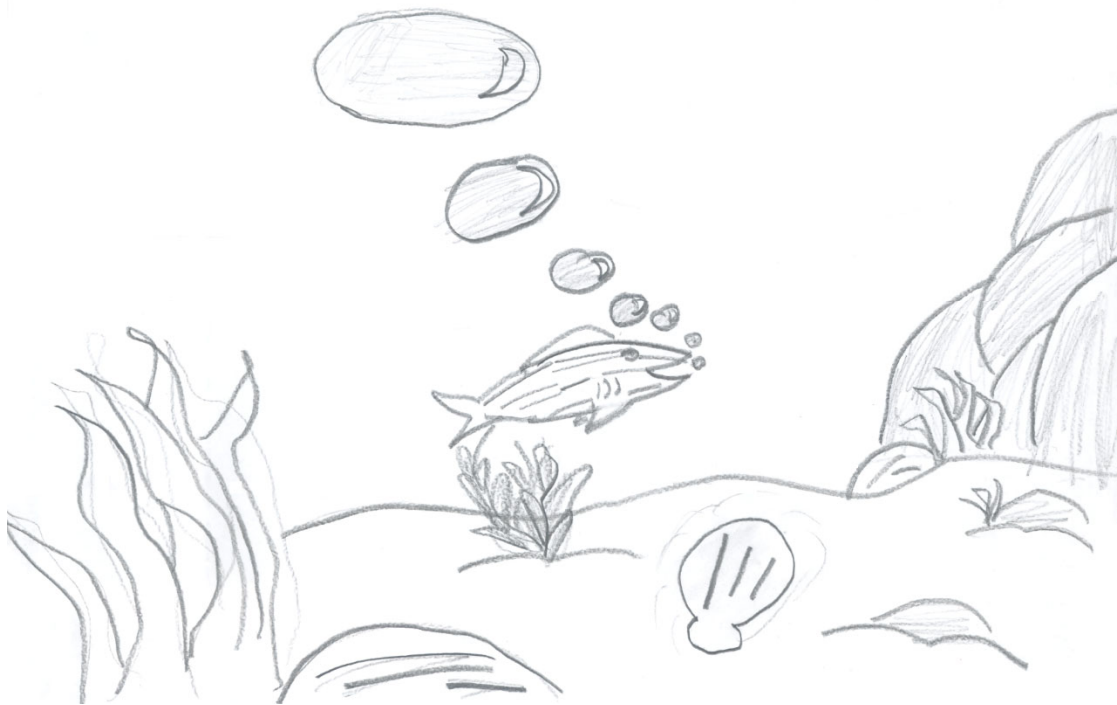

TEXAS REGISTER

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

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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(512) 463-5561
FAX (512) 463-5569

<http://www.sos.state.tx.us>
register@sos.texas.gov

Director - Robert Summers

Staff

Lauri Caperton
Cristina Jaime
Belinda Kirk
Jill S. Ledbetter
Cecilia Mena
Joy L. Morgan
Breanna Mutschler
Andrea Reyes
Barbara Strickland

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THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for May 1, 2019

Appointed to the State Pension Review Board, for a term to expire January 31, 2025, Keith W. Brainard of Georgetown, Texas (Mr. Brainard is being reappointed).

Appointed to the Gulf Coast Authority Board of Directors, for a term to expire August 31, 2019, Gloria A. Matt of Tomball, Texas (replacing Nancy C. Blackwell of Ballinger, who resigned).

Appointments for May 3, 2019

Appointed to the Texas Commission of Licensing and Regulation, for a term to expire February 1, 2025, Nora Castañeda of Harlingen, Texas (replacing Deborah Ann Yurco of Austin, whose term expired).

Appointed to the Child Fatality Review Team Committee, for a term to expire at the pleasure of the Governor, Elizabeth Farley of Austin, Texas (replacing Heather Fleming of Austin).

Appointments for May 7, 2019

Appointed to the Texas Lottery Commission, for a term to expire February 1, 2025, Mark A. Franz of Austin, Texas (replacing Peggy A. Heeg of Houston, whose term expired).

Appointed to the Texas State Board of Acupuncture Examiners, for a term to expire January 31, 2023, Raymond J. Graham of El Paso, Texas (Mr. Graham is being reappointed).

Appointments for May 13, 2019

Appointed to the Dental Review Committee, for a term to expire February 1, 2021, Jessica R. Bell, D.D.S. of Highland Village, Texas (replacing Shahrooz Seifkar, D.D.S. of Dallas, who resigned).

Appointed to the Dental Review Committee, for a term to expire February 1, 2025, Joanna L. Allaire of The Woodlands, Texas (Ms. Allaire is being reappointed).

Appointed to the Dental Review Committee, for a term to expire February 1, 2025, Danielle R. Franklin, D.D.S. of Dallas, Texas (replacing Andy C. Chang, D.D.S. of Dallas, whose term expired).

Appointed to the Dental Review Committee, for a term to expire February 1, 2025, Raymond L. Wiggins, D.D.S., M.D. of Katy, Texas (Pursuant to Occupations Code 263.0071).

Appointed to the Continuing Advisory Committee for Special Education, for a term to expire February 1, 2021, Amy E. Litzinger of Austin, Texas (replacing Karen W. Beasley of Bronson, who is deceased).

Appointed to the Continuing Advisory Committee for Special Education, for a term to expire February 1, 2023, Laura M. Villarreal of Universal City, Texas (replacing Erin S. Wilder of Round Rock, whose term expired).

Greg Abbott, Governor

TRD-201901576





THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following:
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

Opinions

Opinion No. KP-0249

The Honorable Joe Moody

Speaker Pro Tempore

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

The Honorable Nicole Collier

Chair, Committee on Criminal Jurisprudence

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a local law enforcement agency's "no-chase" policy limits a peace officer's duty to prevent and suppress crime and exposes the peace officer to civil liability for later harm caused by the offender the peace officer failed to chase (RQ-0255-KP)

S U M M A R Y

While Texas Code of Criminal Procedure article 2.13 imposes a duty on peace officers to prevent and suppress crime, policies that encourage officers to seek alternative methods of pursuit in an attempt to ensure the safety of the public and law enforcement officers generally do not conflict with this duty.

An officer observing a governmental employer's no-chase policy is unlikely to incur personal liability for harm caused by a fleeing offender. In instances when an officer exercises discretion under a no-chase policy, the officer will likely qualify for official immunity. In circumstances where official immunity does not apply, an officer will have other defenses, as courts have generally held that an officer has no legal duty to arrest a suspect to prevent third-party injury. Further, subsection 101.106(f) of the Texas Tort Claims Act entitles a governmental employee to dismissal if a suit is based on conduct within the scope of their employment and could have been brought under the Act against the governmental unit.

Opinion No. KP-0250

The Honorable Joe Moody

Speaker Pro Tempore

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

The Honorable Nicole Collier

Chair, Committee on Criminal Jurisprudence

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether certain prompt-pay provisions in chapters 843 and 1301 of the Insurance Code apply to claims filed by out-of-network emergency care providers (RQ-0256-KP)

S U M M A R Y

A court would likely conclude that the deadline provisions of sections 843.338 and 1301.103 of the Insurance Code relate to prompt payment and, therefore, apply to claims filed by out-of-network emergency care providers pursuant to section 843.351 or 1301.069 of that Code. However, a court would likely conclude that the penalty provisions in sections 843.342 and 1301.137 do not apply to claims filed by out-of-network emergency care providers pursuant to sections 843.351 or 1301.069.

The Legislature provided a penalty regime through sections 843.342 and 1301.137 of the Code for insurers who do not make timely payments on eligible clean claims submitted to them. Thus, the Department cannot impose an additional penalty. But depending on the circumstances, a court could conclude that a particular enforcement action to compel the claim payment required by statute to a non-network emergency care provider is not in the nature of a penalty and is within the Department's authority to implement.

Opinion No. KP-0251

The Honorable Marco A. Montemayor

Webb County Attorney

1110 Washington Street, Suite 301

Laredo, Texas 78040

Re: Whether individuals convicted of a felony are eligible to run for office in Texas after completing their sentence and having their voting rights restored (RQ-0257-KP)

S U M M A R Y

Subsection 141.001(a)(4) of the Election Code provides that to be eligible as a candidate for public office a person must "have not been finally convicted of a felony from which the person has not been pardoned or otherwise released from the resulting disabilities."

The restoration of a convicted felon's qualification to vote under Election Code subsection 11.002(a)(4)(A) after fully discharging a sentence does not restore his or her eligibility to hold public office under Election Code subsection 141.001(a)(4).

Opinion No. KP-0252

The Honorable Donna Campbell, M.D.

Chair, Committee on Veterans Affairs and Border Security

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Authority of municipalities to regulate firearm and ammunition sales through zoning and other regulations (RQ-0269-KP)

S U M M A R Y

Subsection 229.001(a)(1) of the Local Government Code prohibits a municipality from regulating the transfer, private ownership, keeping, transportation, licensing, or registration of firearms, air guns, knives, ammunition, or firearm or air gun supplies. Subsection 229.001(b)(3) excepts from this prohibition a municipality's regulation on the use of property or businesses and the location of businesses as long as the regulation does not circumvent the intent of subsection (a)(1). A regulation that expressly prohibits gun stores from operating in a specific area relates to the transfer of firearms and is prohibited by subsection 229.001(a)(1). Similarly, an ordinance singling out firearm and ammunition sales relates to the transfer of firearms and is therefore prohibited.

A court would likely conclude subsection 229.001(a)(1)'s prohibition encompasses any one or more of the listed items. To the extent a municipality regulates firearm transfers but not also licensing, registration, or transportation of firearms, it acts contrary to subsection 229.001(a)(1).

A violation of section 229.001 may be enforced by the Attorney General. Any plaintiff with standing under the Texas Constitution or the U.S. Constitution could bring an action seeking declaratory or injunctive relief against enforcement of an unconstitutional ordinance. Individual city council members who voted on a zoning provision that is ultimately found to violate section 229.001 or the Texas or the U.S. Constitution would likely be immune from personal liability.

Opinion No. KP-0253

The Honorable Bob Hall

Chair, Committee on Agriculture

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

The Honorable Lois Kolkhorst

Chair, Committee on Public Health

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether the Texas Transportation Commission is authorized to enter into a facility agreement under the North Tarrant Express Comprehensive Development Agreement (RQ-0281-KP)

S U M M A R Y

By operation of section 223.2012(b) of the Transportation Code, the Legislature granted the Department of Transportation authority to enter into facility agreements under the North Tarrant Express Comprehensive Development Agreement when the Department considers it advantageous to do so.

A court would likely conclude that the Department may use a change order to expand the scope of work within a facility agreement as long as that work is encompassed in the scope of work under the comprehensive development agreement.

Pursuant to subsection 223.2012(c) of the Transportation Code, the Legislature does not require the Department to use a competitive procurement process to enter into a facility agreement with the developer or an entity controlled by, or to be controlled by, or to be under common control with the developer under the comprehensive development agreement for the North Tarrant Express project.

Opinion No. KP-0254

Mr. Mike Morath

Commissioner of Education

Texas Education Agency

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: Availability of civil remedies for violations of the Open Meetings Act (RQ-0285-KP)

S U M M A R Y

If a quorum of a governmental body deliberates about public business within the jurisdiction of the body outside of a meeting authorized by the Texas Open Meetings Act, through multiple communications each involving fewer than a quorum, the governmental body violates the Act.

Action taken by a governmental body in violation of the Act is voidable. In addition, any interested person may bring an action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation of the Act by members of a governmental body.

If the Texas Education Agency conducts an investigation as authorized by section 39.057 of the Education Code and concludes that members of a school district board of trustees violated their duty to comply with the Act, it could take appropriate civil action authorized by subsection 39.057(d) of the Education Code.

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-201901583

Ryan L. Bangert

Deputy Attorney General for Legal Counsel

Office of the Attorney General

Filed: May 28, 2019



PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~[Square brackets and strikethrough]~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 38. TRICHOMONIASIS

4 TAC §§38.1 - 38.3, 38.6

EXPLANATION OF PROPOSED RULE

The Texas Animal Health Commission (commission) proposes amendments to Chapter 38, §§38.1 - 38.3, and 38.6, concerning "Trichomoniasis".

The Bovine Trichomoniasis (Trich) Working Group (TWG) had an annual review on April 23, 2019, to evaluate the effectiveness of current program. The TWG discussed the program overview to date, the management of infected herds, and the need for possible revisions to the program.

The group recommends that three changes be made in the control program. The first is to ensure that samples pooled by approved laboratories are not authorized for official test purposes from Trich positive herds, herds identified as being adjacent to Trich positive herds and change of ownership. These need to be individually submitted samples so as to improve the quality of the test sample as well as to provide quicker identification for follow up on the positive animals.

The second recommendation is to limit the use of a virgin certificate as an exemption to the test requirements. The proposed rule provides that sexually intact male cattle under 18 months of age, or verified by birth date listed on the breed registry papers, must be certified by the breeder on a virgin certificate in order for the animal to be sold without a test. Therefore, it is proposed that the use of virgin certificates be restricted to breeder animals that belong to a breed registry which maintains an official list of animals within a specific breed for which there is an association of unique identification for the cattle.

The third recommendation is that a seller must provide written disclosure for female cattle that have been exposed or potentially exposed to a Trich positive bull within the previous 6 months at the time of sale. There is not any easy diagnostic method to disclose female cattle that are positive with Trich. This provision will allow a buyer of female cattle to take this information into account for managing the newly purchased females for breeding purposes. The commission seeks specific comments on the proposed language as to what will be most effective as a herd management tool.

FISCAL NOTE

Ms. Larissa Schmidt, Chief of Staff, Texas Animal Health Commission, has determined for the first five-year period the rules

are in effect, there will be no significant additional fiscal implications for state or local government as a result of enforcing or administering the rules.

REGULATORY ANALYSIS

Public Benefit:

Ms. Schmidt has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be more efficient rules to recognize a test that is easier to collect and submit in a timely manner.

Local Employment Impact Statement:

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed rules will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

Takings Assessment:

The agency has determined that the proposed governmental action will not affect private real property. The proposed amendments are an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

Economic Impact Statement: The Commission has determined that the animal agricultural industries meet the statutory definition of a small or microbusiness (Government Code, Chapter 2006), and that the proposed rule would affect rural communities (as defined by Government Code, Chapter 2006); however, the Commission also has determined that the rule, as proposed, will not result in adverse economic impacts to small and microbusinesses or rural communities because the rule applies to all cattle tested for the disease and determined to be positive and the requirements are intended to prevent exposure of positive cattle to other cattle in the state, thereby protecting other microbusiness. The rule is ensuring that bulls sold as virgins can be properly validated and that a cattle owner recognizes that pooled samples cannot be used for an official test because the test quality is more easily degraded and a positive test means that the five animals have to be retested to determine and isolate which of the five bulls was positive. The disclosure requirement just provides parties animal health information that may assist in the management of the purchased animals.

The estimated number of cattle ranchers that could be impacted by proposed the rule is 2,533. The potential economic impact is counter balanced by having great integrity in the test require-

ments of the control program. The test for an individual sample is estimated to cost between \$30.00 and- \$120.00. This cost is negated by the increased potential market value of the bull found test-negative for Trichomoniasis.

The Trich Control program has evolved to the point of effectively being able to identify and address Trich positive animals. The program changes will add greater integrity to the current protocols regarding qualification for virgin certificates, ensuring that pooling of test samples does not qualify as an official test at approved laboratories, and adding a new requirement for full disclosure when selling a female animal for breeding purposes that has been exposed or potentially exposed to Trichomoniasis in the previous 6 months. There is not an alternative method of achieving the purpose of the proposed rule.

Regulatory Flexibility Analysis includes:

These proposed amendments achieve the purpose of improved quality control of a disease program to reduce risk and exposure while minimizing adverse impacts on affected small businesses and/or rural communities, if consistent with the health, safety, and environmental and economic welfare of the state. The changes proposed are intended to ensure that cattle disclosed as being Trich Positive or exposed to Trich positive animals are not sold to an unwitting purchaser and thereby creating an economic hardship on them.

Government Growth Impact Statement: In compliance with the requirements of Government Code, §2001.0221, the Commission has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will: (1) neither create nor eliminate a government program; (2) not result in an increase or decrease in the number of full-time equivalent employee needs; (3) not result in a need for additional General Revenue funding; (4) not affect the amount of any fee; (5) it modifies a pre-existing disease control program requirement to further reduce exposure of this disease to other cattle; (6) it does not expand an existing regulation; (7) it may increase the number of individuals subject to regulation; and (8) it will not adversely affect the state's economy.

Rule Reduction Statement: The commission has determined that the rule as proposed follows the legislative requirement that the commission shall protect all cattle within the state from diseases that pose a negative disease risk to the Texas cattle industry. It does not impose a direct cost on regulated persons within the state but rather modifies existing disease control requirements for positive cattle in order to protect the Texas Cattle industry, and therefore it is not necessary to repeal or amend any other existing rule.

REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by email at "comments@tahc.texas.gov".

STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.005, entitled "Commission Written Instruments", the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire commission.

Pursuant to §161.006, entitled "Documents to Accompany Shipment", if required that a certificate or permit accompany animals or commodities moved in this state, the document must be in the possession of the person in charge of the animals or commodities, if the movement is made by any other means.

Pursuant to §161.0417, entitled "Authorized Personnel for Disease Control", a person, including a veterinarian, must be authorized by the commission in order to engage in an activity that is part of a state or federal disease control or eradication program for animals. Section 161.0417 requires the commission to adopt necessary rules for the authorization of such persons and, after reasonable notice, to suspend or revoke a person's authorization if the commission determines that the person has substantially failed to comply with Chapter 161 or rules adopted under that chapter. Section 161.0417 does not affect the requirement for a license or an exemption under Chapter 801, Occupations Code, to practice veterinary medicine.

Pursuant to §161.046, entitled "Rules", the commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.048, entitled "Inspection of Shipment of Animals or Animal Products", the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease.

Pursuant to §161.061, entitled "Establishment", if the commission determines that a disease listed in §161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases.

Pursuant to §161.101, entitled "Duty to Report", a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the diseases, if required by the commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis of the disease.

Pursuant to §161.113, entitled "Testing or Treatment of Livestock", if the commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The state may not be required to pay the cost of fees charged for the testing or vaccination. And if the commission requires the dipping of livestock under this subchapter, the livestock shall be submerged in a vat, sprayed, or treated in another sanitary manner prescribed by rule of the commission.

Pursuant to §161.114, entitled "Inspection of Livestock", an authorized inspector may examine livestock consigned to and delivered on the premises of a livestock market before the livestock are offered for sale. If the inspector considers it necessary, the inspector may have an animal tested or vaccinated. Any testing or vaccination must occur before the animal is removed from the livestock market.

No other statutes, articles or codes are affected by the proposal.

§38.1. Definitions.

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

(1) Accredited Veterinarian--A licensed veterinarian who is approved to perform specified functions required by cooperative state-federal disease control and eradication programs pursuant to Title 9 of the Code of Federal Regulations, Parts 160 and 161.

(2) Affected Herd--Any herd in which any cattle have been classified as *Trichomonas foetus* positive on an official test and which has not completed the requirements for elimination of the disease from the herd.

(3) Cattle--All dairy and beef animals (genus *Bos*), excluding bison (genus *Bison*).

(4) Certified Veterinarians--Veterinarians certified with, and approved by the commission to collect *Trichomoniasis* samples for official *Trichomoniasis* testing and to perform any other official function under the *Trichomoniasis* program.

(5) Commission--The Texas Animal Health Commission.

(6) Executive Director--The Executive Director of the Texas Animal Health Commission or his designee.

(7) Exempt Cattle (from testing requirements)--Cattle that have been physically rendered incapable of intromission at a facility recognized by the commission.

(8) Exposed Cattle--Cattle that are part of an affected herd or cattle that have been in contact with *Trichomoniasis* infected cattle.

(9) Herd--

(A) All cattle under common ownership or supervision or cattle owned by a spouse that are on one premise; or

(B) All cattle under common ownership or supervision or cattle owned by a spouse on two or more premises that are geographically separated, but on which the cattle have been interchanged or where there has been contact among the cattle on the different premises. Contact between cattle on the different premises will be assumed unless the owner establishes otherwise and the results of the epidemiological investigation are consistent with the lack of contact between premises; or

(C) All cattle on common premises, such as community pastures or grazing association units, but owned by different persons. Other cattle owned by the persons involved which are located on other premises are considered to be part of this herd unless the epidemiological investigation establishes that cattle from the affected herd have not had the opportunity for direct or indirect contact with cattle from that specific premises. Approved feedlots and approved pastures are not considered to be herds.

(10) Herd Test--An official test of all non-virgin bulls in a herd.

(11) Hold Order--A document restricting movement of a herd, unit, or individual animal pending the determination of disease status.

(12) Infected Cattle--Any cattle determined by an official test or diagnostic procedure to be infected with *Trichomoniasis* or diagnosed by a veterinarian as infected.

(13) Infected Herd--The non-virgin bulls in any herd in which any cattle have been determined by an official test or diagnostic procedure to be infected with *Trichomoniasis* or diagnosed by a veterinarian as being infected.

