addresses the deadline for obtaining federal share insurance.

John R. Hale, commissioner, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Hale 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 that all credit unions in Texas are expected to have federal deposit insurance by December 31, 1992; however, there will be exceptions granted in cases where the credit union could qualify for federal share insurance if additional time were granted. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed should be minimal.

Comments on the proposal will be submitted to Harry L. Elliott, Staff Services Officer, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendment is proposed under the provisions of Texas Civil Statutes, Article 2461-11.07, which provide the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of the Texas Credit Union Act.

§95.3. Share Deposit Guaranty Requirements. All credit unions in the State of Texas shall obtain federal share insurance from the National Credit Union Administration (NCUA). Credit unions presently insured by the Texas Share Guaranty Credit Union shall **reapply** [apply] for federal **share** insurance **within 30 days upon being directed to do so by the commissioner** [with NCUA no later than March 1, 1991,] and obtain federal share insurance within 30 days no notification of eligibility by NCUA. Any credit union unable to qualify for federal share insurance by December 31, 1992 **following such reapplication** may be granted one or more [six-month] extensions by the commissioner **to continue operating and** to qualify for federal **share** insurance, if the commissioner finds that the credit union is making substantial progress in qualifying for federal **share** insurance with NCUA.

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 April 3, 1992.

TRD-9204716 John R. Hale
Commissioner
Credit Union Department

Earliest possible date of adoption: May 18, 1992

For further information, please call: (512) 837-9236

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TITLE 13. CULTURAL RESOURCES

Part I. Texas State Library and Archives Commission

Chapter 6. State Records

Fee Schedules

• 13 TAC §6.121

The Texas State Library and Archives Commission proposes new §6.121, concerning the fee schedule for micrographics services provided to Texas state and local governments. The Records Management Division of the Texas State Library operates a full-service micrographics laboratory for Texas state and local governments. Services include archival quality microfilming, preservation microfilming, micropublishing, microfiche production, quality control testing and analysis, and microfilm processing and duplication. The commission proposes to adopt a fee schedule to comply with the Texas Government Code, §441.168(b), and the 72nd Legislature, 1991, First Called Session, Chapter 19, Article V, §69, Cost Recovery Program.

William L. Dyess, director, records management division has, determined that there will be fiscal implications as a result of administering or enforcing this section. The effect on state government for the first five year period the rule will be in effect will be an estimated additional cost and increase in revenue of $624,007 in 1992; $645,970 in 1993; $1,032,843 in 1994; $1,032,843 in 1995; and $1,068,166 in 1996. The effect on local government for the first five-year period the rule will be in effect will be an estimated additional cost of $3,600 in 1992; $22,995 in 1993; $193,555 in 1994; $193,555 in 1995 and $228,878 in 1996.

Mr. Dyess 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 improved access to public information created and maintained by state and local governments through the orderly and systematic preservation of long-term, permanent, archival, and vital records. 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 William L. Dyess, Records Management Division, Texas State Library, Box 12927, Austin, Texas 78711.

The new section is proposed under the Government Code, §§441.032(b)(2), 441. 168(b), 771.007(a), and the 72nd Legislature, 1991, First Called Session, Chapter 19, Article V, §69, Cost Recovery Program, which provide the Texas State Library and Archives Commission with the authority to provide micrographics services to state and local governments and to recover the costs for such services.

§6.121. Micrographics Services Fee Schedule. The Texas State Library and Archives Commission adopts by reference the Micrographics Services Fee Schedule dated April 1992. Copies may be obtained from the Records Management Division of the Texas State Library, P.O. Box 12927, Austin, Texas 78711.

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 April 3, 1992.

TRD-9204704 Raymond Hitt
Assistant State Librarian
Texas State Library and
Archives Commission

Earliest possible date of adoption: May 18, 1992

For further information, please call: (512) 463-5440

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Title 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

Conservation Rules and Regulations

• 16 TAC §3.1

The Railroad Commission of Texas proposes an amendment to 16 TAC §3.1, concerning the updating of organization reports and the length of time that filing entities are required to retain copies of records, forms, and documents required to be filed with the commission, along with unfiled supporting materials. The proposed amendment to 16 TAC §3.1(a)(7) states that any requirement that a notice or order be sent by the commission to an organization may be met by sending the item by mail to the organization's mailing address as shown on the most recently filed organization report, and provides that hearings and other proceedings which may be accorded administrative finality may proceed on the basis of notice sent to that address, even if actual notice is not received because the organization failed to notify the commission of an address change by filing an amended organizational report. The proposed amendment to 16 TAC §3.1(c) will extend the required retention period for records required to be kept by commission rule from two to three years, or for as long thereafter as enforcement proceedings in which the documents may be material are pending, in order to conform to the standards set forth by the Interstate Oil and Gas Compact Commission, EPA/IOGCC, ***Study of State Regulation of Oil and Gas Exploration and Production of Waste***, §4.2.5 Waste Tracking (December 1990) .

Rita E. Percival, systems analyst for the Oil and Gas Division, has determined that for the first five-year period the proposed rule amendment will be in effect, there will be no fiscal implications for state government as a result of enforcing or administering it. There will be no fiscal implications for local government or cost of compliance with the proposed rule amendment for small businesses as a result of enforcing or administering it.

Dwight Martin, Hearings Examiner, Legal Division, has determined that for each of the first five years that the amendment of 16 TAC §3.1(a)(7) is in effect, the public will benefit from an increased efficiency in the prosecution of commission enforcement cases and the earlier determination of the status of abandoned or inactive wells, both of which will lower administrative costs and enable the commission to minimize the likelihood that commission-regulated operations will cause pollution of surface or subsurface waters of the state; there is no anticipated economic cost to organizations required to comply with the amendment. Mr. Martin also has determined that for the first five years that the amendment of 16 TAC §3.1(c) is in effect, the public will benefit from an enhanced ability of the commission to monitor the activities of organizations regulated by the commission. The anticipated economic cost to organizations required to comply with the proposed amendment will be the incremental costs of retaining the described documents for one additional year or until enforcement proceedings to which they may be material have concluded, and will vary from organization to organization, but is not expected to be substantial.

The commission encourages public comment on the proposed amendment. Please submit written comments to Dwight Martin, Hearings Examiner, Legal Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. The docket number is 20-97344.

The commission proposes the amendments pursuant to Texas Civil Statutes, Article 6252-13a, §4(a)(1) and the Natural Resources Code, §81.052 (Vernon Supp. 1992).

§3.1. Organization Report; [Name To Be Filed And] ***Retention of*** *Records [To Be Kept]; Notice Requirements.*

(a) Filing requirements.

(1)-(6) (No change.)

(7) **Organization reports** [Each organization that is required to file an organization] **must be refiled** [is also required to file] annually [a current organization report] according to the schedule assigned by the commission. Prior to the filing date, the commission will mail notification and information to each organization for update of the organization report file. **An amended organization report must be** [Further, an organization report must be amended and] filed **within 15 days after a** [upon any] change in information **required to be** reported in the organization report [during the annual period within 15 days of such change]. **Any requirement under statute or commission rule for an order to be sent or notice to be given by the commission to an organization may be met by mailing the item to the organization's mailing address shown on the most recently filed organization report. Notice sent by regular first-class mail may be presumed to have been received if, upon arrival of the deadline for any response to the notice, the wrapper containing the notice has not been returned to the commission. Service of notices and orders sent by certified mail is effective upon: acceptance of the item by any person at the address; refusal to accept the item by any person at the address; failure to claim the item prior to its return to the commission by the United States Postal Service; or return of the item to the commission by the United States Postal Service bearing a notation such as "addressee unknown," "no forwarding address," "forwarding order expired," or any similar notation indicating that the organization's mailing address shown on the most recently filed organization report is incorrect. Any commission action or proceeding for which notice is required may go forward on the basis of the notice provided under this subsection, whether or not actual notice has been received.**

(b) (No change.)

(c) Time frame. All **organizations** [such entities] shall keep copies of records, forms and documents which are required to be filed with the commission and shall keep supporting documents for a period of **three** [two] years, or longer if required by another commission rule, and any such copies may be disposed of at the discretion of such entities after the original records, forms, and documents have been on file with the commission for **the** [two years of longer if] required **period, except that particular documents shall be retained beyond the required period and until the resolution of pending commission regulatory enforcement proceedings if the documents contain information material to the determination of any issues therein** [by another commission rule]. All records, forms, and documents required to be filed with the commission shall be filed in the same name, exactly as it appears on the organization report.

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 April 6, 1992.

TRD-9204947

Nolan Ward
Hearings Examiner,
General Law
Legal Division
Railroad Commission of
Texas

Earliest possible date of adoption: May 18, 1992

For further information, please call: (512) 463-6802

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Part II. Public Utility Commission

Chapter 23. Substantive Rules

Records and Reports

• 16 TAC §23.11

The Public Utility Commission of Texas proposes an amendment to §23.11 by deleting subsections (g) and (h) concerning general reporting requirements. The subsections to be deleted require annual reports to be submitted showing payments and other compensation and other expenditures, respectively. The pertinent information contained in these reports is also contained in the annual tele-

phone utility earnings monitoring reports in aggregated form. Additionally, the detailed information contained in these subsections of the rule is generally not needed on an annual basis. The specific information required by the rule is used primarily during §42 proceedings, and is requested when needed.

These subsections became effective July 5, 1976, and were apparently intended to track the Public Utility Regulatory Act, §28(a)(7) and (30). Although Houston Light and Power and the Lower Colorado River Authority have filed these reports in the last two years, Southwestern Bell Telephone Company is the only company which has consistently filed the required reports. Due to limited resources and the lack of necessity, these two subsections have not been strictly enforced in the past.

Suzi Ray, assistant general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for the state or local government as a result of enforcing or administering the section.

Ms. Ray also has determined that for each year of the first five years the section is in effect the public benefit anticipated will be reducing the reporting requirements of public utilities in Texas, while still requiring the utilities to report all necessary information. Other public benefits include reduced workload in the recording and upkeep of the duplicative reports. There will be no effect on small businesses as a result of deleting these subsections. There is no anticipated economic cost to persons who will not be required to file these reports. There will be no impact on employment in the geographical areas affected.

Written comments (13 copies) on the proposal may be submitted to Mary Ross McDonald, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days after publication. Comments should refer to Project Number 10966.

The amendment is proposed under Texas Civil Statutes, Article 1446c, §16(a), which provide the Public Utility Commission of Texas with the authority to make and enforce the rules reasonably required in the exercise of its powers and jurisdiction.

§23.11. General Reports.

(a)-(f) (No change.)

[(g) Payments and other compensation. An annual report shall be submitted to the commission showing all payments of compensation (other than salary or wages subject to the withholding of federal income tax) to residents of Texas, and all payment for legal, administrative, or legislative matters in Texas or for representation before the Texas Legislature or any governmental agency or body.

[(h) Other expenditures. An annual report shall be filed with the commission providing the total for each of the following classes of expenditures and detailing each expenditure exceeding $50:

[(1) business gifts and entertainment;

[(2) institutional, consumption-inducing, and other advertising expenses;

[(3) public relations expenses;

[(4) legislative advocacy;

[(5) charitable, civic, religious, and political contributions and donations;

[(6) all dues or membership fees paid; and

[(7) other expenses as deemed appropriate by the commission.]

(g)[(i)] Gross receipts assessment reporting. All utilities subject to the jurisdiction of the commission shall file a gross receipts assessment report with the state comptroller reflecting those gross receipts subject to the assessment stipulated in the Act on a form prescribed by the state comptroller. These reports shall be required on an annual basis for those companies that have elected to remit their assessment quarterly. Such reports and assessments shall be remitted in accordance with the Public Utility Regulatory Act, Article XII, §79.

(h)[(j)] Information omitted from reports. The commission may waive the reporting of any information required in those sections if it determines that it is either impractical or unduly burdensome on any utility to furnish the requested information. If any such information is omitted by permission of the commission, a written explanation of the omission must be stated in the report.

(i)[(k)] Special and additional reports. Each utility, including municipally owned utilities, shall report on forms prescribed by the commission special and additional information as requested which relates to the operation of the business of the utility.

(j)[(l)] Service quality reports. Service quality reports shall be submitted quarterly on a form prescribed by the commission.

(k)[(m)] Research and development reports. Research and development reports shall be submitted annually on a form prescribed by the commission.

(l)[(n)] Report amendments. Corrections of reports resulting from new information or errors shall be filed on a form prescribed by the commission.

(m)[(o)] Semiannual and annual earnings report. Each utility shall report its semi-annual and annual earnings on forms prescribed by the commission as set out in §23.12 of this title, (relating to Financial Records and Reports).

(n)[(p)] Penalty for refusal to file on time. Addition to penalties prescribed by law, the commission may disallow for rate making purposes the costs related to the activities for which information was requested and not timely filed.

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 April 6, 1992

TRD-9204719 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Earliest possible date of adoption: May 18, 1992

For further information, please call: (512) 458-0100

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Part VIII. Texas Racing Commission

Chapter 303. General Provisions

Subchapter F. Licensing Persons with Criminal Backgrounds

• 16 TAC §303.201

The Texas Racing Commission proposes an amendment to §303.201, concerning general authority. The amendment clarifies the procedures the commission will use to revoke, suspend, or deny a license for past criminal activity.

Paula Cochran Carter, general counsel for the Texas Racing Commission, 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. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the commission's licensing program is conducted in accordance with applicable state laws. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted before May 15, 1992, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorizes the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §7.04, which authorize the commission to revoke, suspend, or deny an occupational license for past criminal activity; and Texas Civil Stat-

utes, Article 6252-13c and Article 6252-13d, which authorize the commission to adopt guidelines for licensing person with criminal backgrounds.

§303.201. General Authority.

(a) In accordance with state law, the commission may revoke, suspend, or deny a license **or the stewards or racing judges may suspend or deny a license** to a person because of the person's conviction of a felony or misdemeanor if the offense directly relates to the person's present fitness to perform the duties and responsibilities associated with the license.

(b) In determining whether or not an offense directly relates to a person's present fitness to perform the duties and responsibilities associated with the license, the commission **or stewards or racing judges** shall consider the **relationship between the offense and the particular license applied for and the following** factors [listed in Texas Civil Statutes, Article 6252-13c, §4(b) and (c).]**:**

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person at the time of the commission of the crime;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person prior to and following the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(6) other evidence presented by the person of the person's present fitness, including letters of recommendation from:

(A) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(B) the sheriff or chief of police in the comjunicty where the person resides; or

(C) any other persons in contact with the convicted person.

(c) on learning of the felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision of a licensee, the commission shall revoke the licensee's license.

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

Issued in Austin, Texas on April 3, 1992.

TRD-9204982 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: May 18, 1992

For further information, please call: (512) 794-8461

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Chapter 305. Licenses for Pari-mutuel Racing

Subchapter B. Individual Licenses

Specific Licensees

• 16 TAC §305.51

The Texas Racing Commission proposes new §305.51, concerning leadout. The section establishes the licensing requirements for leadouts.

Paula Cochran Carter, general counsel for the Texas Racing Commission, 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. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that leadouts participating in pari-mutuel racing are trained to treat racing greyhounds with care. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted before May 15, 1992, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act and §7.02, which authorize the commission to specify the qualifications and experience necessary for the various categories of licensee.

§305.51. Leadout.

(a) To be licensed as a leadout, an individual must:

(1) demonstrate to the satisfaction of the commission veterinarian that the individual is knowledgeable in the handling and/or care of greyhounds; and

(2) participate in a training program for leadouts provided by the association at which the individual desires to be licensed.

(b) For purposes of subsection (a)(2) of this section, a leadout who was licensed before June 1, 1992, must complete a training program before September 1, 1992.

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 April 3, 1992.

TRD-9204976 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: May 18, 1992

For further information, please call: (512) 794-8461

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Chapter 309. Operation of Racetracks

Subchapter B. Horse Racetracks

Operations

• 16 TAC §309.196

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the amended section it adopts on an emergency basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §309.196, concerning traffic in stable area. The amendment clarifies the individuals that are not allowed to operate motor vehicles in the stable area.

Paula Cochran Carter, general counsel for the Texas Racing Commission, 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. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing is safe for all licensees. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted before May 15, 1992, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act and §6.06, which authorize the commission to adopt rules relating to the operation of racetracks.

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 April 3, 1992.

TRD-9204980 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: May 18, 1992

For further information, please call: (512) 794-8461

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Chapter 309. Operation of Racetracks

Subchapter C. Greyhound Racetracks

Facilities and Equipment

• 16 TAC §309.316

The Texas Racing Commission proposes and amendment to §309.316, concerning emergency care facility. The amendment establishes a procedure to evaluating the materials, equipment, and procedures used at emergency care facilities at pari-mutual greyhound racetracks.

Paula Cochran Carter, general counsel for the Texas Racing Commission, 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. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that racing greyhounds are treated with the finest available veterinary care. There will be no fiscal implications for businesses as a result of enforcing the section. The cost to a greyhound racetrack will depend on the degree to which the racetrack maintains the emergency care facilities; therefore, the exact costs cannot be determined. There is no anticipated economic cost to person who are required to comply with the section as proposed.

Comments on the proposal may be submitted before May 15, 1992, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act and §6.06, which authorizes the commission to adopt rules relating to the operation of racetracks.

§309.316. Emergency Care Facility.

(a) An association shall provide a veterinary facility to provide emergency care to injured or stressed animals. The association shall equip and maintain the facility with the equipment and materials approved by the commission veterinarian. **In determining what equipment and materials to approve, the commission veterinarian shall consider the *Standards for Animal Hospitals* adopted by the American Animal Hospital Association and shall consult with the small animal veterinarian serving on the commission.**

(b) On or before January 15 of each year, the commission veterinarian shall review the equipment and materials provided in the facility and shall submit to the association a written statement describing any additional equipment and materials necessary to provide quality veterinary care to the greyhounds. The commission veterinarian may also require changes in protocol or standard operating procedures of the facility to increase the facility's efficiency and effectiveness. Failure to implement the requirements of the commission veterinarian is grounds for disciplinary action against the association. An association may request in writing that the Greyhound Racing Section reconsider, modify, or rescind the commission veterinarian's determinations made under this section.

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

Issued in Austin, Texas, on April 3, 1992.

TRD-9204983 Paula Cochran Carter
General Counsel
Texas Racing Commission

Proposed date of adoption: May 18, 1992

For further information, please call: (512) 794-8461

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Chapter 311. Conduct and Duties of Individual Licensees

Subchapter B. Specific Licensees

Licensees for Greyhound Racing

• 16 TAC §311.174

The Texas Racing Commission proposes an amendment to §311.174, concerning greyhound owners. The amendment clarifies the duties of a greyhound owner for the care of a greyhound that has retired from pari-mutual racing.

Paula Cochran Carter, general counsel for the Texas Racing Commission, 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. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that greyhounds that have participated in pari-mutual racing will be treated humanely and that capricious breeding of greyhounds will be discouraged. There will be no effect on small businesses.The anticipated economic cost to persons who are required to comply with the section as proposed will vary depending on the length of time a greyhound owner must maintain a greyhound before it is permanently placed. The estimated cost of spaying or neutering a greyhound is at $100.

Comments on the proposal may be submitted before May 15, 1992, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act.

§131.174. Greyhound Owners. The owner of a greyhound that has retired from pari-mutual racing in this state is responsible for the humane treatment and care of the greyhound, including the spaying or neutering of the greyhound if not intended for breeding, until the greyhound is permanently placed in a non-racing living environment. The failure to provide for such a greyhound's treatment and placement is a practice that is detrimental to the best interests of the public and the sport of greyhound racing and is grounds for disciplinary action by the racing judges or commission.

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

Issued in Austin, Texas, on April 3, 1992.

TRD-9204984 Paula Cochran Carter
General Counsel
Texas Racing Commission

Proposed date of adoption: May 18, 1992

For more information, please call: (512) 794-8461.

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Chapter 313. Officials and Rules of Horse Racing

Subchapter B. Entries, Declarations, and Allowances

Entries

• 16 TAC §313.103

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the amended section it adopts on an emergency

basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §313.103, concerning eligibility requirements. The amendment clarifies the eligiblity requirements for entering a horse in a race.

Paula Cochran Carter, general counsel for the Texas Racing Commission, 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. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that horses participating in pari-mutuel races are fit and ready to run in races currently being conducted. There will be no effect on small businesses as a result of enforcing the section. 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 on or before May 15, 1992, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act and §6.06, which authorizes the commission to adopt rules relating to the operation of racetracks.

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 April 3, 1992.

TRD-9204979 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: May 18, 1992

For further information, please call: (512) 794-8461

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Entries

• 16 TAC §313.111

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the amended section it adopts on an emergency basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §313.111, concerning age restrictions. The amendment deletes the age limitation for racing a maiden horse.

Paula Cochran Carter, general counsel for the Texas Racing Commission, 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. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the supply of horses for pari-mutuel races is maximized. 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 on or before May 15, 1992, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act and §6.06, which authorizes the commission to adopt rules relating to the operation of racetracks.

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 April 3, 1992.

TRD-9204978 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: May 18, 1992

For further information, please call: (512) 794-8461

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Subchapter C. Claiming Races

• 16 TAC §313.304

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the amended section it adopts on an emergency basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §313.304, concerning claim irrevocable. The amendment clarifies the status of a claim of a horse that is excused before it is a starter.

Paula Cochran Carter, general counsel for the Texas Racing Commission, 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. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing is conducted fairly and with the utmost integrity. 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 on or before May 15, 1992, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act and §6.06, which authorizes the commission to adopt rules relating to the operation of racetracks.

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 April 3, 1992.

TRD-9204981 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: May 18, 1992

For further information, please call: (512) 794-8461

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Chapter 319. Veterinary Practices and Drug Testing

Subchapter B. Treatment of Horses

• 16 TAC §319.110

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the amended section it adopts on an emergency basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §319.110, concerning Coggins test and health certificate. The amendment clarifies the health documentation for a horse to be admitted to an association's grounds.

Paula Cochran Carter, general counsel for the Texas Racing Commission, 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. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the horses participating in pari-mutuel racing are healthy and that the potential for spreading certain equine diseases is minimized. 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 on or before May 15, 1992, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act and §6.06, which authorizes the commission to adopt rules relating to the operation of racetracks.

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 April 3, 1992.

TRD-9204977 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: May 18, 1992

For further information, please call: (512) 794-8461

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 5. Property and Casualty

Subchapter E. Texas Catastrophe Property Insurance Association

Plan of Operation

• 28 TAC §5.4001

The State Board of Insurance of the Texas Department of Insurance proposes an amendment to §5.4001, concerning the plan of operation of the Texas Catastrophe Property Insurance Association (TCPIA). The amendment is necessary to incorporate a change to the plan of operation to provide a new provision concerning the submission of an application for new or increased coverage to the TCPIA for acceptance of the application on the date mailed. Applications for new or increased coverage will be effective on the date mailed if sent by regular mail that is hand cancelled by the United States Postal Service.

Lyndon Anderson, deputy commissioner, property/casualty division, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Anderson 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 another available option to insureds submitting application for new or increased coverage to have the coverage become effective on the date mailed. This allows coverage through the TCPIA to be provided in an expedited manner. 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 Lyndon Anderson, Deputy Commissioner, Property/Casualty Division, 333 Guadalupe, P. O. Box 149104, Mail Code 103-1A, Austin, Texas 78714-9104.

The amendment is proposed under the Insurance Code, Article 21.49, §5(c), which requires the State Board of Insurance to adopt the plan of operation of the Texas Catastrophe Property Insurance Association or any amendment thereto.

§5.4001 Plan of Operation.

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

(d) Catastrophe insurance.

(1) (No change.)

(2) Application, acceptance, and rejection.

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

(E) Receipt of the application.

(i) (No change.)

(ii) New or increased coverage will be effective on the date received by the Texas Catastrophe Property Insurance Association or effective on the date the application is mailed if sent by registered or certified mail or United States Postal Service Express Mail, **or if sent by regular mail that is hand cancelled by the United States Postal Service** prior to the time specified in this clause as an exception, unless the application for new or increased coverage stipulates a later date. Renewal policies will be effective to provide continuous coverage if the request for a renewal is received on or before the expiration of the existing policy. Exception: no new or increased coverage shall be accepted when a windstorm designated as a hurricane by the United States Weather Bureau is in the Gulf of Mexico or within the boundaries of 80 degree west longitude and 20 degrees north latitude. This exception does not apply to any renewal policy affording windstorm coverage if the expiring policy was written by the Texas Catastrophe Property Insurance Association and if the application for renewal was received by the Texas Catastrophe Property Insurance Association on or before the expiration of the existing Texas Catastrophe Property Insurance Association policy or if mailed by registered or certified mail or United States Postal Service Express Mail **or by regular mail that is hand cancelled by the United States Postal Service** prior to the expiration of the existing Texas Catastrohpe Property Insurance Association Policy.

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

(e)-(f) (No change.)

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

Issued in Austin, Texas, on April 7, 1992.

TRD-9204798 Linda von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: May 18, 1992

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

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Standard Policy Forms-Windstorm and Hail

• 28 TAC §5.4201

The State Board of Insurance of the Texas Department of Insurance proposes an amendment to §5.4201, concerning the withdrawal of the Texas Catastrophe Property Insurance Association Form Number 560, Beach Area Percentage Deductible Clause, from use in connection with a Texas Catastrophe Property Insurance Association policy. The amendment is necessary to eliminate any reference to the Beach Area Percentage Deductible Clause Endorsement Form 560, since the beach area percentage deductible will no longer be an available deductible option for attachment to a Texas Catastrophe Property Insurance Association policy. The removal of the defined areas of beach area and coastal area eliminates the need to have a specific deductible endorsement available for the beach area.

Lyndon Anderson, deputy commissioner, property/casualty division, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Anderson also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the elimination of an unnecessary endorsement form and the elimination of any confusion that a beach area deductible is available. 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 Lyndon Anderson, Deputy Commissioner, Property/Casualty Division, 333 Guadalupe, P. O. Box 149104, Mail Code 103-1A, Austin, Texas 78714-9104.

The amendment is proposed under the Insurance Code, Article 21.49, §8, which authorizes the State Board of Insurance to approve policy forms and endorsements for the Texas Catastrophe Property Insurance Association.

§5.4201. Standard Texas Catastrophe Property Insurance Association Forms-Windstorm and Hail. The State Board of Insurance adopts by reference the standard Texas Catastrophe Property Insurance Association forms -windstorm and hail. Specimen copies of these forms are available from the Texas Catastrophe Property Insurance Association, P. O. Box 2930, Austin, Texas 78767. They are also available from the Property Section, State Board of Insurance, 333 Guadalupe Street, P. O. Box 149104, Austin, Texas 78714-9104. The forms are more specifically identified as follows:

(1)-(7) (No change.)

[(8) TCPIA Form 560-beach area percentage deductible clause. Effective May 1, 1972;]

(8) [(9)] TCPIA Form 570-mobile home percentage deductible clause. Effective August 17, 1976;

(9) [(10)] TCPIA Form 575-mobile home percentage deductible clause. Effective August 17, 1976.

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 April 7, 1992.

TRD-9204799 Linda von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: May 18, 1992

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

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Manual

• 28 TAC §5.4501

The State Board of Insurance of the Texas Department of Insurance proposes an amendment to §5.4501, concerning the adoption by reference of the Texas Catastrophe Property Insurance Associations Rules Manual. The amendment is necessary in order to provide deductible provisions in the TCPIA manual to reflect new deductibles that will apply to all property located in the first tier of counties along the Texas seacoast and insured by the Texas Catastrophe Property Insurance Association. The new deductibles produce equity for all insureds by eliminating a distinction between deductibles applicable to property located in the beach area and property located in the coastal area, and by introducing deductibles that are applicable to all property regardless of the location. The new deductibles will be a 1.0% deductible for dwelling property with a buy back to a $250 deductible and a $100 deductible for commercial property with optional higher deductibles available for a rate credit. The new deductibles are justified based on the rates approved by the board for use on property insured by the Texas Catastrophe Property Insurance Association. In addition, the amendment provides for the methods an application for new or increased coverage can be submitted to the TCPIA for acceptance on the date mailed. Applications for new or increased coverage will be effective on the date mailed if sent by regular mail that is hand cancelled by the United States Postal Service. The TCPIA manual is also corrected to include United States Postal Service Express Mail as a method of forwarding an application for new or increased coverage to the TCPIA. This method was previously adopted in the TCPIA Plan of Operation under rule 28 TAC §5.4001, but was never included in the TCPIA manual.

Lyndon Anderson, deputy commissioner, property/casualty division, has determined that for the first five-year period the section is in effect there is no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Anderson, 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 equal treatment in the application of standard deductibles on all property insured through the Texas Catastrophe Property Insurance Association, all in accordance with the rating structure approved for use in the first tier of counties. In addition, the use of regular mail that is hand cancelled by the United States Postal Service provides an additional option, at a reduced cost for insureds, to have coverage effective through the TCPIA. 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 Lyndon Anderson, Deputy Commissioner, Property/Casualty Division, 333 Guadalupe Street, P.O. Box 149104, Mail Code 103-1A, Austin, Texas 78714-9104.

The amendment is proposed under the Insurance Code, Article 21.49, §8, which authorizes the State Board of Insurance to approve manuals of classifications, rules, and rates for the Texas Catastrophe Property Insurance Association.

§5.4501. Rules and Regulations for Texas Catastrophe Property Insurance Association (association). The State Board of Insurance adopts by reference a rules manual for the association, as amended effective **June 1, 1992** [January 1, 1992]. Copies of the rules manual may be obtained by contacting the Property /**Casualty** Division, Mail Code 103-1A, Texas Department of Insurance, 333 Guadalupe Street, P. O. Box 149104, Austin, Texas 78714-9104.

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 April 7, 1992.

TRD-9204800 Linda von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: May 18, 1992

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

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TITLE 31. NATURAL RESOURCES

Part II. Parks and Wildlife Department

Chapter 57. Fisheries [and Wildlife]

Mitigation of Fish and Wildlife Resources as a Result of Damages Incurred from Water Development and Other Construction Projects

• 31 TAC §57.141

(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 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 §57.141, concerning mitigation policy of the Texas Parks and Wildlife Commission. This policy has been revised and a new policy will be submitted for commission approval pending repeal of this section.

Robin Riechers, staff economist, has determined that for the first five-year period the repeal is in effect there will be minor fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Riechers 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 because the intent of the regulation will be covered by a commission policy. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. The department has not filed a local employment impact statement with the Texas Employment Commission in compliance with the Administrative Procedure and Texas Register Act, §4A, as this agency has determined that the rule as proposed will not impact local employment.

Comments on the proposal may be submitted to Dr. Larry McKinney, Director, Resource Protection Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4864, or 1-800-792-1112, extension 4864.

The repeal is proposed under the Texas Parks and Wildlife Code, §12.001 and §12.024, which provides the department with the authority to allow establishment of a re-

vised mitigation policy by the commission in pursuit of department responsibilities.

§57.141. Policy.

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 April 13, 1992.

TRD-9205068 Paul M. Shinkawa
Director, Legal Services
Texas Parks and Wildlife Department

Earliest possible date of adoption: May 18, 1992

For further information, please call: 1-800-792-1112, ext. 4433 or (512) 389-4433

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Permits to Sell Nongame Fish Taken From Public Fresh Water

• **31 TAC §57.378**

The Texas Parks and Wildlife Department proposes an amendment to §57.378, concerning the sale of nongame fish taken from public water. The proposal will allow the sale of freshwater drum and reflects changes in nomenclature since the rules went into effect.

Robin Riechers, staff economist, has determined that for the first five-year period the section is in effect there will be minimal fiscal implications for state or local government as a result of enforcing or administering the section. The effects of the rule on small businesses should be positive as an additional species is being added to the list of fish which may be sold.

Mr. Riechers also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the ability to purchase an additional fish species in Texas. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

The department has not filed a local employment impact statement with the Texas Employment Commission in compliance with the Administrative Procedure and Texas Register Act, §4A, as this agency has determined that the rule as proposed will not impact local economics.

Comments on the proposal may be submitted to Earl Chilton, Inland Fisheries Branch, Staff Specialist, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4652 or 1-800-792-1112, extension 4652.

The amendment is proposed under the Texas Parks and Wildlife Code, Chapter 67, §67.0041, which provides the Texas Parks and Wildlife Commission with authority to issue permits for the taking, possession, transportation, sale, and exportation of nongame species of fish.

§57.378. Nongame Fishes Covered By These Rules. A permit to sell the following species of nongame fish taken from public fresh water may be issued if the department determines that the sale is necessary to properly manage the species.

Common Name	Scientific Name
Alligator gar	*Lepisoteus spatula*
Shortnose gar	*Lepisoteus platostomus*
Spotted gar	*Lepisoteus oculatus*
Longnose gar	*Lepisoteus osseus*
Bowfin	*Amia calva*
Gizzard shad	*Dorosoma cepedianum*
Threadfin shad	*Dorosoma petenense*
Common carp	*Cyprinus carpio*
Goldfish	*Carassius auratus*
Grass carp	*Ctenopharyngodon idella*
Bighead carp	*Aristichthys nobilis*
Bigmouth buffalo	*Ictiobus cyprinellus*
Black buffalo	*Ictiobus niger*
Smallmouth buffalo	*Ictiobus bubalus*
River carpsucker	*Carpiodes carpio*
Black bullhead	*Ameiurus [Ictalurus] melas*
Yellow bullhead	*Ameiurus [Ictalurus] natalis*
Freshwater drum	*Aplodinotus grunniens*
Mozambique tilapia	*Tilapia mossambica*
Blue tilapia	*Tilapia aurea*
Redbelly tilapia	*Tilapia zilli*
Rio Grande cichlid	*Cichlasoma cyanoguttatum*
Silversides	*Menidia beryllina [spp.]*
Mullet	*Mugil spp.*
Shiners	*Notropis spp., and Cyprinella spp.*
Minnows	*Hybognathus spp.*

Note: Hybrids among species listed above may also be sold.

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 April 13, 1992.

TRD-9205072 Paul M. Shinkawa
Director, Legal Services
Texas Parks and Wildlife Department

Earliest possible date of adoption: May 18, 1992

For further information, please call: 1-800-792-1112, ext. 4652 or (512) 389-4652

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Chapter 65. [Fisheries and] Wildlife

Subchapter A. Statewide Hunting and Fishing

- **31 TAC §§65.3, 65.13, 65.28, 65.40, 65.62, 65.72, 65.78, 65. 80**

The Texas Parks and Wildlife Commission proposes new §65.28 and §65.80 and amendments to §§65.3, 65.13, 65.40, 65.62, 65.72, and 65.78, concerning the Statewide Hunting and Fishing Proclamation. The amendments are a result of the Parks and Wildlife Commission's public hearing held March 26, 1992, where the public made comments concerning amending the proclamation to incorporate their proposals.

The commission directed staff to initiate rulemaking relative to the proposals but within biologically sound management of the resources. The proposals were generated by resolutions, petitions, letters, telephone calls, and comments made at the commission's public hearing and in 45 public hearings held throughout the state during the period of March 2-6 and 23, 1992. The proposed new rules and amendments herein are in addition to other proposed amendments to the Statewide Hunting and Fishing Proclamation that are contained in Texas Register document number 9202357, published in the February 25, 1992, issue of the *Texas Register* (17 TexReg 1516).

The proposed amendments are §§65.13, 65.40, and 65.62 and new rule §65. 28 to permit a special experimental muzzleloading season in selected counties for white-tailed and mule deer and turkey during the mid portion of the archery-only season and assess a $10 fee for the aggregate muzzleloading tags, amendments to §65.40 and §65.62 add one day to the end of the archery-only season which allows five full weekends for hunting deer and turkey but only during the 1992-93 season, amendment to §65.72 allows a suspension of the requirement that hooks and lines of saltwater trotlines must be picked up by 1 p. m. on Fridays of each week and not replaced until 1 p.m. on Sunday by allowing adjustments to those times based on small craft warnings issued by the National Weather Service, amendment to §65.78(a)(3)(C) clarifies the possession of stone crab claws, and new §65.80 and the amendment to §65.3 impose certain restrictions on harvest of freshwater mussels.