(14) Movement Permit--Authorization for movement of infected or exposed cattle from the farm or ranch of origin through marketing channels to slaughter or for movement of untested animals to a location where the animals will be held under hold order until testing has been accomplished.

(15) Movement Restrictions--A "Hold Order," "Quarantine," or other written document issued or ordered by the commission to restrict the movement of livestock or exotic livestock.

(16) Negative--Cattle that have been tested with official test procedures and found to be free from infection with *Trichomoniasis*.

(17) Official Identification/Officially Identified--The identification of livestock by means of an official identification device, official eartag, registration tattoo, or registration brand, or any other method approved by the commission and/or Administrator of APHIS that provides unique identification for each animal. Official identification includes USDA alpha-numeric metal eartags (silver bangs tags), 840 RFID tags, 840 bangle tags, official breed registry tattoos, and official breed registry individual animal brands.

(18) Official *Trichomoniasis* Test--A test for bovine *Trichomoniasis*, approved by the commission, applied and reported by TVMDL or any other laboratory approved as an official laboratory by the commission. The test document is valid for 60 days, provided the bull is isolated from female cattle at all times, and may be transferred within that timeframe with an original signature of the consignor.

(19) Official Laboratory Pooled *Trichomoniasis* test samples--Up to five samples individually collected by a veterinarian and packaged and submitted to an official laboratory which can then pool the samples.

(20) Positive--Cattle that have been tested with official test procedures and found to be infected with *Trichomoniasis*.

(21) Quarantine--A written commission document or a verbal order followed by a written order restricting movement of animals because of the existence of or exposure to *Trichomoniasis*. The commission may establish a quarantine on the affected animals or on the affected place. The quarantine of an affected place may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen. The commission may establish a quarantine to prohibit or regulate the movement of any article or animal that the commission designates to be a carrier of *Trichomoniasis* and/or an animal into an affected area, including a county district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen.

(22) Registered Breeding Cattle--Cattle that belong to a breed registry, which maintains an official list of animals within a specific breed for which there is an association of unique identification for each head of cattle.

(23) [(22)] Test-Eligible Cattle--All sexually intact non-virgin male cattle and all sexually intact male cattle which have erupting or erupted permanent incisor teeth (or older), which are being sold, leased, gifted or exchanged in the state of Texas for breeding purposes.

(24) [(23)] Trichomoniasis--A venereal disease of cattle caused by the organism *Trichomonas foetus*.

(25) [(24)] TVMDL--The official laboratory for testing is the Texas A&M Veterinary Medical Diagnostic Laboratory.

(26) [(25)] Virgin Bull--Sexually intact male registered breeding cattle which have not serviced a cow and which are not more than 18 months of age as determined by the eruption of the two permanent central incisors or birth date on breed registry papers certified by the breeder; or not more than 30 months of age and certified by both the breeder based on birth date and confirmed by his veterinarian that the bull facility is sufficient to prevent contact with female cattle. The virgin certification by the breeder is valid for 60 days, provided the bull is isolated from female cattle at all times, and may be transferred within that timeframe with an original signature of the consignor.

§38.2. *General Requirements.*

(a) Test Requirements. All Texas origin bulls sold, leased, gifted, exchanged or otherwise changing possession for breeding purposes in the State of Texas shall meet the following testing or certification requirements prior to sale or change of ownership in the state:

(1) Be certified as virgin, by the breeder or his representative, on and accompanied by a breeder's certificate of virgin status; or

(2) If from a herd of unknown status (a herd that has not had a whole herd test), be tested negative on three consecutive culture tests conducted not less than seven days apart or one RT-PCR test conducted within 60 days of sale or movement, be held separate from all female cattle since the test sample was collected, and be accompanied by a Trichomoniasis test record showing the negative test results.

(b) Identification of Bulls. All bulls certified as virgin bulls shall be identified by an official identification device or method on the breeder's certification of virgin status. All bulls tested for Trichomoniasis shall be officially identified at the time the initial test sample is collected. That official identification shall be recorded on the test documents prior to submittal.

(c) Confirmatory Test. The owner of any bull which tests positive for Trichomoniasis may request in writing, within five days of the positive test, that the commission allow a confirmatory test to be performed on the positive bull. If the confirmatory test is positive the bull will be classified as infected with Trichomoniasis. If the confirmatory test is negative the bull shall be retested in not less than seven days to determine its disease status. If the confirmatory test reveals that the bull is only infected with fecal trichomonads, the test may be considered negative.

(d) Untested Bulls. Bulls presented for sale without a breeder's certification of virgin status for registered breeding cattle or a Trichomoniasis test record showing negative test results may:

(1) Be sold for movement only directly to slaughter; or

(2) Be sold for movement to an approved feedlot and then moved to slaughter or transported back to a livestock market under permit, issued by commission personnel, to be sold in accordance with this chapter; or

(3) Be sold and moved under a Hold Order to such place as specified by the commission for testing to change status from a slaughter bull. Such bulls shall be officially individually identified with a

permanent form of identification prior to movement, move to the designated location on a movement permit, and be held in isolation from female cattle at the designated location where the bull shall undergo three consecutive culture tests at least seven days apart or one RT-PCR test. If the results of any test are positive, all bulls in the herd of origin of the positive bull shall be placed under hold order and tested as provided by subsection (e) of this section. The positive bull shall be classified as infected and be permitted for movement only directly to slaughter or to a livestock market for sale directly to slaughter; or

(4) Be sold and moved to another physical location under permit issued by commission personnel, and then to a livestock market or location to be resold within seven days from the date of issuance. The bull cannot be commingled with female cattle during the seven days.

(e) Herd of Origin or Unit Testing.

(1) All bulls that are part of a herd of origin from which a bull is sold in accordance with subsection (d)(3) of this section and is found to be infected with Trichomoniasis shall be placed under hold order and officially tested for Trichomoniasis.

(2) All bulls that are part of a unit of origin, as epidemiologically determined by the commission, from which a bull becomes separated and that bull is found to be positive for Trichomoniasis shall be placed under a hold order and officially tested for Trichomoniasis. All bulls that are part of the unit on which the separated positive bull was located, as epidemiologically determined by the commission, shall also be placed under hold order and officially tested for Trichomoniasis.

(3) Officially tested, as used in this subsection, requires at a minimum three official culture tests conducted not less than seven days apart, or one official RT-PCR test. If the results of any test that are required by this subsection are positive, the herd shall be tested as provided by §38.3 of this chapter (relating to Infected Herds).

§38.3. *Infected Herds.*

(a) Bulls that have been determined to be infected by culture or by RT-PCR test and/or by confirmatory RT-PCR test shall be placed under hold order along with all other non-virgin bulls in the bull herd. Infected bulls must be isolated from all female cattle from the time of diagnosis until final disposition or as directed by the commission. Breeding bulls which have been disclosed as reactors may be retested provided: the owners, or their agents initiate a request to the TAHC Regional Director where the bull is located; that retests are conducted within 30 days after the date of the original test; test samples for retests are submitted to the TVMDL for testing; and the positive bull is held under quarantine along with all other exposed bulls on the premise. If they are retested, they must have two negative tests by RT-PCR to be released within 30 days of the initial test.

(b) Positive bulls may be moved directly to slaughter or to a livestock market for sale directly to slaughter. In order to move, the bulls shall be individually identified by official identification device on a movement permit authorized by the commission from the ranch to the market and from the market to the slaughter facility, or from the ranch directly to the slaughter facility. Movement to slaughter shall occur within 30 days from disclosure of positive test results (or confirmatory test results) or as directed by the commission.

(c) All bulls that are part of a herd in which one or more bulls have been found to be infected shall be placed under hold order in isolation away from female cattle until they have undergone at least two additional culture tests with negative results (not less than a total of three negative culture tests or two negative RT-PCR tests) within 60 days of the initial test unless handled in accordance with subsection (d)

of this section. All bulls remaining in the herd from which an infected bull(s) has been identified must be tested two more times by culture or one more time by RT-PCR test. Any bull positive on the second or third test shall be classified as positive. All bulls negative to all three culture tests or both RT-PCR tests shall be classified as negative and could be released for breeding.

(d) Breeding bulls that are part of a quarantined herd or a herd that is under a hold order and tests negative to the first official Trichomoniasis test may be maintained with the herd if the owner or caretaker of the bulls develops a Trichomoniasis herd control plan with a certified veterinarian. The Trichomoniasis herd control plan shall require all breeding bulls to be tested annually with an official Trichomoniasis test and include other best management practices to control, eliminate and prevent the spread of Trichomoniasis. The Trichomoniasis herd control plan, unless otherwise approved or disapproved by the commission, expires three years from the date the plan is signed by the herd owner or caretaker and the authorized veterinarian. Breeding bulls that are part of a Trichomoniasis herd control plan that expires or that is disapproved must be tested for Trichomoniasis as required by subsection (c) of this section.

(e) When Trichomoniasis is diagnosed in female cattle or fetal tissue, all breeding bulls associated with the herd will be restricted under a Hold Order for testing in accordance with this section.

(f) If male or female cattle are found to be infected with Trichomoniasis, then bulls that are located or were located on property adjacent to the infected animal within 30 days from the date the infected animal was removed from such property shall be officially tested for Trichomoniasis. Such bulls shall be tested within a timeframe as determined by the commission. The commission shall provide written notification to the owner or caretaker of the bulls specifying the timeframe in which the bulls must be tested. The commission may waive this testing requirement if it is epidemiologically determined by the commission that testing is not required.

(g) A seller of female cattle that were exposed or potentially exposed to a Trichomoniasis positive bull within the previous six months shall disclose, in writing, prior to or at the time of sale.

§38.6. Official Trichomoniasis Tests.

Approved Tests. Approved tests for Trichomoniasis testing within the State of Texas shall include the culture or Real Time Polymerase Chain Reaction (RT-PCR) testing of samples collected by certified veterinarians following approved collection, handling and shipping protocols, then tested in approved laboratories.

(1) Official Culture Tests. An official test is one in which the sample, collected in an InPouch, is received in the official laboratory, in good condition, within 48 hours of collection or is incubated in an InPouch by the collecting veterinarian for 48 hours after collection, and such sample is submitted to be tested according to the "Official Protocol for Culture of Trichomoniasis." Samples in transit for more than 48 hours will not be accepted for official culture testing. During transportation, the organisms should be protected from exposure to daylight and extremes of temperature, which should remain above 15 degrees Celsius (59 degrees Fahrenheit) and below 37 degrees Celsius (98.6 degrees Fahrenheit).

(2) Official Polymerase Chain Reaction Tests. Polymerase Chain Reaction is accepted as an official test or an official confirmatory test when completed by a qualified laboratory, approved by the Executive Director, and meets the following requirements:

(A) A Trichomoniasis sample submitted in an InPouch must be received in the official laboratory, in good condition, within 48

hours of collection or incubated by the collecting veterinarian for 48 hours after collection and submitted to arrive at the laboratory within 96 hours of collection. Trichomoniasis samples pooled at the laboratory may qualify as official tests at a ratio of up to five individually collected samples pooled for one test, excluding those submitted from Trichomoniasis positive herds, herds identified as being adjacent to Trichomoniasis positive herds and change of ownership. Veterinary practitioners may not submit pooled samples for an official test.

(B) A Trichomoniasis sample submitted in phosphate buffered saline must be received in the official laboratory, in good condition, within 96 hours of collection.

(3) Other Official Tests. Other tests for Trichomoniasis may be approved by the Commission, as official tests, after the tests have been proven effective by research, have been evaluated sufficiently to determine efficacy, and a protocol for use of the test has been established.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Larissa Schmidt

Chief of Staff

Texas Animal Health Commission

Earliest possible date of adoption: July 7, 2019

For further information, please call: (512) 719-0722



CHAPTER 44. BOVINE VIRAL DIARRHEA VIRUS

4 TAC §44.1, §44.2

EXPLANATION OF PROPOSED RULE

The Texas Animal Health Commission (TAHC) proposes a new Chapter 44 for the purpose of establishing a Bovine Viral Diarrhea Virus (BVDV) control program.

Bovine viral diarrhea (BVD) is an economically impactful disease of cattle with a worldwide prevalence that is endemic in most states. BVD is caused by the Bovine viral diarrhea virus, a Pestivirus. The major reservoir responsible for disease spread geographically is the persistent infection syndrome (BVDV-PI) seen in calves. BVDV can result in impacts to the stocker and feedlot operations by causing immunosuppression and contributing to Bovine Respiratory Disease Complex, or "Shipping Fever". This can lead to reduced feed conversion and weight gain, and increases in days on feed, morbidity, treatment cost, and mortality. In regards to cow-calf operations, all of these impacts may occur plus decreased conception rates, abortions, weak calves, and congenital defects.

The dam can be transiently infected during pregnancy and her calf become infected during development in the womb. If this infection occurs between days 40-120 of the pregnancy, the calf's immune system may not recognize the BVD Virus as foreign, and no natural immunity is produced in the calf. The calf becomes persistently infected (PI), and produces large numbers of the virus. The calf may display a normal appearance with immunosuppression or may result in acute death, poor performance, or mucosal disease.

Texas stakeholders have indicated interest in addressing the disposition of known animals positive for BVDV. The TAHC convened a group of stakeholders to discuss the negative implications of the disease on the Texas cattle industry. Stakeholder groups represented at the meeting included Texas Southwest Cattle Raisers Association (TSCRA), Texas Cattle Feeder Association (TCFA), Livestock Marketing Association (LMA), Independent Cattlemen's Association (ICA), Texas Farm Bureau (TFB), Texas Association of Dairymen (TAD), Texas A&M Agrilife, USDA, and Texas A&M Veterinary Medical Diagnostic Laboratory (TVMDL).

The Commission can designate that specific animal diseases must be reported in order that the Commission may act as necessary to eradicate or control significant animal diseases. BVDV adversely affects both health and productivity. The losses due to transient infection are diarrhea, decreased milk production, reproductive disorders, increased occurrence of other diseases, and death. The losses from fetal infection include abortions; congenital defects; weak and abnormally small calves; unthrifty, persistently infected (PI) animals; and death among PI animals. In order to provide Texas cattle some mitigation from the risk of exposure this disease is being added as a reportable disease in Chapter 45, entitled "Reportable Diseases".

Section 44.1 is for definitions used in this chapter and contains the following definitions: (1) Accredited Veterinarian; (2) Authorized Veterinarians; (3) Bovine Viral Diarrhea virus (BVDV); (4) BVDV Approved Feedlots and Pens; (5) Cattle; (6) Commission; (7) Initial BVDV Test; (8) Executive Director; (9) Hold Order; (10) Infected Cattle; (11) Movement Permit; (12) Movement Restrictions; (13) Negative; (14) Official Identification/Officially Identified; (15) Official BVDV Retest; (16) Positive; (17) Quarantine; (18) Texas Animal Health Commission Designated Diseases; and (19) TVMDL.

Section 44.2 contains the primary elements of a BVDV Control Program. Subsection (a) provides that any veterinarian, or a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal, shall report the existence of Bovine Viral Diarrhea Virus (BVDV).

Subsection (b) provides the additional information to be reported for a positive animal.

Subsection (c) provides that when BVDV is disclosed as positive using the BVDV antigen capture test (e.g., ELISA [enzyme-linked immunosorbent assay], SNAP test, or lateral flow device) or BVDV immunohistochemistry (IHC), the presumptive BVDV positive animal(s) are restricted from movement.

Subsection (d) provides that any cattle which test positive for BVDV may be retested with a confirmatory test.

Subsection (e) provides that only veterinarians authorized by the Commission's Authorized Personnel Program or TAHC staff may collect and submit samples for BVDV confirmatory retesting.

Subsection (f) provides that if the confirmatory test is positive as infected with BVDV the animal will be classified as having a persistent infection (PI) for BVDV (BVDV-PI).

Subsection (g) provides that if the confirmatory test is negative the cattle(s) shall be confirmed as negative for BVDV. If they are retested in accordance with the requirements and are test negative they will be released from the movement restrictions of the Hold Order by TAHC.

Subsection (h) provides that all cattle classified as being BVDV-PI-positive shall be identified by an official identification device.

Subsection (i) provides that the official laboratory for the confirmatory test for BVDV are the TVMDL laboratories or other laboratories approved by the Commission.

Subsection (j) provides that if cattle are confirmed positive for BVDV-PI they may only be moved under specific conditions.

Subsection (k) provides that an approved feedlot or pen(s) can accept cattle restricted for being exposed for BVDV within an area, isolating these cattle from non-exposed animals through fencing and geographic separation; official identification; biosecurity standards; and recordkeeping requirements, which include information for all animals entering and leaving a facility. Failure to meet and maintain those standards and procedures will cause a facility to have the approved status to accept these animals rescinded. It is recommended that all approved facilities be cleaned and disinfected between groups of cattle unless specifically directed by the Commission to clean and disinfect all or portions of the pen or other parts of the facility. An approved facility shall maintain records which indicated the movement of all animals that enter and leave a facility.

Subsection (l) provides that the Commission shall establish a BVDV Control Program Review Working Group and there will be an annual review.

FISCAL NOTE

Mrs. Larissa Schmidt, Chief of Staff, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no significant additional fiscal implications for state or local government because of enforcing or administering the rules.

REGULATORY ANALYSIS

Public Benefit: Ms. Schmidt has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated because of enforcing the rules will allow the agency to more effectively address the risk from cattle that have tested positive for BVDV and reduce the risk of exposure to other cattle in the state.

Local Employment Impact Statement: In accordance with Texas Government Code §2001.022, the Commission has determined that the proposed rules will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

Major Environmental Rule: The Commission has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

Takings Assessment: The Commission has determined that the proposed governmental action will not affect private real property. The proposed amendments are an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC, §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

Employment Impact Statement: The Commission has determined that the animal agricultural industries meet the statutory definition of a small or microbusiness (Government Code, Chapter 2006), and that the proposed rule would affect rural communities (as defined by Government Code, Chapter 2006); how-

ever, the Commission also has determined that the rule as proposed will not result in adverse economic impacts to small and microbusinesses or rural communities because the rule applies to all cattle tested for the disease and determined to be positive and the requirements are intended to prevent exposure to other cattle in the state.

Regulatory Flexibility Analysis: The proposed rule does not have an adverse impact on affected small businesses and/or rural communities located in Texas because the rule allows the Commission to identify animals that have been disclosed as being positive for a disease which negatively impacts the Texas cattle industry and to quickly and efficiently follow up on positive animals and thereby protects other similarly situated cattle from consequential disease exposure.

Government Growth Impact Statement: In compliance with the requirements of Government Code, §2001.0221, the Commission has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will: (1) neither create nor eliminate a government program; (2) not result in an increase or decrease in the number of full-time equivalent employee needs; (3) not result in a need for additional General Revenue funding; (4) not affect the amount of any fee; (5) it provides a disease control program which supports a reporting requirement used by the agency to notify the agency of disease and thereby reduce the risk exposure to other cattle; it does not expand an existing regulation; (7) it may increase the number of individuals subject to regulation; and (8) it will not adversely affect the state's economy.

Rule Reduction Statement: The commission has determined that the rule as proposed follows the legislative requirement that the commission shall protect all cattle within the state from diseases that pose a negative disease risk to the Texas cattle industry. It does not impose a direct cost on regulated persons within the state but rather provides disease control requirements for positive cattle in order to protect the Texas Cattle industry, and therefore it is not necessary to repeal or amend any other existing rule.

REQUEST FOR COMMENT

Comments regarding the proposed amendments may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by e-mail at comments@tahc.texas.com.

STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.054, entitled "Regulation of Movement of Animals", "[t]he Commission, by rule, may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce."

Pursuant to §161.048, entitled "Inspection of Shipment of Animals or Animal Products", "[t]he commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal

products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease."

Pursuant to §161.005, entitled "Commission Written Instruments", the Commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire Commission.

Pursuant to §161.044, entitled "Regulation of Livestock Movement from Stockyards or Railway Shipping Pens", "[t]he commission may regulate the movement of livestock out of stockyards or railway shipping pens and require treatment or certification of those animals as reasonably necessary to protect against communicable diseases".

Pursuant to §161.046, entitled "Rules", "[t]he commission may adopt rules as necessary for the administration and enforcement of this chapter."

Pursuant to §161.049, entitled "Dealer Records", "[t]he commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer."

Pursuant to §161.061, entitled "Establishment", "[i]f the commission determines that a disease listed in Section 161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases."

Pursuant to §161.081, entitled "Importation of Animals", "[t]he commission by rule may regulate the movement, including movement by a railroad company or other common carrier, of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country."

Pursuant to §161.101, entitled "Duty to Report" that a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the specific listed diseases among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis of the disease.

Pursuant to §161.112, entitled "Rules" the commission shall adopt rules relating to the movement of livestock, exotic livestock, and exotic fowl from livestock markets and shall require tests, immunization, and dipping of those livestock as necessary to protect against the spread of communicable diseases.

Pursuant to §161.113, entitled "Testing or Treatment of Livestock", "[i]f the commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The state may not be required to pay the cost of fees charged for the testing or vaccination. And if the commission requires the dipping of livestock under this subchapter, the livestock shall be submerged in a vat, sprayed, or treated in another sanitary manner prescribed by rule of the commission."