Robin Riechers, staff economist, has determined that for the first five-year period the sections are in effect there will be minimal fiscal implications to state or local governments or small businesses as a result of enforcing or administering the sections.

Ms. Riechers also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the implementation of an experimental muzzleloading season in limited areas of Texas to increase hunter diversity and opportunity, obtaining research data on muzzleloading hunters and their success, assessing a $10 muzzleloading tag fee for department administrative costs, adding one day on the end of the archery-only season which permits five weekends of hunting, permitting trotlines to be left in place if small craft warnings are announced by the United States Weather Bureau, clarifying that those who possess the left claw of a stone crab are in violation, and implementing restrictions to protect freshwater mussels from overharvest.

It is anticipated there will be minimal fiscal implications to persons who are required to comply with the sections as proposed. Persons who choose to hunt during the special muzzleloading season are required to purchase a $10 set of muzzleloading tags. Persons who previously could harvest freshwater mussels unrestricted now have size and weight limits for the amounts of mussels they can retain. Additionally, clarification that possession of the left claw of a stone crab is a violation will improve enforcement of this section.

The department has filed a local employment impact statement with the Texas Employment Commission in compliance with the Administrative Procedure and Texas Register Act, §4A but has not yet received a reply to the local employment impact of the new sections and amendments.

The proposed sections are based upon wildlife management tenets and it is anticipated that the net value of economic effects to the state will be positive.

Comments on the proposal may be submitted to Phil Evans, Regulatory Coordinator, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4974 or 1-800-792-1112, extension 4974.

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

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

Freshwater mussel–Bivalve mollusks of the family Unionidae (collectively including Amblimidae and Margaritiferidae) as listed by the American Fisheries Society Special Publication 16.

§65.13. Firearms.

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

(c) **It is unlawful to hunt with a broadhead hunting point while in possession of a firearm during the archery-only seasons. During the special experimental muzzleloading season from October 17-25, 1992, it is lawful to possess both muzzleloading firearms and broadhead hunting points while hunting** [It is unlawful to hunt deer or turkey with a firearm or possess a firearm while hunting deer or turkey with archery equipment during the archery season].

[(d) Subsection (c) of this section does not prohibit the possession of a shotgun on the person of the hunter, in a hunting camp, or in an automobile if:

[(1) the shotgun is not used for the taking or assisting in the taking of deer or turkey; and

[(2) the person possesses on his person or in the hunting camp or automobile no shotgun shells having shot larger in size than number four shot.]

(d)[(e)] 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) During the special experimental muzzleloading season in counties designated in §65. 40(6) and §65.62(d)(3) of this title (relating to Deer: White-Tailed and Mule Deer; and Turkey), muzzleloading firearms capable of being loaded only from the muzzle and having a minimum caliber of .45 inch for rifles or 20 gauge for shotguns are lawful.

§65.28. Tags.

(a) It is unlawful to hunt white-tailed deer, mule deer, or turkey with a muzzleloading firearm during the special experimental muzzleloading season without first obtaining muzzleloading tags from the department or its authorized agent.

(b) The fee for the muzzleloading tags is $10 for all tags in the aggregate; an authorized agent, other than a department employee, may retain $1.00 as his or her collection fee for issuing the muzzleloader tags.

(c) The department under the authority of the Texas Parks and Wildlife Code, §42.010, may charge a fee for issuance of muzzleloading tags.

§65.40. Deer: White-tailed and Mule Deer. No person may take more than the aggregate total of five 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 two white-tailed buck deer, or no more than five antlerless deer, both species combined.

(1) (No change.)

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

(A) In Aransas, Atascosa, Bandera, Bee, Bell, Bexar, Blanco, Bosque, Brewster, Brooks, Brown, Burnet, Calhoun, Cameron, Coke, Coleman, Comal, Concho, Coryell, Crockett, Culberson, Dimmit, Duval, Edwards, Frio, Gillespie, Glasscock, Goliad, Hamilton, Hays, Hidalgo, Irion, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Kendall, Kenedy, Kerr, Kimble, Kinney, Kleberg, Lampasas, LaSalle, Live Oak, Llano, McCulloch, McMullen, Mason, Matagorda, Maverick, Medina, Menard, Mills, Mitchell, Nolan, Nueces, Pecos, Presidio, Reagan, Real, Reeves, Refugio, Runnels, San Patricio, San Saba, Schleicher, Starr, Sterling, Sutton, Terrell, Tom Green, Travis, Uvalde, Val Verde, Victoria, Webb, Wharton, Willacy, Williamson, Zapata, and Zavala Counties, there is an open season during which white-tailed deer may be taken only with longbow and arrows.

(i) Open season: **October 1-November 1, 1992** [October 1-31].

(ii) (No change.)

(B) 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.

(i) In Anderson, Angelina, Austin, Borden, Bowie, Brazoria, Brazos, Burleson, Callahan, Camp, Cass, Chambers, Cherokee, Colorado, Comanche, Delta, DeWitt, Eastland, Erath, Falls, Fayette, Fisher, Fort Bend, Franklin, Freestone, Gonzales, Gray, Grayson (only on the Hagerman National Wildlife Refuge), Gregg, Grimes, Guadalupe, Hardin, Harris, Harrison, Haskell, Hemphill, Henderson, Hood, Hopkins, Houston, Howard, Hutchinson, Jack, Jasper, Jefferson, Karnes, Kent, Lamar, Lavaca, Lee, Leon, Liberty, Limestone, McLennan, Madison, Marion, Milam, Morris, Montgomery, Nacogdoches, Navarro, Newton, Orange, Palo Pinto, Panola, Parker, Polk, Red River, Roberts, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Scurry, Shackelford, Shelby, Smith, Somervell, Stephens, Taylor, Throckmorton, Titus, Trinity, Tyler, Upshur, Upton, Van Zandt, Walker, Wheeler, Wilson, Wise, Wood, and Young Counties, there is an open season during which white-tailed deer may be taken only with longbow and arrows.

(I) Open season: **October 1-November 1, 1992** [October 1-31].

(II) (No change.)

(ii) In Archer, Armstrong, Bastrop, Baylor, Briscoe, Caldwell, Carson, Childress, Clay, Collingsworth, Cooke, Cottle, Crane, Crosby, Denton, Dickens, Donley, Ector, Ellis, Fannin, Floyd, Foard, Garza, Grayson (except on Hagerman National Wildlife Refuge), Hall, Hardeman, Hartley, Hill, Hunt, Johnson, Jones, Kaufman, King, Knox, Lipscomb, Loving, Midland, Montague, Moore, Motley, Ochiltree, Oldham, Potter, Rains, Randall, Stonewall, Swisher, Tarrant, Waller, Ward, Washington, Wichita, and Wilbarger Counties, there is an open season during which white-tailed buck deer may be taken only with longbow and arrows.

(I) Open season: **October 1-November 1, 1992** [October 1-31].

(II) (No change.)

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

(3) (No change.)

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

(A) In Armstrong, Borden, Briscoe, Carson, Childress, Cottle, Crane, Crockett, Crosby, Dallam, Deaf Smith, Dickens, Donley, Ector, El Paso, Fisher, Floyd, Garza, Gray, Hall, Hartley, Hemphill, Hutchinson, Jeff Davis, Kent, King, Loving, Midland, Moore, Motley, Ochiltree, Oldham, Potter, 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 longbow and arrows.

(i) Open season: **October 1-November 1, 1992** [October 1-31].

(ii) (No change.)

(B) In Brewster, Culberson, Hudspeth, Pecos, Presidio, and Terrell Counties, there is an open season during which mule deer may be taken only with longbow and arrows.

(i) Open season: **October 1-November 1, 1992** [October 1-31].

(ii) (No change.)

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

(5) (No change.)

(6) Special experimental muzzleloading season.

(A) In Blanco, Dimmit, Duval, Edwards, Gillespie, Kerr, Kimble, LaSalle, Llano, Mason, McMullen, Sutton, and Webb Counties there is a special experimental muzzleloading season for white-tailed deer. In Crockett County there is a special experimental muzzleloading season for white-tailed deer and mule deer.

(i) **Open season: October 17-25, 1992.**

(ii) **Bag limit: Four white-tailed deer, either sex, no more than two bucks. In only Crockett County, one buck mule deer may be taken in addition to the white-tailed deer bag limit.**

(B) In counties listed in subparagraph (A) of this paragraph, both muzzleloading firearms and longbow and arrow are legal means and methods for hunting white-tailed deer and mule deer during the special experimental muzzleloading season.

(C) All persons must first obtain muzzleloading tags required by §65.28 of this title (relating to Tags) to hunt white-tailed or mule deer with a muzzleloading firearm during the special experimental muzzleloading season. All white-tailed deer and mule deer taken must be tagged with the appropriate muzzleloading tag in addition to the appropriate tag from the hunting license. The muzzleloading tag and the hunting license tag must remain with the carcass

until it reaches its final destination and is finally processed.

(D) The special experimental muzzleloading season bag limit is not in addition to the general open season bag limit or the archery only season bag limit for white-tailed deer or mule deer.

(E) In all other counties, there is no special experimental muzzleloading season for white-tailed deer or mule deer.

§65.62. Turkey.

(a) (No change.)

(b) General open season, archery only season, and bag limit. In Archer, Bandera, Bell, Bexar, Blanco, Bosque, Burnet, Calhoun, Clay, Comal, Comanche, Coryell, Erath, Gillespie, Goliad, Gonzales, Hamilton, Hays, Hood, Jack, Karnes, Kendall, Kerr, Kinney (only north of U.S. Highway 90), Lampasas, Llano, McLennan, Medina (only north of U.S. Highway 90), Montague, Palo Pinto, Parker, Real, Somervell, Stephens, Travis, Uvalde (only north of U.S. Highway 90), Wichita, Williamson, Wilson, and Young Counties, there are open seasons for turkey.

(1) Open seasons.

(A) (No change.)

(B) Archery only season: **October 1-November 1, 1992** [October 1-31], during which turkeys may be taken only with longbow and arrows.

(2) (No change.)

(c) General (South Texas) open season, archery only season, and bag limit. In Aransas, Atascosa, Bee, Brooks, Dimmit, Duval, Frio, Jim Hogg, Jim Wells, Kenedy, Kinney (only south of U.S. Highway 90), Kleberg, LaSalle, Live Oak, McMullen, Maverick, Medina (only south of U.S. Highway 90), Nueces, Refugio, San Patricio, Uvalde (only south of U.S. Highway 90), Webb, Willacy, and Zavala Counties, there are open seasons for turkey.

(1) Open seasons.

(A) (No change.)

(B) Archery only season: **October 1-November 1, 1992** [October 1-31], during which turkeys may be taken only with longbow and arrows.

(2) (No change.)

(d) Exceptions to general open season, archery only season, **and special experimental muzzleloading season** or bag limits.

(1) (No change.)

(2) In Armstrong, Baylor, Borden, Briscoe, Brown, Callahan, Carson, Childress, Coke, Coleman, Collinsworth, 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, Knox, Lipscomb, Lynn, McCulloch, Martin, Mason, 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, Val Verde, Ward, Wheeler, and Wilbarger Counties, there are open seasons for turkey.

(A) Open seasons:

(i) (No change.)

(ii) Archery only season: **October 1-November 1, 1992** [October 1-31], during which turkeys may be taken only with longbow and arrows.

(B) (No change.)

(3) Special Experimental Muzzleloading Season is as follows.

(A) In Blanco, Crockett, Dimmit, Duval, Edwards, Gillespie, Kerr, Kimble, LaSalle, Llano, Mason, McMullen, Sutton, and Webb Counties there is a special experimental muzzleloading season for turkey.

***(i)* Open season: October 17–25, 1992.**

***(ii)* Bag limit.**

(I) In Blanco, Dimmit, Duval, Gillespie, Kerr, LaSalle, Llano, McMullen, and Webb Counties, the bag limit is two turkeys, gobblers or bearded hens.

(II) In Crockett, Edwards, Kimble, Mason, and Sutton Counties, the bag limit is two turkeys, either sex.

(B) In counties listed in subparagraph (A) of this paragraph, both muzzleloading firearms and longbow and arrow are legal means and methods for hunting turkey during the special experimental muzzleloading season.

(C) All persons must first obtain muzzleloading tags required by §65.28 of this title (relating to Tags) to hunt turkey with a muzzleloading firearm during the special experimental muzzleloading season. All turkey taken must be tagged with the appropriate muzzleloading tag in addition to the appropriate tag from the hunting license. The muzzleloading tag and the hunting license tag must remain with the carcass until it reaches its final destination and is finally processed.

(D) The special experimental muzzleloading season bag limit is not in addition to the general open season bag limit or the archery only season bag limit for turkey.

(E) In all other counties, there is no special experimental muzzleloading season for turkey.

(e) (No change.)

§65.72. Fish.

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

(d) Saltwater devices, means, and methods.

(1) (No change.)

(2) Only the following means and methods may be used for taking fish.

(A)-(B) (No change.)

(C) Trotlines.

(i)-(vii) (No change.)

(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 p.m. on Friday through 1 p.m. on Sunday of each week, except that attended sail lines are excluded from the restrictions imposed by this clause. **Under the authority of the Texas Parks and Wildlife Code, §66.206(b), in the event small craft warnings or higher marine weather advisories issued by the National Weather Service are in place at 1 p.m. on Friday, trotlines may remain in the water until Saturday. When small craft warnings are lifted by 8 a.m. on Saturday, trotlines must be removed by 1 p.m. on Saturday. When small craft warnings are lifted by 1 p.m. on Saturday, trotlines must be removed by 6 p.m. on Saturday. When small craft warnings or higher marine weather advisories are still in place at 1 p.m. on Saturday, trotlines may remain in the water through 1 p.m. on Sunday. It is a viola-**

tion 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 notices will be delineated by department policy.

(ix)-(xiv) (No change.)

(D) (No change.)

(e) (No change.)

§65.78. Crabs.

(a) Bag, possession, and size limits.

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

(3) It is unlawful for any person to:

(A) -(B) (No change.)

(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)-(E) (No change.)

(b)-(d) (No change.)

§65.80. Freshwater Mussels.

(a) General rules.

(1) It is unlawful for any person to take or possess freshwater mussels, within a protected size limit, in greater numbers, by other means, or at any time or place, other than as permitted under these rules.

(2) Marl, Sand, Gravel, Shell, and Mudshell may be taken under the provisions of the Texas Parks and Wildlife Code, Subtitle F, Chapter 86.

(b) Bag, possession, and size limits.

(1) It is unlawful for any person while fishing on public waters to have in his possession freshwater mussels in excess of the daily bag limit or within a protected size limit.

(2) It is unlawful for any person to:

(A) take more than 75 pounds of whole freshwater mussels and their shells per day on Saturday or Sunday of each week;

(B) possess more than 75 pounds of whole freshwater mussels and their shells per day on Saturday or Sunday of each week while on public water or within 500 yards of any public water;

(C) take or possess freshwater mussels and their shells of the following species that will pass through a ring with an inside diameter (I.D.) specified for that species.

Species	Ring I.D. in inches
Washboard, Megalonaias nervosa	4.00
Threeridges and roundlakes, Amblema spp.	2.75
Mapleleafs and pimplebacks, Quadrula spp.	2.75
Tampico pearlymussel, Cyrtonaias tampicoenisis	2.75
All Other Species	2.50

[graphic]

(c) Devices, means, and methods.

(1) It is unlawful for any person to take or possess freshwater mussels by any device, means, or method other than as authorized in these rules or in the Texas Parks and Wildlife Code, Chapter 78.

(2) Freshwater mussels may be taken only by hand.

(d) Seasons, times, and places.

(1) It is unlawful for any person to take freshwater mussels from 30 minutes after sunset to 30 minutes before sunrise of each day.

(2) All public fresh waters of the state are open to freshwater mussel harvest except that freshwater mussels may not be taken from the following rivers or creeks and their tributaries:

(1) North Sulphur River from State Highway 50 in Hunt County to State Highway 24 in Delta and Lamar Counties;

(2) South Sulphur River from State Highway 50 in Hunt County to State Highway 154 in Hopkins County;

(3) Sulphur River from State Highway 37 in Franklin County to U. S. Highway 271 in Titus County;

(4) White Oak Creek from State Highway 37 in Franklin County to U.S. Highway 271 in Titus County;

(5) Big Cypress Creek from the Dam at Lake Bob Sandlin downstream to U. S. Highway 271 in Camp County;

(6) Sabine River from the dam at Lake Tawakoni downstream to State Highway 19 in Rains and Van Zandt Counties, from FM 14 to State Highway 155 in Smith County and from State Highway 43 downstream to U.S. Highway 59 in Harrison and Panola Counties;

(7) Angelina from its source in Rusk County to its confluence with the Neches River in Jasper County;

(8) Neches River from the Dam at Lake B. A. Steinhagen downstream to its confluence with Pine Island Bayou in Orange County;

(9) Pine Island Bayou from its source in Hardin County to the confluence with the Neches River in Hardin County;

(10) Trinity River from State

Highway 34 in Kaufman and Ellis Counties downstream to the FM 85 in Navarro County and from the dam at Lake Livingston downstream to U. S. Highway 59 in Polk County;

(11) Brazos River from U. S. Highway 380 downstream to U. S. Highway 83 in Stonewall County; from the dam at Possum Kingdom Reservoir downstream to the bridge at U. S. Highway 180 in Palo Pinto County and from the bridge at State Highway 7 downstream to the bridge at Ranch Road 413 in Falls County;

(12) the Colorado River from its source in Dawson County downstream to Ranch Road 1205 in Borden County, from the dam at Lake E. V. Spence downstream to U. S. Highway 277 in Coke County; and from the U. S. Highway 377 Bridge in McCulloch and Brown Counties to Ranch Road 45 in Mills and San Saba Counties;

(13) the North Concho River from the State Highway 163 in Sterling County to the city limits of Water Valley in Tom Green County;

(14) the Concho River from the mouth of Kickapoo Creek downstream to the U. S. Highway 83 Bridge in Concho County;

(15) the San Saba River from the Ranch Road 1311 Bridge in Menard County downstream to the U. S. Highway 87 Bridge in McCulloch County;

(16) the Guadalupe River from the State Highway 123 Bridge in Guadalupe County downstream to the State Highway 80 Bridge in Gonzales County;

(17) the San Marcos River from its source in Hays County downstream to the confluence with the Guadalupe River in Gonzales County; and

(18) the Comal River from its source downstream to its confluence with the Guadalupe River in Comal County.

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 April 13, 1992.

TRD-9205069 Paul M. Shinkawa
Director, Legal Services
Texas Parks and Wildlife Department

Earliest possible date of adoption: May 18, 1992

For further information, please call: 1-800-792-1112, ext. 4974 or (512) 389-4974

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Subchapter H. Type I Wildlife Management Areas, Hunting and Fishing

• 31 TAC §§65.190-65.194

The Texas Parks and Wildlife Department proposes amendments to §§65. 190-65.194, concerning the Type I Wildlife Management Area Hunting and Fishing Proclamation. The proposed amendments prescribe appropriate public use for one new area and three existing areas which are being transferred from the Type II public hunting program, prohibit the operation of an all terrain vehicle except as provided for a disabled person, require persons under 17 years of age to be under the immediate supervision of an authorized supervising adult while providing more lenient supervisory requirements for minors who have received hunter education certification, encourage youth participation by expanding the definition of authorized supervising adult and waiving most permit fees for minors, allow a non-hunting adult to be afield during public hunts to assist a disabled person who possesses a valid permit, require a $35 annual public hunting permit to participate in various hunting and fishing activities that previously were available under permission by registration, establish a $100 special permit fee for participation in experimental extended period (four-day) hunts for deer and exotic mammals, and establish a $5.00 application fee ($20 for desert bighorn sheep) to accompany each individual's application for a special permit.

The proposed rules have as their factual basis scientific studies and investigations which track trends in wildlife resource populations and assess user impacts upon those populations and related habitats. These studies and information which supports the proposed rules, are incorporated by reference and are available for public inspection. The rules as proposed are designed to prevent depletion or waste and promote public user opportunity.

Robin Riechers, staff economist, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Riechers also has determined that for each year of the first five years the are in effect the public benefit anticipated as a result of enforcing the sections will be to provide for additional public user opportunities on management areas, promote proper management of wildlife resources, and allow all public use groups to contribute financially toward the support of public use programs. There will be no effect on small businesses. It is anticipated there will be minimal fiscal implications to persons who are required to comply with the amendments as proposed.

The department has not filed a local employment impact statement with the Texas Employment Commission in compliance with the Administrative Procedure and Texas Register Act, §4A as this agency has determined that the rules as proposed will not impact local economies.

Comments on the rules as proposed may be submitted to H. G. Kothmann, Public Hunts 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 Texas Parks and Wildlife Code, Chapter 81, Subchapter E, which provides the Texas Parks and Wildlife Commission with authority to regulate seasons, number, means, methods, and conditions for taking wildlife resources on wildlife management areas; with respect to designated state parks, the commission is acting under the authority of the Texas Parks and Wildlife Code, Chapter 62, Subchapter D, which provides authority to prescribe seasons, number, size, kind, and sex and the means and method of taking any wildlife.

§65.190. Application. The provisions of this subchapter apply to all of the wildlife resources in the following areas, except as restricted herein:

(1) Alazan Bayou Wildlife Management Area in Nacogdoches County;

(2)[(1)] Atkinson Island Wildlife Management Area in Harris County;

(3) Black Gap Wildlife Management Area in Brewster County.

(4)[(2)] Candy Abshier Wildlife Management Area in Chambers County.

(5)[(3)] Cedar Creek Islands Wildlife Management Area:

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

(6)[(4)] Chaparral Wildlife Management Area in Dimmit and LaSalle Counties;

(7)[(5)] Dam B Unit (includes Angelina-Neches Scientific Area) in Jasper and Tyler Counties;

(8)[(6)] designated units of the Las Palomas Wildlife Management Area:

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

(9) [(7)] designated units of the State Park System of Texas approved by the executive director as having met the following criteria:

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

(10)[(8)] Elephant Mountain Wildlife Management Area in Brewster County;

(11)[(9)] Gene Howe Wildlife Management Area in Hemphill County;

(12)[(10)] Granger Wildlife Management Unit in Williamson County;

(13) [(11)] Guadalupe Delta Wildlife Management Area in Calhoun County;

(14)[(12)] Gus Engeling Wildlife Management Area in Anderson County;

(15)[(13)] James E. Daughtrey

Wildlife Management Area in Live Oak and McMullen Counties;

(16)[(14)] J. D. Murphree Wildlife Management Area in Jefferson County;

(17)[(15)] Keechi Creek Wildlife Management Area in Leon County;

(18)[(16)] Kerr Wildlife Management Area in Kerr County;

(19)[(17)] Kiskadee Wildlife Management Area in Hidalgo County;

(20)[(18)] lands within a Desert Bighorn Sheep Cooperative Unit for the hunting of desert bighorn sheep only;

(21)[(19)] Lower Neches Wildlife Management Area in Orange County;

(22)[(20)] Mad Island Wildlife Management Area in Matagorda County;

(23) Matador Wildlife Management Area in Cottle County;

(24)[(21)] Matagorda Island Wildlife Management Area in Calhoun County;

(25)[(22)] M. O. Neasloney Wildlife Management Area in Gonzales County;

(26)[(23)] Old Tunnel Wildlife Management Area in Kendall County;

(27)[(24)] Pat Mayse Wildlife Management Unit in Lamar County;

(28)[(25)] Peach Point Wildlife Management Area in Brazoria County;

(29) Richland Creek Wildlife Management Area in Freestone and Navarro Counties;

(30)[(26)] Sheldon Wildlife Management Area in Harris County.

(31)[(27)] Sierra Diablo Wildlife Management Area in Culberson and Hudspeth Counties;

(32)[(28)] Somerville Wildlife Management Area in Burleson and Lee Counties;

(33)[(29)] Walter Buck Wildlife Management Area in Kimble County.

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

All terrain vehicle (ATV)–Any motor vehicle having a saddle, three or four tires, designed for off-highway use, and not designed for farming or lawn care.

Annual public hunting permit–A $35 Type II Wildlife Management Area-Public Hunting Lands Permit; an annual permit, valid from September 1 or issuance date; whichever is later, through the following August 31, issued to an individual to allow the hunting and taking of specific wildlife resources from Type I wildlife management areas. The fee for a regular permit is waived for the holder of the annual public hunting permit.

Authorized entry/exit location–A location where public entry or exit from an area is authorized and is identified by on-site signing, posted information, departmental literature, or departmental instructions in writing.

Authorized supervising adult–A parent or legal guardian of a minor age participant, or an individual 21 years of age or older who possesses written authorization signed by a parent or legal guardian of a minor age participant to assume liability responsibility for the minor age participant.

Immediate supervision–Control of the actions of a person less than 17 years of age (minor) by the authorized supervising adult through the use of verbal instructions in a normal voice level.

Minor age participant–An individual less than 17 years of age.

Non-consumptive **activities** [user]–**Activities which do not involve the taking** [A person who does not take] or attempt to take of wildlife resources.

On-site [Permission by] registration–The **requirement for public users to register** [registering] at designated places **upon entry to and exit from specified** [on] wildlife management areas [by consumptive and nonconsumptive users].

Texas conservation passport–An annual permit, valid for one year from the date of issuance, issued to an individual to allow access to designated areas for participation in nonconsumptive activities.

§65.192. General Rules and Regulations.

(a) The following rules and regulations apply to all wildlife management areas unless an exception is provided in the open seasons and special regulations section for a specific area.

(1) (No change.)

(2) It is an offense to not confine motor vehicle use to designated roads, except parking is permitted on the shoulder of or immediately adjacent to designated roads and as provided in **paragraphs** [paragraph] (4) **and (5)** of this subsection.

(3) It is unlawful to hunt, take, or kill, or attempt to hunt, take, or kill any wildlife resource from a motor vehicle, motor-driven land conveyance, or from any aircraft or airborne device, or possess a loaded firearm in or on the vehicle, except as provided in **paragraphs** [paragraph] (4) **and (5)** of this subsection.

(4) It is an offense to operate an all terrain vehicle (ATV) on a wildlife management area, except by a disabled person.

(5)[(4)] **Disabled** [It is an offense for any person, except disabled] persons **may** [, to] hunt from a stationary motor vehicle or motor driven land conveyance provided the hunting by a disabled person is not conducted on a designated road.

(6)[(5)] The disturbance of plants, rocks, artifacts, or other objects or their removal from wildlife management areas is prohibited, except as authorized by the department.

(7)[(6)] It is unlawful for any person to not obey posted regulations, 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 the Texas Parks and Wildlife Code, §§81.401-81.404.

(8)[(7)] Strewing of refuse, litter, trash, or garbage is prohibited.

(9)[(8)] The possession of a loaded firearm within a designated campsite, vehicle parking area, boat launching facility, or departmental check station is prohibited.

(10) [(9)] **It is an offense for a person to be under the influence of alcohol or consume an alcoholic beverage while engaged in hunting activities, or to publicly consume or display an alcoholic beverage while on a wildlife management area.** [It is unlawful for a person engaged in hunting activities on wildlife management areas to be under the influence of alcohol, or consume or possess alcoholic beverages.]

(11)[(10)] It is an offense **if** a person **within the hunt area** fails to visibly wear a minimum of 400 square inches of daylight fluorescent orange material with 144 square inches appearing on both the chest and back when hunting **is permitted** [any wildlife] on a wildlife management area, except that persons hunting only the following species are exempt from this requirement:

(A)-(B) (No change.)

(C) migratory birds, **except as provided in paragraph (12) of this section;**

(D)-(F) (No change.)

(12)[(11)] It is an offense **if** a **person who is hunting** mourning dove [hunter] fails to comply with minimum requirements for visible fluorescent orange

material on days when concurrent hunts are held for mourning dove and quail or mourning dove and chachalaca.

(13)[(12)] It is a violation to conduct business concessions such as selling, buying, renting, leasing, or peddling goods, merchandise, or services to the public unless specifically authorized in writing by the executive director.

(14)[(13)] It is unlawful to enter a wildlife management area with a firearm, bow and arrow, or any other weapon, or to possess a firearm, bow and arrow, or any other weapon on a wildlife management area, except persons authorized by the Parks and Wildlife Department to hunt on the areas, or commissioned law enforcement officers and/or department employees in performance of their duties.

(15)[(14)] It is a violation to possess dogs in camp that are not confined or leashed.

(16) 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 a wildlife management area. The authorized supervising adult for minors who have received hunter education certification is required to only be present on the wildlife management area while the minor is engaged in hunting activities.

[(15) Water skiing is prohibited except on those leased or licensed wildlife management areas when allowed by the leasing or licensing authority.

[(16) It is a violation to leave boats, skiffs, or floating craft of any type overnight on a wildlife management area.

[(17) Swimming is prohibited except on those leased or licensed wildlife management areas when allowed by the leasing or licensing authority.]

(17)[(18)] It is a violation for a person without a valid permit to be afield during hunts on wildlife management areas, except on those areas where no permits are required **or for a non-hunting adult who is assisting a permitted disabled person or for minor age participants under the supervision of an authorized supervising adult possessing a Type II permit.**

(18)[(19)] It is unlawful for any person or persons to harass, molest, or otherwise interfere with anyone lawfully engaged in hunting or fishing activities on a wildlife management area. This paragraph does not apply to peace officers of this state, law enforcement officers of the United States, or employees of the department while in the actual discharge of official duties.

(19)[(20)] The use of traps, snares, and deadfalls is an offense, except handheld snares with integral locking mechanism may be used for taking alligator, crab traps may be used for taking crabs, and designated exotic mammals may be taken by means as specified on the special permit.

(20)[(21)] The use of electrically amplified calls is prohibited for taking wildlife resources, except when stipulated as an approved means and method on regular permits issued specifically for taking coyotes and furbearers.

(21)[(22)] It is unlawful to use or possess a horse, mule, burro, or any type of riding stock or pack animal on any wildlife management area, except as provided by written authorization of the department.

(22)[(23)] Firearms.

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

(E) It is an offense if a waterfowl hunter fails to comply with requirements for use and possession of nontoxic shot only [as provided in the Early Season Migratory Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation].

(F) (No change.)

(23)[(24)] Archery.

(A)-(B) (No change.)

(C) **A shotgun** [Shotguns] with shells having **non-toxic shot or** no larger than size #4 lead [or #2 nontoxic] shot may be possessed when hunting under **regular permit or annual public hunting permit** [permission by registration] during concurrent periods of archery only hunts and firearms hunts, but **it is an offense to use the shotgun** [may not be used] to take species for which archery only hunts are being held **(non-toxic shot requirements for waterfowl remain in effect).**

(24)[(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, predatory animals, javelina, or turkey, **except as provided in subparagraph (C) of this paragraph.**

(B)-(C) (No change.)

(25)[(26)] Falconry.

(A)-(B) (No change.)

(26)[(27)] Checking game, entering and exiting wildlife management areas.

(A) (No change.)

(B) On areas where **on-site** [permission by] registration is required for hunting, fishing, or nonconsumptive use, it is an offense if a hunter, fisherman, or nonconsumptive user fails to check in each day at a [self-]registration station and properly complete [permission by] registration procedures before initiation of hunting, fishing, or nonconsumptive use activities or fails to check out at the [checking station or self-] registration station [and leave the completed permit] before departing the area.

(C) It is an offense if a person enters a wildlife management area at any location other than an authorized entry location or exits a wildlife management area at any location other than an authorized exit location.

(D)[(C)] **Access for nonconsumptive use and fishing** [Other public access] may be temporarily restricted while hunts are being conducted by special or regular permit.

(E)[(D)] Employees of the department may remove parts from specimens harvested on management areas for scientific investigation.

(27)[(28)] Tagging of game.

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

(28)[(29)] Construction of blinds.

(A) (No change.)

(B) The use of temporary blinds, stands, towers, or platforms is permitted only if such structures are not excluded for the specific activity or area, **are** not [be] nailed to timber, and **are not** [be] emplaced [no] longer than 48 hours.

(C) It is an offense **for a person** to fail to remove all materials used in constructing a temporary blind, stand, tower, or platform upon completion of **participation in** the public use activity.

(D) **It is an offense for a** [A] person **to attempt to** [may not] establish preferential rights to [for] use of a specific location through construction of a temporary blind, stand, tower, or platform. **The** [and the] temporary blind, stand, tow-

er, or platform will be equally available to all public users on a first-come-first-served basis.

(b) The following rules and regulations apply to the taking of specific wildlife resources.

(1) Deer and exotic mammals.

(A)-(B) (No change.)

(C) **Unless otherwise specified for designated areas, the** [The] hunting **of** [for] deer and exotic mammals of either-sex is legal during the archery only season.

(D) (No change.)

(2) (No change.)

(3) Desert bighorn sheep.

(A)-(B) (No change.)

(C) Method of hunting.

(i)-(ii) (No change.)

(iii) No two-way radio communications may be used **to assist in the taking of** [in hunting] desert bighorn sheep.

(D)-(G) (No change.)

[(4) Waterfowl.

[(A) Means, methods, and special requirements for taking migratory game birds are as provided by the Early Season Migratory Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation, except as further restricted in the open seasons and special regulations section for a specific area.

[(B) It is an offense if a waterfowl hunter fails to comply with requirements for use and possession of non-toxic shot only as provided in the Early Season Migratory Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation.]

(4)[(5)] Predatory animals–special regulations. It is an offense if a person takes any predatory animal other than the specific species listed on the permit during hunts by special or regular permit on wildlife management areas or designated units of the state park system.

[(6) Fishing. Regulations governing fishing activities are as provided by the Statewide Hunting and Fishing Proclamation, except as further restricted in the open seasons and special regulations section for a specific area.]

(5)[(7)] Alligator.

(A)-(B) (No change.)

§65.193. Open Seasons, Bag and Possession Limits, and Means and Methods; General Rules.

(a)-(e) (No change.)

[(f) Hours during which migratory birds may be taken may be further restricted by the Early Season Migratory Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation.]

(f)[(g)] The executive director may close to public use an area or a portion of an area to protect sensitive sites, or may restrict bag limits, cancel hunts, or close the season on specific species in certain areas to avoid depletion of wildlife resources.

(g)[(h)] The executive director may permit recreational activities on wildlife management areas which are compatible with sound resource management practices and public health and safety.

[(i) It is an offense to take any wildlife resources on the wildlife management areas except during open seasons set out in this subchapter.]

(h) Open seasons, shooting hours, means and methods, and bag and possession limits for taking deer, javelina, pronghorn antelope, desert bighorn sheep, squirrel, turkey, and quail and fishing are as provided by the Statewide Hunting and Fishing Proclamation, except as otherwise specified for a specific area.

(i) Open seasons, shooting hours, means, methods, special requirements, and bag and possession limits for taking mourning dove, white-winged dove, rail, gallinule, and teal duck during the early teal season are as provided by the Early Season Migratory Game Bird Proclamation, except as further restricted for a specific area.

(j) Open seasons, shooting hours, means, methods, special requirements, and bag and possession limits for taking waterfowl (outside of the early teal season), sandhill crane, woodcock, and snipe are as provided by the Late Season Migratory Game Bird Proclamation, except as further restricted for a specific area.

(k) Open seasons, means and methods, and bag and possession limits for taking furbearing animals are as provided by the Statewide Furbearing Animal and Trapping Proclamation, except as otherwise specified for a specific area.

(l)[(j)] Open seasons, bag and possession limits, means and methods, and special regulations for certain areas.

(1) Alazan Bayou Wildlife Management Area:

(A) squirrel–by annual public hunting permit;

(B) quail–by annual public hunting permit;

(C) mourning doves–by annual public hunting permit;

(D) waterfowl–by annual public hunting permit;

(E) rabbits and hares–to correspond with dates and shooting hours designated for squirrel, quail, mourning dove, or waterfowl hunts; no bag or possession limits; by annual public hunting permit;

(F) special regulations–It is an offense to possess a rifle of greater size than .22 caliber rimfire while hunting during the season designated for squirrel.

(2)[(1)] Atkinson Island Wildlife Management Area–special regulations.

(A)-(B) (No change.)

(C) It is an offense for a person to allow a dog, cat, or any animal to enter the area **unleashed** [unleased] and not under the person's physical control.

(3) Black Gap Wildlife Management Area:

(A) deer:

***(i)* archery–on designated days during the period from September 1-January 31; one deer (buck only); 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) javelina:

***(i)* archery–to correspond with dates designated for archery only deer hunts; one javelina (either-sex); by annual public hunting permit.**

***(ii)* general–during the period from September 1-March 31; one 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–impoundments are closed to fishing. Fishing is permitted in the Rio Grande River year-round, except on days when hunts are being conducted by special permit; annual public hunting permit required, except fishermen who enter and exit the area by boat are not required to possess an annual public hunting permit. Fishermen 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 fisherman who does not possess an annual public hunting permit commits an offense if the fisherman 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.**

(4)[(2)] Candy Abshier Wildlife Management Area–special regulations.

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

(D) It is an offense for a person to allow a dog, cat, or any animal to enter the area **unleashed** [unleased] and not under the person's physical control.

(5)[(3)] Cedar Creek Islands Wildlife Management Area (Big Island, Bird Island, and Telfair Island Units)–special regulations.

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

(D) It is an offense for a person to allow a dog, cat, or any animal to enter the area **unleashed** [unleased] and not under the person's physical control.

(6)[(4)] Chaparral Wildlife Management Area:

(A)-(B) (No change.)

(C) quail–on designated days during the period from October through February; [bag and possession limits as provided by the Statewide Hunting and Fishing Proclamation;] by regular permit;

(D) mourning dove–on designated days [during the seasons as provided by the Early Season Migratory Game Bird Proclamation; shooting hours, bag and possession limit as provided by the Early Season Migratory Game Bird Proclamation;] by regular permit;

(E)-(G) (No change.)

(7)[(5)] Dam B Wildlife Management Area:

(A) deer and exotic mammals:

(i) archery–[to correspond with the season as provided by the Statewide Hunting and Fishing Proclamation;] one deer or exotic mammal (either-sex); by **annual public hunting permit** [permission by registration];

(ii) general–[to correspond with the season as provided by the Statewide Hunting and Fishing Proclamation;] one deer or exotic mammal (buck only); by **annual public hunting permit** [permission by registration];

(B) squirrel–[regulations are as provided by the Statewide Hunting and Fishing Proclamation;] by **annual public hunting permit** [permission by registration];

(C) quail–[regulations are as provided by the Statewide Hunting and Fishing Proclamation;] by **annual public hunting permit** [permission by registration];

(D) mourning doves–[regulations are as provided by the Early Season Migratory Game Bird Proclamation;] by **annual public hunting permit** [permission by registration];

(E) waterfowl–[regulations are as provided by the Early Season Migratory Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation;] by **annual public hunting permit** [permission by registration];

(F) woodcock–[regulations are as provided by the Late Season Migratory Game Bird Proclamation;] by **annual public hunting permit** [permission by registration].

(G) king and clapper rail–[regulations are as provided by the Early Season Migratory Game Bird Proclamation;] by **annual public hunting permit** [permission by registration];

(H) sora and Virginia rails–[regulations are as provided by the Early Season Migratory Game Bird Proclamation;] by **annual public hunting permit** [permission by registration];

(I) gallinules–[regulations are as provided by the Early Season Migratory Game Bird Proclamation;] by **annual public hunting permit** [permission by registration];

(J) snipe–[regulations are as provided by the Late Season Migratory Game Bird Proclamation;] by **annual public hunting permit** [permission by registration];

(K) rabbits and hares–no closed season; no bag or possession limits; by **annual public hunting permit** [permission by registration];

(L) furbearing animals–during the period from September 1-March 31; [bag and possession limits are as provided by the Statewide Furbearing Animal and Trapping Proclamation;] by **annual public hunting permit** [permission by registration];

(M) feral hog:

(i) archery–to correspond with the archery only season for taking deer and exotic mammals; no bag or possession limits; by **annual public hunting permit** [permission by registration];

(ii) general–to correspond with the general season for taking deer and exotic mammals; no bag or possession limits; by **annual public hunting permit** [permission by registration];

(N) coyotes–during the period from September 1-March 31; no bag or possession limit; by **annual public hunting permit** [permission by registration];

(O) special regulations:

(i)-(ii) (No change.)

[(iii) Boats, skiffs, or other types of floating craft may be left overnight by authorized campers.]

(iii)[(iv)] It is an offense to use any **device** [firearm] other than shotguns with **non-toxic shot or** no larger than size #4 lead shot [or non-toxic shot] or bow and arrow for hunting, except that rifles **(including muzzleloaders)** or shotguns with rifled slugs are the only legal firearms for taking deer, exotic mammals, or feral hogs during the general season prescribed for deer and exotic mammals **(non-toxic shot requirements for hunting waterfowl remain in effect).**

(iv)[(v)] Dogs may be used in hunting coyotes and furbearers.

[(vi) Permission by registration is not required for nonconsumptive users.]

(v) [(vii)] Exemption from the daylight restriction for open seasons is provided for hunting coyotes and furbearers.

(8) [(6)] Designated units of the Las Palomas Wildlife Management Area.

(A) Chachalaca–on designated days [during the season as provided by the Statewide Hunting and Fishing Proclamation; bag and possession limits as provided by the Statewide Hunting and Fishing Proclamation;] by **annual public hunting permit** [permission by registration];

(B) mourning dove–on designated days [during the seasons as provided by the Early Season Migratory Game Bird Proclamation; shooting hours, bag and possession limits as provided by the Early Season Migratory Game Bird Proclamation;] by **annual public hunting permit** [permission by registration];

(C) white-winged and white-tipped dove-on designated days [during the season as provided by the Early Season Migratory Game Bird Proclamation; shooting hours, bag and possession limits as provided by the Early Season Migratory Game Bird Proclamation;] by regular permit, **except on the Ocotillo Unit where an annual public hunting permit is required;**

(D) -(E) (No change.)

(9)[(7)] Designated Units of the state park system:

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

(D) squirrel–on designated days [during the season as provided by the Statewide Hunting and Fishing Proclamation; bag and possession limits as provided by the Statewide Hunting and Fishing Proclamation;] by regular permit;

(E) (No change.)

(F) quail–on designated days during the period from October-February; [bag and possession limits as provided by the Statewide Hunting and Fishing Proclamation;] by regular permit;

(G) mourning dove–on designated days [during the seasons as provided by the Early Season Migratory Game Bird Proclamation; shooting hours, bag and possession limits as provided by the Early Season Migratory Game Bird Proclamation;] by regular permit;

(H) white-winged and white-tipped dove–on designated days [during the season as provided by the Early Season Migratory Game Bird Proclamation; shooting hours, bag and possession limits as provided by the Early Season Migratory Game Bird Proclamation;] by regular permit;

(I) waterfowl–on designated days [during the duck season as provided by the Late Season Migratory Game Bird Proclamation;] shooting hours [begin as provided by the Late Season Migratory Game Bird Proclamation and] end at noon; [bag and possession limits as provided by the Late Season Migratory Game Bird Proclamation;] by regular permit.

(J) -(L) (No change.)

(10)[(8)] Elephant Mountain Wildlife Management Area:

(A) deer [and exotic mammals]:

(i) archery–during the period from September 1-January 31; one deer **(buck only)** [or exotic mammal (either-sex)]; by special permit;

(ii) general–during the period from October 1-February 15; one deer [or exotic mammal] as specified on the permit; by special permit;

(B) javelina:

(i) archery–to correspond with dates designated for archery only deer [and exotic mammal] hunts; one javelina (either-sex); by special permit;

(ii) (No change.)

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

(E) quail–on designated days during the period from October-February; [bag and possession limits as provided by the Statewide Hunting and Fishing Proclamation;] by **annual public hunting permit** [permission by registration];

(F) mourning dove–on designated days [during the seasons as provided by the Early Season Migratory Game Bird Proclamation; shooting hours, bag and possession limits as provided by the Early Season Migratory Game Bird Proclamation;] by **annual public hunting permit** [permission by registration];

(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** [permission by registration];

(H) (No change.)

(11)[(9)] Gene Howe Wildlife Management Area:

(A) deer and exotic mammals:

(i) archery–**on designated days** during the period from **September** [October] 1-**January** [October] 31; one deer or exotic mammal (either-sex); by **annual public hunting permit** [permission by registration];

(ii) (No change.)

(B) (No change.)

(C) quail–on designated days during the period from October-February; [bag and possession limits as provided by the Statewide Hunting and Fishing Proclamation;] by **annual public hunting permit** [permission by registration];

(D) mourning dove–on designated days [during the seasons as provided by the Early Season Migratory Game Bird Proclamation; shooting hours, bag and possession limits as provided by the Early Season Migratory Game Bird Proclamation;] **by annual public hunting permit** [permission by registration];

(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** [permission by registration];

(F) feral hog: archery–to correspond with the archery only season for deer and exotic mammals; no bag or posses-

sion limit; by **sannual public hunting permit** [permission by registration];

(G) fishing–[regulations as provided by the Statewide Hunting and Fishing Proclamation, except] season closed on days when hunts are conducted by special permit; **annual public hunting** [no] permit required;[.]

(H) special regulations–it is an offense if a public user fails to perform on-site registration.

(12)[(10)] Granger Wildlife Management Area:

(A) squirrel–[regulations are as provided by the Statewide Hunting and Fishing Proclamation;] by **annual public hunting permit** [permission by registration];

(B) quail–[regulations are as provided by the Statewide Hunting and Fishing Proclamation;] by **annual public hunting permit** [permission by registration];

(C) mourning doves–[regulations are as provided by the Early Season Migratory Game Bird Proclamation;] by **annual public hunting permit** [permission by registration];

(D) waterfowl–[regulations are as provided by the Early Season Migratory Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation;] by **annual public hunting permit** [permission by registration];

(E) woodcock–[regulations are as provided by the Late Season Migratory Game Bird Proclamation;] by **annual public hunting permit** [permission by registration];

(F) gallinules–[regulations are as provided by the Early Season Migratory Game Bird Proclamation]; by **annual public hunting permit** [permission by registration];

(G) snipe–[regulations are as provided by the Late Season Migratory Game Bird Proclamation;] by **annual public hunting permit** [permission by registration].

(H) rabbits and hares–no closed season; no bag or possession limits; by **annual public hunting permit** [permission by registration];

(I) furbearing animals–during the period from September 1-March 31; [bag and possession limits are as provided by the Statewide Furbearing Animal and Trapping Proclamation;] by **annual public hunting permit** [permission by registration];

(J) coyotes–during the period from September 1-March 31; no bag or possession limit; by **annual public hunting permit** [permission by registration];

(K) special regulations:

(i) (No change.)

(ii) It is a violation to use any type of **device** [firearm] other than a shotgun with **non-toxic shot or** no larger than size #4 lead shot [or non-toxic shot] or bow and arrow for hunting **(Non-toxic shot requirements for hunting waterfowl remain in effect)** .

(iii)-(iv) (No change.)

[(v) Permission by registration is not required for non-consumptive users.]

(13)[(11)] Guadalupe Delta Wildlife Management Area:

(A) waterfowl–on designated days [during the seasons as provided by the Early Season Migratory Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation]; shooting hours [begin as provided by the Early Season Migratory Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation and] end at noon; [bag and possession limits are as provided by the Early Season Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation;] by regular permit;

(B) king and clapper rails–[regulations are as provided by the Early Season Migratory Game Bird Proclamation] on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit;

(C) sora and Virginia rails–[regulations are as provided by the Early Season Migratory Game Bird Proclamation] on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(D) gallinules–[regulations are as provided by the Early Season Migratory Game Bird Proclamation] on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit;

(E) snipe–[regulations are as provided by the Late Season Migratory Game Bird Proclamation] on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit;

(F) alligator–during the month of September; one alligator as specified on the permit; means and methods as specified on the permit or attachments; by special permit.

(14) [(12)] Gus Engeling Wildlife Management Area:

(A) deer and exotic mammals:

(i) archery–**on designated days** during the period from **September 1** [the third Saturday in October]-**January** [October] 31; one deer or exotic mammal (either-sex); by **annual public hunting permit** [permission by registration];

(ii) (No change.)

(B) squirrel–on designated days [during the periods of May 1-May 31 and October 1-January 15; bag **and** possession limit as provided by the Statewide Hunting and Fishing Proclamation]; by **annual public hunting permit** [permission by registration];

(C) (No change.)

(D) waterfowl–on designated days [during the season as provided by the Early Season Migratory Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation]; shooting hours [begin as provided by the Early Season Migratory Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation and] end at noon; [bag and possession limits as provided by the Early Season Migratory Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation;] by regular permit;

(E) woodcock–[during the season as provided by the Late Season Migratory Game Bird Proclamation] on dates and shooting hours which correspond with those designated for waterfowl hunts; [bag and possession limit as provided by the Late Season Migratory Game Bird Proclamation;] by regular permit;

(F) gallinules–[during the season as provided by the Early Season

Migratory Game Bird Proclamation] on dates and shooting hours which correspond to those designated for waterfowl hunts; [bag and possession limits as provided by the Early Season Migratory Game bird Proclamation;] by regular permit;

(G) snipe–[during the season as provided by the Late Season Migratory Game bird Proclamation] on dates and shooting hours which correspond to those designated for waterfowl hunts; [bag and possession limit as provided by the Late Season Migratory Game Bird Proclamation;] by regular permit;

(H) rabbits and hares–to correspond with dates and shooting hours designated for squirrel hunts; no bag or possession limits; by **annual public hunting permit** [permission by registration];

(I) feral hog:

(i) archery–to correspond with dates designated for archery only deer and exotic mammal hunts; no bag or possession limits; by **annual public hunting permit** [permission by registration].

(ii) (No change.)

(J) fishing–[regulations are as provided by the Statewide Hunting and Fishing Proclamation, except] season is closed on dates designated for hunts by special or regular permit; by **annual public hunting permit** [permission by registration];[.]

(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 of greater size than .22 caliber rimfire while hunting during the season designated for squirrel.**

(15)[(13)] James Daughtrey Wildlife Management Area.

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

(D) quail–on designated days during the period from October-February; [bag and possession limits as provided by the Statewide Hunting and Fishing Proclamation;] by **annual public hunting permit** [permission by registration];

(E) mourning dove–on designated days [during the season as provided by the Early Season Migratory Game Bird Proclamation; shooting hours, bag and possession limits as provided by the Early Season Migratory Game Bird Proclamation;] by **annual public hunting permit** [permission by registration];

(F) waterfowl–[regulations are as provided by the Early Season Migratory Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation;] by **annual public hunting permit** [permission by registration];

(G) sandhill crane–[regulations are as provided by the Late Season Migratory Game Bird Proclamation;] by **annual public hunting permit** [permission by registration];

(H) snipe–[regulations are as provided by the Late Season Migratory Game Bird Proclamation;] by **annual public hunting permit** [permission by registration];

(I) 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** [permission by registration];

(J)-(K) (No change.)

[(L) special regulations: Permission by registration is not required for nonconsumptive users.]

(16)[(14)] J. D. Murphree Wildlife Management Area:

(A) waterfowl–on designated days [during the seasons as provided by the Early Season Migratory Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation]; shooting hours [begin as provided by the Early Season Migratory Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation and] end at noon; [bag and possession limits are as provided by the Early Season Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation;] by regular permit;

(B) king and clapper rails–[regulations are as provided by the Early Season Migratory Game Bird Proclamation] on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(C) sora and Virginia rails–[regulations are as provided by the Early Season Migratory Game Bird Proclamation] on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit;

(D) gallinules–[regulations are as provided by the Early Season Migratory Game Bird Proclamation] on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit;

(E) snipe–[regulations are as provided by the Late Season Migratory Game Bird Proclamation] on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit;

(F) fishing–[regulations are as provided by the Statewide Hunting and Fishing Proclamation (]no permit required[) with the following restrictions].

(i)-(viii) (No change.)

(G)-(H) (No change.)

(17) [(15)] Keechi Creek Wildlife Management Area:

(A) deer and exotic mammals:

(i) archery–[on designated days] during the period from **September 1** [the third Saturday in October]-**January** [October] 31; one deer or exotic mammal (either-sex); by special permit;

(ii) general–during the period from October 1-February 15; one deer or exotic mammal **as specified on the permit**; by special permit;

(B) squirrel–on designated days [during the periods of May 1-May 31 and October 1-January 15; bag and possession limits as provided by the Statewide Hunting and Fishing Proclamation]; by regular permit;

(C) (No change.)

(D) waterfowl–on designated days [during the season as provided in the Early Season Migratory Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation]; shooting hours [begin as provided by the Early Season Migratory Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation and] end at noon; [bag and possession limits are as provided by the Early Season Migratory Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation;] by regular permit;

(E) woodcock–[during the season as provided by the Late Season Migratory Game Bird Proclamation] on dates and shooting hours which correspond to those designated for waterfowl hunts; [bag and possession limits as provided by the Late Season Migratory Game Bird Proclamation;] by regular permit;

(F) gallinules–[during the season as provided by the Early Season Migratory Game Bird Proclamation] on dates and shooting hours which correspond to those designated for waterfowl hunts; [bag and possession limits as provided by the Early Season Migratory Game Bird Proclamation;] by regular permit;

(G) snipe–[during the season as provided by the Late Season Migratory Game Bird Proclamation] on dates and shooting hours which correspond to those established for waterfowl hunts; [bag and possession limits as provided by the Late Season Migratory Game Bird Proclamation;] by regular permit.

(H)-(J) (No change.)

(K) special regulations–It is an offense to possess a rifle of greater size than .22 caliber rimfire while hunting during the season designated for squirrel.

(18)[(16)] Kerr Wildlife Management Area:

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

(D) mourning dove–on designated days [during the seasons as provided by the Early Season Migratory Game Bird Proclamation; shooting hours, bag and possession limits as provided by the Early Season Migratory Game Bird Proclamation]; by **annual public hunting permit** [permission by registration];

(E) 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** [permission by registration];

(F) fishing–[regulations are as provided by the Statewide Hunting and Fishing Proclamation;] **no permit required; on-site** [by permission by] registration **required;**

(G) individuals who participate only in the self-guided driving tour need not possess a Texas conservation passport or perform on-site registration.

(19)[(17)] Kiskadee Wildlife Management Area–special regulations:

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

(E) It is an offense for a person to allow a dog, cat, or other animal to enter the area **unleashed** [unleased] and not under the person's physical control.

(20)[(18)] Lands Within a desert bighorn sheep cooperative unit. Desert bighorn sheep–during the period from September 1-August 31; one desert bighorn sheep ram as specified on the permit; by special permit.

(21)[(19)] Lower Neches Wildlife Management Area.

(A) waterfowl–on designated days [during the seasons as provided by the Early Season Migratory Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation]; shooting hours [begin as provided by the Early Season Migratory Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation and] end at noon; [bag and possession limits are as provided by the Early Season Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation;] by **annual public hunting permit** [permission by registration];

(B) king and clapper rails–[regulations are as provided by the Early Season Migratory Game Bird Proclamation] on dates and shooting hours which correspond to those designated for waterfowl hunts; by **annual public hunting permit** [permission by registration];

(C) sora and Virginia rails–[regulations are as provided by the Early Season Migratory Game Bird Proclamation] on dates and shooting hours which correspond to those designated for waterfowl hunts; by **annual public hunting permit** [permission by registration].

(D) gallinules–[regulations are as provided by the Early Season Migratory Game Bird Proclamation] on dates and shooting hours which correspond to those designated for waterfowl hunts; by **annual public hunting permit** [permission by registration];

(E) snipe–[regulations are as provided by the Late Season Migratory Game Bird Proclamation] on dates and shooting hours which correspond to those designated for waterfowl hunts; by **annual public hunting permit** [permission by registration];

(F) fishing–[regulations are as provided by the Statewide Hunting and Fishing Proclamation (]no permit required[) with the following restrictions].

(i)-(vi) (No change.)

(G)-(H) (No change.)

(22)[(20)] Mad Island Wildlife Management Area:

(A) waterfowl–on designated days [during the seasons as provided by the Early Season Migratory Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation]; shooting hours [begin as provided by the Early Season Migratory Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation and] end at noon; [bag and possession limits are as provided by the Early Season Migratory Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation;] by regular permit;

(B) king and clapper rails–[regulations are as provided by the Early Season Migratory Game Bird Proclamation] on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit;

(C) sora and Virginia rails–[regulations are as provided by the Early Season Migratory Game Bird Proclamation] on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit;

(D) gallinules–[regulations are as provided by the Early Season Migratory Game Bird Proclamation] on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit;

(E) snipe–[regulations are as provided by the Late Season Migratory Game Bird Proclamation] on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit;

(F) (No change.)

(23) Matador Wildlife Management Area:

(A) deer:

(i) **archery–on designated days during the period from September 1-January 31; one deer (buck only); 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) turkey–during the months of April and May; one gobbler; 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) waterfowl–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 limits; by annual public hunting permit;

(G) fishing–fishing is permitted year-round, except on days when hunts are being 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.

(24)[(21)] Matagorda Island Wildlife Management Area:

(A) (No change.)

(B) quail–on designated days [during the period from October-February; bag and possession limits as provided by the Statewide Hunting and Fishing Proclamation]; by regular permit;

(C) mourning dove–on designated days [during the seasons as provided by the Early Season Migratory Game Bird Proclamation; shooting hours, bag and possession limits as provided by the Early Season Migratory Game Bird Proclamation]; by regular permit;

(D) waterfowl–on designated days [during the seasons as provided by the Early Season Migratory Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation]; shooting hours [begin as provided by the Early Season Migratory Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation and] end at noon; [bag and possession limits are as provided by the Early Season Migratory Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation;] 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;

(E) king and clapper rails–on dates and shooting hours and permit requirements which correspond to those designated for waterfowl hunts;

(F) sora and Virginia rails–on dates and shooting hours and permit requirements which correspond to those designated for waterfowl hunts.

(G)[(E)] gallinules–[regulations are as provided by the Early Season Migratory Game Bird Proclamation] on dates and shooting hours **and permit requirements** which correspond to those designated for waterfowl hunts[; by regular permit];

(H)[(F)] snipe–[regulations are as provided by the Late Season Migratory Game Bird Proclamation] on dates and shooting hours **and permit requirements** which correspond to those designated for waterfowl hunts[; by regular permit];

(25)[(22)] 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.

(26)[(23)] Old Tunnel Wildlife Management Area–special regulations.

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

(E) It is an offense for a person to allow a dog, cat, or any animal to enter the area **unleashed** [unleased] and not under the person's physical control.

(F) (No change.)

(27)[(24)] Pat Mayse Wildlife Management Area:

(A) deer and exotic mammals:

(i) archery–[during the period from October 1-October 31;] one deer or exotic mammal (either-sex); by **annual public hunting permit** [permission by registration];

(ii) (No change.)

(B) squirrel–[regulations are as provided by the Statewide Hunting and Fishing Proclamation, except season] closed on days designated for hunts by special permit; by **annual public hunting permit** [permission by registration];

(C) quail–[regulations are as provided by the Statewide Hunting and Fishing Proclamation, except season] closed on days designated for hunts by special permit; by **annual public hunting permit** [permission by registration];

(D) mourning dove–[regulations are as provided by the Early Season Migratory Game Bird Proclamation, except season] closed on days designated for hunts by special permit; by **annual public hunting permit** [permission by registration];

(E) waterfowl–[regulations are as provided by the Early Season Migratory Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation,] by **annual public hunting permit** [permission by registration];

(F) woodcock–[regulations are as provided by the Late Season Migratory Game Bird Proclamation, except season] closed on days designated for hunts by special permit; by **annual public hunting permit** [permission by registration];

(G) gallinules–[regulations are as provided by the Early Season Migratory Game Bird Proclamation, except season closed on days designated for hunts by special permit;] by **annual public hunting permit** [permission by registration];

(H) snipe–[regulations are as provided by the Late Season Migratory Game Bird Proclamation, except season closed on days designated for hunts by special permit;] by **annual public hunting permit** [permission by registration];

(I) 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** [permission by registration];

(J) furbearing animals–during the period from September 1-March 31, except season closed on days designated for hunts by special permit; [bag and possession limit are as provided by the Statewide

Furbearing Animal and Trapping Proclamation]; by **annual public hunting permit** [permission by registration];

(K) feral hog: archery–to correspond with the archery only season for taking deer and exotic mammals; no bag or possession limit; by **annual public hunting permit** [permission by registration];

(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; by **annual public hunting permit** [permission by registration];

(M) special regulations:

(i) It is an offense to use any **device** [firearm] other than shotguns with **nontoxic shot or** no larger than size #4 lead shot [or nontoxic shot] or bow and arrow for hunting, except that rifles **(including muzzleloaders)** or shotguns with rifled slugs are the only legal firearms for taking deer, exotic mammals, or feral hogs during the general season prescribed for deer and exotic mammals **(nontoxic shot requirements for hunting waterfowl remain in effect).**

(ii) (No change.)

[(iii) Permission by registration is not required for nonconsumptive users.]

(iii)[(iv)] Exemption from the daylight restriction for open seasons is provided for hunting coyotes and furbearers.

(28)[(25)] Peach Point Wildlife Management Area:

[(A) quail–on designated days during the period from October-February; bag and possession limits as provided by the Statewide Hunting and Fishing Proclamation; by permission by registration.

[(B) mourning dove–on designated days during the seasons as provided by the Early Season Migratory Game Bird Proclamation; shooting hours, bag and possession limits as provided by the Early Season Migratory Game Bird Proclamation; by permission by registration;]

(A)[(C)] waterfowl–on designated days [during the seasons as provided by the Early Season Migratory Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation]; shooting hours [begin as provided by the Early Season Migratory Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation and] end at noon; [bag and possession limits are as provided by the Early Season Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation;] by regular permit;

(B)[(D)] king and clapper rails–[regulations are as provided by the Early Season Migratory Game Bird Proclamation] on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit;

(C)[(E)] sora and Virginia rails–[regulations are as provided by the Early Season Migratory Game Bird Proclamation] on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(D)[(F)] gallinules–[regulations are as provided by the Early Season Migratory Game Bird Proclamation] on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit;

(E)[(G)] snipe–[regulations are as provided by the Late Season Migratory Game Bird Proclamation] on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit;

[(H) rabbits and hares–to correspond with hunt dates and shooting hours designated for quail and mourning dove; no bag or possession limit; by permission by registration;]

(F)[(I)] feral hog: general–during the period from September 1-August 31; no bag or possession limit; by special permit.

(29) Richland Creek Wildlife Management Area:

(A) deer and exotic mammals:

***(i)* archery–on designated days during the period from October 1-October 31; one deer or exotic mammal (either-sex); by annual public hunting permit;**

***(ii)* general–during the period from October 1-February 15; one deer or exotic mammal as specified on the permit; by special permit;**

(B) squirrel–during the season as provided, except closed on days designated for hunts by special permit; by annual public hunting permit;

(C) quail–during the season as provided, except closed on days designated for hunts by special permit; by annual public hunting permit;

(D) mourning Dove–by annual public hunting 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 the waterfowl hunts; by annual public hunting permit;

(I) rabbits and hares–to correspond with dates and shooting hours designated for squirrel, quail, mourning dove, or waterfowl hunts; no bag or possession limits; by annual public hunting permit;

(J) feral hog–Archery–to correspond with the archery only season for taking deer and exotic mammals; no bag or possession limit; 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:

***(i)* It is an offense to possess any device other than a shotgun or bow and arrow for hunting on that portion of the area located north of U.S. Highway 287.**

***(ii)* It is an offense to possess a rifle of greater size than .22 caliber rimfire while hunting during the season designated for squirrel.**

(30)[(26)] Sheldon Wildlife Management Area: fishing–[regulations are as provided by the Statewide Hunting and Fishing Proclamation (]no permit re-

quired][) with the following restrictions].

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

(31)[(27)] Sierra Diablo Wildlife Management Area:

(A) deer [and exotic mammals]:

(i) archery–during the period from September 1-January 31; one deer **(buck only)** [or exotic mammal (either-sex)]; by special permit;

(ii) general–during the period from October 1-February 15; one deer [or exotic mammal] as specified on the permit; by special permit;

(B) javelina: archery–to correspond with dates designated for archery only deer [and exotic mammal] hunts; one javelina (either-sex); by special permit;

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

(32)[(28)] Somerville Wildlife Management Area:

(A) deer and exotic mammals:

(i) archery–[during the period from October 1-October 31;] one deer or exotic mammal (either-sex); by **annual public hunting permit** [permission by registration];

(ii) (No change.)

(B) squirrel–[regulations are as provided by the Statewide Hunting and Fishing Proclamation, except season] closed on days designated for hunts by special permit; by **annual public hunting permit** [permission by registration];

(C) quail–[regulations are as provided by the Statewide Hunting and Fishing Proclamation, except season] closed on days designated for hunts by special permit; by **annual public hunting permit** [permission by registration];

(D) mourning dove–[regulations are as provided by the Early Season Migratory Game Bird Proclamation, except season] closed on days designated for hunts by special permit; by **annual public hunting permit** [permission by registration];

(E) waterfowl–[regulations are as provided by the Early Season Migratory Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation, except season] closed on days designated for hunts by special permit; by **annual public hunting permit** [permission by registration];

(F) woodcock–[regulations are as provided by the Late Season Migratory Game Bird Proclamation, except season] closed on days designated for hunts by special permit; by **annual public hunting permit** [permission by registration];

(G) gallinules–[regulations are as provided by the Early Season Migratory Game Bird Proclamation, except season] closed on days designated for hunts by special permit; by **annual public hunting permit** [permission by registration];

(H) snipe–[regulations are as provided by the Late Season Migratory Game Bird Proclamation, except season] closed on days designated for hunts by special permit; by **annual public hunting permit** [permission by registration];

(I) 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** [permission by registration].

(J) feral hog: archery–to correspond with the archery only season for taking deer [and exotic mammals], and additionally during the period from January 15-March 15; no bag or possession limit; by **annual public hunting permit** [permission by registration];

(K) special regulations:

(i) (No change.)

(ii) It is an offense to use any **device** [firearm] other than shotguns with **non-toxic shot or** no larger than size #4 lead shot [or nontoxic shot] or bow and arrow for hunting, except that rifles **(including muzzleloaders)** or shotguns with rifled slugs are the only legal firearms for taking deer, exotic mammals, or feral hogs during the general season prescribed for deer and exotic mammals **(nontoxic shot requirements for hunting waterfowl remain in effect).**

[(iii) Permission by registration is not required for nonconsumptive users.]

(33)[(29)] Walter Buck Wildlife Management Area:

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

§65.194. Permit Required and Fees.

(a) **A Texas conservation passport is required of each individual, 17 years of age or older, to obtain access to wildlife management areas for participation in nonconsumptive activities, except on the Dam B, Granger, James E. Daughtrey, Pat Mayse, and Somerville Wildlife Management Areas where a Texas conservation passport is not required for nonconsumptive use. The Texas conservation passport is not required of individuals participating in hunting and fishing activities or educational programs and management demonstrations sponsored by the department** [Permission by registration is required of nonconsumptive users, except on the Atkinson Island, Candy Abshier, Cedar Creek Islands, Dam B, Granger, James Daughtrey, Kiskadee, Matagorda Island, Old Tunnel, Pat Mayse, and Somerville Wildlife Management Areas].

(b) No permit is required for fishing, except on the **Black Gap, Gene Howe, Gus Engeling,** Kerr, **Matador,** and [Gus Engeling] **Richland Creek** Wildlife Management Areas where **an annual public hunting permit** [permission by registration] is required, and no permit is required to hunt waterfowl, **rails, gallinules** or **snipe within the designated marsh unit of the Matagorda Island Wildlife Management Area, and supervised minor age participants are exempt from requirement for an annual public hunting permit**; otherwise, none of the wildlife resources of the wildlife management areas may be taken except by holders of permits that have been issued by the Parks and Wildlife Department [or by persons who have obtained permission by registration].

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

(f) Application fee.

(1) The department may charge a nonrefundable application fee in the amount set by the Parks and Wildlife Commission as authorized by Texas Parks and Wildlife Code, §11.027(b)[, provided that House Bill 1809 passes].

(2) An application fee of **$5.00** [in the amount set by the commission] **is** [may be] required to accompany and validate each individual's application for a special permit, **except that the application fee shall be $20 per individual in application for a special permit to take desert bighorn sheep.**

(3) In the event an application is received prior to the established application deadline but said application is invalid due to incomplete required information, [or] duplicate application, **or insufficient application fees,** the department shall retain the concerned application fee.

(4) The department shall refund the concerned application fee in the event an application is received after the established application deadline [or the hunt for which the application was made is canceled].

[(5) This subsection will become effective on the effective date of House Bill 1809.]

(g) (No change.)

(h) The fees for special and regular permits are:

(1) (No change.)

(2) deer and exotic mammals-extended period-$100;

(3)[(2)] pronghorn antelope–$50;

(4)[(3)] alligator–$50;

(5)[(4)] javelina–$25;

(6)[(5)] turkey–$25;

(7)[(6)] feral hog–$25;

(8)[(7)] coyote–$25;

(9)[(8)] white-winged dove and white-tipped dove–$12;

(10)[(9)] squirrel–$6.00;

(11)[(10)] quail–$6.00;

(12) [(11)] mourning dove–$6.00;

(13)[(12)] woodcock–$6.00;

(14)[(13)] waterfowl–$6.00;

(15)[(14)] rails–$6. 00;

(16)[(15)] gallinules–$6.00;

(17)[(16)] snipe–$6.00;

(18)[(17)] desert bighorn sheep–no charge.

(i) (No change.)

(j) **Any applicable regular permit fees will be waived for persons possessing an annual public hunting permit and for minor age participants under the supervision of a duly permitted authorized supervising adult** [No fee is assessed for permission by registration].

(k) (No change.)

(l) The fees for annual public hunting permits and Texas conservation passports are:

(1) annual public hunting permit–$35;

(2) Texas conservation passport–$25.

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 April 13, 1992.

TRD-9205073

Paul M. Shinkawa
Director, Legal Services
Texas Parks and Wildlife Department

Earliest possible date of adoption: May 18, 1992

For further information, please call: 1-800-792-1112, ext. 4770 or (512) 389-4770

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Subchapter P. Alligators

- **31 TAC §§65.352-65.354, 65.356, 65.359, 65.361-65.364, 65. 368**

The Texas Parks and Wildlife Commission is proposing amendments to §§65. 352-65.354, 65.356, 65.359, 65.361- 65.364, and 65.368, concerning take, possession, and propagation of alligators statewide. These rules will prevent depletion or waste, while enhancing utilization of these resources. The proposed amendments are consistent with federal requirements to qualify alligators and alligator parts from Texas for international export under the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Alligators in Texas are not endangered but their similarity in appearance to endangered crocodilian species require controls on take and commerce to minimize illegal marketing.

The proposed regulations that differ significantly from the existing regulations are summarized as follows.

The amendment to §65.352 redefines alligator farmer, incubator, and landowners agents and newly defines alligator farm, alligator shed and sale for reference to proposed amendments.

The amendment to §65.353 removes provision relating to tagging requirements and clarifies tagging requirements.