Pursuant to §161.114, entitled "Inspection of Livestock", "[a]n authorized inspector may examine livestock consigned to and delivered on the premises of a livestock market before the livestock are offered for sale. If the inspector considers it necessary, the inspector may have an animal tested or vaccinated. Any testing or vaccination must occur before the animal is removed from the livestock market".

§44.1. Definitions.

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

(1) Accredited Veterinarian--A licensed veterinarian who is approved to perform specified functions required by cooperative state-federal disease control and eradication programs pursuant to Title 9 of the Code of Federal Regulations, Parts 160 and 161.

(2) Authorized Veterinarians--Veterinarians certified with, and approved by the commission to perform official BVDV testing and to perform any other official function under the BVDV control program.

(3) Bovine Viral Diarrhea (BVD)--Bovine viral diarrhea is a viral disease of cattle and other ruminants that is caused by the bovine viral diarrhea virus (BVDV).

(4) BVDV Approved Feedyard/Approved Pens or other authorized locations--A confined area, either the entire feedyard or designated pens within the feedyard or at a livestock market, approved by the Executive Director of the Commission for feeding of restricted cattle for BVDV. Biosecurity standards, to include requirements for geographic separation, shall be enforced to prevent potential spread of diseases to other livestock on the premises and adjacent premises. Procedures for accountability of inventory, animal identification, and movement control shall be enforced to ensure that restricted cattle remain within approved facilities until verification of slaughter.

(5) Cattle--All dairy and beef animals (genus *Bos*).

(6) Commission--The Texas Animal Health Commission.

(7) Executive Director--The Executive Director of the Texas Animal Health Commission or his designee.

(8) Hold Order--A document restricting movement of a herd, unit, or individual animal pending the determination of disease status.

(9) Infected Cattle--Any cattle determined by an initial BVDV test or official BVDV retest procedure to be infected with BVDV.

(10) Movement Permit--Authorization for movement of infected cattle from the farm or ranch of origin to slaughter or for movement of infected animals to a location where the animals will be held under hold order until the disease issue is resolved.

(11) Movement Restrictions--A "Hold Order," "Quarantine," or other written document issued or ordered by the commission to restrict the movement of livestock or exotic livestock.

(12) Negative--Cattle that have been tested with official test procedures and found to be free from infection with BVDV.

(13) Official Identification/Officially Identified--The identification of livestock by means of an official identification device, official eartag, registration tattoo, or registration brand, or any other method approved by the commission and/or Administrator of APHIS that provides unique identification for each animal. Official identification includes USDA alpha-numeric metal eartags (silver bangs tags),

840 RFID tags, 840 bangle tags, official breed registry tattoos, and official breed registry individual animal brands.

(14) Official BVDV Retest--A test result for BVDV using an Antigen Capture test or IHC at TVMDL or any other laboratory approved as an official laboratory by the commission. A list of official laboratories will be published by the commission.

(15) Positive--Cattle that have been tested with official test procedures and found to be infected with BVDV and is classified as being presumptive BVDV-PI on an initial test and confirmed BVDV-PI on an official retest. NOTE: Until cleared as negative on an official retest, the animal will be managed as a BVDV-PI animal.

(16) Quarantine--A written commission document or a verbal instruction from Commission personnel followed by a written document restricting movement of animals because of the existence of or exposure to BVDV. The commission may establish a quarantine on the affected animals or on the affected place. The quarantine of an affected place may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen. The commission may establish a quarantine to prohibit or regulate the movement of any article or animal that the commission designates to be a carrier of BVDV and/or an animal into an affected area, including a county district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen.

(17) Reportable BVDV Test--A positive result for a BVDV antigen capture test (e.g., ELISA [enzyme-linked immunosorbent assay], SNAP test, or lateral flow device) or BVDV immunohistochemistry (IHC). All animals receiving an initial BVDV test, must have, a minimum, a traceable local ID (e.g., alphanumeric ear tag or back tag), or official identification

(18) Texas Animal Health Commission Designated Diseases--Animal diseases that the Commission has determined must be reported in order that the Commission may act as necessary to eradicate or control significant animal diseases.

(19) TVMDL--An official laboratory for testing is the Texas A&M Veterinary Medical Diagnostic Laboratory.

§44.2. General Requirements.

(a) Any veterinarian, or a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal, shall report the existence of Bovine Viral Diarrhea Virus (BVDV) to the commission within 24 hours after detection as required by §45.2 of this title (relating to "Duty to Report").

(b) In addition to reporting the existence of a disease, the reporting person or entity shall also report to the commission information relating to:

- (1) any identification associated with the cattle involved;
- (2) any clinical diagnosis;
- (3) location of the animal; and
- (4) owner of the animal.

(c) When BVDV is disclosed in cattle using an initial test of BVDV antigen capture test (e.g., ELISA [enzyme-linked immunosorbent assay], SNAP test, or lateral flow device) or BVDV immunohistochemistry (IHC), the presumptive BVDV-positive animal(s) are restricted from movement unless subsequently confirmed as negative by official retesting in accordance with this section. Pooling of samples for antigen capture testing is strongly discouraged because of significantly reduced test sensitivity and challenges with managing animals that contributed to the pools. Any disclosure of BVDV in an antigen capture test pool must be reported to TAHC, to include local IDs of all

animals that contributed to the pool. All animals in the BVDV-positive pool will be managed as presumptive BVDV-positive and can only be cleared by official retesting.

(d) Any cattle which test positive to BVDV may be retested with a confirmatory test performed by BVDV antigen capture ELISA or IHC at an official laboratory approved by the commission. If they are not retested for confirmation they will be classified as positive for BVDV and restricted in accordance with this section.

(e) Only veterinarians authorized by the Commission's Authorized Personnel Program or TAHC staff may collect and submit samples for BVDV confirmatory retesting.

(f) If the confirmatory test is positive indicating infection with BVDV the animal will be classified as having a persistent infection (PI) for BVDV (BVDV- PI).

(g) If the confirmatory test is negative the cattle(s) shall be confirmed as negative for BVDV. If they are retested in accordance with the requirements and are test negative they will be released from the movement restrictions of the Hold Order by TAHC.

(h) All cattle classified as being BVDV-PI-positive shall be identified by an official identification device, such as an 840 RFID or method approved by the Commission and have a brand applied on the left side of the animal near the head of the tail and with the marking of a lazy "P" with an "I" All cattle retested for BVDV shall be officially identified before or at the time the confirmation test sample is collected. That official identification shall be recorded on the test documents prior to submittal.

(i) The official laboratories for the confirmatory test for BVDV are the TVMDL laboratories or other laboratories approved by the Commission.

(j) Cattle confirmed positive for BVDV-PI may only be moved under the following conditions:

(1) Be sold or shipped directly to slaughter under permit, issued by commission personnel; or

(2) Be sold for movement to an approved feedyard or approved pens and later moved to slaughter, under permit, issued by commission personnel.

(k) BVDV Approved Feedyard/Approved Pens or other approved location: A confined area, either the entire feedyard or designated pens within the feedyard or at a livestock market, approved by the Executive Director of the Commission for holding and feeding of restricted cattle for BVDV.

(1) Designation Agreement: In order to be recognized as an approved feedyard or approved pen there shall be a signed designation agreement with TAHC indicating that the facility can meet the necessary standards to accept restricted cattle. The agreement will contain standards and procedures which the facility must meet in order to be approved. The Agreement will provide for isolation of animals, to separate and prevent contact between restricted animals and unrestricted animals through fencing and geographic separation; official identification; biosecurity standards; and recordkeeping requirements, which include information for all animals entering and leaving a facility. Failure to meet and maintain those standards and procedures will cause a facility to have the approved status rescinded. These animals will be placed under hold order and permitted out to slaughter.

(2) Standards and procedures.

(A) Geographic separation: Adequate isolation of animals which separate and prevent contact with tested animals and untested animals by fencing and geographic separation. Geographic

separation shall be sufficient to meet the minimum standards as to prevent potential spread of diseases to other livestock on the premises and adjacent premises.

(B) Official identification: All animals entering and leaving the facility must be officially identified and that information is to be recorded and maintained as required by subparagraph (D) of this paragraph.

(C) Biosecurity standards: All approved facilities may be required to be cleaned and disinfected between groups of cattle at the direction of the Commission. Additionally, approved facilities may be required to vacate pens, that have contained BVDV infected animals, for thirty (30) days if specifically required by the Commission.

(D) Recordkeeping requirements: An approved facility shall maintain records which indicate the movement of all animals that enter and leave a facility. An approved facility must maintain the records for five (5) years.

(E) Grazing: In order for the Commission to recognize an approved facility having grazing, the facility must be able to show an ability to maintain isolation of those restricted animals from unrestricted animals. An animal leaving the confined area must be destined to either another approved feedlot or approved pen, or to an approved slaughter facility.

(F) The approved status must be renewed by the operator every two years provided that the requirements specified in these regulations and the approved agreement continue to be met by the feedyard. If the Executive Director determines the feedyard's failure to comply with the Approved Pens Agreement or these regulations are grounds to rescind the agreement.

(l) The Commission shall establish a BVDV Control Program Review Working Group consisting of members from the cattle industry, veterinary profession, veterinary diagnostic laboratory, veterinary college, extension service and agency representatives. The working group shall annually review the BVDV control program and make recommendations to the Commission on amendments to program components or operation, or whether or not the program should be continued.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2019.

TRD-201901560

Larissa Schmidt

Chief of Staff

Texas Animal Health Commission

Earliest possible date of adoption: July 7, 2019

For further information, please call: (512) 719-0722



CHAPTER 45. REPORTABLE DISEASES

4 TAC §45.2

EXPLANATION OF PROPOSED RULE

The Texas Animal Health Commission (TAHC) proposes amendments to Chapter 45, §45.2, concerning Reportable Diseases. The Texas Agriculture Code, Chapter 161, Section 161.101, requirements provide for the duty of a veterinarian, veterinary diagnostic laboratory or a person having care, custody, or control of an animal to report specified animal health diseases to the TAHC. The Commission has a specific list of diseases reportable

in Chapter 45 of the Commission rules. This proposal is for the purpose of adding Bovine Viral Diarrhea (BVD) as a reportable disease.

BVD is an economically impactful disease of cattle with a worldwide prevalence that is endemic in most states. The major reservoir responsible for disease spread geographically is the persistent infection syndrome (BVD-PI) seen in calves. BVD can result in impacts to the stocker and feedlot operations by causing immunosuppression and Bovine Respiratory Disease Complex, or "Shipping Fever". This can lead to reduced feed conversion and weight gain, and increases in days on feed, morbidity, treatment cost, and mortality. In regards to cow-calf operations, all of these impacts may occur plus decreased conception rates, abortions, weak calves, and congenital defects.

The dam can get transiently infected during pregnancy and her calf becomes infected during development in the womb. If this infection occurs between days 40-120 of the pregnancy, the calf's immune system does not recognize the BVD virus (BVDV) as foreign, and no natural immunity is produced in the calf. The calf becomes Persistently Infected (PI), and produces large numbers of the virus. The calf may display a normal appearance with immunosuppression or may result in acute death, poor performance, or mucosal disease.

The Texas Cattle Industry has indicated interest in addressing the disposition of known PI animals. The TAHC convened a group of stakeholders to discuss the negative implications of the disease on the Texas cattle industry. Industry groups represented at the meeting included TSCRA, TCFA, LMA, ICA, TFB, TAD, AgriLife, USDA, and TVMDL. In addition, some interested producers and TAHC commissioners attended.

The Commission can designate that specific animal diseases must be reported in order that the Commission may act as necessary to eradicate or control significant animal diseases. BVDV adversely affects both health and productivity. The losses due to transient infection are diarrhea, decreased milk production, reproductive disorders, increased occurrence of other diseases, and death. The losses from fetal infection include abortions; congenital defects; weak and abnormally small calves; unthrifty, persistently infected (PI) animals; and death among PI animals. In order to provide the cattle some mitigation from the risk of exposure this disease is being added as a reportable disease.

FISCAL NOTE

Mrs. Larissa Schmidt, Chief of Staff, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no significant additional fiscal implications for state or local government because of enforcing or administering the rules.

REGULATORY ANALYSIS

Public Benefit: Ms. Schmidt has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated because of enforcing the rules will allow the agency to quickly respond to reports of animals having tested positive for BV and reduce the risk of exposure to other cattle in the state.

Local Employment Impact Statement: In accordance with Texas Government Code §2001.022, this agency has determined that the proposed rules will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

Major Environmental Rule: The Commission has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

Takings Assessment: The agency has determined that the proposed governmental action will not affect private real property. The proposed amendments are an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

Employment Impact Statement: The Commission has determined that the animal agricultural industries meet the statutory definition of a small or microbusiness (Government Code, Chapter 2006), and that the proposed rule would affect rural communities (as defined by Government Code, Chapter 2006); however, the Commission also has determined that the rule as proposed will not result in adverse economic impacts to small and microbusinesses or rural communities because the rule is just a reporting requirement and applies to all cattle tested for the disease.

Regulatory Flexibility Analysis: The proposed rule does not have an adverse impact on affected small businesses and/or rural communities located in Texas because the rule provides that the agency is notified of positive animals and thereby protects other similarly situated cattle from consequential disease exposure.

Government Growth Impact Statement: In compliance with the requirements of Government Code, §2001.0221, the Commission has prepared the following Government Growth Impact Statement. The rule as proposed, if adopted, will: (1) neither create nor eliminate a government program; (2) not result in an increase or decrease in the number of full-time equivalent employee needs; (3) not result in a need for additional General Revenue funding; (4) not affect the amount of any fee; (5) it modifies a pre-existing reporting requirement used by the agency to prevent disease exposure; (6) it does not expand an existing regulation; (7) it may increase the number of individuals subject to regulation; and (8) it will not adversely affect the state's economy.

Rule Reduction Statement: The commission has determined that the rule as proposed follows the legislative requirement that the commission shall protect all cattle within the state from regulatory diseases. It does not impose a direct cost on regulated persons within the state but rather provides a reporting requirement for positive cattle, and therefore it is not necessary to repeal or amend any other existing rule.

REQUEST FOR COMMENT

Comments regarding the proposed amendments may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by e-mail at comments@tahc.texas.com.

STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.054, and entitled "Regulation of Movement of Animals", "[t]he Commission, by rule, may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce.

Pursuant to §161.048, and entitled, "Inspection of Shipment of Animals or Animal Products", [t]he commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease.

Pursuant to §161.005, and entitled, "Commission Written Instruments", the Commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire Commission.

Pursuant to §161.044, entitled "Regulation of Livestock Movement from Stockyards or Railway Shipping Pens", "[t]he commission may regulate the movement of livestock out of stockyards or railway shipping pens and require treatment or certification of those animals as reasonably necessary to protect against communicable diseases".

Pursuant to §161.046, entitled "Rules", "[t]he commission may adopt rules as necessary for the administration and enforcement of this chapter."

Pursuant to §161.049, entitled "Dealer Records", "[t]he commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer."

Pursuant to §161.061, entitled "Establishment", "[i]f the commission determines that a disease listed in Section 161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases.

Pursuant to §161.081, entitled "Importation of Animals", "[t]he commission by rule may regulate the movement, including movement by a railroad company or other common carrier, of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country.

Pursuant to §161.101, entitled "Duty to Report", that a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the specific listed diseases among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis of the disease

Pursuant to §161.112, entitled "Rules", the commission shall adopt rules relating to the movement of livestock, exotic livestock, and exotic fowl from livestock markets and shall require tests, immunization, and dipping of those livestock as necessary to protect against the spread of communicable diseases.

Pursuant to §161.113, entitled "Testing or Treatment of Livestock", [i]f the commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The state may not be required to pay the cost of fees charged for the testing or vaccination. And if the commission requires the dipping of livestock under this subchapter, the livestock shall be submerged in a vat, sprayed, or treated in another sanitary manner prescribed by rule of the commission.

Pursuant to §161.114, entitled "Inspection of Livestock", "[a]n authorized inspector may examine livestock consigned to and delivered on the premises of a livestock market before the livestock are offered for sale. If the inspector considers it necessary, the inspector may have an animal tested or vaccinated. Any testing or vaccination must occur before the animal is removed from the livestock market".

§45.2. Duty to Report.

(a) A veterinarian, a veterinary diagnostic laboratory or a person having care, custody, or control of an animal, shall report the existence of the following diseases among livestock, exotic livestock, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis. The following listing includes diseases and conditions that are Office International Des Epizooties Diseases, Foreign Animal Diseases, National Program Diseases or Texas Animal Health Commission Designated Diseases.

Figure: 4 TAC §45.2(a)
[Figure: 4 TAC §45.2(a)]

(b) In addition to reporting the existence of a disease under subsection (a) of this section, the veterinarian shall also report to the commission information relating to:

- (1) the species and number of animals involved;
- (2) any clinical diagnosis or postmortem findings;
- (3) any death losses;
- (4) location; and
- (5) owner.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2019.

TRD-201901561

Larissa Schmidt

Chief of Staff

Texas Animal Health Commission

Earliest possible date of adoption: July 7, 2019

For further information, please call: (512) 719-0722



CHAPTER 49. EQUINE

4 TAC §49.1

EXPLANATION OF PROPOSED RULE

The Texas Animal Health Commission (Commission) proposes amendments to Chapter 49, entitled "Equine". The amendment is for §49.1. The purpose of these amendments is to incorporate forms of electronic identification as official identification for equine.

The Commission is participating with a consortium of other state animal health regulatory agencies for fulfilling the objectives and provisions for the interstate movement of equine using an Extended Equine Certificate of Veterinary Inspection (EECVI). The consortium has established a framework in each participating state to enhance the coordination and cooperation regarding the allowance and documentation of interstate movement of equine. This amendment provides that for an official equine passport the official identification includes a microchip.

FISCAL NOTE

Mrs. Larissa Schmidt, Chief of Staff, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no significant additional fiscal implications for state or local government because of enforcing or administering the rules.

REGULATORY ANALYSIS

Public Benefit: Ms. Schmidt has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated because of enforcing the rules will be removing a requirement to enter Texas.

Local Employment Impact Statement: In accordance with Texas Government Code §2001.022, the Commission has determined that the proposed rules will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

Major Environmental Rule: The Commission has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

Takings Assessment: The Commission has determined that the proposed governmental action will not affect private real property. The proposed amendments are an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with Title 4 TAC, §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

Employment Impact Statement: The Commission has determined that the animal agricultural industries meet the statutory definition of a small or microbusiness (Government Code, Chapter 2006), and that the proposed rule would affect rural communities (as defined by Government Code, Chapter 2006); however, the Commission also has determined that the rule as proposed will not result in adverse economic impacts to small and microbusinesses or rural communities because it recognizes additional acceptable forms of official identification.

Regulatory Flexibility Analysis: The proposed rule does not have an adverse impact on affected small businesses and/or rural communities located in Texas because the rule recognizes pragmatic official identification options for a horse owner.

Government Growth Impact Statement: In compliance with the requirements of Government Code, §2001.0221, the Commission has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will: (1) neither create nor eliminate a government program; (2) not result in an increase or decrease in the number of full-time equivalent employee needs; (3) not result in a need for additional General Revenue funding; (4) not affect the amount of any fee; (5) it modifies a pre-existing regulation; (6) it does not expand an existing regulation; (7) it may increase the number of individuals subject

to regulation; and (8) it will not adversely affect the state's economy.

Rule Reduction Statement: The commission has determined that the rule as proposed follows the legislative requirement that the commission shall protect all livestock, exotic livestock, domestic fowl, and exotic fowl within the state from regulatory diseases. It does not impose a direct cost on regulated persons within the state but rather provides the individuals regulatory options, and, therefore, it is not necessary to repeal or amend any other existing rule.

REQUEST FOR COMMENT

Comments regarding the proposed amendments may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by e-mail at comments@tahc.texas.com.

STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.054, and entitled "Regulation of Movement of Animals", "[t]he Commission, by rule, may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce."

Pursuant to §161.048, and entitled "Inspection of Shipment of Animals or Animal Products", "[t]he commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease."

Pursuant to §161.005, and entitled "Commission Written Instruments", "[t]he Commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire Commission."

Pursuant to §161.044, entitled "Regulation of Livestock Movement from Stockyards or Railway Shipping Pens", "[t]he commission may regulate the movement of livestock out of stockyards or railway shipping pens and require treatment or certification of those animals as reasonably necessary to protect against communicable diseases."

Pursuant to §161.046, entitled "Rules", "[t]he commission may adopt rules as necessary for the administration and enforcement of this chapter."

Pursuant to §161.049, entitled "Dealer Records", "[t]he commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer."

Pursuant to §161.061, entitled "Establishment", "[i]f the commission determines that a disease listed in Section 161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases."

Pursuant to §161.081, entitled "Importation of Animals", "[t]he commission by rule may regulate the movement, including movement by a railroad company or other common carrier, of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country."

Pursuant to §161.112, entitled "Rules", "[t]he commission shall adopt rules relating to the movement of livestock, exotic livestock, and exotic fowl from livestock markets and shall require tests, immunization, and dipping of those livestock as necessary to protect against the spread of communicable diseases."

Pursuant to §161.113, entitled "Testing or Treatment of Livestock", "[i]f the commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The state may not be required to pay the cost of fees charged for the testing or vaccination. And if the commission requires the dipping of livestock under this subchapter, the livestock shall be submerged in a vat, sprayed, or treated in another sanitary manner prescribed by rule of the commission."

Pursuant to §161.114, entitled "Inspection of Livestock", "[a]n authorized inspector may examine livestock consigned to and delivered on the premises of a livestock market before the livestock are offered for sale. If the inspector considers it necessary, the inspector may have an animal tested or vaccinated. Any testing or vaccination must occur before the animal is removed from the livestock market."

§49.1. Equine Infectious Anemia (EIA): Identification and Handling of Infected Equine.

(a) Official Test. The agar gel immunodiffusion (AGID) test, also known as the Coggins test, the Competitive Enzyme-Linked Immunosorbent Assay (CELISA) test, and other USDA licensed [~~USDA-licensed~~] tests approved by the commission, are the official tests for equine infectious anemia (EIA) in horses, asses, mules, ponies, zebras and any other equine in Texas.

(b) Authorization to conduct test. Only United States Department of Agriculture (USDA) approved [~~(USDA)-approved~~] laboratories, including USDA approved off-site laboratories, are allowed to run the AGID and CELISA or other USDA licensed tests and all tests will be official. Only test samples from accredited veterinarians or other TAHC authorized personnel accompanied by a completed VS Form 10-11 can be accepted for official testing.

(c) Official Identification of Equine Tested for EIA. All official blood tests must be accompanied by a completed VS Form 10-11 (Equine Infectious Anemia Laboratory Test) listing the description of the equine to include the following: age, breed, color, sex, animal's name, and all distinctive markings (i.e., color patterns, brands, tattoos, scars, or blemishes) and unique and permanent forms of identification, such as electronic identification that complies with ISO 11784/11785; or non-ISO electronic identification injected in the equine on or before March 11, 2014; or digital photographs sufficient to identify the individual equine. In the absence of any distinctive color markings or any

form of visible permanent identification (brands, tattoos or scars), the animal must be identified by indicating the location of all hair whorls, vortices or cowlicks with an "X" on the illustration provided on the VS Form 10-11. It must list owner's name, address, the animal's home premise and county, the name and address of the authorized individual collecting the test sample, and laboratory and individual conducting the test. The EIA test document shall list one horse only.

(d) Reactor. A reactor is any equine which discloses a positive reaction to the official test. The individual collecting the test sample must notify the animal's owner of the quarantine within 48 hours after receiving the results.

(e) Retest of reactors. Equine which have been disclosed as reactors may be retested prior to branding provided:

(1) owners or their agents initiate a request to the TAHC Area Director of the area where the horse is located;

(2) retests are conducted within 30 days after the date of the original test;

(3) blood samples for retests are collected by the person who collected the sample for the first test or by TAHC personnel, and the blood samples are submitted to the Texas Veterinary Medical Diagnostic Laboratory (TVMDL) for testing;

(4) the individual collecting the retest sample is provided documentation that the animal being retested is the same as the one shown positive on the initial test and can verify the retested equine as being the same as shown on the original test document; and

(5) the positive animal is held under quarantine along with all other equine on the premise.

(f) Official identification of reactors. A reactor to the official test must be permanently identified using the National Uniform Tag Code number assigned by the USDA to the state in which the reactor was tested followed by the letter "A" (the code for Texas is 74A). The reactor identification must be permanently applied by a representative of the Texas Animal Health Commission who must use for the purpose of identification, a hot-iron brand or freeze-marking brand. The brand must be not less than two inches high and shall be applied to the left shoulder or left side of the neck of the reactor. Reactors must be branded within ten days of the date the laboratory completes the test unless the equine is destroyed. Any equine destroyed prior to branding must be described in a written statement by the accredited veterinarian or other authorized personnel certifying to the destruction. This certification must be submitted to the Texas Animal Health Commission promptly.

(g) Quarantine. Any equine animal found to be a reactor to the official test will be quarantined by a representative of the Texas Animal Health Commission to the premises of its home, farm, ranch or stable until natural death, disposition by euthanasia, slaughter, or disposition to a Texas Animal Health Commission approved, diagnostic or research facility. The quarantine shall restrict the infected equine, all other equine on the premise, and all equine epidemiologically determined to have been exposed to an EIA-positive animal to isolation at least 200 yards away from equine on adjacent premises.

(h) Movement of Reactors and Exposed Equine.

(1) Reactor equine. Following official identification, a reactor must be accompanied by a VS Form 1-27 permit issued by an accredited veterinarian or other authorized state or federal personnel when moved from its home premises either:

(A) Directly to a slaughter plant, slaughter-only market, or slaughter- only buying facility; or

(B) Directly to an approved diagnostic or research facility; or

(C) Directly to a livestock market to be sold for slaughter, provided that within 24 hours prior to entry, the equine is inspected by a TAHC veterinarian or a Texas USDA-accredited veterinarian to ensure the equine displays no clinical signs of EIA and has a normal temperature. The auction market must isolate the positive equine from other equine, pen the positive equine under a roof, and hold the positive equine on the premise for no longer than 24 hours.

(2) Exposed equine. Exposed equine must be identified with an "S" brand placed on the left shoulder or left side of the neck, and be accompanied by a VS Form 1-27 permit issued by an accredited veterinarian or other authorized state or federal personnel when moved either:

(A) Directly to a livestock market for sale directly to slaughter provided the exposed equine is quarantined at the market in isolation from other horses; or

(B) Directly to a slaughter plant, slaughter-only market, or slaughter-only buying facility; or

(C) Directly to an approved diagnostic or research facility.

(i) Requirements for testing equine on quarantined premises. All equine determined to have been on the same premise with an EIA-positive horse at the time the positive horse was bled shall be tested by an accredited veterinarian at owner's expense or by Commission personnel. Nursing foals are exempt from testing.

(j) Requirements for Testing Exposed Equine and High Risk Herds.

(1) Exposed equine. All equine epidemiologically determined to have been exposed to an EIA-positive animal shall be quarantined and tested by an Accredited Veterinarian at owner's expense or by Commission personnel. Nursing foals are exempt from testing.

(2) Whole herd testing. All equine except nursing foals that are part of a herd from which a reactor has been classified shall be tested by an Accredited Veterinarian at owner's expense or by Commission personnel. A herd is:

(A) All equine under common ownership or supervision that are on one premise; or

(B) All equine under common ownership or supervision on two or more premises that are geographically separated, but on which the equine have been interchanged or where there has been contact among the equine on the different premises. Contact between equine on the different premises will be assumed unless the owner establishes otherwise and the results of the epidemiologic investigation are consistent with the lack of contact between premises; or

(C) All equine on common premises, such as community pastures or grazing association units, but owned by different persons. Other equine owned by the persons involved which are located on other premises are considered to be part of this herd unless the epidemiologic investigation establishes that equine from the affected herd have not had the opportunity for direct or indirect contact with equine from that specific premise.

(3) High Risk Testing. Herds determined to be at high risk shall be tested by an accredited veterinarian at owner's expense or by commission personnel. High risk herds are those epidemiologically judged by a State-Federal veterinarian to have a high probability of having or developing equine infectious anemia. A high risk herd need not be located on the same premise as an infected or adjacent herd.

(k) Release of EIA quarantine. The EIA quarantine may be released by the Texas Animal Health Commission after all quarantined equine test negative at least 60 days following identification and removal of the last EIA-positive equine as set out in subsections (f) and (h) of this section. Epidemiological data may be considered in the release of the quarantine.

(l) Requirements for Change of Ownership. A negative EIA test within the previous 12 months is required for all equine, except zebras, which are eight months of age or older, changing ownership in Texas, except, if the animal is:

(1) sold to slaughter, to be tested at the slaughter facility at Commission expense; or

(2) a nursing foal that is transferred with its dam and the dam has tested negative for equine infectious anemia during the 12 months preceding the date of the transfer.

(m) Any equine sold, through a market, which has not had a negative EIA test in the twelve months preceding the date of sale must be permitted for movement, by an accredited veterinarian or other authorized state or federal personnel, to slaughter. The permit shall be signed by the consignor and contain information regarding either permanent identification (i.e. branding, tagging or other means acceptable to the commission) of the equine or by the number on a red collar, issued by the commission, to be verified at the slaughter plant, slaughter-only market, or slaughter-only buying facility. These equine shall arrive at the slaughter facility no later than ten days from the date of the issuance of the permit.

(n) Equine animals stabled, boarded or pastured within 200 yards of equine belonging to another person shall be considered to be a congregation point. All equine must have a negative EIA test within the last twelve months.

(o) Equine that participate in any assembly are required to have a current proof of a negative EIA test within the last 12 months. An assembly includes, but is not limited to, parades, rodeos, roping events, and trail rides. Sponsors of an assembly of equine are required to implement a procedure for review of records on each participating equine to confirm proof of a negative EIA test status within the previous 12 months prior to allowing entry of the equine into facilities or locations where the animals will be commingled. Procedures other than confirmation of proof of EIA test negative status by the event sponsor(s) at the time of arrival at the event shall be submitted to the Executive Director for consideration at least 30 days prior to the event. A decision regarding a proposed procedure will be provided to the sponsor within 10 days of receipt by the Executive Director.

(p) Equine that are in boarding stables, boarding pastures, breeding farms, and training stables are required to have a current proof of a negative EIA test within the last 12 months.

(q) Equine that utilize or ride on publicly accessible equestrian trails, and public lands open to equestrian riding, where a congregation of equine can occur, are required to have a current proof of a negative EIA test within the last 12 months.

(r) Equine entering a pari-mutuel track must have a negative EIA test within the past 12 months and a Certificate of Veterinary Inspection.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2019.
TRD-201901562



CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §51.13

EXPLANATION OF PROPOSED RULE

The Texas Animal Health Commission (Commission) proposes amendments to Chapter 51, §51.13, concerning Entry Requirements. The purpose of these amendments is to incorporate forms of electronic identification as official identification for equine moving on an equine passport.

The Commission is participating with a consortium of other state animal health regulatory agencies for fulfilling the objectives and provisions for the interstate movement of equine using an Extended Equine Certificate of Veterinary Inspection (EECVI). The consortium has established a framework in each participating state to enhance the coordination and cooperation regarding the allowance and documentation of interstate movement of equine. This amendment provides that for an official equine passport the official identification includes a microchip.

FISCAL NOTE

Mrs. Larissa Schmidt, Chief of Staff, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no significant additional fiscal implications for state or local government because of enforcing or administering the rules.

REGULATORY ANALYSIS

Public Benefit: Ms. Schmidt has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated because of enforcing the rules will be removing a requirement to enter Texas.

Local Employment Impact Statement: In accordance with Texas Government Code §2001.022, this agency has determined that the proposed rules will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

Major Environmental Rule: The Commission has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

Takings Assessment: The agency has determined that the proposed governmental action will not affect private real property. The proposed amendments are an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7 and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

Employment Impact Statement: The Commission has determined that the animal agricultural industries meet the statutory definition of a small or microbusiness (Government Code, Chapter 2006), and that the proposed rule would affect rural communities (as defined by Government Code, Chapter 2006); however, the Commission also has determined that the rule as pro-

posed will not result in adverse economic impacts to small and microbusinesses or rural communities because it is for animals entering the state and not from Texas.

Regulatory Flexibility Analysis: The proposed rule does not have an adverse impact on affected small businesses and/or rural communities located in Texas because the rule recognizes pragmatic official identification options for a horse owner.

Government Growth Impact Statement: In compliance with the requirements of Government Code, §2001.0221, the Commission has prepared the following Government Growth Impact Statement. The rule as proposed, if adopted, will: (1) neither create nor eliminate a government program; (2) not result in an increase or decrease in the number of full-time equivalent employee needs; (3) not result in a need for additional General Revenue funding; (4) not affect the amount of any fee; (5) it modifies a pre-existing regulation; (6) it does not expand an existing regulation; (7) it may increase the number of individuals subject to regulation; and (8) it will not adversely affect the state's economy.

Rule Reduction Statement: The commission has determined that the rule as proposed follows the legislative requirement that the commission shall protect all livestock, exotic livestock, domestic fowl, and exotic fowl within the state from regulatory diseases. It does not impose a direct cost on regulated persons within the state but rather provides the individuals regulatory options, and therefore it is not necessary to repeal or amend any other existing rule.

REQUEST FOR COMMENT

Comments regarding the proposed amendments may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by e-mail at comments@tahc.texas.com.

STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.054, entitled "Regulation of Movement of Animals", "[t]he Commission, by rule, may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce.

Pursuant to §161.048, entitled "Inspection of Shipment of Animals or Animal Products", "[t]he commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease.

Pursuant to §161.005, and entitled, "Commission Written Instruments", the Commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or writ-

ten notice signed under that authority, has the same force and effect as if signed by the entire Commission.

Pursuant to §161.044, entitled "Regulation of Livestock Movement from Stockyards or Railway Shipping Pens", "[t]he commission may regulate the movement of livestock out of stockyards or railway shipping pens and require treatment or certification of those animals as reasonably necessary to protect against communicable diseases".

Pursuant to §161.046, entitled "Rules" "[t]he commission may adopt rules as necessary for the administration and enforcement of this chapter."

Pursuant to §161.049, entitled "Dealer Records", "[t]he commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer."

Pursuant to §161.061, entitled "Establishment", "[i]f the commission determines that a disease listed in Section 161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases.

Pursuant to §161.081, entitled "Importation of Animals", "[t]he commission by rule may regulate the movement, including movement by a railroad company or other common carrier, of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country.

Pursuant to §161.112, entitled "Rules" the commission shall adopt rules relating to the movement of livestock, exotic livestock, and exotic fowl from livestock markets and shall require tests, immunization, and dipping of those livestock as necessary to protect against the spread of communicable diseases.

Pursuant to §161.113, entitled "Testing or Treatment of Livestock" "[i]f the commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The state may not be required to pay the cost of fees charged for the testing or vaccination. And if the commission requires the dipping of livestock under this subchapter, the livestock shall be submerged in a vat, sprayed, or treated in another sanitary manner prescribed by rule of the commission.

Pursuant to §161.114, entitled "Inspection of Livestock", "[a]n authorized inspector may examine livestock consigned to and delivered on the premises of a livestock market before the livestock are offered for sale. If the inspector considers it necessary, the inspector may have an animal tested or vaccinated. Any testing or vaccination must occur before the animal is removed from the livestock market".

§51.13. Equine.

(a) Equine infectious anemia (EIA) requirements. All horses, mules, asses, ponies, zebras and all other equidae shall have a certificate of veterinary inspection and proof of a negative EIA test within the previous 12 months prior to entering Texas, along with unique and permanent forms of identification, such as electronic identification that complies with ISO 11784/11785; or non-ISO electronic identification injected in the equine on or before March 11, 2014; or digital photographs sufficient to identify the individual equine. The negative test

results together with the name of the laboratory conducting the test must be shown on the certificate of veterinary inspection. Alternatively, a completed VS Form 10-11 (Equine Infectious Anemia Laboratory Test) may be attached to the certificate of veterinary inspection. Only test results from USDA-approved laboratories are acceptable. Exceptions to these test requirements are:

(1) equidae consigned directly to an approved slaughtering establishment accompanied by a prior permit issued by the Texas Animal Health Commission;

(2) equidae that have been "S" branded and consigned directly to an approved slaughter establishment accompanied by a VS 1-27 permit;

(3) equidae may enter Texas when consigned directly to a veterinary hospital or clinic for treatment or for usual veterinary procedures when accompanied by a permit number issued by the Texas Animal Health Commission. Following release by the veterinarian, equidae must be returned immediately to the state of origin by the most direct route;

(4) equidae may enter Texas for shows, fairs, exhibitions or assembly purposes when accompanied by a valid equine interstate passport or equine identification card and a completed VS form 10-11 showing negative results to an official EIA test within the previous six months.

(5) equidae entering for consignment to a livestock market, may first move directly to an EIA approved lab/vet clinic for testing. The animal must be accompanied by a prior entry permit issued by the Texas Animal Health Commission.

(6) foals, under eight months of age, accompanying and nursing a dam with a negative test within the last twelve months.

(b) Fever tick requirements: Equidae originating in a fever tick infected area must be accompanied by a certificate issued by an authorized state or federal inspector showing them free of fever tick infestation or exposure thereto and dipped in a recognized dipping solution. Dipping must be under the supervision of a state or federal inspector immediately prior to shipment, and the equidae must be transported in clean and disinfected trucks, railroad cars, or other vehicles.

(c) Equine Viral Arteritis (EVA):

(1) Owners, shippers or exporters of EVA carrier stallions, as defined in §49.4 of this title (relating to Equine Viral Arteritis (EVA): Reporting and Handling for Breeding of Infected Equine), which are to be imported into Texas, shall notify the buyer or receiver of the stallion, in writing, prior to shipment into the state, that the stallion is an EVA carrier stallion. The equine shall be accompanied by a certificate veterinary inspection, on which the carrier status of the stallion is notated.

(2) Owners of EVA carrier stallions, who intend to ship semen from the carrier stallion into Texas, shall notify, in writing, the owners, managers or caretakers of mares to be inseminated that the semen is from an EVA carrier stallion and that the mare could become EVA infected through insemination with infective semen.

(3) Any equine that originate from an area quarantined, excluding a quarantined facility, for EVA, must be accompanied by a certificate of veterinary inspection which states that the animal does not exhibit clinical signs of EVA, and that the equine had a rectal temperature of 101° F. or less at the time of examination for entry. EVA carrier stallions shall also comply with paragraph (1) of this subsection.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2019.

TRD-201901563

Larissa Schmidt

Chief of Staff

Texas Animal Health Commission

Earliest possible date of adoption: July 7, 2019

For further information, please call: (512) 719-0722



TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 23. SINGLE FAMILY HOME PROGRAM

SUBCHAPTER H. HOMEBUYER ASSISTANCE WITH NEW CONSTRUCTION (HANC) OR REHABILITATION

10 TAC §§23.80 - 23.82

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 23, Subchapter H, Homebuyer Assistance with New Construction (HANC) or Rehabilitation, §§23.80 - 23.82. The purpose of the proposed new sections is to provide a new program activity to address the shortage of quality affordable housing available in rural communities by allowing homeownership through new construction or rehabilitation of single family housing on acquired or owned real property.

Tex. Gov't Code §2001.0045(b) does apply to the rule being adopted, however, the costs associated with the new activity created by this rule are only those typical and customary costs associated with an administrator voluntarily electing to participate in a single family activity similar to those in other sections of this chapter related to homebuyer and reconstruction/rehabilitation activities.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. David Cervantes, Acting Director, has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed rule does not create a new government program but does establish another eligible activity type within the existing HOME Program. This new activity type provides for increased opportunities for rural Texans to access quality affordable housing opportunities.

2. The proposed new rule does not require a change in work that would require the creation of new employee positions. While some additional work by the Department will be required associated with underwriting and loan processing applications under the new activity, the Department anticipates handling this additional work with existing staff resources; the new rule does not reduce work load such that any existing employee positions could be eliminated.

3. The proposed new rule does not require additional future legislative appropriations.

4. The proposed new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The proposed rule is creating a new regulation to address an identified need for a household driven option for prospective low income homeowners in rural communities.

6. The proposed rule will not limit or repeal an existing regulation, but can be considered to "expand" the existing regulations because the proposed rule adds a new category of homebuyer assistance under the HOME Program. However, this new rule is necessary to establish regulations for access to and implementation of the new activity which will serve to increase the opportunity for eligible low income rural families to access affordable homes for purchase.

7. The proposed rule will increase the number of individuals subject to the rule's applicability but only so far as administrators voluntarily elect to participate in this new Department activity.

8. The proposed rule will not negatively affect the state's economy, and may be considered to have a positive effect on the state's economy because the proposed rule enables homebuyers to access new or rehabilitated homes at a lower cost and provides communities with a tool to increase and update their housing stock.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this proposed rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.002.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed rule may provide a possible positive economic effect on local employment in association with this rule because the construction activities associated with the program will allow local contractors to bid on jobs in their area; however, because the work would be bid on a project-by-project basis, and because it is unknown what communities will end up pursuing this activity, a local impact is not able to be quantified for any given community.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Cervantes has also determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be increased opportunity to access affordable housing for homeownership. There will not be any economic cost to any individuals required to comply with the new sections because the costs associated with this activity and that are incurred to ad-

minister the activity are allowable and payable under the grant through which the activity is offered.

f. **FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).** Mr. Cervantes also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections do not have any foreseeable implications related to costs or revenues of the state or local governments. The costs incurred to comply with the rule are reimbursable by the federal funding source under which the activity is offered.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held June 7, 2019, to July 12, 2019, to receive input on the new proposed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email abigail.versyp@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, July 12, 2019.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

§23.80. Homebuyer Assistance with New Construction (HANC) or Rehabilitation Threshold and Selection Criteria.