The amendment to §65.354 provides specific exception to license or permit requirements, delete duplicate provision, removes validation requirements for egg collectors, increase license fees for resident and nonresident alligator buyers, increases permit fees for alligator farmers and import permit holders, provides alligator hide tag fees for farm reared alligators and increases hide tag fees for wild harvested alligators.

The amendment to §65.356 allows alligator farmers to apply for alligator hide tags at the departmental law enforcement office in their area of residence. Application must still be done prior to scheduled harvest. Amendments to §65. 356 and §65.358 also require permanent attachment of hide tags to an alligator immediately upon possession of the alligator by an alligator hunter or upon killing of an alligator by an alligator farmer.

Amendment to §65. 359 specifies what an alligator buyer may purchase, specifies that an alligator hunter can sell only his or her own take of legally harvested alligators, clarifies to whom an alligator farmer may sell live or legally harvested alligators, disallows egg transport outside Texas, and requires an alligator farmer to obtain a permit to transport and exhibit live alligators.

Amendment to §65.361 requires landowners or their agents to have individual alligator hunter report be submitted not later than seven days from date of take rather than five, deletes extraneous language, and establishes a report as delinquent if report, tags, etc. are not submitted within 15 days after due date rather than existing 30 days' requirement.

Amendment to §65.363 removes the word "validated" as validation requirement for egg collection is proposed to be deleted.

Amendment to §65.364 deletes wording relating to incubator and alligator shed. This language is no longer needed as alligator shed and incubator is defined at §65.352. It also provides information to be furnished to the department by alligator farmers for each clutch of alligator eggs placed in incubators.

Amendment to §65.368 deletes exception which authorizes the department to use firearms or other methods to take free swimming alligators.

Robin Riechers, staff economist, has determined that for the first five-year period the sections are in effect there will be minimal fiscal implications for state and local government as a result of enforcing or administering the amendments. There will be minimal fiscal implications for small businesses as a result of compliance with the proposed amendments.

Mr. Riechers also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be improved control on alligator production and harvest to ensure that alligators harvested and marketed in Texas continue to meet federal requirements for approved international export which is necessary for maximum value of hides and parts. Clarification of language will facilitate public compliance, thereby accruing public benefits in the form of efficiency in the alligator industry. There will be economic costs to individual alligator buyers, importers, landowners, and farmers who are required to comply with the proposed rules. Some additional costs will be compensated by the reduction in hide tag fees. The department has filed a local employment impact statement with the Texas Employment Commission in compliance with the Administrative Procedure and Texas Register Act, §4A. This agency has determined that the rules as proposed may have a minimal impact on local economics.

Comments on the proposed amendments may be submitted to Dr. Bill Harvey, Director, Special Projects, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4642 or 1-800-792 extension 4642.

The amendments are proposed under the Texas Parks and Wildlife Code, Chapter 65, which provides the Texas Parks and Wildlife Commission with authority to adopt regulations for the taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of alligators or parts of alligators as considered necessary to manage the species.

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

Alligator farm–An enclosed area, constructed so as to prevent the ingress and egress of alligators from surrounding public or private lands or waters and meeting other specifications prescribed by the department, where alligators are bred or raised under controlled conditions.

Alligator farmer–A [properly permitted] person **holding an alligator farmers permit** who **possesses** [holds] live alligators in captivity **for commercial purposes including the** [or who propagates alligators for the purpose of] selling **of** alligators, **eggs,** hides, meat, or other parts of an alligator.

Alligator shed–An enclosed structure capable of maintaining a minimum constant temperature of 80 degrees Fahrenheit, containing dry and wet areas of sufficient surface area to permit all alligators to completely submerge in water and completely exit from water and orient in any direction without touching the sides of the tank(s).

Incubator–An apparatus designed and used for the purpose of incubating alligator eggs **and meeting other specifications of the department.**

Landowner's agent–A person who has written authorization **(from a landowner)** to represent **that** [the] landowner.

Sale–Includes barter and other transfers of ownership for consideration.

§65.353. General Rules.

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

[(d) Hides of alligators harvested in Texas shall be tagged in accordance with §65.356 of this title (relating to Hide Tag Procurement and Tagging Requirements) and deviation from those requirements shall be a violation and subject hides to confiscation.]

(d)[(e)] Pole hunting is prohibited.

(e)[(f)] An alligator hunter must possess on his or her person one or more current alligator hide tags while taking alligators provided that only one licensed hunter needs to possess current hide tags among a group of licensed hunters accompanying each other.

(f)[(g)] An alligator hunter who possesses valid hide tags shall **kill and immediately tag all alligators removed from a taking device** [not release a legal alligator from any taking device for any purpose without first dispatching and tagging the alligator].

§65.354. Licenses, Permits, and Fees.

(a) The licenses and fees required for activities authorized by this subchapter are as prescribed under provisions of the Texas Parks and Wildlife Code, Chapter 65, or as prescribed in this subsection, and are:

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

(3) **$200** [150] for a resident alligator buyer's license;

(4) **$650** [600] for a nonresident alligator buyer's license;

(5) **$25** [15] for an alligator import permit fee;

(6) **$200** [150] for an alligator farmer permit fee;

(7) **$4.00** [5.00] for each **farm raised** alligator hide tag fee;

(8) $10 for each wild caught alligator hide tag fee;

(9) [(8)] $50 for each alligator nest stamp fee.

(b) No person may take, attempt to take, possess, or accompany another person who is attempting to take an alligator in this state during the open season established in this subchapter for taking alligators unless he or she has acquired and possesses an alligator hunter's license **or is otherwise exempted under the Texas Parks and Wildlife Code, Chapter 43.**

(c) **Except as provided by §65.359 of this title (relating to Importation, Exportation, Purchase, and Sale), no**[No] person may purchase or possess after purchase [from an alligator hunter] an alligator, alligator hide, or any part of an alligator taken in this state unless he or she has acquired and possesses an alligator buyer's license **or is otherwise exempted under the Texas Parks and Wildlife Code, Chapter 43.**

(d) An alligator farmer permit shall be acquired by any person possessing one or more live alligators or alligator eggs **unless otherwise exempted under the Texas Parks and Wildlife Code, Chapter 43.**

[(e) No person may purchase or possess after purchase from an alligator farmer or alligator buyer an alligator, alligator hide, or any part of an alligator taken in this state unless he or she has acquired and possesses an alligator buyer's license or is otherwise exempted.]

(e) [(f)] No person may remove and possess alligator eggs from wild nests or accompany anyone removing eggs from wild nests unless he or she has acquired and possesses an alligator hunter's license and an alligator egg collector's **permit** [validation] provided, however, landowners are not required to be **permitted** [validated] as egg collectors to accompany authorized egg collectors on their property. **An** egg collector's **permit** [validations] will only be issued to those persons who [demonstrate competency in egg collection and handling, have necessary equipment accessible, and] complete the prescribed application form provided by the department.

(f)[(g)] All licenses and permits prescribed in this subchapter are valid from September 1 or from the date of issuance, whichever is later, until the following August 31st unless otherwise provided in this subchapter.

(g)[(h)] Applicants for an alligator buyer's license must comply with federal licensing and permit requirements to engage in commerce involving alligators, alligator hides, and parts.

(h) Permits issued pursuant to this chapter may not be renewed unless all required reports have been received by the department.

§65.356. Hide Tag Procurement and Tagging Requirements.

(a) Alligator hide tags may be obtained as follows.

(1) (No change.)

(2) Alligator farmers-upon **submission of hide tag application to departmental law enforcement office in their area of residence prior to scheduled harvesting. All applications are** [written request to the department at least 30 days prior to scheduled killing,] subject to verification of available stock by department personnel. **Applications for** [provided that] hide tags may be **made** [obtained] at any time [upon request to and approval from the department] for individual alligators in stock that have died unexpectedly, provided that **the game warden or district law enforcement supervisor is** [department personnel are] notified before skinning of those alligators begins.

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

(b) (No change.)

(c) A hide tag shall be attached **and permanently locked** around a medial scute in the last six inches of an alligator's tail immediately upon:

(1) possession of an alligator by an alligator hunter; **or**

(2) killing of an alligator by an alligator farmer.

§65.358. Possession.

(a) No person may possess **at any time:**

(1) an [untagged] alligator hide **without a hide tag attached and permanently locked;** or

(2) undocumented alligator parts [at any time]. Documented evidence is as described in §65.359 of this title (relating to Importation, Exportation, Purchase, and Sale).

(b)-(d) (No change.)

§65.359. Importation, Exportation, Purchase, and Sale.

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

(c) Purchases of alligators and alligator parts are restricted as follows.

(1) (No change.)

(2) A licensed alligator buyer may purchase **legally taken alligators, alligator hides, or parts of alligators** from a licensed alligator hunter, another alligator buyer, an alligator farmer, an import permit holder, or a person designated as a nuisance control hunter by ADC under a cooperative agreement with the department.

(3)-(6) (No change.)

(d) Sales of alligators and alligator parts are restricted as follows.

(1) A licensed alligator hunter may sell **only his or her take of legally harvested** alligators [taken during the general open season only] to a licensed alligator buyer.

(2) (No change.)

(3) An alligator farmer may sell **live alligators** to [an alligator buyer or to] another alligator farmer **or licensed alligator farmer in another state or to a holder of a permit, issued under the Texas Parks and Wildlife Code, Chapter 43, authorizing the purchase.**

(4) An alligator farmer may sell legally harvested alligators to a licensed alligator buyer.

(5)[(4)] Alligator nest stamp recipients may sell alligator eggs only to licensed alligator farmers designated on egg collection authorization forms.

(6)[(5)] Any person holding a valid license or permit issued under this subchapter, other than a licensed alligator hunter, may sell processed or manufactured alligator parts to a person engaged in wholesale or retail business involving alligator parts or with potential for such commerce.

(7)[(6)] Any person engaged in wholesale or retail business involving alligator parts or with potential for such commerce may sell legally obtained and documented processed or manufactured alligator parts to anyone.

(8)[(7)] A nuisance alligator hunter or a person designated as a nuisance control hunter by ADC under a cooperative agreement with the department may sell to an alligator farmer or an alligator buyer.

(9)[(8)] All alligator meat processed in this state must be packaged in containers which identifies the contents as alligator meat and is marked with a properly completed department alligator parts label.

(e) Legally tagged and documented alligators and parts of alligators [taken in Texas] may be exported by all categories of license and permit holders subject to Report Requirements provided that no live alligators [or eggs] originating in Texas may be exported outside of the United States without specific department authorization.

(f) (No change.)

(g) It is an offense for an alligator farmer to transport live alligators from an alligator farm for exhibition purposes unless authorized by a permit issued under the Texas Parks and Wildlife Code, Chapter 43.

§65.361. Report Requirements.

(a) Report forms provided by the department must be completed and filed with the department by all persons who have been issued an alligator hunter's license, alligator buyer's license, alligator import permit, alligator farmer permit, alligator nest stamp(s), or alligator hide tag(s) in accordance with this section. Reports shall include the information specified in this section.

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

(3) The original copy of the form shall be submitted by the landowners or landowner's agent to the Parks and Wildlife Department office in Austin not later than the **seventh** [fifth] day following the date of take. A copy shall remain with the dealer or person possessing the alligator hide until shipped or sold out of state, at which time, the copy will also be submitted to the Parks and Wildlife Department office in Austin.

(4) An alligator buyer shall file reports by October 31 [after the end of the open season] and by the last day of every second month thereafter detailing purchase and sale transactions until all transactions (PWD 306) are complete for hides and parts handled during the license year.

(A)-(B) (No change.)

(5)-(8) (No change.)

(b) Any person who is delinquent in excess of **15** [30] days in returning hide tags, or nest stamps, or filing a report required by this subchapter or falsifies a report commits an offense.

§65.363. Alligator Egg Collection.

(a) Alligator nest stamps may be obtained as follows.

(1) (No change.)

(2) **Permitted** [Validated] alligator egg collectors may obtain nest stamps from a landowner or landowner's agent.

(b)-(c) (No change.)

(d) Alligator eggs shall be collected from the wild by hand and must be appropriately marked as prescribed by these rules to identify them as being legally collected.

(1) (No change.)

(2) Egg collectors shall notify the game warden or district law enforcement supervisor in the area of egg collection **of the date, time, county, and ranch location of the collection,** no less than 24 hours prior to each collection trip.

(e) (No change.)

§65.364. Alligator Farm Facility Requirements.

(a) (No change.)

(b) [All] Alligator farmers possessing alligator eggs outside an alligator nest shall house such eggs in identifiable original clutch groups in an **incubation facility approved by the department** [incubator providing constant temperature and humidity conditions]

(c) All alligator farmers possessing hatchling alligators shall house such hatchlings in temperature controlled alligator sheds [capable of maintaining a minimum constant temperature of 80 degrees Fahrenheit, containing dry and wet areas of sufficient surface area to permit all alligators to completely submerge in water and completely exit from water and orient in any direction, without touching the sides of the tank(s)].

(d)-(f) (No change.)

(g) Alligator farmers, possessing alligator eggs collected from the wild shall file a report on forms (PWD-371A) provided by the department by September 30. Information shall include nest stamp number, date clutch received, landowner's name, number of eggs in clutch collected, number of eggs placed in incubator, number of eggs hatched, date eggs hatched, and name of farmer if eggs are transferred.

(h) [(g)] All alligators 48 inches or less in length shall be housed in [temperature controlled] alligator sheds unless a written authorization from the department is received to move them to outside growth areas.

(i)[(h)] Alligator egg incubators shall:

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

(j)[(i)] All facilities, alligator stock, and records are subject to examination by department personnel prior to permitting and thereafter during farm operation.

(k)[(j)] No alligator eggs collected or obtained under authority of these rules may be shipped out of state.

§65.368. Exceptions.

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

[(d) Notwithstanding other provisions in these rules, firearms and other alligator harvest methods may be used to take free-swimming alligators on department wildlife management areas when authorized in Subchapter H of this chapter (relating to Type I Wildlife Management Areas Hunting and Fishing) or Subchapter U of this chapter (relating to Type II Management Area - Public Hunting Lands).]

(d)[(e)] This subchapter does not require an import permit of persons who import finished leather products (other than tanned hides) or finished jewelry derived from legally taken alligators.

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 April 13, 1992.

TRD-9205070 Paul M. Shinkawa
Director, Legal Services
Texas Parks and Wildlife Department

Proposed date of adoption: May 18, 1992

For further information, please call:1-(800)-792-1112, extension 4642 or (512) 389-4642

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Subchapter U. Type II Wildlife Management Area–Public Hunting Lands

• 31 TAC §§65.702-65.705

The Texas Parks and Wildlife Department proposes amendments to §§65. 702-65.705, concerning the Type II Wildlife Management Area - Public Hunting Lands Proclamation. The proposed amendments provide definitions for an all terrain vehicle, authorized supervising adult, and minor age participant; expand the definition of the Type II permit to allow participation in certain activities on designated Type I areas; delete the Black Gap, Matador, and Richland Creek Wildlife Management Areas which are being transferred to the Type I Public Hunting Program; delete certain lands in the Trans-Pecos and Panhandle on which public use has been minimal; prohibits the operation of an all terrain

vehicle except as provided for a disabled person; promote youth participation by allowing additional persons to qualify as sponsor for a minor and increasing from 12 to 16 the maximum age of minors exempt from requirement for a Type II permit; and provide waiver of permit requirements for a nonhunting and nonfishing person who accompanies and assists a duly permitted disabled person.

The proposed rules have as their factual basis scientific studies and investigations which track trends in wildlife resource populations and assess user impacts upon those populations and related habitats. These studies, and information which supports the proposed rules, are incorporated by reference and are available for public inspection. The rules as proposed are designed to prevent depletion or waste and promote public user opportunity.

Robin Riechers, staff economist, has determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local governments as a result of enforcing or administering the rules.

Ms. Riechers, also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will provide for additional public user opportunities on management areas and promote proper management of wildlife resources. There will be no effect on small businesses. It is anticipated there will be minimal fiscal implications to persons who are required to comply with the amendments as proposed. The department has not filed a local employment impact statement with the Texas Employment Commission in compliance with the Administrative Procedure and Texas Register Act, §4A as this agency has determined that the sections as proposed will not impact local economies.

Comments on the proposal may be submitted to H. G. Kothmann, Public Hunts 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 Texas Parks and Wildlife Code, Chapter 81, Subchapter E, which provides the Texas Parks and Wildlife Commission with authority to regulate seasons, number, means, methods, and conditions for taking wildlife resources on wildlife management areas.

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

All terrain vehicle (ATV)–Any motor vehicle having a saddle, three or four tires, designed for off-highway use, and not designed for farming or lawn care.

Authorized supervising adult–A parent or legal guardian of a minor age participant, or an individual 21 years of age or older who possess written authorization signed by a parent or legal guardian of a minor age participant to assume liability responsibility for the minor age participant.

Minor age participant–An individual less than 17 years of age.

Type II permit–An annual permit, valid from September 1 or issuance date, whichever is later, through the following August 31, issued to an individual to allow the hunting and taking of wildlife resources and other activities on land designated as a Type II Wildlife Management Area in accordance with commission adopted regulations for the county where the Type II Wildlife Management Area is located. **The Type II permit also allows access to designated Type I wildlife management areas for participation in hunting or fishing activities not requiring a special permit for the taking of wildlife resources in accordance with Type I rules and regulations.**

§65.703. Open Seasons, Bag and Possession Limits, and Means and Methods.

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

(c) It is an offense for a person while hunting waterfowl [on a Type II area located within a nontoxic shot zone,] to use or possess any shot shells or loose shot for muzzleloading firearms other than nontoxic (steel) shot.

(d) -(g) (No change.)

§65.704. Exceptions. The exceptions to commission adopted regulations provided by this section apply to Type II Wildlife Management Areas.

(1) (No change.)

(2) Except on National Grasslands (Unit 901) [and General Land Office (Unit 501) lands] designated as **a** Type II **area** [areas], it is an offense to use a dog or dogs to hunt, pursue, or take bobcats, coyotes, and fur-bearing animals during the period of 30 minutes before sunrise through 30 minutes after sunset.

(3) (No change.)

(4) It is an offense to hunt from a vehicle, except disabled persons may hunt from a stationary vehicle provided the hunting is not conducted on a designated road. Disabled persons are exempt from the restrictions of paragraph **(5)**[(6)] of this section, to the extent that they may drive directly to the hunting place and hunt from a stationary vehicle.

(5)[(6)] It is an offense to use motor vehicles [including all-terrain vehicles, three-wheelers, four-wheelers, and dirt bikes] except on designated roads[, see §65.702 of this title (relating to Definitions)].

(6) It is an offense for individuals other than disabled persons to operate an all terrain vehicle (ATV) on a wildlife management area.

(7)[(5)] It is an offense to use, hunt with, or place any device capable of capturing or injuring any animal or bird on a designated road, see §65.702 of this title (relating to Definitions).

(8)[(7)] It is an offense for persons under 17 years of age to hunt except under the immediate supervision of **an authorized supervising adult** [a parent or guardian] who possesses a Type II Wildlife Management Area Permit. **The authorized supervising adult for minors who have received hunter education certification is required to only be present on the wildlife management area while the minor is engaged in hunting activities.**

(9)[(8)] It is an offense to construct permanent hunting blinds, stands, towers, or platforms. The use of temporary hunting blinds, stands, towers, or platforms is permitted only if such structures not be nailed to timber, be emplaced no longer than 72 hours, and it is an offense to fail to remove all materials from the area upon completion of the hunt.

(10)[(9)] It is an offense to place a hunting blind, stand, tower, or platform within 50 yards of any designated road, designated campsite, or Type II marked boundary.

(11)[(10)] It is an offense for a person to fail to wear a minimum of 400 square inches of visible hunter orange material with 144 square inches appearing on both the chest and back on a Type II Wildlife Management Area during times when the taking of deer is permitted, except that persons hunting fur-bearing animals and coyotes at night, sandhill cranes, waterfowl, and persons within vehicles or designated campsites, and authorized department and landowner employees are exempt from this requirement.

(12)[(11)] It is an offense to take exotic mammals except during the **lawful open seasons and shooting hours provided for taking deer** [period 1/2 hour before sunrise until 1/2 hour after sunset].

(13)[(12)] It is an offense to discharge firearms on or across a designated road.

(14) [(13)] The executive director may establish additional restrictions on camping consistent with the type of hunting season and the environmental protection of the area.

(15)[(14)] It is an offense to camp or start a camp fire except in areas identified as a designated campsite, see §65.702 of this title.

(16)[(15)] It is an offense to dis-

charge a firearm, muzzle loading weapon, or bow and arrow in designated campsites.

(17)[(16)] It is an offense for any person to not obey posted regulations, fail to comply with instructions on special permits and self registration permits, area leaflets, or refuse to follow directions given by department personnel in the discharge of official duties.

(18)[(17)] It is an offense to leave or strew refuse, litter, trash, or garbage.

(19)[(18)] It is an offense to allow dogs that are not confined or leashed in designated campsites.

(20)[(19)] It is an offense for a person to cause, create, or contribute to excessive or disturbing sounds beyond the person's immediate campsite between the hours of 10 p.m. and 6 a.m.

(21)[(20)] Department personnel may collect parts from hunter harvested wildlife resources for scientific investigation.

(22)[(21)] It is an offense to disturb or remove plants, rocks, artifacts, or other objects from Type II Wildlife Management Areas.

(23)[(22)] It is an offense to possess buckshot on a Type II Wildlife Management Area.

(24)[(23)] It is an offense to use or display a firearm or other weapon in an obviously unsafe or threatening manner.

(25)[(24)] It is an offense to take turkey **or alligator** on any Type II Wildlife Management Area.

(26)[(25)] It is an offense for a person who does not possess a special permit to enter into a Type II Wildlife Management Area during the specific time period when the hunting of a wildlife resource is authorized by special permit only.

(27)[(26)] It is an offense for a person to enter an area identified by boundary signs as a limited use zone and fail to obey the restrictions on public use posted at the area or published in the Type II Map Booklet.

(28)[(27)] It is an offense to take antlerless white-tailed deer on Type II Wildlife Management Areas, except antlerless deer may be taken during the archery only season on the following units: 102, 103, 104, 106, 108, 109, 112, 113, 114, 115, 116, 117, 119, 120, 121, 122, 125, 129, 130, 133, 134, 136, 137, 142, 143, 144, 145, 146, 147, 148, 150, 151, 152, 154, 155, 156, 157, 158, 159, 160, 201, 203, 204, 210, 211, 213, 217, 218, 221, 222, 223, 301, 615, 616, 630, [703,] 801, 803, 902, 903, and 904**, and by special permit on selected units during specified time periods.**

(29)[(28)] The restrictions listed in this paragraph apply only to specific areas.

[(A) On General Land Office lands in Hudspeth County, designated as Type II Wildlife Management Areas (Units 401, 402, and 403), it is an offense to use, enter, hunt, or take wildlife resources at any time except as provided in these rules beginning on September 1 and ending on the last Sunday in the following February, and overnight camping is prohibited.

[(B) The season on mule deer and javelina is closed on General Land Office Lands (Units 401, 402, and 403) in Hudspeth County.

[(C) Panhandle Lands.

[(i) On the Gabel tracts (Units 610, 611, 612, 613, 614, and 623) located in Castro and Deaf Smith Counties and Formby tract (Unit 602) located in Hale County, it is an offense to take any wildlife resource except mourning dove, pheasant, ducks, geese, and sandhill cranes or take these species at a time or in numbers except as authorized by lawful open seasons and bag limits adopted by the commission for these species in the county where the area is located. Rabbits and hares in unlimited numbers may be taken only during dove, pheasant, duck, goose, and sandhill crane seasons.]

(A) *[(ii)]* On the [Borth tract (Unit 620) located in Sherman County,] Cleavinger tract (Unit 617) located in Castro County, [and Borth tract (Unit 618) located in Dallam County,] it is an offense to take any wildlife resource except pheasants, or to take pheasants at any time or in numbers other than those authorized by commission adopted seasons and bag limits for pheasants in the county where the area is located. Rabbits and hares in unlimited numbers may be taken only during pheasant season.

[(iii) On the Barkley (Unit 621) and Christian (Unit 622) tracts located in Sherman County and Gonser (Unit 619) tract located in Parmer County, it is an offense to take any wildlife resource except mourning dove and pheasant or to take mourning dove or pheasant at a time or in numbers other than as authorized by commission adopted seasons and bag limits for dove and pheasant in the county where the area is located. Rabbits and hares in unlimited numbers may be taken only during dove and pheasant seasons.]

(B)*[(iv)]*. On the Wall (Unit 608) tract located in Dallam County, it is an offense to take any wildlife resource except pheasants, ducks, and geese or to take pheasant, ducks, and geese at a time or in numbers other than as authorized by commission adopted seasons and bag limits for pheasant, ducks, and geese for Dallam County. Rabbits and hares in unlimited numbers may be taken only during pheasant, duck, and goose seasons.

[(v) On the Dixon (Unit 601) tract located in Parmer County, it is an offense to take any wildlife resource except dove, quail, and pheasant or to take dove, quail or pheasant at a time or in numbers other than as authorized by commission adopted seasons and bag limits for dove, quail, and pheasant for Parmer County. Coyotes, rabbits, and hares in unlimited numbers may be taken only during dove, quail, and pheasant seasons.]

[(D) It is an offense to possess any device other than shotguns and bow and arrow for hunting on that portion of the Richland Creek Wildlife Management Area (Unit 703) located north of U.S. Highway 287.]

(C)[(E)] Lake Ray Roberts Wildlife Management Area (Unit 501): special exceptions. It is an offense to:

(i)-(vii) (No change.)

(D)[(F)] Additional restrictions on public use of North Toledo Bend (Unit 615), [Richland Creek (Unit 703), Black Gap (Unit 701),] Alabama Creek (Unit 904), Bannister (Unit 903) , Moore Plantation (Unit 902), **and** Caddo (Unit 901)[, and Matador (Unit 702)] Type II Wildlife Management Areas are as follows.

(i) A hunter commits an offense if that hunter fails to selfregister when entering Type II Wildlife Management Areas listed in this section except that persons entering North Toledo Bend (Unit 615)[, and Richland Creek (Unit 703)] Wildlife Management **Area** [Areas] are not required to selfregister.

[(ii) On the Black Gap Wildlife Management Area (Unit 701), it is an offense for persons except those entering by boat to fail to self-register at area headquarters immediately upon arrival.

[(iii) Regular seasons, bag, and possession limits apply except as specifically provided in this subparagraph.

[(I) On Black Gap (Unit 701) and Matador (Unit 702) Wildlife Management Areas, exotic mammals and predatory animals may be taken only by persons authorized to hunt deer or by hold-

ers of permits to take exotic mammals and predatory animals. It is an offense to take fur-bearing animals or to use traps, snares, and deadfalls.

[(II) It is an offense to take mule deer or white-tailed deer without a special permit during the general season on the Black Gap (Unit 701) and Matador (Unit 702) Wildlife Management Areas. Mule deer or white-tailed deer may be taken during the archery only season without a special permit by hunters who have selfregistered. It is an offense to take any deer except buck deer during the general season and archery only seasons on the Black Gap (Unit 701) and Matador (Unit 702) Wildlife Management Areas. It is an offense to bring onto or use horses, mules, riding stock, or pack animals on the Black Gap (Unit 701) or Matador (Unit 702) Wildlife Management Areas except by written authorization of the department.

[(III) On Richland Creek Wildlife Management Area (Unit 703), on that portion of the area which lies north of U.S. Highway 287, it is an offense to use firearms in hunting deer at any time except during the period from the first Saturday in November through November 30.

[(IV) On the Black Gap Wildlife Management Area (Unit 701), it is an offense to hunt javelina at any time except during daylight hours from noon on Friday through noon on Monday during the period from the third Friday in January through the third Monday in February. It is a violation if a person hunting javelina fails to check in at the departmental check station and obtain a regular permit prior to hunting javelina, fails to possess a valid regular permit, fails to confine javelina hunting activities to the assigned hunting compartment, or fails to check out at the departmental check station and complete a javelina harvest questionnaire upon completion of the hunt and prior to departing the Black Gap Wildlife Management Area. The bag and possession limit is one javelina per season.

[(V) On Black Gap (Unit 701) and Matador (Unit 702) Wildlife Management Areas, it is an offense to hunt rabbits and hares at any time except during open seasons for javelina, quail, and mourning dove.]

(ii)[(VI)] 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 in the A.M. until noon each week during the regular seasons.

[(VII) Black Gap Wildlife Management Area (Unit 701). impoundments are closed to fishing and fishermen shall be required to use Maravillas Canyon and Horse Canyon Roads only while going to and from the Rio Grande on the Black Gap Wildlife Management Area (Unit 701). From the point where the Maravillas Canyon Road enters the Rio Grande Valley downstream to the area boundary, a fisherman who does not possess a Type II permit commits an offense if the fisherman 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.]

§65.705. Permit Required and Fees.

(a) Except as provided in subsections (b) and (d) of this section, it is an offense for a person **17** [13] years of age or older to enter or hunt on a Type II Wildlife Management Area without having in his or her possession a Type II Wildlife Management Area-Public Hunting Lands Permit.

(b)-(c) (No change.)

(d) The permits required under subsections (a) and (b) of this section are not required for:

(1) persons who enter on United States Forest Service System lands designated as a Type II area (Units 901, 902, 903 and 904), including Caddo National Grassland [(Unit 501)], or any portion of Units 902 and 903 in Sabine and San Augustine Counties for any purpose other than hunting white-tailed deer with firearms;

(2)-(4) (No change.)

(5) persons owning or leasing land within the boundaries of a Type II Area while traveling to or from their property; [and]

(6) **a nonhunting and nonfishing adult who accompanies and assists a duly permitted disabled person** [fishing access on the Black Gap Wildlife Management Area (Unit 701)].

(e) A person, by this signature on the permit, waives all liability towards the landowner (licensor) and Texas Parks and Wildlife Department (licensee). The text of the disclaimer of liability being: "This Permit allows entry upon lands owned by licensor and licensed to Texas Parks and Wildlife Department. Neither licensor nor the Texas Parks and Wildlife Department know what type of conditions exist upon any of such lands, nor the number or proficiency of other participating hunters, and they specifically do not make any warranty or representation of any type, kind or character, whatsoever, as to existing conditions upon said lands or as to the suitability or nonsuitability of such lands for hunting purposes. Any person entering upon such lands enters at his or her own risk, impliedly accepts such lands in the existing conditions, and recognize that all hunting is potentially dangerous because of the use of firearms by hunters of varying degrees of proficiency, and in consideration of being permitted to participate in this public hunting program, I, and as **the authorized supervising adult** [parent or guardian] of any accompanying minor, unconditionally release and holds harmless Licensor and Licensee against and for all liability, cost, expenses, claims and damages for which Licensor and Licensee might otherwise become liable by reason of any accidents, or injuries to or death of any persons, or damage to property, or both, in any manner arising or resulting from, caused by, connected with or related to the presence of any such person upon such land and premises, regardless of how, where, or when such injury, death or damage occurs even if caused by the negligence of Licensor and Licensee, its agents, servants or employees, or due to conditions on or defects in the premises. I, the Permittee, have read this release and understand all its terms. I execute it voluntarily with full knowledge of its significance."

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

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

Issued in Austin, Texas, on April 13, 1992.

TRD-9205071 Paul M. Shinkawa
Director, Legal Services
Texas Parks and Wildlife Department

Earliest possible date of adoption: May 18, 1992

For further information, please call: 1-800-792-1112, ext. 4770 or (512) 389-4770

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Part IX. Texas Water Commission

Chapter 305. Consolidated Permits

Subchapter D. Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits

- **31 TAC §305.69**

The Texas Water Commission (TWC) proposes an amendment to §305.69, concerning consolidated permits. The amendment to §305.69 is proposed in order to conform to the federal hazardous waste regulations as published and adopted in the March 7, 1989,

issue of the *Federal Register* (54 FedReg 9608), the February 21, 1991, issue of the *Federal Register* (56 FedReg 7239), and the July 17, 1991, issue of the *Federal Register* (56 FedReg 32688). The TWC proposes an amendment to §305.69 relating to solid waste permit modifications at the request of the permittee, in order to conform to the federal hazardous waste regulations as published and adopted in the February 21, 1991, issue of the *Federal Register* (56 FedReg 7239). Section 305.69 is proposed to be amended at §305.69(g) to authorize continued operations at facilities with newly regulated hazardous wastes and units, subject to certain permit modification submittal requirements. Additionally, §305.69 is proposed to be amended at §305.69(h), Appendix I, Subsection L, to include within the descriptions of permit modifications, boilers and industrial furnaces, along with additional descriptions of operational limitations.

Norma Nance, director of budget, planning and evaluation division, has determined that for the first five-year period these rules will be in effect there will be fiscal implications as a result of enforcement or administration of the rules. There will be an increased cost to state government of $234,000 in fiscal year 1993 and a cost increase of $159,000 each of the fiscal years 1994-1997. There are no fiscal impacts to local governments anticipated. These rules will have fiscal impacts on operators of the facilities subject to new requirements. These sections are proposed in order to incorporate existing federal regulations and are not anticipated to have fiscal impacts that do not currently result from compliance with federal requirements. EPA has estimated the total national cost effect of these regulations to be approximately $15.2 million per year before taxes.

Ms. Nance also has determined that for the first five-year period these rules are in effect the public benefit anticipated as a result of enforcing the section will be improvements in the standards for combustion facilities which burn hazardous waste, reduce emissions of hazardous constituents from boilers and industrial furnaces, and consistency of state and federal regulations regarding hazardous wastes burned for energy recovery. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with these rules as proposed.

Comments on the proposal may be submitted to Margaret Ligarde, Staff Attorney, Legal Division, P.O. Box 13087, Austin, Texas 78711. The deadline for submission of written comments will be 30 days after the date of publication of this proposal in the *Texas Register*. To facilitate public comment on the proposed amendments and new sections in Chapter 305, the commission has scheduled several public hearings in various locations for the receipt of comments as follows: Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, on April 27, 1992, at 10 a.m., Austin; Midlothian High School, 925 South Ninth Street, Auditorium, on April 27, 1992, at 6:30 p.m., Midlothian; New Braunfels Civic Center, 390 South Seguin, on April 29, 1992, at 6:30 p.m., New Braunfels; Texas City Nessler Center, Captain's Room, 2010 Fifth Avenue North, on April 30, 1992, at 6:30 p.m., Texas City. Persons participating in the public hearing are encouraged to summarize their testimony in written presentations.

The amendment is proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, which gives the commission the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The amendment is also proposed under the Solid Waste Disposal Act, §3 and §4, which gives the commission the authority to regulate industrial solid wastes and hazardous municipal wastes and to adopt rules and promulgate rules consistent with the general intent and purposes of the Act.

§305.69. Solid Waste Permit Modification at the Request of the Permittee.

(a)-(f) (No change.)

(g) Newly **regulated** [listed or identified] wastes **and units**.

(1) The permittee is authorized to continue to manage wastes listed or identified as hazardous under 40 CFR Part 261 **or to continue to manage hazardous waste in units newly regulated as hazardous waste management units** if [the permittee]:

(A) **the unit** was in existence as a hazardous waste facility **unit** with respect to the newly listed or characteristic waste **or newly regulated waste management unit** on the effective date of the final rule listing or identifying the waste **or regulating the unit**;

(B) **the permittee** submits a Class 1 modification request on or before the date on which the waste **or unit** becomes subject to the new requirements;

(C) **the permittee** is in substantial compliance with the **applicable** standards of 40 CFR Part 265 **and Part 266**;

(D) in the case of Classes 2 and 3 modifications, **the permittee** also submits a complete permit modification request within 180 days after the effective date of the final rule listing or identifying the waste **or subjecting the unit to RCRA Subtitle C management standards**; and

(E) in the case of land disposal units, **the permittee** certifies that each **such** unit is in compliance with all applicable 40 CFR Part 265 ground-water monitoring and financial responsibility requirements on the date 12 months after the effective date of the final rule identifying or listing the waste as hazardous, **or regulating the unit as a hazardous waste management unit.** If the owner or operator fails to certify compliance with these requirements, the owner or operator shall lose authority to operate under this section.