(a) **Threshold Match requirement.** The Department shall use population figures from the most recently available U.S. Census Bureau's American Community Survey (ACS) as of the date that an Application is first submitted under the NOFA to determine the applicable Threshold Match requirement. The Department may incentivize or provide preference to Applicants committing to provide additional Threshold Match above the requirement of this subsection. Such incentives may be established as selection criteria in the NOFA. Excluding Applications under the disaster relief and persons with disabilities set asides, Threshold Match shall be required based on the tiers described in paragraphs (1) and (2) of this subsection:

(1) No Threshold Match is required when:

(A) the Service Area includes the entire unincorporated area of a county and where the population of Administrator's Service Area is less than or equal to 20,000 persons; or

(B) the Service Area does not include the entire unincorporated area of a county, and the population of the Administrator's Service Area is less than or equal to 3,000 persons.

(2) One percent of Direct Activity Costs, exclusive of Match, is required as Match for every 1,000 in population up to a maximum of 15%.

(b) **Cash Reserve Threshold requirement.** When HOME funds will be utilized for construction activities, documentation, as described below, must be submitted at the time of Application that demonstrates that the Applicant has at least \$40,000 in cash reserves. The cash reserves may be utilized to facilitate administration of the program, and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(1) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(2) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in this subsection.

(c) Other Threshold and/or Selection criteria for this Activity may be outlined in the NOFA.

§23.81. Homebuyer with New Construction or Rehabilitation (HANC) General Requirements.

(a) Eligible Activities must meet the ownership requirement in subparagraph (A) of this subsection and an Activity described in paragraph (1)(B) of this subsection:

(1) Ownership requirement. A site must be owned by the beneficiary or the HOME Activity must include one of the two following Activities:

(A) Acquisition of existing single family housing or a parcel; or

(B) Refinance of non-owner occupied real property parcel not prohibited for single family housing by zoning or restrictive covenants.

(2) All Activities must include New Construction or Rehabilitation of a unit of single family housing not occupied by the Household prior to assistance; New Construction described in this subsection includes the purchase and installation of a new unit of Manufactured Housing (MHU). Rehabilitation of an MHU is not an eligible Activity.

(b) The unit of housing in any of the Activities described in subsection (a) of this section must be occupied by the assisted Household as their principal residence for a minimum of 15 years from the Construction Completion Date.

(c) If the assisted property is owned by the Household prior to participation, the Household must be current on any existing Mortgage Loans and taxes, and the property cannot have any existing home equity loan liens. HOME funds may not be utilized to refinance loans made or insured by any federal program.

(d) The purchase price of acquired property and the post-improvement value of the unit may not exceed the limitations set forth in 24 CFR §92.254. Compliance with the purchase price limitation must be evidenced prior to loan closing. Compliance with the post-improvement value limitation must be evidenced with a final appraisal of the completed project prior to release of retainage.

(e) Activity Costs. Total Activity Costs, exclusive of Match funds, are limited to an amount not to exceed the federal subsidy limitations defined in 24 CFR §92.250. Direct Activity Costs, exclusive of Match and leverage, for construction are limited to:

(1) Construction of new site-built housing: The Direct Activity Costs are not restricted beyond the Total Activity Costs as identified in this subsection;

(2) Placement of an energy efficient MHU: \$75,000; and

(3) Rehabilitation that is not Reconstruction: \$60,000, or up to \$100,000 for properties listed in or identified as eligible for listing in the National Register of Historic Places.

(f) In addition to the Direct Activity Costs allowable under subsection (e) of this section, a sum not to exceed \$10,000 and not causing the total subsidy to exceed the limitations set forth by 24 CFR §92.250 may be requested and, if approved, used to pay for any of the following as applicable:

(1) Necessary environmental mitigation as identified during the Environmental review process;

(2) Installation of an aerobic septic system; or

(3) Homebuyer requests for accessibility features.

(g) Activity soft costs eligible for reimbursement are limited to:

(1) New Construction: no more than \$11,500 per housing unit;

(2) Replacement with an MHU: no more than \$5,000 per housing unit; or

(3) Rehabilitation: \$8,500 per housing unit. This limit may be exceeded for lead-based remediation and only upon prior approval of the Division Director. The costs of testing and assessments for lead-based paint are not eligible Activity soft costs for housing units that are reconstructed or if the existing housing unit was built after December 31, 1977.

(h) Funds for administrative costs are limited to no more than 4% of the Direct Activity Costs, exclusive of Match funds.

(i) Homebuyers may choose to obtain financing for the acquisition or construction, or any combination thereof, from a third-party lender so long as the loan meets the requirements of Chapter 20 of this title (relating to Single Family Programs Umbrella Rule).

(j) Direct assistance will be structured as a fully amortizing, repayable loan and will initially be evaluated at zero percent interest. The minimum loan term shall be equal to the required federal affordability period based on the HOME investment, and shall be calculated by setting the total estimated housing payment (including principal, interest, property taxes, insurance, and any other homebuyer assistance), equal to at least the minimum required housing payment. Should the estimated housing payment, including all funding sources, be less than the minimum required housing payment for the minimum term, the Department may charge an interest rate to the homebuyer such that the total estimated housing payment is no less than the required minimum housing payment. In no instance shall the interest rate charged to the homebuyer exceed 5% and such result may deem the applicant as overqualified for assistance. The term shall not exceed 30 years and not be less than 15 years.

(1) The total Mortgage Loan may include costs incurred for Acquisition or Refinance, Mortgage Loan closing costs, and Direct Activity Costs, exclusive of Match funds.

(2) The total Debt-to-Income Ratio shall not exceed the limitations set forth in Chapter 20 of this title.

(3) For homebuyers whose income is equal to or less than 50% AMFI, the minimum required housing payment shall be no less than 15% of the household's gross income. For homebuyers whose income exceeds 50% AMFI, the minimum required housing payment shall be no less than 20% of the household's gross income.

(k) Earnest money may be credited to the homebuyer at closing, but may not be reimbursed as cash. HOME funds may be used to pay other reasonable and customary closing costs that are HOME eligible costs.

(l) To ensure affordability, the Department will impose recap-ture provisions established in this Chapter.

(m) For New Construction, site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes, standards, ordinances, and zoning requirements. In addition, New Construction housing is required to meet 24 CFR §92.251(a)(2) as applicable. Housing that is Rehabilitated under this Chapter must meet the Texas Minimum Construction Standards (TMCS) and all other applicable local codes, Rehabilitation standards, ordinances, and zoning

ordinances in accordance with the HOME Final Rule. MHUs must be installed according to the manufacturer's instructions and in accordance with Federal and State laws and regulations.

(n) Housing proposed to be constructed under this subchapter must meet the requirements of Chapters 20 and 21 of this title (relating to Single Family Programs Umbrella Rule and Minimum Energy Efficiency Requirements for Single Family Construction Activities, respectively) and must be certified by a licensed architect or engineer.

(1) To the extent that a set of architectural plans are generated and used by an Applicant for more than one home site, the Department will reimburse only for the first time a set of architectural plans is used, unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer for the reuse of the plans on that subsequent specific site.

(2) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

§23.82. Homebuyer with New Construction (HANC) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator must submit the true and complete information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (14) of this subsection:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Activity funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested, a maximum of 5% of hard construction costs for contingency items, proposed Match to be provided, evidence that Direct Activity Cost and Soft Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance from the Department;

(4) A copy of the Household's intake application on a form prescribed by the Department;

(5) Certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. All documentation used to determine the income of the Household must be provided;

(6) Project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion;

(7) Identification of any Lead-Based Paint (LBP) if activity involves an existing unit and certification that LBP will be mitigated as required by 24 CFR §92.355;

(8) Evidence that the housing unit will be located outside of the 100-year floodplain;

(9) If applicable, documentation to address or resolve any potential conflict of interest, Identity of Interest, or duplication of benefit;

(10) Information necessary to draft Mortgage Loan documents, including issuance of an SOL;

(11) Life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship;

(12) Documentation of homebuyer completion of a homebuyer counseling program/class provided by a HUD certified housing counselor;

(13) For Activities involving acquisition of real property:

(A) A title commitment to issue a title policy that evidences that the property will transfer with no tax lien, child support lien, mechanics or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. The effective date of the title commitment must be no more than 30 days prior to the date of project submission. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;

(B) Executed sales contract; and

(C) A loan estimate or letter from any other lender confirming that the loan terms and closing costs will be consistent with the executed sales contract, the first lien Mortgage Loan requirements, and the requirements of this Chapter;

(14) For Activities that do not involve acquisition of real property:

(A) A title commitment or policy, or a down date endorsement to an existing title policy, and the actual documents, or legible copies thereof, establishing the Household's ownership, such as a warranty deed or ground lease for a 99-year leasehold. The effective date of the title commitment must be no more than 30 days prior to the date of project submission. Title commitments for loan projects that expire prior to the loan closing date must be updated and must not have any adverse changes. These documents must evidence the definition of Homeownership is met;

(B) A tax certificate that evidences a current paid status;

(C) Written consent from all Persons who have a valid lien or ownership interest in the Property for the Rehabilitation or New Construction Activities;

(D) Consent to demolish from any existing Mortgage Loan lien holders and consent to subordinate to the Department's loan, if applicable; and

(15) Any other documentation necessary to evidence that the Activity meets the Program requirements.

(b) Loan closing. In addition to the documents required under subsection (a) of this section, the Administrator must submit the appraisal or other valuation method approved by the Department which establishes the post Rehabilitation or New Construction value of improvements prior to the issuance of loan documents by the Department.

(c) Disbursement of funds. The Administrator must comply with all of the requirements described in paragraphs (1) - (10) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of additional documentation related to the Administrator's compliance with requirements described in paragraphs (1) - (10) of this subsection, may be required with a request for disbursement:

(1) For construction costs that are part of a loan subject to the requirements of this subsection, a down date endorsement to the title policy not older than the date of the last disbursement of funds or 45 calendar days, whichever is later, is required. For release of retainage, the down date endorsement must be dated at least 40 calendar days after the Construction Completion Date.

(2) If applicable, a maximum of 50% of Activity funds for an Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed.

(3) Property inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo, are required to be submitted. The inspection must be signed and dated by the inspector and Administrator.

(4) Certification of the following is required:

(A) That its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided;

(B) That no Person that would benefit from the award of HOME funds has satisfied the Applicant's cash reserve obligation or made promises in connection therewith;

(C) That each request for disbursement of HOME funds is for the actual cost of providing a service; and

(D) That the service does not violate any conflict of interest provisions.

(5) Original, fully executed, legally enforceable loan documents for each assisted Household containing remedies adequate to enforce any applicable affordability requirements are required. Certified copies of fully executed, recorded loan documents that are required to be recorded in the real property records of the county in which the housing unit is located must be returned to the Department, duly certified as to recordation by the appropriate county official. This documentation prior to disbursement is not applicable for funds made available at the loan closing.

(6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness for expenditures submitted for reimbursement. The Department may request Administrator to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all Program Rules.

(7) The request for funds for administrative costs must be proportionate to the amount of Direct Activity Costs requested or already disbursed.

(8) Disbursement requests must include the withholding of 10% of hard construction costs for retainage. Retainage will be held until at least 40 calendar days after the Construction Completion Date.

(9) For final disbursement requests, the following is required:

(A) Submission of documentation required for Activity completion reports and evidence that the demolition or, if an MHU, salvage and disposal of all dilapidated housing units on the lot occurred for Newly Constructed or Rehabilitated housing unit;

(B) Certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot for which ownership was established and on and within the same lot secured by the loan; and

(C) A final appraisal of the property after completion of improvements.

(10) The final request for disbursement must be submitted to the Department with support documentation no later than 60 calendar days after the termination date of the Contract in order to remain in compliance with the Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2019.

TRD-201901550

David Cervantes

Acting Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: July 7, 2019

For further information, please call: (512) 475-0908



TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 16. HISTORIC SITES

13 TAC §16.3

The Texas Historical Commission (hereafter referred to as the "Commission") proposes amendments to Rule 16.3 of Title 13, Part 2, Chapter 16 of the Texas Administrative Code concerning historic sites. These amendments are needed as part of the Commission's overall effort to clarify language in order to implement necessary updates, additions and changes to more precisely reflect the procedures of the historic sites division.

The rule amends the current two-phase process and creates a three-phase process within the updated State Historic Sites Historic Properties Collection Plan for the evaluation of a historic property. The amendments provide the criteria to be used in preliminary staff evaluations and defines a process to more effectively evaluate properties and contain costs.

FISCAL NOTE. There will be no fiscal impact. The proposed revisions to the process of historic site evaluation will minimize the fiscal impact and contain costs in evaluating potential properties and be more cost effective to the state. Mark Wolfe, Executive Director, has determined that for the first five-year period the amended rules are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules, as proposed.

PUBLIC BENEFIT/COST NOTE. The benefit to the public will be achieved by providing an improved and enhanced structured approach in property evaluations. The proposed new three-step procedure will insure that the process is the most effective and efficient in the deployment of state resources. Mr. Wolfe has also determined that for each year of the first five-year period the amended rules are in effect, the public benefit will be a clearer statement of the criteria to be used in evaluating potential historic sites and a more clearly defined process.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the amendments to these rules as proposed. There is no effect on the local economy for the first five years that the proposed amendments are in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022 and 2001.024(a)(6).

COSTS TO REGULATED PERSONS. The proposed amendments do not impose a cost on regulated persons or entities; therefore, they are not subject to Texas Government Code, §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. The proposed rule amendments provide an opportunity for the historic sites division to operate more strategically in assessing properties with a preliminary in-house first step to determine if further investment of state resources is required in any property assessment. There is no anticipated economic impact of these amendments to the rule. Mr. Wolfe has also determined that there will be no negative impact on rural communities, small or micro-businesses because of implementing these rules amendments and, therefore, no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required. There are no anticipated economic costs to the public in compliance with the amendments to these rules, as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT. During the first five years that the amendments would be in effect, the proposed amendments: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not create a new regulation; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendments would be in effect, the proposed amendments will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. THC has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Comments on the proposal may be submitted to Joseph Bell, Deputy Executive Director of Historic Sites, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY. These amendments are proposed under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission; Texas Government Codes §442.0057 and §442.0058, which allow the Commission to accept donations of land or sell or exchange land; and Texas Government Code §442.0053(a), which provides that the Commission by rule shall adopt the criteria to determine the eligibility for the inclusion of real property into the state historic sites system.

CROSS REFERENCE TO STATUTE. Texas Government Code §442.0053(a) provides the Commission with the authority to

adopt the criteria to determine the eligibility for real property's inclusion into the state historic sites system and Texas Government Code §442.0056(a) provides the Commission with the authority to acquire historic sites. No other statutes, articles, or codes are affected by this amended rule.

§16.3. *Addition of Historic Sites to the Texas Historical Commission Historic Sites Program.*

(a) Criteria. The addition of new Historic Sites will follow the "State Historic Sites Historic Properties Collection Plan" in a three-step process ["Historic Sites Division Property Collection Plan"] as posted on the Texas Historical Commission's (Commission) website at the.texas.gov detailing themes and subthemes in Texas history, site assessment, operational and managerial evaluations processes, and the following criteria:

(1) The property must have recognized statewide or national significance based on the standards of the National Register of Historic Places.

(2) The property should be able to provide interpretation of a significant theme or event of Texas history that is not fully represented by the Commission's existing historic sites or other historic sites accessible to the public. The Commission will strive to maintain a geographic, cultural, and thematic balance in its program.

(3) The property should have exceptional integrity of location (including surrounding environment), design, material, setting, feeling, and association.

(4) The property should have appropriate collections (objects, manuscript material, artifacts) associated with the historic site or necessary artifacts related to the site's history, and the period of significance should be identified and available.

(5) The property must be appropriate for use as an interpretive museum or historic site, have high potential to attract and accommodate diverse and new audiences, and be accessible to travelers as well as to the local community.

(6) The property must be available without restrictions that would limit the Commission's options for preservation and interpretation as a historic site (for example, a life estate retained by the grantor, restrictions against future sale or conveyance, or limits on alterations deemed appropriate by the Commission). The Commission encourages the use of easements or other restrictions to ensure the preservation of historic sites.

(7) Financial resources must be available or assured, including an endowment fund where appropriate, or sources of funding must be identified in a comprehensive funding plan to ensure the restoration, interpretation, development, long term operation, and preservation of the site.

(8) The property must have the potential for strong supporting partnerships including community support.

(b) Evaluation Process. To evaluate the site against these criteria, the Commission will follow a [three-step ~~two-step~~] process as follows.

(1) Phase I. Staff will determine if the property should be recommended to be added to the Commission's portfolio of State Historic Sites. The preliminary evaluation will briefly address the following issues: [~~A staff committee will be appointed to conduct a preliminary review of the property with reference to criteria noted in subsection (a) of this section. The committee will make a recommendation to the Commission whether to proceed with the second step evaluation.~~]

(A) Importance of the property in Texas and/or American History;

(B) Property value - strategic comparison with other available properties for location, operation, cultural resources and marketability;

(C) Potential for generation of sustainable visitation and revenue;

(D) Commission resources to operate the property;

(E) Property Condition - Improvements required for successful operation;

(F) Resources for interpretation of the property's themes and stories;

(G) Resources for preservation and care for the property's infrastructure and collections;

(H) Collections or endowment accompanying the property;

(I) Potential for development of Friends Organizations;

(J) Evaluation of other already organized local support; and

(K) Limitations on site development, such as environmental regulations and local restrictions (zoning, land use).

(2) Phase II. If the property is recommended for additional study, a staff committee will be assigned to conduct a preliminary review of the property with reference to criteria noted in subsection (a) of this section. The committee will make a recommendation to the Commission whether to proceed with the development of a historic site management plan in phase three of the evaluation process.

(3) [~~2~~] Staff will obtain and use the following information in phase two:

(A) A description of the property, including land, structures, and other features.

(B) A preliminary inventory of collections and equipment.

(C) A statement of significance or reference to its designation on the National Register of Historic Places/National Historic Landmark and an evaluation of the site's integrity.

(D) A statement from the current owner indicating a willingness to transfer the real and relevant personal property and the terms and conditions for such a transfer.

(E) Needed and available funding for development costs and continuing operational costs.

(F) Letters of support from interested parties, including an indication of willingness to create an appropriate support group.

(G) A statement identifying how the property would support the educational mission of the Historic Sites Program to serve a broad and diverse audience.

(H) A preliminary estimate of the visitation and costs for development and operation of the site.

(4) [~~3~~] Phase Three. Upon positive action by the Commission on the recommendation noted in paragraph (2) [~~1~~] of this subsection, the staff will prepare or have prepared a management plan for the site's evaluation [site] including:

(A) Evaluation of the site, including, but not limited to, buildings, support facilities, infrastructure (including roads, trails, utility service/water and sewer systems), landscape features, and collections.

(B) Required staffing and services for operation of the site, including ongoing costs of preservation, operation, maintenance, and marketing. [Merits of the proposed site compared to other sites in Texas that embody the same or similar historical or physical characteristics.]

(C) Preservation and facility development needs.

(D) Costs and timeline for making the property available to the public.

(E) Needed staffing and consultant services for development of the site. [Any limitation on site development, such as environmental regulations and local restrictions (zoning, land use).]

(F) Projected audience/annual visitation, sources of funding to support programming including community partnerships, potential earned revenue, philanthropic, and endowment. [Needed staffing and consultant services for development of the site.]

~~(G) Needed staffing and services for operation of the site, including ongoing costs of preservation operation, and marketing.]~~

~~(H) Business plan for the site identifying projected audience/annual visitation, sources of funds for all aspects of the program including available community support, potential to generate revenue, and endowment.]~~

(5) [(4) The management [This] plan will be reviewed by a panel of experts including an independent Texas historian, museum professional, and expert in heritage tourism and their recommendation will be taken into consideration by the Commission to determine whether the property should be accepted.

(6) [(5)] The decision to accept a site is within the sole discretion of the Commission, including determining whether acceptance of a property that meets all technical criteria is in the best interest of the State.

(c) A property that is adjacent to an existing THC State Historic Site that will enhance the preservation, protection, or interpretation of the existing site, or a property that is needed to support the operations of the state historic site as a program support facility, may be acquired by purchase or donation by action of the Commission on recommendation of the Executive Director, without the evaluation process described in subsection (b) of this section.

(d) A right of way or easement required to allow for installation or connection of necessary utilities at a THC State Historic Site between regular meetings of the Commission, may be approved by the Executive Director with the approval of the Chairman. This action will be ratified at the next meeting of the Commission.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2019.

TRD-201901546

Mark Wolfe

Executive Director

Texas Historical Commission

Earliest possible date of adoption: July 7, 2019

For further information, please call: (512) 463-7948

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 57. FOR-PROFIT LEGAL SERVICE CONTRACT COMPANIES

16 TAC §§57.1, 57.10, 57.21 - 57.23, 57.25, 57.70 - 57.72, 57.80, 57.90

The Texas Department of Licensing and Regulation (Department) proposes the repeal of existing rules at 16 Texas Administrative Code (TAC), Chapter 57, §§57.1, 57.10, 57.21 - 57.23, 57.25, 57.70 - 57.72, 57.80, and 57.90, regarding For-Profit Legal Service Contract Companies.

EXPLANATION OF AND JUSTIFICATION FOR THE REPEAL

This proposed rulemaking proposes the repeal of the For-Profit Legal Service Contract Companies rules under 16 TAC, Chapter 57, regarding the registration and regulation of for-profit legal service contract companies, administrators, and sales representatives by the Department. The rules under 16 TAC, Chapter 57 implement Texas Occupations Code, Chapter 953, Regulation of For-Profit Legal Service Contract Companies.

The proposed repeal is necessary to implement Senate Bill (S.B.) 2065 and House Bill (H.B.) 2113, 85th Legislature, Regular Session, 2017. These two bills eliminated the statewide registration requirements and regulation by the Department of for-profit legal service contract companies, administrators, and sales representatives under Occupations Code, Chapter 953. The two bills also eliminated requirements on for-profit legal service contract companies to submit financial security and other financial information to the Department and to maintain certain company records. These two bills, however, preserved other requirements under Chapter 953 regarding for-profit legal service contracts and for-profit legal service contract companies, administrators, and sales representatives. A violation of the remaining chapter is a deceptive trade practice actionable under Subchapter E, Chapter 17, Business and Commerce Code (Deceptive Trade Practices-Consumer Protection Act). These statutory changes will be effective September 1, 2019.

This proposed rulemaking proposes the repeal of 16 TAC Chapter 57 and is being published so that the effective date of the repeal corresponds with the effective date of the statutory changes. As of September 1, 2019, the Department will no longer register or regulate for-profit legal service contract companies, administrators, and sales representatives.

SECTION-BY-SECTION SUMMARY

This proposal repeals §57.1, Authority. This section states that the rules are promulgated under the authority of Texas Occupations Code, Chapters 51 and 953.

This proposal repeals §57.10, Definitions. This section defines group legal service contract, group legal service contract manager, administrator, company, and sales representative.

This proposal repeals §57.21, Registration Requirements--Company. This section sets out the registration requirements, the registration term, and the requirements regarding financial se-

curity and other financial information for legal service contract companies.

This proposal repeals §57.22, Registration Requirements--Sales Representative. This section sets out the registration requirements and the registration term for legal service contract sales representatives.

This proposal repeals §57.23, Registration Requirements--Administrator. This section sets out the registration requirements and the registration term for legal service contract administrators.

This proposal repeals §57.25, Registration Requirements--Renewal. The section sets out the registration renewal requirements for companies, sales representatives, and administrators.

This proposal repeals §57.70, Responsibilities of Registrants--General. The section requires a registrant to notify the Department in writing within 30 days of any change in the registrant's information.

This proposal repeals §57.71, Responsibilities of Registrants--Company. This section establishes the responsibilities of a legal service contract company, including: providing a receipt and a copy of the legal service contract to a contract holder; providing notice that the Department regulates legal service contract companies and sale representatives; and providing the Department's contact information.

This proposal repeals §57.72, Responsibilities of Registrants--Sales Representative. This section provides that a sales representative may only sell legal service contracts under Texas Occupations Code, Chapter 953 and this chapter on behalf of a registered company.

This proposal repeals §57.80, Fees. This section sets out the initial and renewal registration fees for companies, administrators, and sales representatives; fees for revised or duplicate registrations; late renewal fees; and the annual premium tax replacement fee for companies.

This proposal repeals §57.90, Administrative Penalties and Sanctions. This section sets out the administrative penalties and sanctions for violations of the Department's statutes and rules.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

State Government

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed repeal is in effect, there will be a reduction in costs to the State as a result of enforcing or administering the proposed repeal.

S.B. 2065 and H.B. 2113 repealed the statewide registration requirements and regulation by the Department of for-profit legal service contract companies, administrators, and sales representatives from the statute, Occupations Code, Chapter 953. This proposal repeals the corresponding program rules. The Department will no longer have costs associated with the regulation of the industry including paying full time employees (FTEs) to administer and enforce the program. No FTEs worked on this program on a full-time basis so there is no loss of FTEs. The changes to the statute, and the resulting repeal of the rules, will result in a reduction in costs to the State of approximately \$91,232 for each year of the first five years.

Mr. Couvillon has determined that for each year of the first five years the proposed repeal is in effect, there will be a loss in rev-

enue to the State as a result of enforcing or administering the proposed repeal.

S.B. 2065 and H.B. 2113 repealed the registration and renewal requirements, including payment of fees, from the statute. This proposal repeals the specific registration and renewal fees for companies, administrators, and sales representatives from the existing rules. As of May 1, 2019, there were: 16 for-profit legal service contract companies; 9,685 for-profit legal service contract sales representatives; and 1 for-profit legal service contract administrator. The registration fees for the program have averaged \$215,000 each year for the past five years.

S.B. 2065 and H.B. 2113 repealed the annual premium tax replacement fee, which must be paid by each company, and the formula for calculating the fee from the statute. This proposal repeals this fee from the corresponding program rules. The annual premium tax replacement fee has averaged \$860,000 each year for the past five years.

The changes to the statute, and the resulting repeal of the fees set by rule, will result in a loss of revenue to the State of approximately \$1,075,000 each year for the first five years.

Local Government

Mr. Couvillon has determined that for each year of the first five years the proposed repeal is in effect, there will be no estimated additional costs or estimated reduction in costs to local government as a result of enforcing or administering the proposed repeal.

Mr. Couvillon has determined that for each year of the first five years the proposed repeal is in effect, there is no estimated increase or loss in revenue to local government as a result of enforcing or administering the proposed repeal.

Mr. Couvillon has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the proposed repeal does not have foreseeable implications relating to costs or revenues of local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed repeal will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon has determined that for each year of the first five-year period the proposed repeal is in effect, the public benefit will be the repeal of unnecessary rules. The rules under 16 TAC Chapter 57 implement Texas Occupations Code, Chapter 953. S.B. 2065 and H.B. 2113 eliminate the statewide registration requirements and regulation by the Department under Chapter 953 effective September 1, 2019, so the rules will no longer be necessary.

The changes to the statute, and the repeal of the corresponding program rules, eliminate the cost of a regulatory program with a relatively small license population and little need for enforcement activity. As of May 1, 2019, there were: 16 for-profit legal service contract companies; 9,685 for-profit legal service contract sales representatives; and 1 for-profit legal service contract administrator.

Mr. Couvillon has determined that for each year of the first five-year period the proposed repeal is in effect, there will be a reduction in costs (savings) to persons who are required to comply

with the proposed repeal. The Department estimates the collective savings to these persons to be approximately \$1,075,000 for each year of the first five-year period.

For-profit legal service contract companies will no longer need to submit initial license or renewal applications, pay an initial application fee of \$250, or pay a renewal fee which ranges from \$250 to \$1,000 depending on the number of legal service contracts sold in the 12 months preceding the renewal application. Companies will no longer be required to meet costly financial security requirements to sell legal service contracts, and no longer required to submit audit reports and audited financial statements, or a certified statement from an actuary describing the company's reserves. Consequently, there will be less of a regulatory burden on the businesses in this industry, potentially enabling a reduction for consumers of the prices for legal service contracts.

For-profit legal service contract sales representatives will no longer need to pay a \$20 initial application fee or a \$20 annual renewal fee. For-profit legal service contract administrators will no longer be required to pay a \$25 initial application fee or a \$25 annual renewal fee.

The removal of Subchapter E from the statute will result in companies, sales representatives, and administrators no longer being subject to potential disciplinary action in the form of administrative penalties and sanctions by the Department. Consumers are still protected from violations of the statute through certain consumer protection provisions in the Deceptive Trade Practices-Consumer Protection Act.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed repeal is effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeal.

As explained under "Public Benefits", the for-profit legal service contract companies will experience a reduction in costs from the elimination of initial application fees, annual renewal fees, and the annual premium tax replacement fee due to the changes made to the statute by S.B. 2065 and H.B. 2113 and the repeal of the corresponding program rules. The sales representatives and administrators will experience a reduction in costs from the elimination of initial application fees and annual renewal fees due to the changes made to the statute by S.B. 2065 and H.B. 2113 and the repeal of the corresponding program rules. The Department estimates the collective reduction in costs to these persons to be approximately \$1,075,000 for each year of the first five-year period.

There could be a negligible economic cost to for-profit legal service contract companies that have pre-printed legal service contracts and that would need to update their contracts to remove the Department's contact information. This cost, however, would be a result of changes made to the statute by S.B. 2065 and H.B. 2113, not by the proposed repeal.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed repeal. Since the agency has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis,

as detailed under Texas Government Code §2006.002, is not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed repeal does not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed repeal. For each year of the first five years the proposed repeal will be in effect, the agency has determined the following:

1. The proposed repeal does not create or eliminate a government program. S.B. 2065 and H.B. 2113 repealed the statewide registration requirements and regulation by the Department from the statute, resulting in the elimination of the government program. The proposal repeals the corresponding program rules.
2. Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions. The legislature creates and eliminates employee positions through the General Appropriations Act.
3. Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the agency. The creation of, repeal of, and changes to a statute result in increases and decreases in future appropriations to an agency.
4. The proposed repeal does not require an increase in fees, but it requires a decrease in fees paid to the agency. S.B. 2065 and H.B. 2113 repealed the registration and renewal requirements, including payment of fees, from the statute. The proposed repeal decreases the fees paid to the agency by repealing the specific registration and renewal fees for companies, administrators, and sales representatives set out in the existing rules. S.B. 2065 and H.B. 2113 also repealed the required annual premium tax replacement fee and the prescribed formula from the statute. This statutory change decreases the annual fee paid by each company to the agency. This proposal just repeals this fee from the corresponding program rules.
5. The proposed repeal does not create a new regulation. This proposal repeals the existing regulations under 16 TAC Chapter 57. The proposed repeal is a result of the statutory changes made by S.B. 2065 and H.B. 2113.
6. The proposed repeal does not expand or limit an existing regulation, but it repeals an existing regulation. This proposal repeals the existing regulations under 16 TAC Chapter 57. The proposed repeal is a result of the statutory changes made by S.B. 2065 and H.B. 2113.
7. The proposed repeal does not increase the number of individuals, but it decreases the number of individuals subject to the rule's applicability. This proposal repeals the existing rules under 16 TAC Chapter 57, which results in a decrease in the number of companies, administrators, and sales representatives subject to the rule's applicability. The proposed repeal is a result of the statutory changes made by S.B. 2065 and H.B. 2113.
8. The proposed repeal does not positively or adversely affect this state's economy. S.B. 2065 and H.B. 2113 eliminated the

statewide registration requirements and regulation by the Department from the statute; however, the sale and administration of for-profit legal service contracts will continue. There should be no effect to the state's economy.

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed repeal and the proposed repeal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed repeal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposal may be submitted to Dalma Sotero, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY

The repeal is proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 953, and Texas Business and Commerce Code, Chapter 17, Subchapter E.

No other statutes, articles, or codes are affected by the proposal.

§57.1. *Authority.*

§57.10. *Definitions.*

§57.21. *Registration Requirements--Company.*

§57.22. *Registration Requirements--Sales Representative.*

§57.23. *Registration Requirements--Administrator.*

§57.25. *Registration Requirements--Renewal.*

§57.70. *Responsibilities of Registrants--General.*

§57.71. *Responsibilities of Registrants--Company.*

§57.72. *Responsibilities of Registrant--Sales Representative.*

§57.80. *Fees.*

§57.90. *Administrative Penalties and Sanctions.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2019.

TRD-201901539

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: July 7, 2019

For further information, please call: (512) 463-8179



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

DIVISION 1. GENERAL PROVISIONS

31 TAC §57.977

The Texas Parks and Wildlife Department withdraws the emergency amendment of §57.977 which appeared in the May 24, 2019, issue of the *Texas Register* (43 TexReg 2560).

Filed with the Office of the Secretary of State on May 24, 2019.

TRD-201901579

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Effective date: May 24, 2019

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





ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 62. SEXUAL ASSAULT PREVENTION AND CRISIS SERVICES

SUBCHAPTER C. SEXUAL ASSAULT PROGRAM GRANTS

1 TAC §§62.100 - 62.102, 62.104 - 62.109, 62.111, 62.114, 62.115, 62.200 - 62.202, 62.300 - 62.309, 62.402, 62.500 - 62.503, 62.505 - 62.509, 62.600 - 62.603

The Office of the Attorney General (OAG) adopts amendments to Subchapter C (Sexual Assault Program Grants) §§62.100 - 62.102, 62.104 - 62.109, 62.111, 62.114, 62.115, 62.200 - 62.202, 62.300 - 62.309, 62.500 - 62.503, 62.505 - 62.509, and 62.600 - 62.603. The OAG also adopts a new section §62.402.

The amendments and new rule relate to the grant programs of the OAG concerning Sexual Assault Prevention and Crisis Services (SAPCS). The amendments and new rule are adopted without changes to the proposed text as published in the February 8, 2019, issue of the *Texas Register* (44 TexReg 519) and will not be republished.

According to Article I, Section 31 of the Texas Constitution, the Texas Compensation to Victims of Crime Fund may be expended as provided by law only for delivering or funding victim-related compensation, services, or assistance. Article 56.541(e) of the Texas Code of Criminal Procedure provides that the OAG may use funds from the Texas Compensation to Victims of Crime Fund for grants or contracts supporting crime victim-related services or assistance. Article 56.541(f) authorizes the OAG to adopt rules necessary to carry out the Article's provisions.

Chapter 420 of the Texas Government Code establishes an SAPCS Fund, and authorizes the OAG to award grants to promote the development throughout the state of nonprofit programs for the survivors of sexual assault and to standardize the quality of services provided. Section 420.011 authorizes the OAG to adopt rules necessary to implement Chapter 420.

The amendments and new rule will better serve victims of crime by improving the administration of the SAPCS grant programs. The amendments and new rule implement, interpret, and prescribe the standards of the OAG relating to the administration of the Texas Compensation to Victims of Crime Fund and the SAPCS Fund.

The amendment to §62.100 adds new definitions and renumbers the definitions accordingly.

The amendment to §62.101 replaces "party" with "interested person" and adds a new subsection concerning the applicability of federal law.

The amendment to §62.102 clarifies the source of grant funds.

The amendment to §62.104 clarifies the purpose of the SAPCS program and how the OAG makes grant funding decisions.

The amendment to §62.105 clarifies the eligible purpose areas for SAPCS grants.

The amendment to §62.106 clarifies who is eligible to apply for SAPCS grants.

The amendment to §62.107 removes the match requirement for grants and clarifies that volunteer requirements will be stated in the RFA and Application Kit.

The amendment to §62.108 removes the minimum amount of funding for a grant application from the rule and provides that minimum and maximum amounts will be stated in the RFA and Application Kit.

The amendment to §62.109 clarifies the grant contract period.

The amendment to §62.111 clarifies the criteria for additional award opportunities.

The amendment to §62.114 updates references to federal and state grant requirements.

The amendment to §62.115 requires that information submitted to the OAG not identify a person providing or receiving services.

The amendment to §62.200 generalizes the reference to the OAG and its website.

The amendment to §62.201 clarifies the screening, evaluation, and review process for grant applications.

The amendment to §62.202 clarifies that an applicant's failure to timely return a signed acceptance document to the OAG may be construed as a rejection of the grant award.

The amendment to §62.300 clarifies the federal law applicable to grantees.

The amendment to §62.301 moves the definition of "Employee" to §62.100 and removes the prohibition on the use of grant funds for overtime pay.

The amendment to §62.302 moves the definition of "Fringe benefits" to §62.100 and substitutes the term "employees" for "personnel."

The amendment to §62.303 moves the definition of "Professional and consultant benefits" to §62.100.

The amendment to §62.304 clarifies the criteria for reimbursement of travel expenses.

The amendment to §62.305 moves the definition of "Equipment" to §62.100 and clarifies requirements concerning the use of grant funds for equipment.

The amendment to §62.306 moves the definition of "Supplies" to §62.100 and clarifies the types of allowable items considered to be supplies.

The amendment to §62.307 moves the definition of "Other direct operating expenses" to §62.100.

The amendment to §62.308 moves the definition of "Indirect costs" to §62.100 and clarifies the OAG will not fund indirect costs.

The amendment to §62.309 removes overtime, out-of-state travel, and dues from the list of unallowable costs.

New §62.402 requires an applicant to submit all forms required by the Application Kit.

The amendment to §62.500 clarifies requirements pertaining to grant contract forms.

The amendment to §62.501 prescribes the requirements for a grantee's grant contact and authorized signator.

The amendment to §62.502 substitutes the term "grants" for "contracts," and "grantee" for "contractor."

The amendment to §62.503 substitutes the term "grantee" for "contractor."

The amendment to §62.505 removes the limit on grant adjustments per state fiscal year and clarifies the process for requesting a grant adjustment.

The amendment to §62.506 addresses copyrights purchases with OAG funds.

The amendment to §62.507 substitutes the term "grantee" for "contractor" and updates references to federal law.

The amendment to §62.508 substitutes the term "grantee" for "contractor" and clarifies that maintenance and retention of grant records is governed by Texas Government Code Chapter 441, Subchapter L, and the grant contract.

The amendment to §62.509 concerns the range of sanctions the OAG may impose on grantees and the procedures related to notification and review of sanctions.

The amendment to §62.600 substitutes the term "grantee" for "contractor."

The amendment to §62.601 prescribes conflict of interest standards for grantee personnel and officials.

The amendment to §62.602 substitutes the term "compliance" for "quality assurance" in both the title and body of the section.

The amendment to §62.603 clarifies audit standards and audit submission requirements.

During the comment period, the OAG received one comment from the Texas Association Against Sexual Assault.

Comment: The Texas Association Against Sexual Assault suggests substituting the term "Remedies for Noncompliance" for the term "Sanctions," and the term "Specific Conditions" for the term "Special Conditions," so that the terms in these rules precisely match the terms used in the federal regulations.

Response: The OAG declines to make the suggested changes, as the terms used in these rules are consistent with the federal regulations.

These amendments and new rule are adopted under: 1) Texas Code of Criminal Procedure, Article 56.541(f), which authorizes the OAG to adopt rules necessary to implement Article 56.541, including rules concerning the use of money for grants or contracts that support crime victim-related services or assistance; and 2) Texas Government Code §420.011, which authorizes the OAG to adopt rules necessary to implement the Sexual Assault Prevention and Crisis Services Act.

The amendments and new rule affect Texas Code of Criminal Procedure, Article 56.541(e) and Texas Government Code Chapter 420.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 21, 2019.

TRD-201901518

Ryan L. Bangert

Deputy Attorney General for Legal Counsel

Office of the Attorney General

Effective date: June 10, 2019

Proposal publication date: February 8, 2019

For further information, please call: (512) 475-3210



1 TAC §§62.504, 62.700, 62.701

The Office of the Attorney General (OAG) adopts the repeal of Subchapter C, §§62.504, 62.700, and 62.701, concerning Sexual Assault Prevention and Crisis Services (SAPCS). The repeals are adopted without changes to the proposed repeals as published in the February 8, 2019, issue of the *Texas Register* (44 TexReg 527).

According to Article I, Section 31 of the Texas Constitution, the Texas Compensation to Victims of Crime Fund may be expended as provided by law only for delivering or funding victim-related compensation, services, or assistance. Article 56.541(e) of the Texas Code of Criminal Procedure provides that the OAG may use funds from the Texas Compensation to Victims of Crime Fund for grants or contracts supporting crime victim-related services or assistance. Article 56.541(f) authorizes the OAG to adopt rules necessary to carry out the Article's provisions.

Chapter 420 of the Texas Government Code establishes an SAPCS Fund, and authorizes the OAG to award grants to promote the development throughout the state of nonprofit programs for the survivors of sexual assault and to standardize the quality of services provided. Section 420.011 authorizes the OAG to adopt rules necessary to implement Chapter 420.

The adopted repeals will better serve victims of crime by improving the administration of the SAPCS grant programs.

The repeal of §62.504 will eliminate the requirement to file a separate inventory report for equipment. At the same time, the OAG is adopting amendments to §62.100, SAPCS Definitions, and §62.508, Maintenance of Records, to align the OAG's rules on equipment with the Uniform Grant Management Standards.

The repeal of §62.700 will eliminate this separate section of rule concerning suspension of funds and termination of a grant. At the same time, the OAG is adopting amendments to §62.509, Sanctions, that address the range of sanctions the OAG may impose on grantees.

The OAG is adopting the repeal of §62.701 because, to the extent, if any, a grantee may be entitled to a hearing concerning a sanction, such hearing is already addressed in federal or state law.

The OAG did not receive any comments concerning the repeal of §§62.504, 62.700, and 62.701.

The repeals of §§62.504, 62.700, and 62.701 are adopted under: 1) Texas Code of Criminal Procedure, Article 56.541(f), which authorizes the OAG to adopt rules necessary to implement Article 56.541, including rules concerning the use of money for grants or contracts that support crime victim-related services or assistance; and 2) Texas Government Code §420.011, which authorizes the OAG to adopt rules necessary to implement the Sexual Assault Prevention and Crisis Services Act. The adopted repeals affect Texas Code of Criminal Procedure, Article 56.541(e) and Texas Government Code Chapter 420.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 21, 2019.