(2) (No change.)

(h) Appendix I. The following appendix will be used for the purposes of this subchapter which relates to solid waste permit modification at the request of the permittee.

Modifications	Class
A. General Permit Provisions	
1. Administrative and informational changes	1
2. Correction of typographical errors	1
3. Equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls)	1
4. Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee:	
a. To provide for more frequent monitoring, reporting, sampling, or maintenance	1

b. Other changes..... 2

5. Schedule of compliance

a. Changes in interim compliance dates, with prior approval of the executive director..... 1[1]

b. Extension of final compliance date..... 3

6. Changes in expiration date or permit to allow earlier permit expiration, with prior approval of the executive director..... 1[1]

7. Changes in ownership or operational control of a facility, provided the procedures of §305.65(g) are followed..... 1[1]

B. General Standards

1. Changes to waste sampling or analysis methods:

a. To conform with agency guidance or regulations..... 1

b. Other changes..... 2

2. Changes to analytical quality assurance/ control plan:

a. To conform with agency guidance or regulations..... 1

b. Other changes..... 2

3. Changes in procedures for maintaining the operating record..... 1

4. Changes in frequency or content of inspection schedules..... 2

5. Changes in the training plan:

   a. That affect the type or decrease the amount of training given to employees..... 2

   b. Other changes..... 1

6. Contingency plan:

   a. Changes in emergency procedures (i.e., spill or release response procedures)..... 2

   b. Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed..... 1

   c. Removal of equipment from emergency equipment list..... 2

   d. Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan..... 1

Note: When a permit modification (such as introduction of a new unit) requires a change in facility plans or other general facility standards, that change shall be reviewed under the same procedures as the permit modification.

C. Ground-water Protection

1. Changes to wells:

a. Changes in the number, location, depth, or design of upgradient or downgradient wells of permitted groundwater monitoring system..... 2

b. Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well..... 1

2. Changes in groundwater sampling or analysis procedures or monitoring schedule, with prior approval of the executive director..... 1[1]

3. Changes in statistical procedure for determining whether a statistically significant change in groundwater quality between upgradient and downgradient wells has occurred, with prior approval of the executive director..... 1[1]

4. Changes in point of compliance..... 2

5. Changes in indicator parameters, hazardous constituents, or concentration limits (including ACLs):

a. As specified in the groundwater protection standard..... 3

b. As specified in the detection monitoring program..... 2

6. Changes to a detection monitoring program as required by §335.164(10) of this title

(relating to Detection Monitoring Program), unless otherwise specified in this appendix..... 2

7. Compliance monitoring program:

a. Addition of compliance monitoring program pursuant to §335.164(8)(D) of this title (relating to Detection Monitoring Program), and §335.165 of this title (relating to Compliance Monitoring Program)..... 3

b. Changes to a compliance monitoring program as required by §335.165(11) of this title (relating to Compliance Monitoring Program), unless otherwise specified in this appendix.... 2

8. Corrective action program:

a. Addition of a corrective action program pursuant to §335.165(9)(B) of this title (relating to Compliance Monitoring Program) and §335.166 of this title (relating to Corrective Action Program)..... 3

b. Changes to a corrective action program as required by §335.166(8), unless otherwise specified in this appendix..... 2

D. Closure

1. Changes to the closure plan:

a. Changes in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life

of the facility, with prior approval of the executive director..... 1[1]

b. Changes in the closure schedule or any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior approval of the executive director..... 1[1]

c. Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the executive director..... 1[1]

d. Changes in procedures for decontamination of facility equipment or structures, with prior approval of the executive director..... 1[1]

e. Changes in approved closure plan resulting from unexpected events occurring during partial or final closure, unless otherwise specified in this appendix..... 2

f. Extension of the closure period to allow a landfill, surface impoundment or land treatment unit to receive non-hazardous wastes after final receipt of hazardous wastes under 40 CFR 264.113(d) and (e)..... 2

2. Creation of a new landfill unit as part of closure..... 3

3. Addition of the following new units to be used

temporarily for closure activities:

a. Surface impoundments..... 3

b. Incinerators..... 3

c. Waste piles that do not comply with 40 CFR 264.250(c)..... 3

d. Waste piles that comply with 40 CFR 264.250(c)..... 2

e. Tanks or containers (other than specified below)..... 2

f. Tanks used for neutralization, dewatering, phase separation, or component separation, with prior approval of the executive director.....1[1]

E. Post-Closure

1. Changes in name, address, or phone number of contact in post-closure plan..... 1

2. Extension of post-closure care period..... 2

3. Reduction in the post-closure care period..... 3

4. Changes to the expected year of final closure, where other permit conditions are not changed..... 1

5. Changes in post-closure plan necessitated by events occurring during the active life of the facility, including partial and final closure..... 2

F. Containers

1. Modification or addition of container units:

a. Resulting in greater than 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below..... 3

b. Resulting in up to 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below..... 2

c. Or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), with prior approval of the executive director. This modification may also involve addition of new waste codes or narrative descriptions of wastes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1[1]

2. a. Modification of a container unit without

increasing the capacity of the unit..... 2

b. Addition of a roof to a container unit without alternation of the containment system..... 1

3. Storage of different wastes in containers, except as provided in F(4) below:

a. That require additional or different management practices from those authorized in the permit..... 3

b. That do not require additional or different management practices from those authorized in the permit..... 2

Note: See §305.69(g) of this title (relating to Newly Listed Solid Waste Permit Modification at the Request of the Permittee or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

4. Storage or treatment of different wastes in containers:

a. That require addition of units or change in treatment process or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards, or that are to

be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8 (a)(2)(ii), with prior approval of the executive director. This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1[1]

b. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1

5. Other changes in container management practices (e.g., aisle space, types of containers, segregation)..... 2

G. Tanks

1. a. Modification or addition of tank units resulting in greater than 25% increase

in the facility's tank capacity, except as provided in G(1)(c), G(1)(d), and G(1)(e) below of this appendix..... 3

b. Modification or addition of tank units resulting in up to 25% increase in the facility's tank capacity, except as provided in G(1)(d) and G(1)(e) below of this appendix..... 2

c. Addition of a new tank (no capacity limitation) that will operate for more than 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation..... 2

d. After prior approval of the executive director, addition of a new tank (no capacity limitation) that will operate for up to 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation..... 1[1]

e. Modification or addition of tank units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to

treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), with prior approval of the executive director. This modification may also involve addition of new waste codes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1[1]

2. Modification of a tank unit or secondary containment system without increasing the capacity of the unit..... 2

3. Replacement of a tank with a tank that meets the same design standards and has a capacity within +/-10% of the replaced tank provided:..... 1

   a. The capacity difference is no more than 1500 gallons;

   b. The facility's permitted tank capacity is not increased; and

   c. The replacement tank meets the same conditions in the permit.

4. Modification of a tank management practice..... 2

5. Management of different wastes in tanks:

a. That require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(c) below..... 3

b. That do not require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(d) below..... 2

c. That require addition of units or change in treatment processes or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(1)(ii), with prior approval of the executive director. The modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027,

and 028)..... 1[1]

d. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1

Note: See §305.69(g) of this title (relating to Newly Listed Solid Waste Permit Modification at the Request of the Permittee or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

H. Surface Impoundments

1. Modification or addition of surface impoundment units that result in increasing the facility's surface impoundment storage or treatment capacity... 3
2. Replacement of a surface impoundment unit..... 3
3. Modification of a surface impoundment unit without increasing the facility's surface impoundment storage or treatment capacity and without modifying the unit's liner, leak detection system, or leachate collection system..... 2

4. Modification of a surface impoundment management practice..... 2

5. Treatment, storage, or disposal of different wastes in surface impoundments:

   a. That require additional or different management practices or different design of the liner or leak detection system than authorized in the permit..... 3

   b. That do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit..... 2

   c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), and provided that the unit meets the minimum technological requirements stated in 40 CFR 268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022,

023, 026, 027, and 028)..... 1

d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a unit that meets the minimum technological requirements stated in 40 CFR 268.5(h)(2), and provided further that the surface impoundment has previously received wastes of the same type (for example, incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1

Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

I. Enclosed Waste Piles. For all waste piles except those complying with 40 CFR 264.250(c), modifications are treated the same as for a landfill. The following modifications are applicable only to waste piles complying with 40 CFR 264.250(c).

1. Modification or addition of waste pile units:

a. Resulting in greater than 25% increase

in the facility's waste pile storage or treatment capacity..... 3

b. Resulting in up to 25% increase in the facility's waste pile storage or treatment capacity..... 2

2. Modification of waste pile unit without increasing the capacity of the unit..... 2

3. Replacement of a waste pile unit with another waste pile unit of the same design and capacity and meeting all waste pile conditions in the permit..... 1

4. Modification of a waste pile management practice.... 2

5. Storage or treatment of different wastes in waste piles:

a. That require additional or different management practices or different design of the unit..... 3

b. That do not require additional or different management practices or different design of the unit..... 2

Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

J. Landfills and Unenclosed Waste Piles

1. Modification or addition of landfill units that result in increasing the facility's disposal capacity..... 3
2. Replacement of a landfill..... 3
3. Addition or modification or a liner, leachate collection system, leachate detection system, run-off control, or final cover system..... 3
4. Modification of a landfill unit without changing a liner, leachate collection system, leachate detection system, run-off control, or final cover system..... 2
5. Modification of a landfill management practice..... 2
6. Landfill different wastes:
   a. That require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system..... 3
   b. That do not require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system..... 2
   c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available

technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), and provided that the landfill unit meets the minimum technological requirements stated in 40 CFR 268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1

d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a landfill unit that meets the minimum technological requirements stated in 40 CFR 268.5(h)(2), and provided further that the landfill has previously received wastes of the same type (for example, incinerator ash). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1

Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

K. Land Treatment

1. Lateral expansion of or other modification of a land treatment unit to increase areal extent..... 3

2. Modification of run-on control system..... 2

3. Modify run-off control system..... 3

4. Other modifications of land treatment unit component specifications or standards required in the permit..... 2

5. Management of different wastes in land treatment units:

a. That require a change in permit operating conditions or unit design specifications..... 3

b. That do not require a change in permit operating conditions or unit design specifications..... 2

Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

6. Modification of a land treatment management practice to:

a. Increase rate or change method of waste application..... 3

b. Decrease rate of waste application..... 1

7. Modification of a land treatment unit management practice to change measures of pH or

moisture content, or to enhance microbial or chemical reactions..... 2

8. Modification of a land treatment unit management practice to grow food chain crops, or add to or replace existing permitted crops with different food chain crops, or to modify operating plans for distribution of animal feeds resulting from such crops..... 3

9. Modification of operating practice due to detection of releases from the land treatment unit pursuant to 40 CFR 264.278(g)(2)..... 3

10. Changes in the unsaturated zone monitoring system, resulting in a change to the location, depth, or number of sampling points, or that replace unsaturated zone monitoring devices or components thereof with devices or components that have specifications different from permit requirements..... 3

11. Changes in the unsaturated zone monitoring system that do not result in a change to the location, depth, or number of sampling points, or that replace unsaturated zone monitoring devices or components thereof with devices or components having specifications not different from permit requirements..... 2

12. Changes in background values for hazardous

constituents in soil and soil-pore liquid..... 2

13. Changes in sampling, analysis, or statistical procedure..... 2

14. Changes in land treatment demonstration program prior to or during the demonstration..... 2

15. Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met, and the executive director's prior approval has been received..... 1[1]

16. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration and have received the prior approval of the executive director..... 1[1]

17. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the waste can be treated completely, where the conditions for the second demonstration

are not substantially the same as the conditions for the first demonstration..... 3

18. Changes in vegetative cover requirements for closure..... 2

L. Incinerators, Boilers and Industrial Furnaces

1. Changes to increase by more than 25% any of the following limits authorized in the permit: A thermal feed rate limit; a feedstream [waste] feed rate limit; a [or an organic] chlorine feed rate limit, a metal feed rate limit, or an ash feed rate limit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means..... 3

2. Changes to increase by up to 25% any of the following limits authorized in the permit: A thermal feed rate limit; a feedstream [waste] feedrate limit; [or an organic] chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means..... 2

3. Modification of an incinerator, boiler, or industrial furnace unit by changing the internal size of geometry of the primary or secondary combustion units, by adding a primary or secondary combustion unit, by substantially changing the design of any component used to remove HCl/Cl_2, metals or particulate from the combustion gases, or by changing other features of the incinerator, boiler, or industrial furnace that could affect its capability to meet the regulatory performance standards. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means..... 3

4. Modification of an incinerator, boiler, or industrial furnace unit in a manner that would not likely affect the capability of the unit to meet the regulatory performance standards but which would change the operating conditions or monitoring requirements specified in the permit. The executive director may require a new trial burn to demonstrate compliance with the regulatory performance standards..... 2

5. Operating requirements:

   a. Modification of the limits specified in the permit for minimum or maximum combustion gas

temperature, minimum combustion gas residence time, [or] oxygen concentration in the secondary combustion chamber, flue gas carbon monoxide and hydrocarbon concentration, maximum temperature at the inlet to the particulate matter emission control system, or operating parameters for the air pollution control system. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means..... 3

b. Modification of any stack gas emission limits specified in the permit, or modification of any conditions in the permit concerning emergency shutdown or automatic waste feed cutoff procedures or controls..... 3

c. Modification of any other operating condition or any inspection or recordkeeping requirement specified in the permit..... 2

6. Burning [Incineration of] different wastes:

a. If the waste contains a POHC that is more difficult to burn [incinerate] than authorized by the permit or if burning [incineration] of the waste requires

compliance with different regulatory performance standards than specified in the permit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means..... 3

b. If the waste does not contain a POHC that is more difficult to burn [incinerate] than authorized by the permit and if burning [incineration] of the waste does not require compliance with different regulatory performance standards than specified in the permit..... 2

Note: See §305.69(g) of this title (relating to Newly Regulated [Listed or Identified] Wastes and Units) for modification procedures to be used for the management of newly regulated [listed or identified] wastes and units.

7. Shakedown and trial burn:

a. Modification of the trial burn or any of the permit conditions applicable during the shakedown period for determining operational readiness after construction, the trial burn period, or the period immediately following the trial burn..... 2

b. Authorization of up to an additional 720 hours of waste burning [incineration] during the shakedown period for determining operational readiness after construction, with the prior approval of the executive director .....1[1]

c. Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor and has received the prior approval of the executive director... 1[1]

d. Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the executive director..... 1[1]

8. Substitution of an alternate type of nonhazardous waste fuel that is not specified in the permit..... 1

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 April 8, 1992.

TRD-9204840 Mary Ruth Holder
Director, Legal Services
Texas Water Commission

Earliest possible date of adoption: May 18, 1992

For further information, please call: (512) 463-8069

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Chapter 322. Community Wastewater Planning

• 31 TAC §§322.1-322.6

The Texas Water Commission (TWC) proposes new §§322.1-322.6, concerning community development of wastewater regional plans and TWC implementation of such plans through the permitting process.

Pursuant to the Clean Water Act (CWA), §208(a)(2) the governor designated areas of the state with substantial water quality control problems and designated local organizations from each of those areas to develop area wide waste treatment management plans. Seven area wide planning agencies are currently designated under §208 and are still active in water quality planning. The seven designated agencies are: Ark-Tex Council of Governments for the Texarkana area; Coastal Bend Council of Governments for the Corpus Christi area; Central Texas Council of Governments for the Killeen-Temple area; Houston-Galveston Area Council for the greater Houston area; Lower Rio Grande Valley Development Council for the lower Rio Grande Valley; North Central Texas Council of Governments for the Dallas-Ft. Worth area; and South East Texas Regional Planning

Commission for the Beaumont-Pt. Arthur-Orange area.

The CWA, §208(a)(6) designates the state as the planning agency for all other areas not specifically designated by the governor. TWC was appointed by the governor to be the lead agency for water quality planning. Additionally, TWC is the state agency designated in, the Texas Water Code, §26.012 and §26.036, to develop comprehensive water quality management (WQM) plans for the different areas of the state. Section 26.036(b) allows TWC to contract with local governments, planning agencies, and other entities to prepare WQM plans. Further §26.036(d) requires any ~person developing such a plan to consult with TWC and other affected/interested governmental agencies.

Section 26.036(e) states that WQM plans shall be reasonably compatible with other governmental plans for the area. Section 26.177 requires municipal water pollution control and abatement programs in cities of 5,000 or greater population to be submitted to TWC for review and approval. Regional plans should therefore be compatible with pollution abatement and other programs. In fact, they can become an integral part of municipal pollution abatement program plans for wastewater treatment.

Many communities are developing long-term plans for wastewater treatment services in order to provide adequate facilities for citizens within the corporate limits and within municipal extraterritorial jurisdictions which usually include growth corridors. TWC was requested by the City of Houston to adopt rules that would assist in implementing its long-term wastewater regional plan. This proposed rule is intended to be a tool to encourage community regional planning. A community may design a regional plan with appropriate input from citizens, businesses, and designated planning agencies. The plan is then approved by one of the seven designated planning agencies and/or TWC, as appropriate, and then the plan should be implemented under ordinances adopted by the municipality. If the community desires TWC to review domestic wastewater permit applications in accordance with the adopted community regional plan, the community can make such a request.

TWC will consider approved community regional plans that are filed with TWC when reviewing any type of domestic wastewater permit application. TWC will assess the need for a permit in terms of quantity, quality, and length of permit term. If regional facilities become available before the renewal of a permit and the service area of the applicant is within a reasonable distance of the regional facility, TWC may decide not to renew the permit and require the serviced area to connect to the regional plant. TWC may encourage areas not covered under an approved regional plan to investigate connecting to a regional plant or to become a regional facility itself.

This action by TWC may cause some entities to lose its capital investment because some interim wastewater treatment facilities may be allowed to be constructed prior to the availability of a larger regional plant. Salvage value for a package wastewater treatment facility varies greatly depending on the size, maintenance history, age, and overall facility condition. The value can vary from 0-50% of the original cost of $180,000-$600,000 for plants of 50,000-200, 000 gallons per day capacity, respectively. This investment loss should be addressed in the regional plan and developers should be aware of this potential prior to seeking a permit from TWC. Additionally, regional wastewater treatment systems may reduce the number of plant operators needed for the service area.

Norma Nance, director of budget and planning, has determined that for the first five-year period the sections are in effect there will be fiscal implications as a result of enforcing or administering of the sections. Some potential effects on local government are anticipated. Local governments may develop applications for wastewater treatment permits without consideration of connection to regional facilities. No benefit may be realized from these application costs if connection to a regional facility is required by the commission. If existing facilities are abandoned in favor of connection to regional facilities when they become available, the loss of capital investment has been described to be between 50%-100% of original cost. These original facility costs are generally between $180,000 and $600,000 for the typical package treatment plant of up to 200,000 gallons per day capacity. Potential losses, therefore, may be expected to vary between $90,000-$600,000 for an operation which is required to connect to a regional facility. The actual loss would vary with the amount of depreciation of the facility and its anticipated service life remaining. Actual operating costs of delivery to a regional system may be lower in many cases, but will vary with distance to the system and the size and condition of the regional facility. Consolidation of facilities may have a minor effect on the number of qualified plant operators required for a given area. There will be no significant effect on state government.

Ms. Nance 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 or administering the sections will be improvements in regional planning and water pollution control efforts and more efficient administration of the provisions of the Water Code relating to water quality control and enforcement of discharge permit requirements. Small businesses are not anticipated to be significantly affected. Those within the service areas of affected local governments or utilities may see some incremental cost of connection passed through in increased rates for service, but may also generally benefit from the availability of greater capacity from a central treatment facility. There are no additional costs anticipated for persons who may be required to comply with the provisions of these sections as proposed.

Comments on the proposal may be submitted to Kevin McCalla, Senior Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512)463-8069. Comments will be accepted until 5 p.m., 30 days following publication of the proposal.

The new sections are proposed under the Texas Water Code, §§5.102, 5.105, and 5.120, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Code and all other laws of the State of Texas and to establish and approve all general policy of the commission.

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

Extraterritorial jurisdiction (ETJ)–That unincorporated area, not a part of any city, which is contiguous to the corporate limits as described in Texas Civil Statutes, Article 970A, §3, Subsection A.

Regional plan–A plan designed to provide wastewater treatment facilities for a specified area utilizing a minimum number of treatment plants.

§322.2. Scope and Applicability. The commission will consider regional plans approved by designated planning agencies and/or the commission and adopted by a municipality for the area within the city limits and its ETJ when evaluating a domestic wastewater permit application.

§322.3. Municipality Request for Implementation of a Regional Plan. Any city that adopts a regional plan and desires the commission to assist in implementing such plan through the TWC permitting process shall submit a written request and a copy of the implementing ordinance to the Water Quality Division of the commission.

§322.4. Application Requirements. Upon application for a permit to discharge treated domestic wastewater, the commission will require submission of information relating to alternatives to discharge (e.g. connection to an existing or planned system) and including documentation of communications with regional authorities and/~or nearby permitted facilities. If the application is for a facility located in an area with an approved regional plan, the applicant must provide a copy of communications with the regional authority concerning the proposed facility's compliance with the regional plan.

§322.5. Notification. The commission shall notify municipalities with approved regional plans of any applications for a permit to discharge treated domestic wastewater within the city limits and/or ETJ.

§322.6. Commission Consideration of Regional Plans. The commission will take into consideration an approved regional plan when determining:

(1) whether to grant or deny an

application for a new permit, an amendment application to an existing permit, or a renewal application;

(2) what flows are appropriate for a permit, if granted:

(A) small flows for an interim facility that will be abandoned at a later date; and

(B) larger flows for a facility that is planned to become a regional facility;

(3) what length of term is appropriate for a permit if granted based upon the regional plan;

(4) what effluent quality should be required if the regional plan contains effluent limits more stringent than water quality based limits or minimum effluent limits in §309.1 of this title (relating to Scope and Applicability);

(5) other permit terms and/or conditions.

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

Issued in Austin, Texas on April 10, 1992.

TRD-9204944 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: May 18, 1992

For further information, please call: (512) 463-8069

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Part X. Texas Water Development Board

Chapter 353. Introductory Provisions

General Provisions

- **31 TAC §353.13**

The Texas Water Development Board (board) proposed new 31 TAC §353.13 concerning the adoption by reference of a memorandum of understanding (MOU) between the board and the Texas Department of Information Resources (DIR). The memorandum is proposed to allow the board, through the Texas Natural Resources Information System (TNRIS), and DIR to cooperate in furthering the development and use of geographic information systems (GIS) in Texas.

Susan Morgan, director of accounting, has determined that for each year of 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. Morgan 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 increased efficiency and effectiveness of GIS technology for the state. There will be no effect on small businesses. There will be no anticipated economic cost to persons required to comply with the section as proposed. The board staff has determined that the rules will have no impact on local economies.

The new section is adopted pursuant to the Texas Water Code, §6.104, which authorizes the board to enter into a memorandum of understanding with any other state agency and to adopt by rule any memorandum of understanding between the board and any other state agency and pursuant to the Texas Water Code, §6.101, which provides that the board has the authority to adopt rules necessary to carry out its powers and duties.

§353.13. Adoption of Memorandum of Understanding by Reference. A memorandum of understanding between the Texas Water Development Board (board), through the Texas Natural Resource Information System, and the Texas Department of Information Resources (DIR) is adopted by reference. This memorandum of understanding defines the respective responsibilities of the board and the DIR related to the management of automated geographic information systems. The purpose of the memorandum of understanding is to prevent duplication of effort between the two state entities and encourage support and cooperation in carrying out of each entity's responsibilities. Copies of the memorandum of understanding are available upon request from the Texas Water Development Board, General Counsel, P.O. Box 13231, Austin, Texas 78711-3231, (512) 463-7981.

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 April 3, 1992.

TRD-9205040 Suzanne Schwartz
General Counsel
Texas Water Development Board

Proposed date of adoption: May 18, 1992

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

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter O. State Sales and Use Tax

- **34 TAC §3.291**

The Comptroller of Public Accounts proposes an amendment to §3.291, concerning contractors. The amendment is necessary because of changes to the Tax Code, §151.311, adopted by the 72nd Legislature, 1991, that were effective October 1, 1991. The October 1, 1991, change limits the organizations exempted under the Tax Code, §151.311, to school districts and nonprofit and public hospitals. Contractors improving realty for the state, city, county, the federal government, and other entities formerly allowed to claim an exemption under the Tax Code, §151.311, may now claim exemptions only under certain circumstances outlined in this section.

Additional amendments, unrelated to action by the 72nd Legislature, 1991, redefine the term "contractor," add references to §3.356, concerning real property service, and §3.357, concerning real property repair and remodeling, and state the comptroller's policy on use tax and resale certificates. Subsections are added on bids, contracts, change orders, and contractors and subcontractors with different types of contracts.

Tom Plaut, chief revenue estimator, has determined that for the first five-year period the section is in effect there will be no significant revenue impact on the state or local government as a result of enforcing or administering the section.

Dr. Plaut 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 administering the section will be in providing new information regarding tax responsibilities. This section is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Lucy Glover, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

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

§3.291. Contractors.

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

(1) (No change.)

(2) Consumable supplies–Tangible personal property, other than machinery and equipment, that is not physically incorporated into the property of a customer and that, after being used for its intended purpose, is completely used up, or is not retained or reusable by the contractor.

(3) [(2)] Contractor–Any person who **builds new improvements to real**

property or repairs, restores, or remodels residential real property, [improves real estate] and who, in making the improvement, incorporates tangible personal property [belonging to him] into the property being improved. The term includes subcontractors but does not include material men and suppliers. **Persons who repair, restore, or remodel nonresidential real property are providing taxable services under §3.357 of this title (relating to Real Property Repair and Remodeling).**

(4)[(3)] Improvements to realty–See §3.347 of this title (relating to Improvements to Realty) [for this definition].

(5)[(4)] Lump-sum contract–A contract in which the agreed contract price is one lump-sum amount and in which the charges for materials are not separate from the charges for skill and labor. Separated invoices issued to the customer will not change a lump-sum contract into a separated contract unless the terms of the contract require separated invoices.

(6)[(5)] Separated contract–A contract in which the agreed contract price is divided into a separately stated agreed contract price for materials and a separately stated agreed contract price for skill and labor. If prices of materials and labor are separately stated, the fact that the charges are added together and a sum total given is irrelevant. Cost-plus contracts are generally regarded as separated contracts.

(b) Tax responsibilities of contractors improving real property belonging to nonexempt customers.

(1) **Equipment** [Consumable supplies and equipment]. Tax must be paid by a contractor at the time of purchase on [those supplies,] tools, **machinery,** and equipment used to perform a contract [but which are not physically incorporated into the property of a customer]. **A contractor must accrue and remit use tax on machinery, tools, and equipment purchased from an out-of-state seller** [The contractor may not collect tax from the customer on the charges for consumables].

(2) Consumable supplies. Except as provided by subparagraph (B) of this paragraph, tax must be paid by a contractor at the time of purchase on supplies used to perform a contract which are not physically incorporated into the property of the customer.

(A) A contractor may not collect tax from the customer on a charge for consumable supplies except as provided by subparagraph (B) of this paragraph.

(B) A contractor may issue a resale certificate to suppliers in lieu of tax for consumable supplies, if title to the consumable supplies transfers to the contractor's customer at the time the contractor takes possession or before, and the consumable supplies are immediately marked, labeled, or otherwise physically identified as the customer's property, where possible. The contractor must separately state the charge for these consumable supplies to the customer and must collect sales tax from the customer unless the customer qualifies for exemption under the Tax Code, §151.309 or §151.310.

(3)[(2)] Lump-sum contracts.

(A) Contractors performing lump-sum contracts are consumers of all materials, supplies, and equipment used or incorporated into a customer's property. As a consumer, a contractor must pay tax to suppliers at the time the materials are purchased. **If the materials are purchased from an out-of-state seller, a contractor must accrue and remit use tax on the materials.** A contractor **shall** [may] not collect tax from a customer on a lump-sum charge or on any portion of the charge.

(B) Contractors who, in addition to performing lump-sum contracts, sell taxable items over the counter or who also perform separated contracts, may maintain a tax-free inventory of items held for resale. Items purchased exclusively for resale may be purchased tax free by issuing a resale certificate to suppliers in lieu of tax. A contractor must hold a sales tax permit to issue a resale certificate, and must collect, report, and remit tax to the comptroller as required by §3.286 of this title (relating to Seller's **and Purchaser's** Responsibilities) when items purchased for resale are sold.

(C) Persons who resell taxable items as part of taxable services under §3.357 of this title may maintain a tax-free inventory of items held for resale.

(D)[(C)] If the contractor incorporates materials from the resale inventory into a lump-sum contract, the contractor **must accrue and remit** [owes] tax [on the materials] based **on** [upon] the purchase price of the materials. ~The tax should be remitted to the comptroller for the reporting period in which the materials were used. A contractor purchasing items specifically for use in a lump-sum contract may not issue resale certificates in lieu of tax for such items.

(E) [(D)] Contractors performing lump-sum contracts for persons having direct payment permits may not accept a direct payment exemption certificate from those persons. When performing lump-sum contracts for a direct payment permit holder, the contractor must pay sales tax to the supplier or accrue and remit sales tax on materials removed from a tax-free inventory for incorporation into the direct payment permit holder's realty. Direct payment permit holders cannot authorize the contractor or any other person to purchase any taxable item using their permit. See §3.288 of this title (relating to Direct Payment Procedures and Qualifications).

(4)[(3)] Separated contracts.

(A) **Except as otherwise provided in this section, contractors** [Contractors] performing separated contracts are considered retailers of all materials physically incorporated into the realty being improved. As a retailer, a contractor must collect tax from the customer based upon the agreed contract price of the materials.

(B) Contractors performing separated contracts must hold sales tax permits and collect, report, and remit the tax as required by §3.286 of this title Contractors purchasing materials specifically for incorporation into realty under separated contracts may issue suppliers a resale certificate in lieu of tax. See §3.285 of this title (relating to **Resale Certificate**; Sales for Resale[; Resale Certificate]). The purchase, rental, or lease of equipment for use in performing a nonexempt contract is subject to tax.

(C) A contractor may maintain an inventory of materials upon which tax was paid to suppliers at the time of purchase. If these materials are used to perform a separated contract or are sold over the counter, the contractor shall collect tax from the customer based upon the agreed contract price of the materials. Tax is due and must be remitted to the comptroller on any difference between the price paid by the customer and the price paid by the contractor. See §3.338 of this title (relating to Allowance of Credit for Tax Paid to Suppliers).

(D) Contractors performing separated contracts for persons having direct payment permits may accept a direct payment exemption certificate from those persons in lieu of tax for all tangible personal property incorporated into customer's realty. A direct payment exemption certificate may not be accepted for tax liability incurred by the contractor on machinery or equipment rented or leased by the contractor and used in the performance of the contract. See §3.288 of this title.

(5) Contracts versus bids and change orders. For tax purposes, the

terms of a contract control over the terms of a bid. For example, if the bid is lump-sum, but the terms of the contract are separated, the contract determines the tax responsibilities of the parties, and the customer is liable for tax on materials. The terms of a contract also control change orders. If the contract is lump-sum, change orders will be treated as lump-sum even if the change orders show charges for materials separate from other charges. If the contract is a separated contract, and change orders are for lump-sum amounts, the lump-sum amounts will be treated as though for materials only unless the contractor can show the portion attributable to labor.

(6) Different types of contracts between contractors and subcontractors. For tax purposes, it is not required that all subcontractors use the same type of contract as the general contractor. For example, a general or prime contract may be lump-sum, while some or all subcontracts may be separated. Each subcontractor's individual contract governs the subcontractor's tax responsibilities. In the example given, the separated subcontractors would collect sales tax from the general contractor. The general contractor would not collect any tax from the general contractor's customer. If the general or prime contract were a separated contract, while some of the subcontracts were lump-sum, the prime or general contractor would not collect tax from the prime contractor's customer on those separately stated charges from lump-sum subcontractors.

(7)[(4)] Materials **provided** [furnished] by customers. A contract may specify that a customer will **provide** [furnish] materials and the person performing improvements will **provide** [furnish] the skill and labor necessary to perform the contract. Under this type of contract, the person **providing** [furnishing] the skill and labor will not incur tax liability on the materials. The customer is liable for the tax on the materials. The tax should be paid to the supplier when the materials are purchased.

(8)[(5)] Noninstalled items. A person who manufactures an item for sale but does not install the item as an improvement to realty is a manufacturer subject to provisions of §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing). Example: cabinet makers or drapery makers who do not affix the cabinets or draperies to realty as a part of a construction contract.

(9)[(6)] **Local tax** [Contractor's responsibility]. A contractor's responsibility for local sales and use taxes depends **on** [upon] the type of contract used. See ~§3.379 of this title (relating to Contractors) **and §3.329 of this title (relating to Enterprise Projects).**

(c) Tax responsibilities of contractors improving real property for **school districts and nonprofit and public hospitals** [exempt customers]. **For the purposes of this section, school districts are those defined by the Education Code, §19.001. Nonprofit hospitals are hospitals licensed under the Health and Safety code, Chapter 242 or 577.**

(1) [Exempt customers are those listed in the Tax Code, §151.309 and §151.310.] Contractors improving realty for **school districts or nonprofit and public hospitals** [an organization claiming an exemption from tax under the Tax Code, §151.309 and §151.310], should obtain a properly completed exemption certificate to substantiate the exemption. [(An exemption certificate is not required for contracts with federal or state agencies.)] If the validity of the exemption is not clear, a contractor cannot accept the exemption certificate in good faith and should request additional evidence of the exempt status of the organization. A sales tax letter of exemption from the comptroller addressed to an organization is evidence of its exempt status and will relieve a contractor from further inquiry, except under the circumstances set out in paragraph (2) of this subsection. If a contractor claims an exemption in lieu of paying tax on a purchase by reason of performing a contract with **a school district or a nonprofit or public hospital** [an exempt organization] and the comptroller subsequently determines the organization is not exempt, the contractor will be liable for all taxes, penalties, and interest accruing upon such purchase unless the contractor accepted in good faith a properly completed exemption certificate at the time the contract **was** [is] entered into. See §3.287 of this title (relating to Exemption Certificates).

(2) A prime contract with a private party [or an exempt entity] to improve real property belonging to an exempt entity, **other than those listed in paragraph (1) of this subsection,** for the primary use and benefit of the private party **or that would benefit the exempt entity** is not [a contract] exempt from sales or use tax. Materials may be purchased tax free **under a separated contract (or under a lump-sum contract with exempt entities listed in paragraph (1) of this subsection)** [only] when a prime contractor has a contract with an exempt entity to improve realty for the [direct use of the] exempt entity **provided that if the exempt entity is a religious, educational, or charitable organization, the improvement must be related to the purpose of the organization** [and any required exemption certificate has been obtained].

(3) Materials **provided** [furnished] by exempt customers. A contract may specify that a customer **that** [which] is **a school district or a nonprofit or public hospital** [an organization exempt from tax under the Tax Code, §151.309 and §151.310], will **provide** [furnish] the materials and the contractor will **provide** [furnish] the skill and labor necessary to perform the contract. Under this type of contract, the contractor will not incur tax liability on **the** materials. The customer may issue [an] exemption **certificates** [certificate] to suppliers in lieu of tax when purchasing the materials, unless [the contract for improvements is of the type outlined in paragraph (2) of this subsection or for] **the** improvements [that] are **to be used in activities** unrelated to the activity **that** [which] qualifies the customer for exemption. **If the improvements are to be used in activities unrelated to the activity that qualifies the customer for exemption** [In either of the last two cases], the exempt **customer** [customers] must pay tax to suppliers at the time the materials are purchased. See also §3.322 of this title (relating to Exempt Organizations).