TRD-201901517

Ryan L. Bangert

Deputy Attorney General for Legal Counsel

Office of the Attorney General

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For further information, please call: (512) 475-3210



PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 252. ADMINISTRATION

1 TAC §252.8

The Commission on State Emergency Communications (CSEC) adopts amended §252.8, concerning the establishment and governance of CSEC's Emergency Communications Advisory Committee (ECAC), without changes to the proposed text as published in the April 12, 2019, issue of the *Texas Register* (44 TexReg 1807). The adopted rule will not be republished.

REASONED JUSTIFICATION

Section 252.8(a) is amended to reflect CSEC's modified approach toward the development, implementation, and management of an interconnected, state-level emergency services Internet Protocol network (ESInet) as authorized and provided in Health and Safety Code §771.0511(b). The primary substantive amendment is to reflect and acknowledge that interconnected, interoperable ESInets providing Next Generation Core Services covering all of Texas constitute the State-level ESInet.

Section 252.8(b) is amended to extend to ECAC CSEC's modified approach to the State-level ESInet, including alignment with CSEC's Next Generation 9-1-1 Master Plan.

Section 252.8(c) is amended to clarify the training, experience, and skills of committee members, and extend the requirements to members representing emergency services other than 9-1-1 services.

Section 252.8(g) is amended to align with CSEC's modified approach to the State-level ESInet, and delete the specific Objectives and Plans required under the prior rule.

Section 252.8(h) is amended to eliminate the reports deleted in subsection (g) and to align ECAC's annual reporting with the state's fiscal year.

Section 252.8(i) is amended for clarification regarding ECAC member legislative activity.

Section 252.8(l) is amended to replace the specific requirements for CSEC staff support with a general statement of support.

Section 252.8(p) is amended to extend ECAC's duration from September 1, 2020, to September 1, 2023. CSEC has determined that the purposes for which the statutory advisory committee was established remain, and will likely continue to remain through the end of fiscal year 2023.

Section 252.8(q), Definitions of Terms, is deleted in its entirety as no longer necessary given CSEC's modified approach to the State-level ESInet.

PUBLIC COMMENTS AND AGENCY RESPONSE

CSEC received no comments on proposed amended §252.8.

STATUTORY AUTHORITY

The amended section is adopted under Health and Safety Code §§771.051(a)(1), (2), (4), (7), (8), (9), (10), 771.0511, and 771.052; Government Code Chapter 2110.

No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2019.

TRD-201901538

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Effective date: June 11, 2019

Proposal publication date: April 12, 2019

For further information, please call: (512) 305-6915



TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §51.9

EXPLANATION OF ADOPTED RULE

The Texas Animal Health Commission (Commission) adopts amendments to Chapter 51, entitled "Entry Requirements." The amendment is for §51.9(a)(1). The purpose of the amendment to Chapter 51 is to remove the Brucellosis test requirement for farmed exotic cervidae entering the state. The commission published the proposal for comment in the January 4, 2019, issue of the *Texas Register* (44 TexReg 16). The commission received two comments on the proposal and no changes are made to the proposal in response to the comments.

The Commission has a requirement that exotic cervidae entering Texas be Brucellosis tested. The United States Animal Health Association (USAHA) issued a Resolution that urges that states remove a Brucellosis test requirement for these exotic cervidae moving in interstate commerce. The reason for this request is outside of the Designated Surveillance Area (DSA) as located in the Greater Yellowstone Area (GYA) which are located within the states of Montana, Idaho and Wyoming there are no known reservoirs for Brucellosis in these states and therefore there is negligible risk of Brucellosis exposure for exotic cervidae moving interstate. Therefore, the requirement for farmed exotic cervidae to have a negative Brucellosis test to enter Texas is being removed. However, for any farmed exotic cervidae that have resided within the DSA of the GYA, they are still required to be tested prior to entry into Texas. Also, the requirement to be Brucellosis tested still applies if the exotic cervidae has been a free ranging exotic cervidae from any state.

The Commission received two comments supporting the removal of the requirement. The Exotic Wildlife Association wholeheartedly supports the Brucellosis rule change eliminating Brucellosis testing of captive exotic cervids entering the state. The Texas Deer Association supports the brucellosis rule change eliminating brucellosis testing of captive exotic cervids entering the state.

STATUTORY AUTHORITY

The amendments are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.054, and entitled "Regulation of Movement of Animals", "[t]he Commission, by rule, may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce."

Pursuant to §161.048, and entitled, "Inspection of Shipment of Animals or Animal Products", "[t]he commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease."

Pursuant to §161.005, and entitled, "Commission Written Instruments", the Commission may authorize the executive director or another employee to sign written instruments on behalf of the

commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire Commission."

Pursuant to §161.044, entitled "Regulation of Livestock Movement from Stockyards or Railway Shipping Pens", "[t]he commission may regulate the movement of livestock out of stockyards or railway shipping pens and require treatment or certification of those animals as reasonably necessary to protect against communicable diseases".

Pursuant to §161.046, entitled "Rules", "[t]he commission may adopt rules as necessary for the administration and enforcement of this chapter."

Pursuant to §161.049, entitled "Dealer Records", "[t]he commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer."

Pursuant to §161.061, entitled "Establishment", "[i]f the commission determines that a disease listed in Section 161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases."

Pursuant to §161.081, entitled "Importation of Animals", "[t]he commission by rule may regulate the movement, including movement by a railroad company or other common carrier, of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country."

Pursuant to §161.112, entitled Rules, "[t]he commission shall adopt rules relating to the movement of livestock, exotic livestock, and exotic fowl from livestock markets and shall require tests, immunization, and dipping of those livestock as necessary to protect against the spread of communicable diseases."

Pursuant to §161.113, entitled "Testing or Treatment of Livestock", "[i]f the commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The state may not be required to pay the cost of fees charged for the testing or vaccination. And if the commission requires the dipping of livestock under this subchapter, the livestock shall be submerged in a vat, sprayed, or treated in another sanitary manner prescribed by rule of the commission."

Pursuant to §161.114, entitled "Inspection of Livestock", "[a]n authorized inspector may examine livestock consigned to and delivered on the premises of a livestock market before the livestock are offered for sale. If the inspector considers it necessary, the inspector may have an animal tested or vaccinated. Any testing or vaccination must occur before the animal is removed from the livestock market".

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 23, 2019.
TRD-201901547

Larissa Schmidt
Chief of Staff
Texas Animal Health Commission
Effective date: June 12, 2019
Proposal publication date: January 4, 2019
For further information, please call: (512) 719-0722



TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 107. DENTAL BOARD PROCEDURES

SUBCHAPTER B. COMPLAINTS AND INVESTIGATIONS

22 TAC §107.110

The State Board of Dental Examiners (Board) adopts new rule 22 TAC §107.110, concerning baseless or unfounded complaints. The purpose of this rule is to create the structure for dismissal of baseless or unfounded complaints as required by Texas Occupations Code §263.0074. Adoption of this rule is a requirement of Senate Bill 313 of the 85th Legislature. This new rule is adopted without changes to the proposed text as published in the April 5, 2019, issue of the *Texas Register* (44 TexReg 1635) and will not be republished.

One comment was received after publication of the proposed rule during the official comment period. The Texas Dental Association provided a written comment supporting the adoption of the rule, but expressing concern regarding complainants who may not possess the necessary dental or clinical knowledge necessary to articulate complaints identifying violations. The Board agrees that this is a valid concern, but does not feel that the comment justifies changes to the text of the adopted rule. The Board's existing preliminary investigation process in 22 TAC §107.103 includes an inquiry period where the complainant is able to provide additional information and communicate with Board staff, steps that must be taken before any complaint reaches the official investigation phase. The Board feels that these safeguards along with the Board's goal of protection of the public health and safety will ensure complainants will receive reasonable assistance and the Board will conduct a reasonable inquiry for each complaint submitted.

This rule is adopted under Texas Occupations Code §254.001(a) - (b), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety, and permits the Board to adopt rules regarding its proceedings, and Texas Occupations Code §263.0074, which directs the Board to adopt rules establishing criteria for determining baseless or unfounded complaints.

This rule implements the requirements of Texas Occupations Code §263.0074.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 23, 2019.

TRD-201901542
Alex Phipps
General Counsel
State Board of Dental Examiners
Effective date: June 12, 2019
Proposal publication date: April 5, 2019
For further information, please call: (512) 305-9380



CHAPTER 108. PROFESSIONAL CONDUCT SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.14

The State Board of Dental Examiners (Board) adopts an amendment to 22 TAC §108.14, concerning pediatric and special needs case management and protective stabilization. This amendment to the existing rule updates and clarifies the applicability of the rule in light of changes to the guidelines published by the American Academy of Pediatric Dentistry and stakeholder comment received by the Board during the rulemaking process. This rule is being adopted as a result of a petition for rulemaking filed with the Board by the Texas Dental Association. This amendment is adopted with no changes to the proposed text as published in the April 5, 2019, issue of the *Texas Register* (44 TexReg 1636). The rule will not be republished.

One comment was received after publication of the proposed rule amendment during the official comment period. The Texas Dental Association provided a written comment in support of adoption of the rule as proposed. The Board agrees with this comment and no changes to the proposed rule were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 23, 2019.

TRD-201901543
Alex Phipps
General Counsel
State Board of Dental Examiners
Effective date: June 12, 2019
Proposal publication date: April 5, 2019
For further information, please call: (512) 305-9380



CHAPTER 110. SEDATION AND ANESTHESIA

22 TAC §110.17

The State Board of Dental Examiners (Board) adopts an amendment to 22 TAC §110.17, concerning sedation/anesthesia of pediatric patients. This amendment to the existing rule clarifies to

permit holders and Board staff the requirements for training related to observation of live cases and high-fidelity sedation simulator cases. This amendment is adopted with no changes to the proposed text as published in the April 5, 2019, issue of the *Texas Register* (44 TexReg 1639); therefore, the rule will not be republished.

One comment was received after publication of the proposed rule amendment during the official comment period. The Texas Dental Association provided a written comment in support of adoption of the rule as proposed. The Board agrees with this comment and no changes to the proposed rule were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety, and Texas Occupations Code §258.1554(b), which authorizes the Board to establish limitations on the administration of anesthesia by a permit holder to a pediatric or high-risk patient.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 23, 2019.

TRD-201901544

Alex Phipps

General Counsel

State Board of Dental Examiners

Effective date: June 12, 2019

Proposal publication date: April 5, 2019

For further information, please call: (512) 305-9380



22 TAC §110.18

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §110.18, concerning the inspection of sedation/anesthesia providers. This amendment to the existing rule clarifies to permit holders and Board staff the appropriate resolution of certain violations identified during the inspection process. This amendment is adopted with no changes to the proposed text as published in the April 5, 2019, issue of the *Texas Register* (44 TexReg 1640) and will not be republished.

One comment was received after publication of the proposed rule amendment during the official comment period. The Texas Dental Association provided a written comment in support of adoption of the rule as proposed. The Board agrees with this comment and no changes to the proposed rule were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety, and Texas Occupations Code §258.156, which authorizes the Board to establish an inspection program for all providers of level 2, 3 or 4 sedation/anesthesia permits.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 23, 2019.

TRD-201901545

Alex Phipps

General Counsel

State Board of Dental Examiners

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Proposal publication date: April 5, 2019

For further information, please call: (512) 305-9380



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 342. REGULATION OF CERTAIN AGGREGATE PRODUCTION OPERATIONS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §342.1 and §342.25 *without changes* to the proposed text as published in the December 28, 2018, issue of the *Texas Register* (43 TexReg 8558), and, therefore, the rules will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

House Bill (HB) 2582, 85th Texas Legislature (2017), amended the Texas Water Code (TWC), §28A.001(1) to add a new exemption to the list of existing exemptions in the definition of "Aggregate production operation" (APO). The exemption applies to a site at which specialty or terrazzo-type stone is removed or extracted from the earth, the material is produced for commercial sale and used exclusively for decorative or artistic uses, and the stone horizon that is exposed for current production does not exceed five acres.

The adopted rulemaking amends Chapter 342 to add the new exemption in HB 2582 and amends rule language for consistency with TWC, Chapter 28A.

Section by Section Discussion

§342.1, *Definitions*

The commission adopts amended §342.1(1)(E) for consistency with §342.1(1)(A) and (D) and TWC, §28A.001(1)(A) and (D) relating to "removed or extracted." The commission adopts §342.1(1)(F) to include the new exemption added by HB 2582.

The commission adopts removal of §342.1(6), which is the definition of "Regulated Activity," as this term is no longer used in the chapter. The commission adopts definitions for "Decorative or artistic uses," "Extraction activities," "Specialty stone," and "Terrazzo-type stone," to improve understanding and enforceability. Lastly, the commission re-numbers the definitions accordingly.

The commission interprets the phrase "the portion of the specialty or terrazzo-type stone horizon that is exposed for current production" from HB 2582 to mean the area exposed for current production, as viewed from an aerial perspective. During pro-

posal, the commission specifically requested comment on this interpretation. No comments were received.

§342.25, Registration

The commission adopts amended §342.25(a) to clarify that the requirement to register each operation refers to each APO. The commission adopts amended §342.25(b) and (d) to replace "regulated activities" with "extraction activities" for consistency with TWC, §28A.051(a) and to replace "operation(s)" with "aggregate production operation," which is a site, or "extraction activities," which are activities at a site, to improve clarity. The commission adopts amended §342.25(e) to remove the 30-day deadline for notifying the commission that extraction activities have ceased, as this deadline is not required by TWC, §28A.051(b). Additionally, the commission adopts language in §342.25(e) that allows the responsible party to inactivate their existing registration by allowing it to expire rather than submitting a cancellation form. This alternative option reduces the regulatory burden while achieving the same goal.

Final Regulatory Impact Analysis

The commission reviewed the adopted rulemaking in consideration of the regulatory analysis of major environmental rules required by Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225(a) because it does not meet the definition of a "Major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3). The following is a summary of that review.

Texas Government Code, §2001.0225 applies to a "Major environmental rule" adopted by a state agency, the result of which is to exceed standards set by federal law, exceed express requirements of state law, exceed requirements of delegation agreements between the state and the federal government to implement a state and federal program, or adopt a rule solely under the general powers of the agency instead of under a specific state law. A "Major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The legislature enacted HB 2582, amending TWC, §28A.001(1), which relates to APOs. As the Author's/Sponsor's Statement of Intent makes clear, the legislature enacted HB 2582 with the aim of exempting certain quarries from current law that stipulates that certain APOs in Texas must adhere to regulations set by the commission, and while there are exemptions in place for some quarries from APO regulations, there is currently no consideration given to a small or micro-business status of their operator. HB 2582 addressed this issue by providing for an exemption for certain quarries from regulation as an APO by adding them to the list of quarries exempted from TCEQ's APO regulations. HB 2582 amends the TWC to exclude from the definition of "Aggregate production operation" operations at a site where the materials being removed or extracted are specialty or terrazzo-type stone removed or extracted exclusively for decorative or artistic uses and where the specialty or terrazzo-type stone horizon that is exposed for current production for commercial sale at the site does not exceed five acres. HB 2582 amends current law relating to an exemption for certain quarries from regulation as APOs. Therefore, the specific intent of the adopted rulemaking

is to add a new exemption to the list of existing exemptions in the definition of an APO.

The adopted rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs; nor would the adopted rulemaking adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state. Therefore, the adopted rulemaking does not fit the Texas Government Code, §2001.0225 definition of "Major environmental rule."

Even if this rulemaking was a "Major environmental rule," this rulemaking meets none of the criteria in Texas Government Code, §2001.0225 for the requirement to prepare a full Regulatory Impact Analysis. First, this rulemaking is not governed by federal law. Second, it does not exceed state law but rather creates an exemption within state law to ensure that small businesses are protected by state law. Third, it does not come under a delegation agreement or contract with a federal program, and finally, it is not adopted under the TCEQ's general rulemaking authority. This rulemaking is adopted under specific state statutes enacted in HB 2582. Because this adoption does not constitute a "Major environmental rule," a Regulatory Impact Analysis is not required.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The following is a summary of that analysis.

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I of the Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The specific purpose of the adopted rulemaking is to implement the legislative amendments in HB 2582, which modifies the definition of an "Aggregate production operation" by creating an additional exemption to the list of existing exemptions in the definition of "Aggregate production operation." The adopted rulemaking will substantially advance this stated purpose by adopting §342.1(1)(F) to include the new exemption from HB 2582 and amending rule language for consistency with TWC, Chapter 28A while reducing regulatory burden.

Promulgation and enforcement of the adopted rules will not be a statutory or constitutional taking of private real property because, as the commission's analysis indicates, Texas Government Code, Chapter 2007 does not apply to these adopted rules

because these rules do not impact private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. Specifically, the adopted rulemaking does not apply to or affect any landowner's rights in any private real property because it does not burden (constitutionally), restrict, or limit any landowner's right to real property and reduce any property's value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The adopted rules are administrative and do not impose any new regulatory requirements. The primary purpose of the adopted rulemaking is to implement HB 2582 by modifying the definition of an "Aggregate production operation" to include the new exemption and amend language for consistency with TWC, Chapter 28A. The adopted rulemaking is reasonably taken to fulfill requirements of state law. Therefore, the adopted rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22, and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the adopted rules include to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas and to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone.

The adopted rules are consistent with the CMP goals and policies because the adopted rulemaking does not authorize the storage, emission, or discharge of any pollutant. The adopted rules exempt certain APOs from the registration and annual fees in Chapter 342. The registrations, required by Chapter 342, do not authorize the storage, emission, or discharge of any pollutant.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with these CMP goals and policies and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The commission offered a public hearing on January 22, 2019. The comment period closed on January 30, 2019. The commission did not receive comments on the proposed rules.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §342.1

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; and TWC, §5.120, which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state. TWC, §28A.001 defines "Aggregate production operation" and lists the operations excluded from this definition.

The amendment implements House Bill 2582, 85th Texas Legislature (2017) and TWC, §§5.013, 5.102, 5.103, and 5.120.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 23, 2019.

TRD-201901564

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: June 12, 2019

Proposal publication date: December 28, 2018

For further information, please call: (512) 239-2613



SUBCHAPTER B. REGISTRATION AND FEES

30 TAC §342.25

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; and TWC, §5.120, which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state.

The amendment implements House Bill 2582, 85th Texas Legislature (2017) and TWC, §§5.013, 5.102, 5.103, and 5.120.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Director, Environmental Law Division

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING

The Commissioner of the General Land Office (Commissioner and GLO) adopts the repeal of §15.41, relating to Evaluation Process for Coastal Erosion Studies and Projects and §15.42, relating to Funding Projects from the Coastal Erosion Response Account, and concurrently adopts new §15.41, relating to Evaluation Process for Coastal Erosion Studies and Projects, and §15.42, relating to relating to Funding Projects from the Coastal Erosion Response Account. The Commissioner also adopts amendments to §15.44, relating to Beneficial Use of Dredged Materials.

The repealed sections and new §15.42 are adopted without changes to the proposed text published in the April 12, 2019, issue of the *Texas Register* (44 TexReg 1816) and therefore will not be republished. The new §15.41 and the amendments to §15.44 are adopted with changes to the proposed text as published in the April 12, 2019, issue of the *Texas Register* (44 TexReg 1816) and therefore will be republished.

BACKGROUND AND JUSTIFICATION

The repeal, new sections, and amendments are adopted, in part, to update, reorganize, and streamline §§15.41, 15.42, and 15.44 to increase transparency and clarify the GLO's review and evaluation process for Applications. The changes modify the Application process to better reflect the GLO's process for selecting and developing final coastal erosion studies and projects for funding from the coastal erosion response account.

COMMENTS

No comments were received during the 30-day comment period.

SUBCHAPTER B. COASTAL EROSION PLANNING AND RESPONSE

31 TAC §15.41, §15.42

STATUTORY AUTHORITY

The repeals are adopted under Texas Natural Resources Code, §33.602(c) that provides the Commissioner of the GLO with the authority to adopt rules as necessary to implement Texas Natural Resources Code, Chapter 33, Subchapter H, concerning coastal erosion.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 23, 2019.

TRD-201901574

Mark Havens

Chief Clerk, Deputy Land Commissioner

General Land Office

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Proposal publication date: April 12, 2019

For further information, please call: (512) 475-1859

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31 TAC §§15.41, 15.42, 15.44

The new sections and amendments are adopted under Texas Natural Resources Code, §33.602(c) that provides the Commissioner of the GLO with the authority to adopt rules as necessary to implement Texas Natural Resources Code, Chapter 33, Subchapter H, concerning coastal erosion.

The section is adopted under Texas Natural Resources Code §33.602(d) which authorizes the Commissioner of the GLO to adopt rules providing for beneficial use of dredged material.

Texas Natural Resources Code §33.602 are affected by the amendments. The adoption of the new sections and amendments is necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters H.

§15.41. Evaluation Process for Coastal Erosion Studies and Projects.