(4) Transactions exempt from sales and use taxes include:

(A) the purchase by a contractor of all materials, supplies, equipment, and other tangible personal property incorporated into the property being improved for **a school district or nonprofit or public hospital** [the exempt customer including the United States, its agencies and instrumentalities]; and

(B) the purchase, rental, or lease by a contractor of all materials, supplies, equipment, and **taxable items** [other tangible personal property] used in the performance of the contract with a **school district or nonprofit or public hospital** [customer exempt under the Tax Code, §151.309(4) or (5) or §151.310. The purchase, rental, or lease by a contractor of all materials, supplies, equipment, and other tangible personal property used in the performance of a contract with the United States, its agencies, and instrumentalities is taxable if the item is not incorporated into the property being improved].

(5) (No change.)

(d) Uses of equipment; tax due; method of computation.

(1) Purchase of equipment. Contractors improving realty for **school districts or nonprofit or public hospitals** [entities exempt under the Tax Code, §151.309(4) or (5) or §151.310], may purchase equipment from suppliers tax free by issuing an exemption certificate as described in subsection (c)(5) of this section

in lieu of paying sales or use tax. When equipment is used on a job other than as described in subsection (c)(4) of this section, [sales] tax should be computed using either the specific identification method or the aggregate method described in paragraphs (9) and (10) of this subsection.

(2) Refund or credit for tax paid. A contractor purchasing equipment for use in the performance of a contract with a customer **other than a school district or a nonprofit or public hospital** [who is not exempt under the Tax Code, §151.309(4) or (5) or §151.310] must pay sales or use tax to the supplier at the time of purchase or, in the case of a direct payment permit holder, accrue the tax on the direct payment return. If at a later date the equipment is used on a job as described in subsection (c)(4) of this section, the contractor may obtain a refund or credit for sales tax directly from the state only by obtaining a written assignment of the right to the refund from the supplier to whom the tax was paid. Direct payment permit holders may take credit on subsequent returns.

(3) (No change.)

(4) Consumable materials and supplies. If a contractor purchases, rents, or leases materials or supplies tax free for use in performing a contract with **a school district or a nonprofit or public hospital** [an exempt organization under the Tax Code, §151.309(4) or (5) or §151.310], and uses the items in some manner or for some purpose other than as described in subsection (c)(4) of this section, the contractor is, at the time of the nonexempt use, liable for tax based upon the purchase price of the items. The tax should be reported and remitted to the comptroller for the reporting period in which the taxable use occurred. For local [and MTA] tax responsibilities, see §3.377 and §3.427 of this title (relating to Divergent Use of a Direct Payment, Resale, or Exemption Certificate; Divergent Use of a Direct Payment, Resale, or Exemption Certificate).

(5)-(10) (No change.)

(e) Tax responsibilities of contractors and subcontractors improving real property for organizations listed under the Tax Code, §151.309 and §151.310, other than school districts and nonprofit hospitals.

(1) Consumable supplies and equipment. See subsection (b)(1) and (2) of this section.

(2) Materials incorporated into the property of the customer by lump-sum contractors and subcontractors. See subsection (b)(2)(A) of this section. A lump-sum contractor may not issue exemption certificates to suppliers or accept an exemption certificate in lieu of tax from orqanizations listed under the Tax Code, §151.309 or §151.310.

(3) Material incorporated into the property of the customer by separated contractors and subcontractors. A resale certificate may be issued to suppliers by separated contractors and subcontractors for those items incorporated into the property being improved. The contractor may then accept an exemption certificate in lieu of tax for those materials sold under separated contracts to organizations listed under the Tax Code, §151.309 or §151.310.

(4) Separated contracts that benefit private parties. See subsection (c)(2) of this section.

(5) Materials provided by organizations listed under the Tax Code, §151.309 or §151.310. See subsection (c)(3) of this section.

(f) Development work. For the purposes of this subsection, development work means improving real property for a private party that ultimately be dedicated to and accepted by a governmental entity. Sales tax is due on all tangible personal property used to improve real property belonging to a private party that has been dedicated to and will be accepted by a governmental entity unless:

(1) the contract between the contractor and the private party is a separated contract. See subsection (b) of this section for a discussion of lump-sum and separated contracts;

(2) the contract provides that title to the materials used to perform the contract passes to the private party at the time the materials are delivered to the jobsite and before they are incorporated into the realty or used by either the contractor or the private party; and

(3) the contract provides that the private party intends to donate the property to the governmental entity and that the governmental entity has agreed to accept the property before it is incorporated into the realty or used by the contractor. The private party must have a letter of intent or other document on file from the governmental entity stating this intent.

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 April 7, 1992.

TRD-9204802 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: May 18, 1992

For further information, please call: (512) 463-4028

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 5. Funds Management (Fiscal Affairs)

Claims Processing-Electronic Funds Transfers

• 34 TAC §§5.11-5.15

The Comptroller of Public Accounts proposes new §§5.11-5.15, concerning claims processing-electronic funds transfers.

Tom Plaut, chief revenue estimator, has determined that for the first five-year period the proposed sections will be in effect there will be no significant revenue impact on the state or local government as a result of enforcing the section.

Dr. Plaut 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 section will be in providing new information regarding the disbursement of funds through electronic funds transfers. There will be no fiscal impact on small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the new sections may be submitted to Kenny McLeskey, Manager of Claims Division, P.O. Box 13528, Austin, Texas 78711.

The new sections are proposed under the Texas Government Code, §403.016, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the electronic funds transfer system.

§5.11. Miscellaneous Provisions.

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

(1) Comptroller–The comptroller of public accounts for the State of Texas.

(2) Credit entry–An electronic funds transfer that the comptroller initiates to an EFT account.

(3) Debit entry–A reversal of a credit entry.

(4) Electronic funds transfer system–The system authorized by the Government Code, §403.016, that the comptroller uses to initiate payments instead of

issuing warrants.

(5) Include–A term of enlargement and not of limitation or exclusive enumeration. The use of the term does not create a presumption that components not expressed are excluded.

(6) May not–A prohibition. The term does not mean "might not" or its equivalents.

(7) Rules–The requirements of the National Automated Clearing House Association concerning cash concentration disbursement, the Federal Reserve System's Regulation E, and the sections of this undesignated head.

(b) References to payments by the comptroller. When a section of this undesignated head refers to the comptroller paying an individual or entity, the reference means:

(1) the comptroller's issuance of a warrant or initiation of a credit entry in accordance with a payment voucher submitted to the comptroller by another state agency; or

(2) the comptroller's payment of an individual or entity in satisfaction of obligations owed to the individual or entity by the comptroller as a result of the fulfillment of the comptroller's constitutional or statutory duties.

(c) Conflicts. If a provision in a section of this undesignated head irreconcilably conflicts with a law of the United States or the State of Texas, a requirement of the National Automated Clearing House Association concerning cash concentration disbursement, or the Federal Reserve System's Regulation E, then the law, requirement, or regulation prevails over the provision.

§5.12. Paying Vendors Through Electronic Funds Transfers.

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

(1) Authorization form–The form designed by the comptroller that is used in accordance with this section.

(2) Custodial state agency–The participating state agency to which a vendor or a participating vendor submitted a properly completed authorization form to designate an EFT account.

(3) EFT account–An account that has been designated in accordance with this section to receive credit entries from participating state agencies.

(4) Participating state agency–A state agency for which the comptroller and the state treasurer have agreed to initiate credit entries in payment of the agency's obligations to certain vendors. The term includes the comptroller.

(5) Participating vendor–A vendor that receives credit entries initiated by the comptroller.

(6) Paying state agency–With respect to a particular credit or debit entry, the state agency that requested the comptroller to initiate the entry.

(7) State agency–A governmental entity that submits payment vouchers to the comptroller to request payments by the comptroller on behalf of the entity to the persons or entities named on the vouchers.

(8) Vendor–An individual or entity other than a state employee, an annuitant, or a governmental entity as defined by §§5.13-5.15 of this undesignated head (relating to Claims Processing-Electronic Funds Transfers).

(b) Participation.

(1) Obtaining authorization forms. Except as provided in subsection (c)(3) and (5) of this section, a vendor or a participating vendor may obtain an authorization form from any participating state agency.

(2) Becoming a participating vendor. A vendor may become a participating vendor only by properly designating an EFT account in accordance with subsection (c)(1)of this section.

(3) Agreements with participating state agencies. A participating vendor and a participating state agency may agree on which payments from the agency will be made through the electronic funds transfer system. Unless the comptroller is a party to the agreement:

(A) the comptroller is not required to take any actions to facilitate or ensure the agency's compliance with the agreement; and

(B) the comptroller is not liable for any damages that result from the agency's failure to comply with the agreement.

(4) A participating vendor's termination of its participation.

(A) A participating vendor may terminate its participation only by terminating the designation of each of the vendor's EFT accounts in accordance with subsection (c)(3) of this section.

(B) The comptroller may not initiate a credit entry to a participating vendor on or after the effective date of the termination of the designation of the vendor's last EFT account.

(5) A custodial state agency's termination of a participating vendor's participation.

(A) A custodial state agency may terminate a participating vendor's participation only if the agency is the only custodial state agency for the vendor.

(B) If a custodial state agency is the only custodial state agency for a participating vendor, then the agency may terminate the vendor's participation by terminating the designation of each of the vendor's EFT accounts in accordance with subsection (c)(4) of this section.

(C) The comptroller may not initiate a credit entry to a vendor on or after the effective date of the termination of the designation of the vendor's last EFT account.

(D) A participating vendor's participation may be terminated under this paragraph without prior notice to the vendor.

(6) Inquiries.

(A) A participating vendor must contact the paying state agency before contacting the comptroller when the vendor has a question about a particular credit entry or debit entry.

(B) If a participating vendor receives an unidentified credit entry or debit entry, the vendor must first contact its financial institution to obtain necessary information about the entry. If the institution is unable to provide the information, then the vendor may ask the comptroller for the information.

(C) A participating vendor may contact any participating state agency if the vendor has a question about this section.

(7) Rules. A participating vendor shall comply with the rules as amended from time to time.

(c) EFT accounts.

(1) Designating an EFT account.

(A) A vendor or a participating vendor may designate an EFT account if:

(i) the vendor or the participating vendor properly completes an au

thorization form and submits the form to a participating state agency;

(ii) the account to be designated as an EFT account is a checking or savings account of the vendor or the participating vendor; and

(iii) the account to be designated as an EFT account would be at a financial institution that allows credit entries to be made to the account.

(B) A custodial state agency shall promptly submit a properly completed authorization form or the information on the form to the comptroller in accordance with the comptroller's requirements.

(C) If a vendor or a participating vendor properly designates an EFT account, the effective date of the designation is the fourteenth calendar day after the comptroller processes the information on the authorization form. The comptroller may initiate credit entries to the EFT account on or after the effective date.

(2) Multiple EFT accounts.

(A) A participating vendor may not designate more than one EFT account unless the vendor obtains the comptroller's prior written consent for each account beyond the first account.

(B) This subparagraph applies only if a participating vendor has already designated an EFT account and received the comptroller's permission to designate an additional account. The vendor may designate the additional account by properly completing an authorization form and submitting the form to either the custodial state agency for the first account or any other participating state agency.

(C) A participating state agency may not submit a participating vendor's authorization form to the comptroller if:

(i) the form would designate an EFT account for the vendor; and

(ii) the vendor has already designated an EFT account; and

(iii) the vendor has not provided to the agency a copy of the comptroller's written consent for the designation of the additional account.

(D) A participating state agency may not submit a participating vendor's authorization form to the comptroller if:

(i) the form would designate an EFT account for the vendor; and

(ii) the vendor has already designated the same account as an EFT account.

(E) A participating state agency is not prohibited from being the custodial state agency for more than one EFT account of a participating vendor.

(F) A participating vendor that has multiple EFT accounts and a participating state agency may agree that a certain type of payment from the agency will be made only to the EFT account or accounts designated in the agreement. Unless the comptroller is a party to the agreement:

(i) the comptroller is not required to take any actions to facilitate or ensure the agency's compliance with the agreement; and

(ii) the comptroller is not liable for any damages that result from the agency's failure to comply with the agreement.

(3) A participating vendor's termination of the designation of an EFT account.

(A) A participating vendor may terminate the vendor's designation of an EFT account only by:

(i) obtaining an authorization form from the custodial state agency for the account;

(ii) properly completing the form; and

(iii) submitting the form to the agency.

(B) A custodial state agency shall promptly submit a properly completed authorization form or the information on the form to the comptroller in accordance with the comptroller's requirements.

(C) The comptroller may not initiate a credit entry to an EFT account on or after the date on which the comptroller processes the information on the authorization form that terminates the designation of the account.

(4) A custodial state agency's termination of the designation of an EFT account

(A) A participating state agency may terminate the designation of an EFT account if:

(i) the agency is the custodial state agency for the account; and

(ii) the agency properly completes an authorization form and submits the form or the information on the form to the comptroller in accordance with the comptroller's requirements.

(B) The comptroller may not initiate a credit entry to an EFT account on or after the date on which the comptroller processes the information on the authorization form that terminates the designation of the account.

(C) The designation of an EFT account may be terminated under this paragraph without prior notice to the vendor or the participating vendor that owns the account.

(5) Modifying information about an EFT account.

(A) A participating vendor may modify information about an EFT account of the vendor only by:

(i) obtaining an authorization form from the custodial state agency for the account;

(ii) properly completing the authorization form; and

(iii) submitting the authorization form to the custodial state agency.

(B) A custodial state agency shall promptly submit a properly completed authorization form or the information on the form to the comptroller in accordance with the comptroller's requirements.

(C) New information about an EFT account applies to credit entries that the comptroller initiates on or after the fourteenth calendar day after the comptroller processes the information on the authorization form that provides the new information.

(d) The comptroller's powers and responsibilities.

(1) Initiating credit entries.

(A) The comptroller may initiate credit entries to an EFT account of a participating vendor as payment for obligations that participating state agencies owe to the vendor.

(B) The comptroller may initiate a credit entry to an EFT account of a participating vendor even if the vendor requests a particular payment to be made by warrant. This subparagraph does not apply after the designation of the account has

been terminated.

(C) The comptroller is not obligated to make a payment via the electronic funds transfer system even if a participating vendor or a participating state agency requests it.

(2) Initiating debit entries.

(A) The comptroller may initiate a debit entry to an EFT account of a participating state employee if the appropriate paying state agency determines that an erroneous credit entry has been made to the account.

(B) The comptroller may initiate a debit entry to an account of a vendor if:

(i) the appropriate paying state agency determines that an erroneous credit entry has been made to the account;

(ii) the erroneous credit entry was made to the account when it was an EFT account; and

(iii) the erroneous credit entry was made when the vendor was a participating vendor.

(C) The comptroller may initiate a debit entry without prior notice to a participating vendor or a vendor.

(3) Compliance with the rules. The comptroller must comply with the rules when initiating credit entries and debit entries.

(4) Contacts. The comptroller may contact a participating state agency or a participating vendor if the comptroller has a question about a credit entry or debit entry.

(5) Termination of a participating vendor's participation. The comptroller may terminate the participation of a participating vendor for any reason, at any time, and without prior notice to the vendor.

(6) Termination of the designation of an EFT account. The comptroller may terminate the designation of an EFT account for any reason, at any time, and without prior notice to the participating vendor that owns the account.

(7) Stop payments. The comptroller's authority to stop the payment of a credit entry is equivalent to the comptroller's authority to stop the payment of a warrant.

(e) Acceptance and return of credit entries.

(1) Voluntary acceptance of credit entries. Neither a participating vendor nor a participating vendor's financial institution is required to accept a credit entry. However, a rejected credit entry must be returned in accordance with the rules.

(2) Liability resulting from the rejection of credit entries.

(A) The comptroller, the state treasurer, and a paying state agency are not liable for the damages resulting from the rejection of a credit entry by a participating vendor or its financial institution.

(B) When a credit entry is rejected, the State of Texas and its participating state agencies:

(i) are not in default on any obligation; and Page 15 of 20

(ii) shall not suffer any loss of discount or incur any penalty, interest, or late charge by reason of the rejection.

(3) Texas Prompt Payment Act. Paragraph (2)(B)(ii) of this subsection applies to the interest that would otherwise be payable under the Texas Prompt Payment Act.

(4) Rejection of credit entries. Even if a participating vendor or its financial institution does not reject a credit entry in accordance with the rules, the vendor does not accept a credit entry as being in the correct amount if:

(A) the participating vendor ensures that the paying state agency receives written notice by no later than the thirtieth calendar day after the participating vendor's financial institution receives the credit entry; and

(B) the written notice clearly states that the amount of the credit entry is erroneous.

(f) Credit for paying state agencies.

(1) Applicability. This subsection applies unless a participating vendor returns a credit entry in accordance with subsection (e) of this section.

(2) When credit required. A participating vendor shall credit the paying state agency for the amount of a credit entry on the effective date of the credit entry, regardless of when the vendor's financial institution posts the credit entry to the vendor's EFT account.

(3) Accrual of interest and other charges or fees. The accrual of interest or other charges or fees payable with respect to the amount of a credit entry shall cease when a participating vendor credits the paying state agency for the credit entry.

(g) Credit entry information.

(1) Definition. For a particular credit entry, the term "credit entry information" means:

(A) the participating vendor's invoice number up to seven digits (if and as supplied to the comptroller by the paying state agency);

(B) the paying state agency's voucher number (if supplied to the comptroller by the agency);

(C) the agency number of the paying state agency; and

(D) the telephone number of the paying state agency.

(2) Responsibility of the comptroller. The comptroller shall accompany each credit entry with credit entry information.

(3) Liability for refusal to provide credit entry information. The comptroller, the state treasurer, and a paying state agency are not liable for the failure, inability, or refusal of a participating vendor's financial institution to give credit entry information to the vendor.

(h) Liability.

(1) Liability for actions of certain parties. A participating vendor, the State of Texas, a participating state agency, a paying state agency, the comptroller, the state treasurer, and a custodial state agency are not liable for the act or omission of any automated clearing house, financial institution, or other person or entity except as specified in the rules.

(2) Liability for actions of participating state agencies or paying state agencies. Neither the comptroller nor the state treasurer is liable for damages arising out of delays caused or errors committed by a participating state agency, a paying state agency, or a custodial state agency.

(i) Miscellaneous provisions.

(1) Effective date. Except as otherwise provided in this subsection, this section takes effect on the earliest date it may take effect under the Texas Civil Statutes, Article 6252-13a, Administrative Procedure and Texas Register Act.

(2) Termination of contracts. The contracts entitled "Agreement for the Direct Deposit of Payments from the State of Texas: Pilot Program" between the comptroller, the Texas State Treasury Department, and certain vendors that were executed before the effective date of this

section are terminated on June 1, 1992, or on the effective date of this section, whichever is later.

(3) Applicability of section. This section applies to all vendors whose payments from participating state agencies are made through the electronic funds transfer system, including vendors whose payments were first made through the electronic funds transfer system before the effective date of this section.

(4) Existing accounts.

(A) This subparagraph applies to each account of a vendor that received a payment to the vendor through the electronic funds transfer system before the effective date of this section. Each account is an EFT account for the purpose of this section unless:

(i) the vendor properly notified the custodial state agency of the account before the effective date of this section that the Page 19 of 20 account would no longer be available to receive electronic funds transfers; and

(ii) the notification is still in effect on the effective date of this section.

(B) A vendor that has one or more EFT accounts under Subparagraph (A) of this paragraph on the effective date of this section is a participating vendor for the purpose of this section.

(C) A custodial state agency for more than one EFT account of a participating vendor on the effective date of this section may terminate the designation of one or more of those accounts only if subsection (c)(4) of this section authorizes the termination. The requirement in subsection (c)(2) of this section to obtain the consent of the comptroller before designating a second or subsequent EFT account does not apply to the accounts that are EFT accounts under subparagraph (A) of this paragraph on the effective date of this section.

(D) An account that is an EFT account under subparagraph (A) of this paragraph on the effective date of this section loses its status as an EFT account at 11:59 p.m. on May 31, 1992, or on the effective date of this section, whichever is later.

(i) The vendor that owns the account may prevent this loss of status if the vendor redesignates the account as an EFT account by properly completing and submitting an authorization form in accordance with this section and the redesignation takes effect before the account loses its status.

(ii) If an account has lost its status as an EFT account under this subparagraph then the vendor that owns the account may reinstate the account as an EFT account if the vendor redesignates the account by properly completing and submitting an authorization form in accordance with this section.

§5.13. Paying State Employees Through Electronic Funds Transfers

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

(1) Above Group 7–Group 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, or 21.

(2) Annuitant–An individual who receives substantially equal and periodic benefit payments from one or ~more retirement plans administered by a retirement system.

(3) Authorization form–The form designed by the comptroller that is used in accordance with this section.

(4) Below Group 8–Group 2, 3, 4, 5, 6, or 7.

(5) Classification salary schedule–The classification salary schedule and the detailed listing of all classified positions table in the General Appropriations Act.

(6) Compensation–The salary, wages, and other compensation that a state employee earns as consideration for providing services to a state agency. The term excludes a payment of compensatory or salary per diem; a lump sum payment of accrued vacation leave; a lump sum payment of accrued sick leave; a lump sum payment of accrued vacation and sick leave; a refund of amounts deducted under the Federal Insurance Contributions Act; a reimbursement of meal expenses incurred while conducting official state business; and any payment made pursuant to a supplemental payroll voucher submitted to the comptroller.

(7) Custodial state agency–The state agency to which a state employee or a participating state employee submitted a properly completed authorization form to designate an EFT account, claim an exemption from the requirement to pay compensation through the electronic funds transfer system, or transfer custodianship of an EFT account from one state agency to another.

(8) EFT account–An account that has been designated in accordance with this section to receive credit entries.

(9) Employer–With respect to any particular state employee, the state agency that employs the employee.

(10) Participating state employee–A state employee who receives credit entries initiated by the comptroller.

(11) Paying state agency–With respect to a particular credit or debit entry, the state agency that requested the comptroller to initiate the entry.

(12) Retirement system–The Employees Retirement System of Texas or the Teacher Retirement System of Texas.

(13) State agency–A governmental entity that employs one or more state employees. The term includes the comptroller.

(14) State employee–An individual whose compensation either is paid by warrant issued by the comptroller and made payable to the individual or is paid through the comptroller's electronic funds transfer system. The fact that an individual is a head of agency, a part-time employee, an hourly employee, a temporary employee, an employee who is not covered by the Position Classification Act of 1961, a member of a governmental body, an appointed or elected officer or official of the state, a member of the legislature, or a combination of the preceding is irrelevant when determining whether the individual is a state employee. However, the term does not include an independent contractor, the employee of an independent contractor, or an annuitant.

(b) Mandatory or voluntary participation.

(1) Mandatory participation.

(A) Except as provided in subparagraph (C) of this paragraph, a state employee who holds a position included in the classification salary schedule must be a participating state employee.

(B) Except as provided in subparagraph (C) of this paragraph, a state employee who does not hold a position included in the classification salary schedule must be a participating state employee.

(C) A state employee is not required to be a participating state employee if subsection (c)(2)-(5) of this section would prohibit the employee's compensation from being paid through the electronic funds transfer system if the employee were a participating employee. An employee who is not required to be a participating state employee under this subparagraph and who does not voluntarily become a participating employee under paragraph (2) of this subsection must claim an exemption for each state agency that pays compensation to the employee in accordance with subsection (c)(6) of this section.

(2) Voluntary participation.

(A) A state employee who is not required by paragraph (1) of this subsection to be a participating state employee may be a participating state employee.

(B) This subparagraph applies only to payments of compensation that are not required by this section to be made through the electronic funds transfer system. A state employee and a state agency that employs the employee may agree on which payments of compensation from the agency will be made through the electronic funds transfer system. Unless the comptroller is a party to the agreement:

(i) the comptroller is not required to take any actions to facilitate or ensure the agency's compliance with the agreement; and

(ii) the comptroller is not liable for any damages that result from the agency's failure to comply with the agreement.

(3) Powers and responsibilities of the comptroller and state agencies.

(A) This paragraph applies only to a state employee ~who is required by paragraph (1) of this subsection to be a participating state employee.

(B) A state agency must ensure that each of the agency's state employees is a participating state employee.

(C) If a state employee is required but refuses or fails to become a participating state employee, then the employee's compensation may be retained by the employee's employer until the employee becomes a participating state employee.

(c) Payments by the comptroller.

(1) Payment methods.

(A) Except as otherwise provided in this subsection, the comptroller must pay the compensation of a participating state employee through the electronic funds transfer system.

(B) The comptroller may not pay the compensation of a non-participating state employee through the electronic funds transfer system.

(C) The state agency on whose behalf the comptroller pays compensation is responsible for determining whether the payment ~must be made through the electronic funds transfer system. The comptroller may rely on that determination.

(2) Exemption based on classification.

(A) Notwithstanding paragraph (1)(A) of this subsection, the comptroller may not pay through the electronic funds transfer system the compensation of a participating state employee who holds a position classified below Group 8 of the classification salary schedule unless the employee has been approved to be paid in this way under subsection (b)(2) of this section.

(B) When a participating state employee holds a position classified below Group 8 of the classification salary schedule, the employee holds that position for the purpose of this paragraph even if the compensation paid to the employee exceeds the compensation paid to certain state employees who hold positions classified above Group 7.

(C) When a participating state employee holds a position classified above Group 7 of the classification salary schedule, the employee holds that position for the purpose of this paragraph even if the compensation paid to the employee is less than the compensation paid to certain state employees who hold positions classified below Group 8.

(3) Exemption based on cost. Notwithstanding paragraph (1)(A) of this subsection, the comptroller may not pay the compensation of a participating state employee through the electronic funds transfer system if:

(A) the comptroller determines that paying the compensation by warrant would cost less to the state;

(B) the employee determines that paying the compensation by warrant would cost less to the employee; or

(C) the employer on whose behalf the comptroller would be paying the compensation determines that paying the compensation by warrant would cost less to the agency.

(4) Exemption based on impracticality.

(A) Notwithstanding paragraph (1)(A) of this subsection, the comptroller may not pay the compensation of a participating state employee through the electronic funds transfer system if:

(i) the comptroller determines that paying the compensation through the electronic funds transfer system would be impractical to the state;

(ii) the employee determines that paying the compensation through the electronic funds transfer system would be impractical to the employee; or

(iii) the employer of the employee determines that paying the compensation through the electronic funds transfer system would be impractical to the agency.

(B) Notwithstanding subparagraph (A)(iii) of this paragraph, a state agency must adopt a written policy before it may determine that paying the compensation of any of its state employees through the electronic funds transfer system is impractical to the agency. The policy must clearly state the circumstances under which the agency will find impracticability. The policy must be made available to the comptroller, the state auditor, and the employees of the agency upon request.

(5) Exemption based on inability to obtain an account. Notwithstanding paragraph (1)(A) of this subsection, the comptroller may not pay the compensation of a participating state employee through the electronic funds transfer system if the employee is unable to obtain an account at a financial institution that may be used to receive credit entries.

(6) Claiming an exemption.

(A) The exemption provided in paragraph (2)(A), (3)(B), (4)(A)(ii), or (5) of this subsection does not apply until a state employee or participating state employee properly claims the exemption in accordance with this paragraph.

(B) A state employee or participating state employee may claim an exemption only by properly completing an authorization form and submitting the form to an employer of the employee.

(C) A custodial state agency must retain the authorization forms on which state employees and participating state employees have claimed the exemptions provided by this subsection. The agency may not send the forms to the comptroller. The agency must make the forms available to the state auditor and the comptroller upon request. The agency may destroy a form no earlier than the second anniversary of the employee's termination of employment with the agency.

(d) Commencement and termination of participation.

(1) Obtaining authorization forms. Except as provided in subsection

(e)(3) and (5) of this section, a state employee or a participating state employee may obtain an authorization form from a state agency that employs the employee.

(2) Becoming a participating state employee.

(A) A state employee who is required or who wants to be a participating state employee must properly designate an EFT account in accordance with subsection (e)(1) of this section.

(B) A state employee is not a participating state employee until the employee has properly designated at least one EFT account and the designation has become effective.

(3) A participating state employee's termination of the employee's participation.

(A) A participating state employee may terminate the employee's participation if:

(i) the employee voluntarily became a participating state employee under subsection (b)(2) of this section; or

(ii) none of the employee's compensation is still required by law to be paid through the electronic funds transfer system.

(B) A participating state employee may terminate the employee's participation only by terminating the designation of each of the employee's EFT accounts in accordance with subsection (e)(3) of this section.

(C) The comptroller may not initiate a credit entry to a state employee on or after the effective date of the termination of the designation of the employee's last EFT account.

(4) A custodial state agency's termination of a participating state employee's participation.

(A) A custodial state agency may terminate a participating state employee's participation only if the agency is the only state agency that employs the employee.

(B) A custodial state agency may terminate the participation of a participating state employee if:

(i) the agency determines in accordance with subsection (c)(4) of this section that continued participation would be impractical to the agency; or

(ii) the agency no longer employs the employee.

(C) If a custodial state agency is authorized under this paragraph to terminate the participation of a participating state employee, then the agency may do so only by terminating the designation of each of the employee's EFT accounts in accordance with subsection (e)(4) of this section.

(D) The comptroller may not initiate a credit entry to a state employee on or after the effective date of the termination of the designation of the employee's last EFT account.

(E) A participating state employee's participation may be terminated under this paragraph without prior notice to the employee.

(5) Inquiries.

(A) A participating state employee must contact the paying state agency before contacting the comptroller when the employee has a question about a particular credit entry or debit entry.

(B) If a participating state employee receives an unidentified credit entry or debit entry, the employee must first contact the employee's financial institution to obtain necessary information about the entry. If the financial institution is unable to provide the information, then the employee may ask the comptroller for the information.

(C) A participating state employee may contact the employer of the employee if the employee has a question about this section.

(6) Rules. A participating state employee shall comply with the rules as amended from time to time.

(e) EFT accounts.

(1) Designating an EFT account.

(A) A state employee or a participating state employee may designate an EFT account if:

(i) the employee properly completes an authorization form and submits the form to an employer of the employee;

(ii) the account to be designated as an EFT account is a checking or savings account of the employee; and

(iii) the account to be designated as an EFT account is at a financial institution that allows credit entries to be made to the account.

(B) A custodial state agency shall promptly submit a properly completed authorization form or the information on the form to the comptroller in accordance with the comptroller's requirements.

(C) If a state employee or a participating state employee properly designates an EFT account, the effective date of the designation is the fourteenth calendar day after the comptroller processes the information on the authorization form. The comptroller may initiate credit entries to the EFT account on or after the effective date.

(2) Multiple EFT accounts.

(A) Notwithstanding anything else in this paragraph, a state employee may require each employer of the employee to be the custodial state agency for one EFT account of the employee. The employee may impose this requirement without obtaining the consent of any employer.

(B) This subparagraph applies when a state employee wants an employer of the employee to be the custodial state agency for more than one of the employee's EFT accounts. The employee may not designate a second or subsequent EFT account unless the employer consents to each account beyond the first account.

(C) Subject to the other requirements of this paragraph, a participating state employee may designate a second or subsequent EFT account by properly completing an authorization form and submitting the form to an employer of the employee.

(D) A state agency may not submit a participating state employee's authorization form to the comptroller if the form would designate an EFT account for the employee that has already been designated by the employee.

(E) A participating state employee that has multiple EFT accounts and an employer of the employee may agree that a certain type of compensation payment will be made only to the account or accounts designated in the agreement. Unless the comptroller is a party to the agreement:

(i) the comptroller is not required to take any actions to facilitate or ensure the employer's compliance with the agreement; and

(ii) the comptroller is not liable for any damages that result from the

employer's failure to comply with the agreement.

(3) A participating state employee's termination of the designation of an EFT account.

(A) A participating state employee may terminate the employee's designation of an EFT account if the termination would not result in a violation of subsection (b)(1) of this section.

(B) A participating state employee may terminate the designation of all the employee's EFT accounts if the employee is authorized by subsection (d)(3) of this section to terminate the employee's participation.

(C) A participating state employee may terminate the employee's designation of an EFT account only by:

(i) obtaining an authorization form from the custodial state agency for the account;

(ii) properly completing the form; and

(iii) submitting the form to the agency.

(D) A custodial state agency shall promptly submit a properly completed authorization form or the information on the form to the comptroller in accordance with the comptroller's requirements.

(E) The comptroller may not initiate a credit entry to an EFT account on or after the date on which the comptroller processes the information on the authorization form that terminates the designation of the account.

(4) A custodial state agency's termination of the designation of an EFT account.

(A) A state agency may terminate the designation of an EFT account if:

(i) the agency is the custodial state agency for the account

(ii) the agency properly completes an authorization form and submits the form or the information on the form to the comptroller in accordance with the comptroller's requirements; and

(iii) the termination would not result in a violation of subsection (b)(1) of this section.

(B) The comptroller may not initiate a credit entry to an EFT account or after the date on which the comptroller processes the information on the authorization form that terminates the designation of the account.

(C) The designation of an EFT account may be terminated under this paragraph without prior notice to the state employee or the participating state employee that owns the account.

(5) Modifying information about an EFT account.

(A) A participating state employee may modify information about an EFT account of the employee only by:

(i) obtaining an authorization form from the custodial state agency for the account;

(ii) properly completing the form; and

(iii) submitting the form to the agency.

(B) A custodial state agency shall promptly submit a properly completed authorization form or the information on the form to the comptroller in accordance with the comptroller's requirements.

(C) New information about an EFT account applies to credit entries that the comptroller initiates on or after the 14th calendar day after the comptroller processes the information on the authorization form that provides the new information.

(6) Interagency transfers.

(A) A participating state employee who transfers from one state agency to a second state agency must properly complete an authorization form and submit the form to the second state agency. The employee must complete an authorization form for each EFT account of the employee for which the first state agency was the custodial state agency.

(B) A state agency to which a participating state employee transfers shall promptly submit a properly completed authorization form or the information on the form to the comptroller in accordance with the comptroller's requirements.

(C) A state agency to which a participating state employee transfers becomes the custodial state agency for an EFT account of the employee if the employee submits an authorization form for the account under subparagraph (A) of this paragraph. The agency becomes the custodial state agency on the date on which the comptroller processes the information on the form.

(7) Number of custodial state agencies. An EFT account has only one custodial state agency at any given time. A state agency that is not the custodial state agency for an EFT account may nevertheless request the comptroller to initiate credit entries to the account.

(f) The comptroller's powers and responsibilities.

(1) Initiating debit entries.

(A) The comptroller may initiate a debit entry to an EFT account of a participating state employee if the appropriate paying state agency determines that an erroneous credit entry has been made to the account.

(B) The comptroller may initiate a debit entry to an account of a state employee if:

(i) the appropriate paying state agency determines that an erroneous credit entry has been made to the account;

(ii) the erroneous credit entry was made to the account when it was an EFT account; and

(iii) the erroneous credit entry was made when the state employee was a participating state employee.

(C) The comptroller may initiate a debit entry without prior notice to a state employee or a participating state employee.

(2) Compliance with the rules. The comptroller must comply with the rules when initiating credit entries and debit entries.

(3) Contacts. The comptroller may contact a state agency or a participating state employee if the comptroller has a question about a credit entry or debit entry.

(4) Termination of a participating state employee's participation.

(A) The comptroller may terminate the participation of a participating state employee at any time if the termination would not result in a violation of subsection (b)(1) of this section.

(B) The comptroller may terminate participation under this paragraph without providing prior notice to the participating state employee.

(5) Termination of the designation of an EFT account.

(A) The comptroller may terminate the designation of an EFT account at any time if the termination would not result in a violation of subsection (b)(1) or (c)(1)(A) of this section.

(B) The comptroller may terminate the designation of an EFT account without providing prior notice to the participating state employee that owns the account.

(6) Stop payments. The comptroller's authority to stop the payment of a credit entry is equivalent to the comptroller's authority to stop the payment of a warrant.

(g) Acceptance and return of credit entries.

(1) Voluntary acceptance of credit entries. Neither a participating state employee nor a participating state employee's financial institution is required to accept a credit entry. However, a rejected credit entry must be returned in accordance with the rules.

(2) Liability resulting from the rejection of credit entries.

(A) The comptroller, the state treasurer, and a state agency are not liable for the consequences of the rejection of a credit entry by a participating state employee or the employee's financial institution.

(B) When a credit entry is rejected, the State of Texas and its state agencies:

(i) are not in default on any obligation; and

(ii) shall not incur any penalty, interest, or late charge by reason of the rejection.

(3) Rejection of credit entries. Even if a participating state employee or the employee's financial institution does not reject a credit entry in accordance with the rules, the employee does not accept a credit entry as being in the correct amount if:

(A) the employee ensures that the paying state agency receives written notice by no later than the 30th calendar day after the employee's financial institution receives the credit entry; and

(B) the written notice clearly states that the amount of the credit entry is erroneous.

(h) Credit for paying state agencies.

(1) Applicability. This subsection applies unless a participating state employee returns a credit entry in accordance with subsection (g) of this section.

(2) When credit required. A participating state employee shall credit the paying state agency for the amount of a credit entry on the effective date of the credit entry, regardless of when the employee's financial institution posts the credit entry to the employee's account.

(3) Accrual of interest and other charges or fees. The accrual of interest or other charges or fees payable with respect to the amount of a credit entry shall cease when a participating state employee credits the paying state agency for the credit entry.

(i) Liability.

(1) Liability for actions of certain parties. A participating state employee, the State of Texas, a state agency, a paying state agency, the comptroller, the state treasurer, and a custodial state agency are not liable for the act or omission of any automated clearing house, financial institution, or other person or entity except as specified in the rules.

(2) Liability for actions of state agencies or paying state agencies. Neither the comptroller nor the state treasurer is liable for damages arising out of delays caused or errors committed by a state agency or a paying state agency.

(j) Compensatory per diem, salary per diem, travel expense and subsistence payments. The comptroller intends to adopt rules at a later date concerning compensatory per diem, salary per diem, travel expense, and subsistence payments to state employees through the electronic funds transfer system. Until then, the comptroller has determined that it would be impractical to make those payments through the electronic funds transfer system.

(k) Miscellaneous provisions.

(1) General effective date. Except as otherwise provided in this subsection, this section takes effect on the earliest date it may take effect under the Texas Civil Statutes, Article 6252-13a, Administrative Procedure and Texas Register Act.

(2) Specific effective date for twice-monthly payrolls.

(A) This paragraph applies to state employees who are paid twice each month.

(B) Subsections (b)(1) and (c) (1) of this section apply to the payment of compensation earned during September 1992 and to the payment of all compensation subsequently earned.

(C) The comptroller has determined that the application of subsections (b)(1) and (c)(1) of this section to twice-monthly payrolls before the effective date specified in subparagraph (B) of this paragraph would be impractical.

(3) Applicability of section. This section applies to all state employees whose compensation is paid through the electronic funds transfer system, including employees whose compensation was first paid through the electronic funds transfer system before the effective date of this section.

(4) Existing accounts.

(A) This subparagraph applies to each account of a state employee that received a payment of the employee's compensation through the electronic funds transfer system before the effective date of this section. Each account is an EFT account for the purpose of this section unless:

(i) the employee properly notified the employer of the employee before the effective date of this section that the account would no longer be available to receive electronic funds transfers; and

(ii) the notification is still in effect on the effective date of this section.

(B) A state employee that has one or more EFT accounts under subparagraph (A) of this paragraph on the effective date of this section is a participating state employee for the purpose of this section.

(C) An employer of a state employee that is the custodial state agency for more than one EFT account of the employee on the effective date of this section may terminate the designation of one or more of those accounts only if subsection (e)(4) of this section authorizes the termination. The requirement in subsection (e)(2) of this section to obtain the consent of an employer before designating a second or subsequent EFT account does not apply to the accounts that are EFT accounts under subparagraph (A) of this paragraph on the effective date of this section.

§5.14. Paying Annuitants Through Electronic Funds Transfers.

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

(1) Annuitant–An individual who receives one or more annuities.

(2) Annuity–A series of substantially equal and periodic benefit payments from a retirement plan administered by a retirement system.

(3) Authorization form–The form designed by the comptroller that is used in accordance with this section.

(4) Custodial retirement system–The retirement system to which an annuitant or a participating annuitant submitted a properly completed authorization form to designate an EFT account or claim an exemption from mandatory participation in the electronic funds transfer system.

(5) EFT account–An account that has been designated in accordance with this section to receive credit entries.

(6) Participating annuitant–An annuitant who receives credit entries initiated by the comptroller.

(7) Paying retirement system–With respect to a particular credit entry or debit entry, the retirement system that requested the comptroller to initiate the entry.

(8) Retirement system–The Employees Retirement System of Texas or the Teacher Retirement System of Texas.

(b) Mandatory or voluntary participation.

(1) Mandatory participation.

(A) Except as provided in subparagraph (B) of this subsection, an annuitant must be a participating annuitant.

(B) An annuitant is not required to be a participating annuitant if subsection (c)(2) -(5) of this section would prohibit the comptroller from paying annuities to the annuitant through the electronic funds transfer system if the annuitant were a participating annuitant. An annuitant who is not required to be a participating annuitant under this subparagraph must claim an exemption for each retirement system that pays annuities to the annuitant in accordance with subsection (c)(6) of this section.

(2) Voluntary participation.

(A) An annuitant who is not required by paragraph (1) of this subsection to be a participating annuitant may be a participating annuitant.

(B) This subparagraph applies only to annuities that are not required by this section to be paid through the electronic funds transfer system. A participating annuitant and a retirement system may agree on which types of annuities will be paid through the electronic funds transfer system. The comptroller is not required to take any actions to facilitate or ensure the retirement system's compliance with the agreement. The comptroller is not liable for any damages that result from the retirement system's failure to comply with the agreement.

(3) Powers and responsibilities of the comptroller and retirement systems.

(A) This paragraph applies only to an annuitant who is required to be a participating annuitant.

(B) A retirement system must ensure that each of the system's annuitants is a participating annuitant.

(C) If an annuitant is required but refuses or fails to become a participating annuitant, then the annuity payments to the annuitant may be retained by the paying retirement system until the annuitant becomes a participating annuitant.

(c) Payments by the comptroller.

(1) Payment methods.

(A) Except as otherwise provided in this subsection, the comptroller must pay an annuity to a participating annuitant through the electronic funds transfer system.

(B) The comptroller may not pay an annuity to a non-participating annuitant through the electronic funds transfer system.

(C) The retirement system on whose behalf the comptroller pays an annuity is responsible for determining whether the payment must be made through the electronic funds transfer system. The comptroller may rely on that determination.

(2) Exemption based on cost. Notwithstanding paragraph (1)(A) of this subsection, the comptroller may not pay an annuity through the electronic funds transfer system if:

(A) the comptroller determines that paying the annuity by warrant would cost less to the state;

(B) the annuitant who will receive the annuity payment determines that paying the annuity by warrant would cost less to the annuitant; or

(C) the retirement system that administers the retirement plan from which the annuity will be paid determines that paying the annuity by warrant would cost less to the system.

(3) Exemption based on impracticality.

(A) Notwithstanding paragraph (1)(A) of this subsection, the comptroller may not pay an annuity through the electronic funds transfer system if:

(i) the comptroller determines that paying the annuity through the electronic funds transfer system would be impractical to the state;

(ii) the annuitant who would receive the annuity payment determines that paying the annuity through the electronic funds transfer system would be impractical to the annuitant; or

(iii) the retirement system that administers the retirement plan from which the annuity will be paid determines that paying the annuity through the electronic funds transfer system would be impractical to the system or the plan.

(B) Notwithstanding subparagraph (A)(iii) of this paragraph, a retirement system must adopt a written policy before it may determine that paying any annuity through the electronic funds transfer system is impractical to the system or the plan. The policy must clearly state the circumstances under which the system will find impracticability. The policy must be made available to the comptroller, the state auditor, and the annuitants of the system upon request.

(C) The comptroller has determined that paying an annuity through the electronic funds transfer system would be impractical to the state if the amount of the annuity is $100 or less.

(4) Exemption based on inability to obtain an account. Notwithstanding paragraph (1)(A) of this subsection, the comptroller may not pay an annuity through the electronic funds transfer system if the annuitant who would receive the annuity is unable to obtain an account at a financial institution that may be used to receive credit entries.

(5) Claiming an exemption.

(A) The exemption provided in paragraph (2)(B), (3)(A)(ii), or (4) of this subsection does not apply until an annuitant properly claims the exemption in accordance with this paragraph.

(B) An annuitant who is not required to be a participating annuitant u

der subsection (b)(1)(B) of this section must properly claim an exemption for each kind of annuity received by the annuitant in accordance with this paragraph. An annuitant who fails to comply with this requirement must be a participating annuitant.

(C) An annuitant may claim an exemption for a particular kind of annuity only by properly completing an authorization form and submitting the form to the retirement system on whose behalf the annuity is paid.

(D) A custodial retirement system must permanently retain the authorization forms on which annuitants have claimed the exemptions provided by this subsection. The system may not send the forms to the comptroller. The system must make the forms available to the state auditor and the comptroller upon request.

(d) Commencement and termination of participation.

(1) Obtaining authorization forms. Except as provided in subsection (e)(3)(C) and (5)(A) of this section, an annuitant may obtain an authorization form from any retirement system.

(2) Becoming a participating annuitant.

(A) An annuitant who is required or who wants to be a participating annuitant must properly designate an EFT account in accordance with subsection (e)(1) of this section.

(B) An annuitant is not a participating annuitant until the annuitant has properly designated at least one EFT account and the designation has become effective.

(3) A participating annuitant's termination of the annuitant's participation.

(A) A participating annuitant may terminate the annuitant's participation if:

(i) the annuitant voluntarily became a participating annuitant under subsection (b)(2) of this section; or

(ii) none of the annuities that the annuitant receives is still required by law to be paid through the electronic funds transfer system.

(B) A participating annuitant may terminate the annuitant's participation only by terminating the designation of each of the annuitant's EFT accounts in accordance with subsection (e)(3) of this section.

(C) The comptroller may not initiate a credit entry to an annuitant on or after the effective date of the termination of the designation of the annuitant's last EFT account.

(4) A custodial retirement system's termination of a participating annuitant's participation.

(A) A custodial retirement system may terminate the participation of a participating annuitant only if the system is the only retirement system that pays annuities to the annuitant.

(B) A custodial retirement system may terminate the participation of a participating annuitant if:

(i) the system determines in accordance with subsection (c)(3) of this section that continued participation would be impractical;

(ii) none of the annuities that the annuitant receives are still required by law to be paid through the electronic funds transfer system; or

(iii) continued participation would be impossible because the annuitant is no longer receiving an annuity from a retirement plan that the system administers.

(C) If a retirement system is authorized under this paragraph to terminate the participation of a participating annuitant, then the system may do so only by terminating the designation of each of the annuitant's EFT accounts in accordance with subsection (e)(4) of this section.

(D) The comptroller may not initiate a credit entry to an annuitant on or after the effective date of the termination of the designation of the annuitant's last EFT account.

(E) A participating annuitant's participation may be terminated under this paragraph without prior notice to the annuitant.

(5) Inquiries.

(A) A participating annuitant must contact the paying retirement system before contacting the comptroller when the annuitant has a question about a particular credit entry or debit entry.

(B) If a participating annuitant receives an unidentified credit entry or debit entry, the annuitant must first contact the annuitant's financial institution to obtain necessary information about the entry. If the financial institution is unable to provide the information, then the annuitant may ask the comptroller for the information.

(C) A participating annuitant may contact the annuitant's retirement system if the annuitant has a question about this section.

(6) Rules. A participating annuitant shall comply with the rules as amended from time to time.

(e) EFT accounts.

(1) Designating an EFT account.

(A) An annuitant or a participating annuitant may designate an EFT account if:

(i) the annuitant properly completes an authorization form and submits the form to a retirement system on whose behalf annuity payments are made to the annuitant;

(ii) the account to be designated as an EFT account is a checking or savings account of the annuitant; and

(iii) the account to be designated as an EFT account is at a financial institution that allows credit entries to be made to the account.

(B) A custodial retirement system shall promptly submit a properly completed authorization form or the information on the form to the comptroller in accordance with the comptroller's requirements.

(C) If an annuitant or a participating annuitant properly designates an EFT account, the effective date of the designation is the 14th calendar day after the comptroller processes the information on the authorization form. The comptroller may initiate credit entries to the EFT account on or after the effective date.

(2) Multiple EFT accounts.

(A) Notwithstanding anything else in this paragraph, an annuitant may require each retirement system on whose behalf an annuity is paid to the annuitant to be the custodial retirement system for one EFT account of the annuitant. The annuitant may impose this requirement without obtaining the consent of any retirement system.

(B) This subparagraph applies when an annuitant wants a retirement system on whose behalf an annuity is paid to the annuitant to be the custodial

retirement system for more than one of the annuitant's EFT accounts. The annuitant may not designate a second or subsequent EFT account unless the retirement system consents to each account beyond the first account.

(C) Subject to the other requirements of this paragraph, a participating annuitant may designate a second or subsequent EFT account by properly completing and submitting an authorization form. The form must be submitted to either the custodial retirement system for the first account or another retirement system on whose behalf annuity payments are made to the annuitant.

(D) A retirement system may not submit a participating annuitant's authorization form to the comptroller if the form would designate an EFT account for the annuitant that has already been designated by the annuitant.

(E) A participating annuitant that has multiple EFT accounts and a retirement system may agree that a certain type of annuity will be paid only to the account or accounts designated in the agreement. The comptroller is not required to take any actions to facilitate or ensure the system's compliance with the agreement. The comptroller is not liable for any damages that result from the system's failure to comply with the agreement.

(3) A participating annuitant's termination of the designation of an EFT account.

(A) A participating annuitant may terminate the annuitant's designation of an EFT account if the termination would not result in a violation of subsection (b)(1) of this section.

(B) A participating annuitant may terminate the designation of all the annuitant's EFT accounts if the annuitant is authorized by subsection (d)(3) of this section to terminate the annuitant's participation.

(C) A participating annuitant may terminate the annuitant's designation of an EFT account only by:

(i) obtaining an authorization form from the custodial retirement system for the account;

(ii) properly completing the form; and

(iii) submitting the form to the system.

(D) A custodial retirement system shall promptly submit a properly completed authorization form or the information on the form to the comptroller in accordance with the comptroller's requirements.

(E) The comptroller may not initiate a credit entry to an EFT account on or after the date on which the comptroller processes the information on the authorization form that terminates the designation of the account.

(4) A custodial retirement system's termination of the designation of an EFT account.

(A) A retirement system may terminate the designation of an EFT account if:

(i) the system is the custodial retirement system for the account;

(ii) the system properly completes an authorization form and submits the form or the information on the form to the comptroller in accordance with the comptroller's requirements; and

(iii) the termination would not result in a violation of subsection (b)(1) of this section.

(B) The comptroller may not initiate a credit entry to an EFT account or after the date on which the comptroller processes the information on the system's authorization form that terminates the designation of the account.

(C) The designation of an EFT account may be terminated under this paragraph without prior notice to the annuitant or the participating annuitant that owns the account.

(5) Modifying information about an EFT account.

(A) A participating annuitant may modify information about an EFT account of the annuitant only by:

(i) obtaining an authorization form from the custodial retirement system for the account;

(ii) properly completing the form; and

(iii) submitting the form to the system.

(B) A custodial retirement system shall promptly submit a properly completed authorization form or the information on the form to the comptroller in accordance with the comptroller's requirements.

(C) New information about an EFT account applies to credit entries that the comptroller initiates on or after the 14th calendar day after the comptroller processes the information on the authorization form that provides the new information.

(f) The comptroller's powers and responsibilities.

(1) Initiating debit entries.

(A) The comptroller may initiate a debit entry to an EFT account of a participating annuitant if the appropriate paying retirement system determines that an erroneous credit entry has been made to the account.

(B) The comptroller may initiate a debit entry to an account of an annuitant if:

(i) the appropriate paying retirement system determines that an erroneous credit entry has been made to the account;

(ii) the erroneous credit entry was made to the account when it was an EFT account; and

(iii) the erroneous credit entry was made when the annuitant was a participating annuitant.

(C) The comptroller may initiate a debit entry without prior notice to an annuitant or a participating annuitant.

(2) Compliance with the rules. The comptroller must comply with the rules when initiating credit entries and debit entries.

(3) Contacts. The comptroller may contact a retirement system or a participating annuitant if the comptroller has a question about a credit entry or debit entry.

(4) Termination of a participating annuitant's participation.

(A) The comptroller may terminate the participation of a participating annuitant at any time if the termination would not result in a violation of subsection (b)(1) of this section.

(B) The comptroller may terminate participation under this paragraph without providing prior notice to the participating annuitant.

(5) Termination of the designation of an EFT account.

(A) The comptroller may ter

minate the designation of an EFT account at any time if the termination would not result in a violation of subsection (b)(1) or (c)(1)(A) of this section.

(B) The comptroller may terminate the designation of an EFT account without providing prior notice to the participating annuitant that owns the account.

(6) Stop payments. The comptroller's authority to stop the payment of a credit entry is equivalent to the comptroller's authority to stop the payment of a warrant.

(g) Acceptance and return of credit entries.

(1) Voluntary acceptance of credit entries. Neither a participating annuitant nor a participating annuitant's financial institution is required to accept a credit entry. However, a rejected credit entry must be returned in accordance with the rules.

(2) Liability resulting from the rejection of credit entries.

(A) The comptroller, the state treasurer, and a retirement system are not liable for the consequences of the rejection of a credit entry by a participating annuitant or the annuitant's financial institution.

(B) When a credit entry is rejected, the State of Texas and its retirement systems:

(i) are not in default on any obligation; and

(ii) shall not incur any penalty, interest, or late charge by reason of the rejection.

(3) Rejection of credit entries. Even if a participating annuitant or the annuitant's financial institution does not reject a credit entry in accordance with the rules, the annuitant does not accept a credit entry as being in the correct amount if:

(A) the annuitant ensures that the paying retirement system receives written notice by no later than the 30th calendar day after the annuitant's financial institution receives the credit entry; and

(B) the written notice clearly states that the amount of the credit entry is erroneous.

(h) Credit for paying retirement systems.

(1) Applicability. This subsection applies unless a participating annuitant returns a credit entry in accordance with subsection (g) of this section.

(2) When credit required. A participating annuitant shall credit the paying retirement system for the amount of a credit entry on the effective date of the credit entry, regardless of when the annuitant's financial institution posts the credit entry to the annuitant's account.

(3) Accrual of interest and other charges or fees. The accrual of interest or other charges or fees payable with respect to the amount of a credit entry shall cease when a participating annuitant credits the paying retirement system for the credit entry.

(i) Liability.

(1) Liability for actions of certain parties. A participating annuitant, the State of Texas, a retirement system, a paying retirement system, the comptroller, the state treasurer, and a custodial retirement system are not liable for the act or omission of any automated clearing house, financial institution, or other person or entity except as specified in the rules.

(2) Liability for actions of participating retirement systems or paying retirement systems. Neither the comptroller nor the state treasurer is liable for damages arising out of delays caused or errors committed by a retirement system or a paying retirement system.

(j) Miscellaneous provisions.

(1) Effective date. This section takes effect on the earliest date it may take effect under the Texas Civil Statutes, Article 6252-13a, Administrative Procedure and Texas Register Act.

(2) Applicability of section. This section applies to all annuitants whose annuities are paid through the electronic funds transfer system, including annuitants whose annuities were first paid through the electronic funds transfer system before the effective date of this section.

(3) Existing accounts.

(A) This subparagraph applies to each account of an annuitant that received an annuity payment for the annuitant through the electronic funds transfer system before the effective date of this section. Each account is an EFT account for the purpose of this section unless:

(i) the annuitant properly notified the custodial retirement system of the account before the effective date of this section that the account would no longer be available to receive electronic funds transfers; and

(ii) the notification is in effect on the effective date of this section.

(B) An annuitant that has one or more EFT accounts under subparagraph (A) of this paragraph on the effective date of this section is a participating annuitant for the purpose of this section.

(C) A retirement system that is the custodial retirement system for more than one EFT account of an annuitant on the effective date of this section may terminate the designation of one or more of those accounts only if subsection (e)(4) of this section authorizes the termination. The requirement in subsection (e)(2) of this section to obtain the consent of a retirement system before designating a second or subsequent EFT account does not apply to the accounts that are EFT accounts under subparagraph (A) of this paragraph on the effective date of this section.

§5.15. Paying Governmental Entities Through Electronic Funds Transfers.

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

(1) Authorization form–The form designed by the comptroller that is used in accordance with this section.

(2) Custodial state agency–The state agency to which a governmental entity or a participating governmental entity submitted a properly completed authorization form to designate an EFT account or to claim an exemption from the requirement to make a recurring payment through the electronic furds transfer system.

(3) EFT account–An account that has been designated in accordance with this section to receive credit entries.

(4) Governmental entity–An entity specifically or impliedly established by law that exercises a sovereign power of the state. The term includes state agencies, special districts, local governments, municipal corporations, and political subdivisions.

(5) Participating governmental entity–A governmental entity that receives credit entries initiated by the comptroller.

(6) Paying state agency–With respect to a particular credit or debit entry, the state agency that requested the comptroller to initiate the entry.

(7) Recurring payment–A regular and periodic payment that is made by the comptroller. The term includes a recurring allocation of tax revenues by the comptroller.

(b) Mandatory or voluntary participation.

(1) Mandatory participation.

(A) Except as provided in subparagraph (B) of this paragraph, a governmental entity that receives recurring payments must be a participating governmental entity.

(B) A governmental entity is not required to be a participating governmental entity if subsection (c)(2)-(4) of this section would prohibit the recurring payments to the entity from being made through the electronic funds transfer system if the entity were a participating governmental entity. An entity that is not required to be a participating governmental entity under this subparagraph must claim an exemption for each type of recurring payment in accordance with subsection (c)(5) of this section.

(2) Voluntary participation.

(A) A governmental entity that is not required by paragraph (1) of this subsection to be a participating governmental entity may be a participating governmental entity.

(B) This subparagraph applies only to recurring payments that are not required by this section to be made through the electronic funds transfer system. A participating governmental entity and a state agency may agree on which types of non-recurring payments from the agency will be paid through the electronic funds transfer system. Unless the comptroller is a party to the agreement:

(i) the comptroller is not required to take any actions to facilitate or ensure the agency's compliance with the agreement; and

(ii) the comptroller is not liable for any damages that result from the agency's failure to comply with the agreement.

(3) Powers and responsibilities of the comptroller and state agencies.

(A) The comptroller's revenue accounting division must ensure that each governmental entity which receives recurring allocations of tax revenues from the comptroller is a participating governmental entity. This subparagraph applies only if the entity is required by paragraph (1) of this subsection to be a participating governmental entity.

(B) A state agency must ensure that each governmental entity which receives recurring payments from the comptroller on behalf of the agency is a participating governmental entity. This subparagraph applies only if:

(i) the entity does not receive recurring allocations of tax revenues from the comptroller; and

(ii) the entity is required by paragraph (1) of this subsection to be a participating governmental entity.

(C) If a governmental entity is required but refuses or fails to become a participating governmental entity, then the entity's recurring payments may be retained by the paying state agency until the entity becomes a participating governmental entity.

(c) Payments by the comptroller.

(1) Payment methods.

(A) Except as otherwise provided in this subsection, the comptroller must make a recurring payment to a participating governmental entity through the electronic funds transfer system.

(B) The comptroller may make a non-recurring payment to a participating governmental entity through the electronic funds transfer system.

(C) The comptroller may not make any type of payment to a non-participating governmental entity through the electronic funds transfer system.

(D) The state agency on whose behalf the comptroller makes a payment is responsible for determining whether the payment is a recurring payment for the purpose of this section. The comptroller may rely on that determination.

(2) Exemption based on cost. Notwithstanding paragraph (1)(A) of this subsection, the comptroller may not make a recurring payment to a participating governmental entity through the electronic funds transfer system if:

(A) the comptroller determines that making the payment by warrant would cost less to the state;

(B) the entity determines that making the payment by warrant would cost less to the entity; or

(C) the state agency on whose behalf the comptroller would be making the payment determines that making the payment by warrant would cost less to the agency.

(3) Exemption based on impracticality.

(A) Notwithstanding paragraph (1) (A) of this subsection, the comptroller may not make a recurring payment to a participating governmental entity through the electronic funds transfer system if:

(i) the comptroller determines that making the payment through the electronic funds transfer system would be impractical to the state;

(ii) the entity determines that making the payment through the electronic funds transfer system would be impractical to the entity; or

(iii) the state agency on whose behalf the comptroller would be making the payment determines that making the payment through the electronic funds transfer system would be impractical to the agency.

(B) Notwithstanding subparagraph (A)(iii) of this paragraph, a state agency must adopt a written policy before it may determine that making a recurring payment to a governmental entity through the electronic funds transfer system is impractical to the agency. The policy must clearly state the circumstances under which the agency will find impracticability. The policy must be made available to the comptroller, the state auditor, and governmental entities upon request.

(4) Exemption based on inability to obtain an account. Notwithstanding paragraph (1)(A) of this subsection, the comptroller may not make a recurring payment to a participating governmental entity through the electronic funds transfer system if the entity is unable to obtain an account at a financial institution that may be used to receive credit entries.

(5) Claiming an exemption.

(A) The exemption provided in paragraph (2)(B), (3)(A)(ii), or (4) of this subsection does not apply until a governmental entity or a participating governmental entity properly claims the exemption in accordance with this paragraph.

(B) A governmental entity that is not required to be a participating governmental entity under subsection (b)(1)(B) of this section must properly claim an exemption for each type of recurring payment in accordance with this paragraph. A governmental entity that fails to comply with this requirement must be a participating governmental entity.

(C) A governmental entity or participating governmental entity may claim an exemption for a particular type of recurring payment only by properly completing

an authorization form and submitting the form to:

(i) the comptroller's revenue accounting division if the entity receives recurring allocations of tax revenues from the comptroller; or

(ii) the state agency on whose behalf the recurring payments are made if the entity does not receive recurring allocations of tax revenues from the comptroller.

(D) A custodial state agency must permanently retain the authorization forms on which governmental entities and participating governmental entities have claimed the exemptions provided by this subsection. The agency may not send the forms to the comptroller. The agency must make the forms available to the state auditor and the comptroller upon request.

(d) Commencement and termination of participation.

(1) Obtaining authorization forms. Except as provided in subsection (e)(3) and (5) of this section, a governmental entity or a participating governmental entity may obtain an authorization form from any state agency that has the forms.

(2) Becoming a participating governmental entity.

(A) A governmental entity that is required or that wants to be a participating governmental entity must properly designate an EFT account in accordance with subsection (e)(1) of this section.

(B) A governmental entity is not a participating governmental entity until the entity has properly designated at least one EFT account and the designation has become effective.

(3) A participating governmental entity's termination of the entity's participation.

(A) A participating governmental entity may terminate its participation if:

(i) the entity voluntarily became a participating governmental entity under subsection (b)(2) of this section; or

(ii) none of the recurring payments that the entity receives are still required by law to be paid through the electronic funds transfer system.

(B) A participating governmental entity may terminate its participation only by terminating the designation of each of the entity's EFT accounts in accordance with subsection (e)(3) of this section.

(C) The comptroller may not initiate a credit entry to a participating governmental entity on or after the effective date of the termination of the designation of the entity's last EFT account.

(4) A custodial state agency's termination of a participating governmental entity's participation.

(A) A custodial state agency may terminate a participating governmental entity's participation only if the agency is the only custodial state agency for the entity.

(B) A custodial state agency may terminate the participation of a participating governmental entity if:

(i) the agency determines in accordance with subsection (c)(3) of this section that continued participation would be impractical to the agency;

(ii) none of the recurring payments that the entity receives are still required by law to be paid through the electronic funds transfer system; or

(iii) continued participation would be impossible because no state agency makes recurring payments to the entity.

(C) If a custodial state agency is authorized under this paragraph to terminate the participation of a participating governmental entity, then the agency may do so only by terminating the designation of each of the entity's EFT accounts in accordance with subsection (e)(4) of this section.

(D) The comptroller may not initiate a credit entry to a governmental entity on or after the effective date of the termination of the designation of the entity's last EFT account.

(E) A participating governmental entity's participation may be terminated under this paragraph without prior notice to the entity.

(5) Inquiries.

(A) A participating governmental entity must contact the paying state agency before contacting the comptroller when the entity has a question about a particular credit entry or debit entry.

(B) If a participating governmental entity receives an unidentified credit entry or debit entry, the entity must first contact its financial institution to obtain necessary information about the entry. If the financial institution is unable to provide the information, then the entity may ask the comptroller for the information.

(C) A participating governmental entity may contact any state agency if the entity has a question about this section.

(6) Rules. A participating governmental entity shall comply with the rules as amended from time to time.

(e) EFT accounts.

(1) Designating an EFT account.

(A) A governmental entity or a participating governmental entity may designate an EFT account if:

(i) the entity properly completes and submits an authorization form;

(ii) the account to be designated as an EFT account is a checking or savings account of the entity; and

(iii) the account to be designated as an EFT account is at a financial institution that allows credit entries to be made to the account.

(B) A governmental entity or a participating governmental entity may submit a properly completed authorization form only to:

(i) the comptroller's revenue accounting division if the entity receives recurring allocations of tax revenues from the comptroller; or

(ii) a state agency on whose behalf recurring payments are made to the entity if the entity does not receive recurring allocations of tax revenues from the comptroller.

(C) A custodial state agency shall promptly submit a properly completed authorization form or the information on the form to the comptroller in accordance with the comptroller's requirements.

(D) If a governmental entity or a participating governmental entity properly designates an EFT account, the effective date of the designation is the 14th calendar day after the comptroller processes the information on the authorization form. The comptroller may initiate credit entries to the EFT account on or after the effective date.

(2) Multiple EFT accounts.

(A) Notwithstanding anything else in this paragraph, a governmental entity may require each state agency that makes recurring payments to the entity to be the custodial state agency for one EFT account of the entity. The entity may impose this requirement without obtaining the consent of any agency.

(B) This subparagraph applies when a governmental entity wants a state agency that makes recurring payments to the entity to be the custodial state agency for more than one of the entity's EFT accounts. The entity may not designate a second or subsequent EFT account unless the agency consents to each account beyond the first account.

(C) Subject to the other requirements of this paragraph, a participating governmental entity may designate a second or subsequent EFT account by properly completing an authorization form and submitting the form to either the custodial state agency for the first account or any other state agency that makes recurring payments to the entity.

(D) A state agency may not submit a participating governmental entity's authorization form to the comptroller if the form would designate an EFT account for the entity that has already been designated by the entity.

(E) A participating governmental entity that has multiple EFT accounts and a state agency may agree that a certain type of payment will be made only to the account or accounts designated in the agreement. Unless the comptroller is a party to the agreement:

(i) the comptroller is not required to take any actions to facilitate or ensure the agency's compliance with the agreement; and

(ii) the comptroller is not liable for any damages that result from the agency's failure to comply with the agreement.

(3) A participating governmental entity's termination of the designation of an EFT account.

(A) A participating governmental entity may terminate its designation of an EFT account if the termination would not result in a violation of subsection (b)(1)(A) of this section.

(B) A participating governmental entity may terminate the designation of all the entity's EFT accounts if the entity is authorized by subsection (d)(3) of this section to terminate its participation.

(C) A participating governmental entity may terminate its designation of an EFT account only by:

(i) obtaining an authorization form from the custodial state agency for the account;

(ii) properly completing the form; and

(iii) submitting the form to the custodial state agency.

(D) A custodial state agency shall promptly submit a properly completed authorization form or the information on the form to the comptroller's claims division in accordance with the division's requirements.

(E) The comptroller may not initiate a credit entry to an EFT account on or after the date on which the comptroller's claims division processes the information on the authorization form that terminates the designation of the account.

(4) A custodial state agency's termination of the designation of an EFT account.

(A) A state agency may terminate the designation of an EFT account if:

(i) the agency is the custodial state agency for the account;

(ii) the agency properly completes an authorization form and submits the form or the information on the form to the comptroller's claims division in accordance with the division's requirements; and

(iii) the termination would not result in a violation of subsection (b)(1)(A) of this section.

(B) The comptroller may not initiate a credit entry to an EFT account or after the date on which the comptroller processes the information on the agency's authorization form that terminates the designation of the account.

(C) The designation of an EFT account may be terminated under this paragraph without prior notice to the governmental entity or the participating governmental entity that owns the account.

(5) Modifying information about an EFT account.

(A) A participating governmental entity may modify information about an EFT account of the entity only by:

(i) obtaining an authorization form from the custodial state agency for the account;

(ii) properly completing the form; and

(iii) submitting the form to the agency.

(B) A custodial state agency shall promptly submit a properly completed authorization form or the information on the form to the comptroller's claims division in accordance with the division's requirements.

(C) New information about an EFT account applies to credit entries that the comptroller initiates on or after the 14th calendar day after the comptroller's claims division processes the information on the authorization form that provides the new information.

(f) The comptroller's powers and responsibilities.

(1) Initiating debit entries.

(A) The comptroller may initiate a debit entry to an EFT account of a participating governmental entity if the appropriate paying state agency determines that an erroneous credit entry has been made to the account.

(B) The comptroller may initiate a debit entry to an account of a governmental entity if:

(i) the appropriate paying state agency determines that an erroneous credit entry has been made to the account;

(ii) the erroneous credit entry was made to the account when it was an EFT account; and

(iii) the erroneous credit entry was made when the governmental entity was a participating governmental entity.

(C) The comptroller may initiate a debit entry without prior notice to a participating governmental entity or a governmental entity.

(2) Compliance with the rules. The comptroller must comply with the rules when initiating credit entries and debit entries.

(3) Contacts. The comptroller may contact a state agency or a participating governmental entity if the comptroller has a question about a credit entry or debit

entry.

(4) Termination of a participating governmental entity's participation.

(A) The comptroller may terminate the participation of a participating governmental entity at any time if the termination would not result in a violation of subsection (b)(1)(A) of this section.

(B) The comptroller may terminate participation under this paragraph without providing prior notice to the participating governmental entity.

(5) Termination of the designation of an EFT account.

(A) The comptroller may terminate the designation of an EFT account at any time if the termination would not result in a violation of subsection (b)(1)(A) or (c)(1)(A) of this section.

(B) The comptroller may terminate the designation of an EFT account without providing prior notice to the participating governmental entity that owns the account.

(6) Stop payments. The comptroller's authority to stop the payment of a credit entry is equivalent to the comptroller's authority to stop the payment of a warrant.

(g) Acceptance and return of credit entries.

(1) Voluntary acceptance of credit entries. Neither a participating governmental entity nor a participating governmental entity's financial institution is required to accept a credit entry. However, a rejected credit entry must be returned in accordance with the rules.

(2) Liability resulting from the rejection of credit entries.

(A) The comptroller, the state treasurer, and a paying state agency are not liable for the consequences of the rejection of a credit entry by a participating governmental entity or the entity's financial institution.

(B) When a credit entry is rejected, the State of Texas and its state agencies:

(i) are not in default on any obligation; and

(ii) shall not suffer any loss of discount or incur any penalty, interest~ or late charge by reason of the rejection.

(3) Texas Prompt Payment Act. Paragraph (2)(B)(ii) of this subsection applies to the interest that would otherwise be payable under the Texas Prompt Payment Act.

(4) Rejection of credit entries. Even if a participating governmental entity or the entity's financial institution does not reject a credit entry in accordance with the rules, the entity does not accept a credit entry as being in the correct amount if:

(A) the entity ensures that the paying state agency receives written notice by no later than the 30th calendar day after the entity's financial institution receives the credit entry; and

(B) the written notice clearly states that the amount of the credit entry is erroneous.

(h) Credit for paying state agencies.

(1) Applicability. This subsection applies unless a participating governmental entity returns a credit entry in accordance with subsection (g) of this section.

(2) When credit required. A participating governmental entity shall credit the paying state agency for the amount of a credit entry on the effective date of the credit entry regardless of when the entity's financial institution posts the credit entry to the entity's EFT account.

(3) Accrual of interest and other charges or fees. The accrual of interest or other charges or fees payable with respect to the amount of a credit entry shall cease when a participating governmental entity credits the paying state agency for the credit entry.

(i) Credit entry information.

(1) Definition. For a particular credit entry, credit entry information~ means:

(A) the participating governmental entity's invoice number up to seven digits (if and as supplied to the comptroller by the paying state agency);

(B) the paying state agency's voucher number (if supplied to the comptroller by the agency);

(C) the agency number of the paying state agency; and

(D) the telephone number of the paying state agency.

(2) Responsibility of the comptroller. The comptroller shall accompany each credit entry with credit entry information.

(3) Liability for refusal to provide credit entry information. The comptroller, the state treasurer, and a paying state agency are not liable for the failure, inability, or refusal of a participating governmental entity's financial institution to give credit entry information to the entity.

(~j) Liability.

(1) Liability for actions of certain parties. A participating governmental entity, the State of Texas, a state agency, a paying state agency~, the comptroller, the state treasurer, and a custodial state agency are not liable for the act or omission of any automated clearing house, financial institution, or other person or entity except as specified in the rules.

(2) Liability for actions of state agencies or paying state agencies. Neither the comptroller nor the state treasurer is liable for damages arising out of delays caused or errors co~mmitted by a state agency or a paying state agency.

(k) Miscellaneous provisions.

(1) Effective date.

(A) Except as otherwise provided in this paragraph, this section takes effect on the earliest date it may take effect under the Texas Civil Statutes, Article 6252-13a, Administrative Procedure and Texas Register Act.

(B) Subsections (b)(1)(A) and (c)(1)(A) of this section apply to a recurring payment to a participating governmental entity if the payment results from the comptroller's receipt of a payment voucher after the effective date of this section.

(2) Termination of contracts. The contracts entitled "Agreement for the Direct Deposit of Payments from the State of Texas: Pilot Program~" between the comptroller, the Texas State Treasury Department, and certain governmental entities that were executed before the effective date of this section are terminated on June 1, 1992, or on the effective date of this section, whichever is later.

(3) Applicability of section. This section applies to all governmental entities whose payments from state agencies are made through the electronic funds transfer system, including entities whose payments were first made through the electronic funds transfer system before the effective date of this section.

(4) Existing accounts.

(A) This subparagraph applies to each account of a governmental entity that received a payment to the entity through the electronic funds transfer system before the effective date of this section. Each account is an EFT account for the purpose of this section unless:

(i) the entity properly notified the custodial state agency of the account before the effective date of this section that the account would no longer be available to receive electronic funds transfers; and

(ii) the notification is still in effect on the effective date of this section.

(B) A governmental entity that has one or more EFT accounts under subparagraph (A) of this paragraph on the effective date of this section is a participating governmental entity for the purpose of this section.

(C) A custodial state agency for more than one EFT account of a participating governmental entity on the effective date of this section may terminate the designation of one or more of those accounts only if subsection (e)(4) of this section authorizes the termination. The requirement in subsection (e)(2) of this section to obtain the consent of a state agency before designating a second or subsequent EFT account does not apply to the accounts that are EFT accounts under subparagraph (A) of this paragraph on the effective date of this section.

(D) An account that is an EFT account under subparagraph (A) of this paragraph on the effective date of this section loses its status as an EFT account at 11:59 p.m. on May 31, 1992, or on the effective date of this section, whichever is later.

(i) The vendor that owns the account may prevent this loss of status if the entity redesignates the account as an EFT account by properly completing and submitting an authorization form in accordance with this section and the redesignation takes effect before the account loses its status.

(11) If an account has lost its status as an EFT account under this subparagraph, then the governmental entity that owns the account may reinstate the account as an EFT account if the entity redesignates the account by properly completing and submitting an authorization form in accordance with this section.

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

Issued in Austin, Texas, on April 7, 1992.

TRD-9204750 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: May 18, 1992

For further information, please call: (512) 463-4028

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Title 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 81. Administrative Provisions

General

• 37 TAC §81.13

The Texas Youth Commission (TYC) proposes an amendment to §81.13, concerning the selection process of an architect/engineer. The amendment is merely the correction of an error in reference to a previous paragraph.

John Franks, director of fiscal affairs, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Franks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more efficient selection process of an architect or engineer. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 N. Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.048, which provides the Texas Youth Commission with the authority to promulgate rules relating to award of contracts for construction.

§81.13. Selection Process of an Architect/Engineer.

(a) (No change.)

(b) Rules.

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

(4) Not less than five firms (short list) are selected based on the combined ratings from paragraph (3) [(2)] of this subsection.

(5)-(12) (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 April 3, 1992.

TRD-9204693 Ron Jackson
Executive Director
Texas Youth Commission

Proposed date of adoption: May 18, 1992

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

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Chapter 85. Admission and Placement

Placement Planning

• 37 TAC §85.33

The Texas Youth Commission (TYC) proposes an amendment to §85.33, concerning the parole of youth whose parents live in Mexico. When these youth are returned home on parole, the TYC staff responsible for contacting the Mexican Consulate is no longer centralized placement, but rather the Statewide Reception Center (SRC) transportation and the Institutional Placement Coodinator (IPC).

John Franks, director of fiscal affairs, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Franks also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be a more efficient parole release process for youth whose parents live in Mexico. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

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

§85.33. Parole of Youth Whose Parents Live in Mexico.

(a) Policy. The Texas Youth Commission (TYC) works with the Mexican Consulate and the United States Immigration and Naturalization Service for parole release of youth whose parents or closest adult relative live in Mexico. Such youth are released and returned to their home on parole status and without parole supervision. Procedures herein apply to all programs releasing TYC youth whose parents live in Mexico.

(b) Rules.

(1) When completion of program criteria has been met, the releasing program informs **Institutional Placement Coordinator (IPC)** [centralized placement] of the pending release. **Statewide Reception Center (SRC)** [Centralized placement] is responsible for notification of appropriate persons within specific time limits.

(A) (No change.)

(B) **At least two** [Two] days before the release, **SRC transportation** [centralized placement] confirms the release date, time and place with the consulate and the parole office.

(2) On the day of parole release, **SRC transportation** [centralized placement] transports the youth to a place designated by the Mexican Consulate office. The assigned parole officer is present at the designated location.

(3) The youth is left in the care of the consulate and a written receipt for the youth signed by the Mexican Consul General or designee is obtained.

(4) If the release of a youth is canceled for any reason, the releasing program immediately notifies **IPC** [centralized placement] who notifies the Mexican Consulate, Immigration and Naturalization Service, parole officer, and other affected parties.

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 April 8, 1992.

TRD-9204897 Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: May 18, 1992

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

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Service

Chapter 29. Purchased Health Services

The Texas Department of Human Services (DHS) proposes the repeal of §29.3, the repeal of §29.402, and an amendment to §29.1504 concerning time limits for submitted claims, filing deadline for chiropractic claims, and reimbursement for hearing aid services in its Purchased Health Services chapter. In addition, DHS proposes new §29.3, regarding time limits for submitted claims. The purpose of the repeals, amendment, and new section is to clarify the time limits within which claims must be received by the health insuring agent to be considered for payment. Also in this issue of the *Texas Register*, DHS is proposing related rule changes in Chapter 33, Early and Periodic Screening, Diagnosis, and Treatment.

Burton F. Raiford, interim commissioner, has determined that for the first five-year period the proposal will be in effect there will be no fiscal implications for state or local governments 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 better understanding of the claims filing deadlines which are applied to Medicaid claims. There is 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 the proposal may be directed to Genie DeKneef at (512) 338-6509 in DHS's Purchased Health Services. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-053, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Subchapter A. Medicaid Procedures for Providers

• 40 TAC §29.3

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal 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.

§29.3. Time Limits for Submitted Claims.

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 April 8, 1992.

TRD-9204833 Nancy Murphy
Agency liaison, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: June 1, 1992

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

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Subchapter A. Medicaid Procedures for Providers

• 40 TAC §29.3

The new section 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.

§29.3. Time Limits for Submitted Claims.

(a) Claims filing deadlines. Claims must be received by the health insuring agent in accordance with the following time limits to be considered for payment. Due to the volume of claims processed, claims that do not comply with the following deadlines will be denied payment.

(1) Inpatient hospital claims must be received by the health insuring agent within 95 days from the date of discharge. In the following situations the claim must be received by the health insuring agent within 95 days from the last date of service on the claim/

(A) Hospitals reimbursed according to prospective payment may submit an interim claim after the patient has been in the facility 30 consecutive days or longer.

(B) Children's hospitals reimbursed according to Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) methodology may submit interim claims prior to discharge and must submit an interim claim if the patient remains in the hospital past the hospital's fiscal year end.

(2) Outpatient hospital claims must be received by the health insuring agent within 95 days from each date of service on the claim.

(3) Claims from all other providers must be received by the health insuring agent within 95 days from each date of service on the claim.

(4) The following exceptions to the claims-filing deadline apply to all claims received by the health insuring agent regardless of provider or service type.

(A) Claims on behalf of an individual who has applied for Medicaid coverage but has not been assigned a Medicaid recipient number on the date of service must be received by the health insuring agent within 95 days from the date the Medicaid eligibility is added to the health insuring agent's eligibility file. This date is referred to as the "add date."

(B) If a client loses Medicaid eligibility and is later determined to be eli-

gible, the claim must be received by the health insuring agent within 95 days from the "add date."

(C) When a service is a benefit of Medicare and Medicaid and the client is covered by both programs, the claim must first be filed with Medicare. There is no filing deadline on claims submitted to Medicaid for payment of the Medicare deductible and/or coinsurance. Claims denied by Medicare must be received by the health insuring agent within 95 days from the date of Medicare disposition.

(D) When a client is eligible for Medicare Part B only, the inpatient hospital claim for services covered as Medicaid only should be submitted directly to Medicaid. The time limits in subsection (a)(1) of this section apply.

(E) When a service is billed to another insurance resource, the claim must be received by the health insuring agent within 95 days from the date of disposition by the other insurance resource.

(F) When a service is billed to a third party resource that has not responded, the claim must be received by the health insuring agent within 12 months of the date of service. However, 110 days must elapse after the third party billing before submitting the claim to the health insuring agent.

(G) When a Title XIX family planning service is denied by Title XX prior to being submitted to Medicaid, the claim must be received by the health insuring agent within 95 days of the date on the Title XX Denial Remittance Advice.

(H) Claims for services rendered by out-of-state providers must be received by the health insuring agent within 365 days from the date of service.

(b) All appeals of claims and requests for adjustments must be received by the health insuring agent within 180 days from the date of the last denial of and/or adjustment to the original claim.

(c) Claims received by the health insuring agent which are lacking the information necessary for processing are denied as incomplete claims. The resubmission of the claim containing the necessary information must be received by the health insuring agent within 180 days from the last denial 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 April 8, 1992.

TRD-9204834 Nancy Murphy
Agency liaison, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: June 1, 1992

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

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Subchapter E. Medicaid Chiropractic Program

• 40 TAC §29.402

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§29.402. Filing Deadline.

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 April 8, 1992.

TRD-9204835 Nancy Murphy
Agency liaison, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: June 1, 1992

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

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Subchapter P. Hearing Aid Services

• 40 TAC §29.1504

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.

§29.1504. Reimbursement for Hearing Aid Services.

(a) (No change.)

(b) Reimbursement for a hearing aid is based on the lowest of the invoice cost of the hearing aid, the acquisition cost of the hearing aid, or the department's maximum allowable fee.

(1) [Providers must submit to the department or its designee claims for authorized hearing aid services within 90 days of the date of service. (An additional five days is allowed for mail time.)] Providers must include on the claim form the model number, serial number, and warranty date of the hearing aid.

(2)-(4) (No change.)

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

Issued in Austin, Texas, on April 8, 1992.

TRD-9204836 Nancy Murphy
Agency liaison, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: June 1, 1992

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

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Chapter 33. Early and Periodic Screening, Diagnosis, and Treatment

The Texas Department of Human Services (DHS) proposes new §33.135 and amendments to §33.317, concerning time limits for processing payment claims, in its early and periodic screening, diagnosis, and treatment (EPSDT) chapter. The purpose of the new section and amendments is to clarify the time limits within which claims must be received by the health insuring agent to be considered for payment. Also in this issue of the *Texas Register*, DHS is proposing related rules in Chapter 29, Purchased Health Services.

Burton F. Raiford, interim commissioner, has determined that for the first five-year period the proposal will be in effect there will be no fiscal implications for state or local governments 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 section will be a better understanding of the claims filing deadlines which are applied to Medicaid claims. 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 the proposal may be directed to Sharon Boatman at (512) 338-6932 in DHS's Purchased Health Services. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-053, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Subchapter J. Medical Phase

• 40 TAC §33.135

The new section 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.

§33.135. Claims–Time Limits, Return, and Denial.

(a) The Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program has time limits for submitting claims. Payment is denied if the time frames are not met. Time limits are as follows.

(1) EPSDT medical screening claims must be received by the health insuring agent within 95 days from each date of service on the claim.

(2) Claims for diagnostic and treatment services must be received by the health insuring agent within 95 days from each date of service on the claims.

(3) If a service is billed to another insurance resource, the claim must be received within 95 days of the disposition by the other resource.

(4) If a service is billed to a third-party resource that has not responded, the claim must be received by the health insuring agent within 12 months of the service date; however, the claim must not be submitted to the health insuring agent before 110 days after the third party has been billed.

(b) All appeals of claims and requests for adjustments must be received by the health insuring agent within 180 days from the date of the last denial of and/or adjustment to the original claim.

(c) Claims received by the health insuring agent which are lacking the information necessary for processing are denied as incomplete claims. The resubmission of the claim containing the necessary information must be received by the health insuring agent within 180 days from the last denial 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 April 8, 1992.

TRD-9204837 Nancy Murphy
Agency Ilaison, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: June 1, 1992

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

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Subchapter R. Dental Services

• 40 TAC §33.317

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.

§33.317. Claims–Time Limits, Return, and Denial.

(a) The **Early and Periodic Screening, Diagnosis, and Treatment (EPSDT)** [EPSDT] Program has time limits for submitting claims. Payment is [will be] denied if the time frames are not met. Time limits are as follows.

(1) Dental services claims must be **received by the health insuring agent within 95 days from each date of service on the claim** [submitted to NHIC within 90 days (plus five days for mail time) of the service date].

(2) If a service is billed to another insurance resource, the claim must be **received by the health insuring agent within 95** [filed within 90] days of the disposition by the other resource.

(3) If a service is billed to a **third-party** [third party] resource that has not responded, the claim must be **received by the health insuring agent** [filed] within 12 months of the service date; however, the claim must not be submitted [to NHIC] before 110 days after the third party has been billed.

(b) If services of a treatment plan cannot be completed within the **95-day** [90-day] filing limit, providers complete a claim form for the completed services and request authorization for the uncompleted services. Both forms are submitted together to **the health insuring agent** [NHIC].

(c) (No change.)

(d) **Claims received by the health insuring agent which are lacking the information necessary for processing are denied as incomplete claims. The resubmission of the claim containing the necessary information must be received by the health insuring agent within 180 days from the last denial date.** [If NHIC returns a claim unprocessed with a request for additional information, NHIC must receive the information 180 days of the request date to consider the claim for payment.]

(e) **The health insuring agent** [NHIC] must receive all claims appeals and requests for adjustments within 180 days of the claim's disposition date. This is the date on the remittance and status report on which the claim appears.

(f) Claims are denied for the following reasons:

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

(3) claim is **not received by the health insuring agent within the 95-day** [submitted after the 90 day] time limit.

(4)-(6) (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 April 8, 1992.

TRD-9204838 Nancy Murphy
Agency Ilaison, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: June 1, 1992

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

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Chapter 48. Community Care for Aged and Disabled

In-Home and Family Support Program

• 40 TAC §48.2707

The Texas Department of Human Services proposes an amendment to §48.2707, concerning program restrictions, in its Community Care for the Aged and Disabled chapter. The purpose of the amendment is to eliminate United States citizenship as a requirement for In-Home and Family Support Program eligibility.

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

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the department's rules will be more consistent with those of the Texas Department of Mental Health and Mental Retardation and with legislative intent. There will be no effect on small businesses as a result of enforcing or administering the section. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Linda Lamb at (512) 450-3199 in the Community Care Section. Comments on the proposal may be submitted to Nancy Murphy, Policy and Document Support Services-090, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

The amendment is proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs, and Chapter 32, which authorizes the department to administer medical assistance programs.

§48.2707. Program Restrictions.

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

[(e) An applicant must be either a United States (U.S.) citizen or an alien le-

gally admitted for permanent residence.]

(e)[(f)] Applicants are limited to one $3,600 grant for capital expenditures.

(f)[(g)] Architectural modifications to leased or rented property are subsidized only if the landlord or owner submits written approval for the modifications to the department.

(g)[(h)] Applicants must not receive services from both the DHS IH/FSP and the TDMHMR IH/FSP.

(h)[(i)] Individuals with mental illness according to the Mental Health Code, mental retardation according to the Mentally Retarded Persons' Act, autism or other mental disease(s) as defined by the Diagnostic and Statistical Manual III, and children who meet the definition of early childhood intervention are not eligible for services in the DHS In-home and Family Support Program. Participants served by the Texas Mental Health and Mental Retardation/In-home and Family Support Program who have reached the age of four years and who have been determined not to have a diagnosis of mental illness or mental retardation as defined in the Texas Mental Health Code (Texas Civil Statutes, Article 5547-205) or the Mentally Retarded Persons Act of 1977 (Texas Civil Statutes, Article 5547-205) will be given priority status when transferring to the DHS program. If space is not available in Category I, individuals who were on the TDMHMR waiting list are placed on the DHS waiting list using the original date they were placed on the TDMHMR list.

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 April 9, 1992.

TRD-9204925 Nancy Murphy
Agency liaison, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: June 30, 1992

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

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Part III. Texas Commission on Alcohol and Drug Abuse

Chapter 153. DWI Education Program Standards and Procedures

General Provisions

• 40 TAC §§153.1, 153.2, 153.7

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §§153.1, 153.2, and 153.7, concerning definitions, agency name change, and exceptions. Section 153.1 defines terms commonly used in DWI Education Programs. Section 153.2 addresses the name change of one agency represented on the certification committee. Section 153.7 defines expiration of exceptions granted.

Otis E. Williams, director, administrative services, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Williams also has determined that for each year of the first five years the sections are in effect there will be no public benefit anticipated as a result of enforcing the sections. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Denise F. Mosel, Division Assistant, Texas Commission on Alcohol and Drug Abuse, 720 Brazos, Suite 403, Austin, Texas 78701-2506.

The amendments are proposed under the Code of Criminal Procedure, Article 42. 12, §13h, as amended in Chapter 473 (1989), which provide the Texas Commission on Alcohol and Drug Abuse with the authority to publish rules and regulations for state approved DWI education programs.

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

Certification period–That period of time beginning with the date the program certification/recertification was granted and ending August 31 of every even numbered year.

DWI Certification Committee–A standing committee comprised of at least one representative of each of the four approving agencies: the Texas Commission on Alcohol and Drug Abuse (TCADA); the Department of Public Safety (DPS); the **Texas Department of Transportation (TxDOT)** [State Department of Highways and Public Transportation (SDHPT)]; the Texas Department of Criminal Justice, Community Justice Assistance Division (CJAD); and the Statewide DWI Education Program Director for the Texas Commission on Alcohol and Drug Abuse, whose purposes are to approve or disapprove applications for program certification/recertification and waiver requests promulgated by the Code of Criminal Procedure, Article 42.12, §13h, and serve as a resource for recommendations on rule changes and appeals to the governing board of the Texas Commission on Alcohol and Drug Abuse.

§153.2. Objective. The intent of the commission, in cooperation with DPS, **TxDOT** [SDHPT], and **CJAD** [TAPC] is to provide the written rules, regulations, and standards reflecting minimum standards for the uniform operation of programs designed to rehabilitate persons who are placed on probation for misdemeanor driving while intoxicated or others who are required to attend such programs. These rules will establish the minimum acceptable level of quality for DWI Education Programs in Texas.

§153.7. Exceptions from the Provisions of the Standards. In programs where specific standards cannot be complied with because of alleged difficulty or hardship, exceptions to specific provisions of the standards may be made where clearly justified if the intent of the certification standard is met and the effective and efficient operation of the program is not seriously affected. To request an exception, the program shall submit a written request to the commission stating name, address, and phone number of the program; section or number of standard or item which will be affected; and action that staff or program will provide to replace or offset the particular exception request. Approval or disapproval of the request for exception will be determined by the DWI Certification Committee and communicated in writing to the party requesting the exception. **All exceptions granted will expire at the end of the programs' certification 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 April 8, 1992.

TRD-9204894 Bob Dickson
Executive Director
Texas Commission on Alcohol and Drug Abuse

Earliest possible date of adoption: May 18, 1992

For further information, please call: (512) 867-8720

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General Provisions

• 40 TAC §153.17, §153.18

The Texas Commission on Alcohol and Drug Abuse proposes new §153.17 and §153.18, concerning complaint procedures and discrimination. Section 153.17 defines program complaint procedures. Section 153.18 establishes a rule prohibiting participant discrimination.

Otis E. Williams, director, administration services, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Williams also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the establishment of participant program complaint procedures, as well as establishing a rule prohibiting participant discrimination. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Denise F. Mosel, Division Assistant, Texas Commission on Alcohol and Drug Abuse, 720 Brazos, Suite 403, Austin, Texas 78701-2506.

The new sections are proposed under the Code of Criminal Procedure, Article 42.12, §13h, as amended in Chapter 473 (1989), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to publish rules and regulations for state approved DWI education programs.

§153.17. Complaint Procedures. Programs shall prominently display at each site where coursework is conducted, a sign containing the name, mailing address and telephone number of the commission and a statement notifying all persons that any complaints against the program may be directed to the commission. Upon verbal or written request, programs and any person associated therewith, including, without limitation, staff, volunteers, administrators, officers and directors, shall also be required to expeditiously provide complete and concise information about complaint procedures, including procedures for complaining directly to the commission.

§153.18. Discrimination Prohibited. Any action taken, or function performed by a certified program pursuant to this chapter or otherwise shall be done without regard to the sex, race, religion, age, national origin, or handicap of the person affected.

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 April 8, 1992.

TRD-9204895 Bob Dickson
Executive Director
Texas Commission on Alcohol and Drug Abuse

Earliest possible date of adoption: May 18, 1992

For further information, please call: (512) 867-8720

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DWI Education Program Standards

40 TAC §§153.31, 153.35, 153.36, 153.38

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §§153.31, 153.35, 153.36, and 153.38, concerning enhancement of program purpose, confidentiality, program operations, and staff requirements. Section 153.31 expands the purpose of the program to include education on other drugs as well as alcohol. Section 153.35 provides the correct federal and state citations relating to client confidentiality. Section 153.36 defines operational requirements of programs designed to rehabilitate persons placed on probation for driving while intoxicated. The proposed changes will clarify required audiovisuals used in the course and further define program staff requirements.

Otis E. Williams, director, administrative services, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Williams also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be enhancement of and high quality programming in state approved DWI education programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Denise F. Mosel, Division Assistant, Texas Commission on Alcohol and Drug Abuse, 720 Brazos, Suite 403, Austin, Texas 78701-2506.

The amendments are proposed under the Code of Criminal Procedure, Article 42. 12, §13h, as amended in Chapter 473 (1989), which provide the Texas Commission on Alcohol and Drug Abuse with the authority to publish rules and regulations for certified DWI education programs.

§153.31. Program Purpose. The purpose of the DWI Education Program shall be to present information on the effects of alcohol **and other drugs** on **driving** [driver] skills; to help participants identify their own individual drinking **or drugged** [and] driving **patterns** [pattern]; and to assist participants in developing a plan to reduce the probability that they will be involved in future DWI behavior.

§153.35. Confidentiality. **Certified programs shall abide by all applicable federal and state laws relating to confidentiality of patient/client records including, without limitation, 42 United State Code, §290dd-3 and 42 United States Code, §290ee-3, 42 Code of Federal Regulation Part 2, and the Texas Health and Safety Code, Chapter 611 (Vernon 1992).** [Client confidentiality shall be assured according to the requirements of Volume 52, Number 110 *Federal Register*, June 9, 1987].

§153.36. Program Operation Requirements. All certified programs designed to rehabilitate persons who have been placed on probation for driving while intoxicated under the provisions of the Act shall:

(1)-(6) (No change.)

(7) utilize all required films and/or videos, transparencies, booklets, **calculator** [calculators], and any other required resources in instruction. Transparencies and 16mm films shall be projected on a surface which produces a clear image. If the program uses VCR equipment, the monitor shall be at least 25 inches and the videotapes must be of high quality. The monitor must be positioned in the classroom so that all participants have an unobstructed view. Any supplemental films used in the program must have prior approval from the DWI Certification Committee according to the following criteria:

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

(8)-(15) (No change.)

§153.38. Program Staff. Program staff should be selected using the following criteria.

(1) Instructors.

(A) Instructors should have professional experience and training in such fields as education, criminal justice, counseling, psychology, or social work. The instructor should be knowledgeable in the areas of traffic safety, **alcohol/drug** [alcohol] abuse and addiction, and must have successfully completed the Administrator/Instructor DWI Education Training Program approved by the DWI Certification Committee.

(B)-(G) (No change.)

(H) Instructors shall be required to teach a minimum of four **complete** courses (48 hours) and shall have successfully completed the Texas DWI Education In-Service Training Program approved by the DWI Certification Committee during the instructor's certification period in order to retain certification.

(I)-(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 April 8, 1992.

TRD-9204893 Bob Dickson
Executive Director
Texas Commission on Alcohol and Drug Abuse

Earliest possible date of adoption: May 18, 1992

For further information, please call: (512) 867-8720

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Texas Department of Insurance Exempt Filing

Notification Pursaunt 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 and Texas Register Act, Article 6252-13a, Texas Civil Statutes, 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 State Board of Insurance, at a board meeting scheduled for April 29, 1992, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, will consider an endorsement for the Business Services Bond titled "Nursing Home Rider Form ORSC 22538."

The proposed Nursing Home Rider Form ORSC 22538 for the business services bond is to expand on the terms "subscriber" and "premises" to clarify definitions in the business services bond when written on nursing homes. The expanding of these terms insures the proper interpretation of the policy conditions in the event of a claim.

There is no rate consequence for this endorsement.

Copies of the full text of the proposed endorsement for the business services bond titled "Nursing Home Rider Form ORSC 22538" are available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

Issued in Austin, Texas, on April 7, 1992.

TRD-9204801 Linda von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Filed: April 7, 1992

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

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The State Board of Insurance, at a board meeting scheduled for 8:30 a.m. on April 29, 1992 in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, will consider a filing by Hanover Insurance Company of a new endorsement, Include Volunteer Workers Other Than Fund Solicitors As Employees 181-1135, to the Business Services Bond.

The proposed endorsement for the business services bond is designed to broaden the definition of "employee" to include non-compensated natural persons, such as volunteers, while performing services for an obligee.

Copies of the full text of the proposed endorsement for the business services bond title "Include Volunteer Workers Other Than Fund Solicitors as Employees 181-1135" are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the proposed endorsement, please contact Lynette Brown at (512) 322-4147 (refer to Reference Number O-0492-16l).

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

Issued in Austin, Texas, on April 10, 1991.

TRD-9205035 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Filed: April 10, 1992

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

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1992 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1992 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on February 28, November 6, December 1, and December 29. A bullet beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
1 *Friday, January 3	Friday, December 27	Tuesday, December 31
2 *Tuesday, January 7	Tuesday, December 31	Thursday, January 2
3 Friday, January 10	Monday, January 6	Tuesday, January 7
4 Tuesday, January 14	Wednesday, January 8	Thursday, January 9
5 Friday, January 17	Monday, January 13	Tuesday, January 14
6 Tuesday, January 21	Wednesday, January 15	Thursday, January 16
Friday, January 24	1991 ANNUAL INDEX	
7 Tuesday, January 28	Wednesday, January 22	Thursday, January 23
8 Friday, January 31	Monday, January 27	Tuesday, January 28
9 Tuesday, February 4	Wednesday, January 29	Thursday, January 30
10 Friday, February 7	Monday, February 3	Tuesday, February 4
11 Tuesday, February 11	Wednesday, February 5	Thursday, February 6
12 Friday, February 14	Monday, February 10	Tuesday, February 11
13 Tuesday, February 18	Wednesday, February 12	Thursday, February 13
14 *Friday, February 21	Friday, February 14	Tuesday, February 18
15 Tuesday, February 25	Wednesday, February 19	Thursday, February 20
Friday, February 28	NO ISSUE PUBLISHED	
16 Tuesday, March 3	Wednesday, February 26	Thursday, February 27
17 Friday, March 6	Monday, March 2	Tuesday, March 3
18 Tuesday, March 10	Wednesday, March 4	Thursday, March 5
19 Friday, March 13	Monday, March 9	Tuesday, March 10
20 Tuesday, March 17	Wednesday, March 11	Thursday, March 12
21 Friday, March 20	Monday, March 16	Tuesday, March 17
22 Tuesday, March 24	Wednesday, March 18	Thursday, March 19
23 Friday, March 27	Monday, March 23	Tuesday, March 24
24 Tuesday, March 31	Wednesday, March 25	Thursday, March 26
25 Friday, April 3	Monday, March 30	Tuesday, March 31
26 Tuesday, April 7	Wednesday, April 1	Thursday, April 2
27 Friday, April 10	Monday, April 6	Tuesday, April 7
Tuesday, April 14	FIRST QUARTERLY INDEX	
28 Friday, April 17	Monday, April 13	Tuesday, April 14
29 Tuesday, April 21	Wednesday, April 15	Thursday, April 16

30 Friday, April 24	Monday, April 20	Tuesday, April 21
31 Tuesday, April 28	Wednesday, April 22	Thursday, April 23
32 Friday, May 1	Monday, April 27	Tuesday, April 28
33 Tuesday, May 5	Wednesday, April 29	Thursday, April 30
34 Friday, May 8	Monday, May 4	Tuesday, May 5
35 Tuesday, May 12	Wednesday, May 6	Thursday, May 7
36 Friday, May 15	Monday, May 11	Tuesday, May 12
37 Tuesday, May 19	Wednesday, May 13	Thursday, May 14
38 Friday, May 22	Monday, May 18	Tuesday, May 19
39 Tuesday, May 26	Wednesday, May 20	Thursday, May 21
40 *Friday, May 29	Friday, May 22	Tuesday, May 26
41 Tuesday, June 2	Wednesday, May 27	Thursday, May 28
42 Friday, June 5	Monday, June 1	Tuesday, June 2
43 Tuesday, June 9	Wednesday, June 3	Thursday, June 4
44 Friday, June 12	Monday, June 8	Tuesday, June 9
45 Tuesday, June 16	Wednesday, June 10	Thursday, June 11
46 Friday, June 19	Monday, June 15	Tuesday, June 16
47 Tuesday, June 23	Wednesday, June 17	Thursday, June 18
48 Friday, June 26	Monday, June 22	Tuesday, June 23
49 Tuesday, June 30	Wednesday, June 24	Thursday, June 25
50 Friday, July 3	Monday, June 29	Tuesday, June 30
51 Tuesday, July 7	Wednesday, July 1	Thursday, July 2
52 Friday, July 10	Monday, July 6	Tuesday, July 7
Tuesday, July 14	SECOND QUARTERLY INDEX	
53 Friday, July 17	Monday, July 13	Tuesday, July 14
54 Tuesday, July 21	Wednesday, July 15	Thursday, July 16
55 Friday, July 24	Monday, July 20	Tuesday, July 21
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57 Friday, July 31	Monday, July 27	Tuesday, July 28
58 Tuesday, August 4	Wednesday, July 29	Thursday, July 30
59 Friday, August 7	Monday, August 3	Tuesday, August 4
60 Tuesday, August 11	Wednesday, August 5	Thursday, August 6
61 Friday, August 14	Monday, August 10	Tuesday, August 11
62 Tuesday, August 18	Wednesday, August 12	Thursday, August 13
63 Friday, August 21	Monday, August 17	Tuesday, August 18
64 Tuesday, August 25	Wednesday, August 19	Thursday, August 20
65 Friday, August 28	Monday, August 24	Tuesday, August 25
66 Tuesday, September 1	Wednesday, August 26	Thursday, August 27
67 Friday, September 4	Monday, August 31	Tuesday, September 1
68 Tuesday, September 8	Wednesday, September 2	Thursday, September 3
69 *Friday, September 11	Friday, September 4	Tuesday, September 8

70 Tuesday, September 15	Wednesday, September 9	Thursday, September 10
71 Friday, September 18	Monday, September 14	Tuesday, September 15
72 Tuesday, September 22	Wednesday, September 16	Thursday, September 17
73 Friday, September 25	Monday, September 21	Tuesday, September 22
74 Tuesday, September 29	Wednesday, September 23	Thursday, September 24
75 Friday, October 2	Monday, September 28	Tuesday, September 29
76 Tuesday, October 6	Wednesday, September 30	Thursday, October 1
77 Friday, October 9	Monday, October 5	Tuesday, October 6
Tuesday, October 13	THIRD QUARTERLY INDEX	
78 Friday, October 16	Monday, October 12	Tuesday, October 13
79 Tuesday, October 20	Wednesday, October 14	Thursday, October 15
80 Friday, October 23	Monday, October 19	Tuesday, October 20
81 Tuesday, October 27	Wednesday, October 21	Thursday, October 22
82 Friday, October 30	Monday, October 26	Tuesday, October 27
83 Tuesday, November 3	Wednesday, October 28	Thursday, October 29
Friday, November 6	NO ISSUE PUBLISHED	
84 Tuesday, November 10	Wednesday, November 4	Thursday, November 5
85 Friday, November 13	Monday, November 9	Tuesday, November 10
*86 Tuesday, November 17	Tuesday, November 10	Thursday, November 12
87 Friday, November 20	Monday, November 16	Tuesday, November 17
88 Tuesday, November 24	Wednesday, November 18	Thursday, November 19
89 Friday, November 27	Monday, November 23	Tuesday, November 24
Tuesday, December 1	NO ISSUE PUBLISHED	
90 Friday, December 4	Monday, November 30	Tuesday, December 1
91 Tuesday, December 8	Wednesday, December. 2	Thursday, December 3
92 Friday, December 11	Monday, December 7	Tuesday, December 8
93 Tuesday, December 15	Wednesday, December 9	Thursday, December 10
94 Friday, December 18	Monday, December 14	Tuesday, December 15
95 Tuesday, December 22	Wednesday, December 16	Thursday, December 17
96 Friday, December 25	Monday, December 21	Tuesday, December 22
Tuesday, December 29	NO ISSUE PUBLISHED	
1 (1993) Friday, January 1	Monday, December 28	Tuesday, December 29

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