(a) The General Land Office (GLO) will conduct an evaluation of potential coastal erosion studies and projects to designate funding for qualifying projects from the coastal erosion response account (Account). The evaluation process will consist of a review by the GLO of Coastal Resources Funding Application (Applications) to identify priority projects for funding. Throughout the evaluation process, the goal of the GLO is to work cooperatively with qualified project partners to identify and select preferred erosion response solutions to address erosion problems identified in the Applications.

(1) For purposes of this section, erosion is presumed if:

(A) a portion of the Gulf of Mexico (Gulf) shoreline is experiencing a historical erosion rate of greater than two feet per year based on the published data of the University of Texas at Austin Bureau of Economic Geology;

(B) a portion of the bay area is experiencing documented erosion;

(C) a portion of the gulf shoreline or bay area has been the subject of an erosion response project and it has been determined that maintenance is required; or

(D) a portion of the gulf shoreline or bay area has been impacted by a storm event and remediation is required to reestablish the preexisting conditions of the site.

(2) To be considered for funding under the Account, a potential project partner must submit an Application to the GLO by the GLO's established submission deadline.

(A) The submitted Application must include the following information to be considered complete:

(i) the name of the entity that will be the potential project partner and the name, mailing address, email address, and telephone number of the person who will represent the potential project partner and be the primary point of contact with the GLO;

(ii) the location and geographic scope of the erosion problem;

(iii) a description of the erosion problem and the severity of erosion in the area;

(iv) a description of the project or study and how the project or study will lessen the negative economic impacts of the erosion problem;

(v) a description of how the project or study will benefit the public infrastructure, and coastal property that has been impacted or threatened by erosion;

(vi) a description of the natural resources impacted or threatened by erosion in the area;

(vii) the estimated cost to complete the project or study;

(viii) whether the project will incorporate the beneficial use of dredged materials;

(ix) whether any potential or committed sources of funding, other than from the Account, will be provided with a description of the total contribution amount and estimated percentage of the project to be funded;

(x) whether the potential project partner can make a binding funding commitment to meet the required percentage of the Account's shared project cost necessary to receive funding from the Account;

(xi) the desired outcome or goals of the project for which funding is sought from the Account;

(xii) if available, the feasibility and cost-effectiveness of the project;

(xiii) if available, the economic impacts of erosion in the area of the project;

(xiv) identification of the project category for which funding is sought from the Account and a description of the partners proposed cost share:

(I) if the project includes a beach nourishment and associated enhancements project on a public beach or bay shore, the qualified project partner's shared project cost, as compared to the Account's contribution, must be at least 25 percent. Beach nourishment and associated enhancements are defined as activities that include direct placement of beach-quality sand to create or maintain a beach. It also includes associated construction or enhancements to the dune system;

(II) if the project includes a marsh restoration project, a bay shoreline protection project other than a beach nourishment and associated enhancements project, or any other coastal erosion response study or project, the qualified project partner's shared project cost, as compared to the Account's contribution, must be at least 40 percent;

(III) a project for removal of debris or structures, relocation of structures from the public beach, including the purchase of property located on a public beach, or the acquisition of property necessary for the construction, reconstruction, maintenance, widening, or extension of an erosion response project with a shared project cost requirement to be determined by the GLO, in accordance with subsections (b)(11) - (13) and (h) of Texas Natural Resources Code, §33.603;

(IV) a structural shoreline protection project on or landward of a public beach that utilizes innovative technologies, designed or engineered to minimize beach scour, in accordance with Texas Natural Resources Code, §33.603(b)(14); or

(V) an erosion response demonstration project in accordance with Texas Natural Resources Code, §33.603(g);

(VI) whether the project for which funding is sought from the Account is being sought without a shared project cost requirement in accordance with Texas Natural Resources Code, §33.603(f);

(xv) whether there is a permit associated with the project;

(xvi) a description of how the project is consistent with the Coastal Management Plan's enforceable policies set out in 31 TAC §501.26(b) (relating to Policies for Construction in the Beach/Dune System), and identification of whether the project involves structural shoreline protection on or landward of a public beach; and

(xvii) whether the potential project partner seeks to manage the project or requests that the GLO manage the project.

(B) The GLO will evaluate received Applications based on the following general requirements:

(i) the feasibility and cost-effectiveness of the project;

(ii) the economic impacts of erosion in the area of the project;

(iii) the effect of the project on public property, public infrastructure, private property, or natural resource threatened by erosion;

(iv) the effect of the project on Coastal Natural Resource Areas threatened by erosion;

(v) if the project is located within the jurisdiction of a local government that administers a beach/dune plan:

(I) whether the local government is adequately administering the Open Beaches Act (Texas Natural Resources Code, Chapter 61) and the Dune Protection Act (Texas Natural Resources Code, Chapter 63); and

(II) whether the local government has implemented an erosion response plan for reducing public expenditures due to erosion and storm damage losses established under Texas Natural Resources Code, §33.607, and §15.17 of this title (relating to Local Government Erosion Response Plans);

(vi) whether the project will provide for beneficial use of beach-quality sand dredged in constructing and maintaining navigation inlets and channels of the state;

(vii) whether the potential project partner has leveraged other sources of funding and already made or received a binding commitment to fund all or a portion of a given project;

(viii) if the project involves the construction or retrofitting of dams, jetties, groins or other structural impoundments, whether such structures will be designed with a sediment bypass system; and

(ix) if the project involves structural shoreline protection on or landward of a public beach, whether such project uses innovative technologies designed or engineered to minimize beach scour in accordance with Texas Natural Resources Code, §33.603(b)(14) and is consistent with the Coastal Management Plan's enforceable policies set out in 31 TAC §501.26(b) of this title (relating to Policies for Construction in the Beach/Dune System).

(C) After conducting an evaluation according to the general requirements identified in subparagraph (B) of this paragraph, the GLO will further evaluate received Applications based on the following priority criteria:

(i) the relative severity of erosion in each area;

(ii) whether the project will enhance community resiliency;

- (iii) the needs in other critical coastal erosion areas;
- (iv) whether federal and local governmental financial participation in the project is maximized;
- (v) whether financial participation by private beneficiaries of the project is maximized;
- (vi) whether the project achieves efficiencies and economies of scale;
- (vii) whether funding the project will contribute to balance in the geographic distribution of benefits for coastal erosion response projects in Texas or have received funding from the Account; and
- (viii) the cost of the project in relation to the amount of money available in the Account.

(D) Based on the evaluation of the Applications and availability of funding, the GLO will designate projects as either priority projects or alternate projects.

(i) If, as a result of the evaluation process, the GLO designates a potential project as an alternate project, the potential project partner will be notified in writing. The GLO will retain the Application and may reevaluate it if future conditions warrant funding the project in the current state fiscal biennium. The Application must be resubmitted by the potential project partner for consideration for funding in a subsequent state fiscal biennium.

(ii) If the GLO's evaluation results in a designation of a project as a priority project, the GLO will enter into a project cooperation agreement with the qualified project partner.

(E) A project cooperation agreement must explicitly define all activities and responsibilities for undertaking a priority project between the GLO and a qualified project partner as set out in §15.42 of this chapter (relating to Funding Projects From the Coastal Erosion Response Account).

(3) As appropriate, the GLO may request the applicant to work cooperatively or participate in a further review to identify and select a preferred erosion response solution to address any erosion problem(s) identified in the Application. The preferred erosion response solution may be determined by the GLO through the evaluation of an alternatives analysis and feasibility study, which may include modeling and consideration of long-term results of various methods of design. Based on this evaluation, the GLO will select the best erosion response solution to accomplish the goals in the Application.

(A) Projects will be evaluated by the GLO on whether the potential or qualified project partner has already made or received a binding commitment to fund all or a portion of a given project and whether the feasibility and cost-effectiveness of the preferred erosion response solution is meeting the objectives stated in the Application.

(B) The GLO may, at its sole discretion, fund studies or activities that evaluate erosion, identify preferred erosion response solutions, or fund projects that investigate methods to help identify and enhance community resiliency strategies.

(C) The GLO will determine whether a qualified project partner should receive funds from the Account based on the final prioritization of a preferred erosion response solution according to the considerations detailed in subparagraph (A) of this paragraph.

(D) Each state fiscal biennium the GLO may determine that at least one project designated as a priority project may be undertaken by the GLO without requiring a qualified project partner to provide a portion of the shared project cost as provided in Texas Natural

Resources Code, §33.603(f). In addition to the considerations detailed in subparagraphs (A) and (C) of this paragraph, the GLO may consider the following factors in determining whether to fund erosion response projects without a cost share requirement:

- (i) whether the total cost of the projects that are approved under this section exceeds one-half of the total amount appropriated to the GLO for coastal erosion planning and response for the state fiscal biennium in which funding is sought;
- (ii) the relative amount of funding available to the qualified project partner from sources other than the Account; and
- (iii) the potential impact of the projects on coastal erosion in relation to the total estimated cost of the projects.

(b) The GLO may use the criteria set forth in this section to select a project for funding that will address an emergency situation. The GLO may accept an emergency project Application at any time during the state fiscal biennium. The Application must describe the area that is immediately threatened or impacted by erosion and how the emergency erosion project will address or resolve the identified erosion problem.

§15.44. Beneficial Use of Dredged Materials.

(a) If a project receives funds from the coastal erosion response account (Account), material dredged in constructing and maintaining navigation inlets and channels of the state shall be placed on or used to benefit, eroding beach areas or to restore or create wetlands to mitigate erosion. The GLO, in consultation with a qualified project partner, shall evaluate the practicality and suitability of proposed beneficial use of dredged material in accordance with this section and shall consider relative cost of the material and the sediment composition.

(b) For the purposes of this subchapter, beneficial use of dredged material shall not be deemed practicable if the cost to the GLO and qualified project partner for placement of the material dredged in constructing and maintaining navigation inlets and channels of the State exceeds the cost of obtaining similar material suitable for placement on or used to benefit, eroding beach areas or to create wetlands from another source, including transportation costs. In the case of placement for wetland restoration, the cost of soil preparation and treatment may also be considered.

(c) In determining the suitability and practicality of dredged material for beach placement the GLO may refer to the guidance materials by the U.S. Army Corps of Engineers, relating to Engineering & Design, Beneficial Uses of Dredged Material, Coastal Engineering, and Beach Fill Design. Only beach-quality sand shall be considered for beach placement.

(d) In this section "beach-quality sand means sediment material that:

- (1) has effective grain size, mineralogy, and quality that approximates the existing beach material in the placement area;
- (2) is low in fine grain, silty, or clayey sediments; and
- (3) contains no hazardous substances listed in the Code of Federal Regulations, Title 40, Part 261, Subpart D- List of Hazardous Wastes, in concentrations which are harmful to human health or the environment as determined by applicable, relevant, and appropriate requirements established by the local, state, and federal governments.

(e) In determining the suitability and practicality of placement of dredged material for wetland restoration, the GLO may refer to the guidance materials by the U.S. Army Corps of Engineers, relating to "Engineering & Design, Beneficial Uses of Dredged Material."

(f) This section applies only to an erosion response project that receives funds from the Account.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 23, 2019.

TRD-201901566

Mark Havens

Chief Clerk, Deputy Land Commissioner

General Land Office

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For further information, please call: (512) 475-1859



PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

SUBCHAPTER A. STATEWIDE OYSTER FISHERY PROCLAMATION

31 TAC §58.21

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 20, 2019, adopted an amendment to §58.21, concerning Taking or Attempting to Take Oysters from Public Oyster Beds: General Rules, with changes to the proposed text as published in the February 15, 2019, issue of the *Texas Register* (44 TexReg 674).

The change removes two components of the proposal as published. As published, the proposed amendment would have renamed Todd's Dump Reef as Pasadena Reef. This was incorrect; Todd's Dump Reef is not being renamed. Additionally, the coordinates published as Pepper Grove Reef were not accurate. The department intends to publish a proposal in the near future to rectify these issues.

The amendment prohibits the harvest of oysters for two years at three sites: one site in Conditionally Approved Area TX-20 in Matagorda Bay (Noble Point Reef, 50 acres), and two sites in Approved Area TX-32 in Copano Bay (Sanctuary Reef and Non-Sanctuary Reef, 34.7 and 35.6 acres, respectively). The Texas Department of State Health Services (DSHS) regulates shellfish sanitation and designates specific areas where oysters may be harvested for human consumption. The designation of "Conditionally Approved" or "Approved" is determined by DSHS.

The temporary closures will allow for the planting of oyster cultch to repopulate in those areas and enough time for those oysters to reach legal size for harvest. Oyster cultch is the material to which oyster spat (juvenile oysters) attach in order to create an oyster bed.

Under Parks and Wildlife Code, §76.115, the department may close an area to the taking of oysters when the commission finds that the area is being overworked or damaged or the area is to be reseeded or restocked. Oyster reefs in Texas have been impacted due to drought, flooding, and hurricanes (Hurricane Ike, September 2008 and Hurricane Harvey, August 2017), as well as

high harvest pressure. The department's oyster habitat restoration efforts to date have resulted in a total of approximately 1,539 acres of oyster habitat returned to productive habitat within these bays.

House Bill 51 (85th Legislature, 2017) included a requirement that certified oyster dealers re-deposit department-approved cultch materials in an amount equal to thirty percent of the total volume of oysters purchased in the previous license year. For the 2018 fiscal year, this will result in the restoration of approximately fifteen acres.

The Copano Bay sites are located in the proximity of Lap Reef and have been degraded due to a variety of stressors. The Nature Conservancy (TNC) secured funding through the Natural Resource Damage Assessment program to restore oyster habitat as a result of damages. The two sites in Copano Bay include 35.6 acres that will be restored on a commercial and recreationally-fished oyster reef that is currently degraded and 34.7 acres that will serve as a sanctuary reef in this heavily fished bay system. The sanctuary reef will be constructed of cultch materials of a size that will limit commercial harvest activities and provide a source of oyster larvae that will colonize other oyster habitat in this bay system.

Noble Point Reef is being designated for closure for the same reason. Meteorological and climatic degradation, along with historical overutilization, has rendered the area incapable of sustaining oyster populations. The department anticipates that depositing cultch and closing the area for two years will result in the establishment of oyster populations that can be commercially and recreationally harvested in the future.

The amendment also removes geographical descriptions of closed areas that were reopened to commercial and recreational exploitation under the terms of the current rule.

The department received 65 comments opposing adoption of the rule as published. Of those comments, 18 offered a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the rule places an unnecessary burden on oyster fishermen. The department disagrees and responds that, as explained in the preamble to the proposed rule, the closures are being instituted in areas that no longer contain or support oysters; therefore, oyster fishermen are not impacted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the oyster fleet should be compensated for the closure. The department disagrees and responds that, as explained in the preamble to the proposed rule, the closures are being instituted in areas that no longer contain or support oysters; therefore, oyster fishermen are not impacted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule will camouflage the damage being done to the fisheries in East Galveston Bay by the proposed closure of Rollover Pass. The department disagrees with the comment and responds that the rules are independent of, unconnected with, and not related to any actions, hypothetical or actual, affecting Rollover Pass. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the closure should be one year. The department disagrees with the comments and responds that one year is insufficient for oysters to

reach the size necessary for reproduction or legal harvest. No changes were made as a result of the comments.

One commenter opposed adoption and stated that closures would not be necessary if harvest by nonresident commercial fishermen was prohibited. The department disagrees with the comment and responds that the Parks and Wildlife Code, Chapter 76, provides for the issuance of various oyster licenses to nonresidents, which the commission does not have the authority to eliminate or modify. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule could be construed to prohibit fishing for species other than oysters. The department disagrees with the comment and responds that the rule clearly creates areas closed to the harvest of oysters. No changes were made as a result of the comment.

One commenter opposed adoption and stated that each bay system should be closed for three years on a rotating basis. The department disagrees with the comment and responds that there is no reason for entire bay systems to be closed when oyster reefs can be restored on a case-by-case basis. No changes were made as a result of the comment.

One commenter opposed adoption and stated that closures should be staggered so that not all areas are closed at the same time. The department disagrees with the comment and responds that the rule as adopted closes three small areas for repopulation, and that in any case, those areas do not support oyster populations at the current time. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the minimum size limit should be increased, and more sanctuary reefs should be created but never subjected to harvest. The department disagrees with the comment and responds that the current minimum size limit represents the size at which oysters have reached maturity and can be harvested (subject to bag limits) without negative impacts to the population, and that the sanctuary reef model is still being explored to determine ecological value. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule will have an impact on commercial activities. The department disagrees with the comment and responds that the areas being closed are no longer viable and, therefore, of no commercial use. No changes were made as a result of the comment.

One commenter opposed adoption and stated the closures should last more than two years because of the intensive commercial harvest effort. The department disagrees with the comment and responds that two years is the minimum amount of time for oysters to reach harvestable size. If after two years the population of mature oysters cannot justify opening an area, the department will extend the closure. The department also notes that the minimum size requirement functions to protect undersized oysters from being harvested and, therefore, protects reefs from overharvest. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "a quota system is unfair." The department disagrees with the comment and responds that there is no "quota system" contemplated by the rule, unless by that term the commenter meant size and bag limits, which are not being contemplated by the rule action. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a closure of one year for commercial and recreational harvest and if a longer closure is contemplated it should be for both commercial and recreational harvest. The department disagrees with the comment and responds that one year is not enough time for oysters to reach a harvestable size, but that in any case, area closures apply to all harvest, recreational and commercial. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the closure should apply only to commercial harvest. The department disagrees with the comment and responds that there are no oysters in the areas being closed. The intent of the closures is to re-establish oyster populations in the closed areas and allowing any harvest until populations are restored would defeat the purpose of the rule. No changes were made as a result of the comments.

One commenter opposed adoption and stated that oyster reefs should not be closed to recreational harvest. The department disagrees with the comment and responds that the areas being closed do not have oyster populations, so they cannot be fished. The point of the closure is to allow for repopulation of the reefs and to allow oysters to grow to a harvestable size. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the recreational and commercial quotas should be the same and that "the reduction in 3 inches" won't have that much of an effect. The department disagrees with the comment and responds that the rule does not impose or authorize any sort of "quota," whatever is meant by that term other than a mistaken reference to bag limits, which is a moot point because the closed areas are devoid of oysters and cannot be exploited commercially or recreationally. Additionally, the rule does not contemplate any regulatory provision relating to the size of oysters. No changes were made as a result of the comment.

The department received 1,959 comments supporting adoption of the proposed rule.

The amendment is adopted under Parks and Wildlife Code, §76.301, which authorizes the commission to regulate the taking, possession, purchase and sale of oysters, including prescribing the times, places, conditions, and means and manner of taking oysters.

§58.21. Taking or Attempting to Take Oysters from Public Oyster Beds: General Rules.

(a) Seasons and Times.

(1) The open season extends from November 1 of one year through April 30 of the following year.

(2) Legal oystering hours--sunrise to 3:30 p.m.

(b) Size Limits and Possession of Undersized Oysters and Shell.

(1) Size limit--Legal oysters must be three inches or larger as measured along the greatest length of the shell.

(2) Oysters between 3/4 inch and three inches in length and dead oyster shell that is greater than 3/4 inch (measured along any axis) must be returned to the reef at the time of harvest.

(3) Unculled oysters must not be sacked and must be kept separate from culled oysters at all times.

(4) It is unlawful for any person to take or possess a cargo of oysters more than 5% of which are between 3/4 inch and three inches measured from beak to bill or along an imaginary line through the long

axis of the shell. For the purposes of this paragraph, any dead oyster shell measuring greater than 3/4 inch along any axis shall be counted as an undersized oyster.

(c) Area Closures.

(1) There is no open public season for oysters from areas declared to be restricted or prohibited by the Department of State Health Services or areas closed by the commission.

(A) The director may close an area to the taking of oysters upon finding that the area is being overworked or damaged or the area is to be reseeded or restocked, and may re-open the areas as provided in Parks and Wildlife Code, §76.115.

(B) An order to close an area shall state the criteria used by the director to determine that the closure is warranted.

(C) The department shall consult with members of the oyster industry regarding the management of oyster beds in the state.

(D) For the purposes of this section an area will include those designated by the Department of State Health Services as "Approved" and "Conditionally Approved" or other areas based on evaluation by the department.

(E) No person may harvest oysters in an area closed by order of the commission or the executive director.

(2) No person may take or attempt to take oysters within an area described in this paragraph. The provisions of subparagraphs (A) - (C) of this paragraph cease effect on November 1, 2021.

(A) Galveston Bay.

(i) Todd's Dump Reef. The area within the boundaries of a line beginning at 29° 29' 55.4"N, 94° 53' 40.1"W (29.498733°N, -94.894467°W; corner marker buoy A); to 29° 29' 55.4"N, 94° 53' 30.6"W (29.498724°N, -94.891834°W; corner marker buoy B); thence to 29° 29' 46.6"N, 94° 53- 30.4"W (29.496273°N, -94.891768°W; corner marker buoy C); thence to 29° 29' 46.6"N, 94° 53' 40.2"W (29.496273°N, -94.894495°W; corner marker buoy D); and thence back to corner marker buoy A.

(ii) South Redfish Reef. The area within the boundaries of a line beginning at 29° 28' 21.1"N, 94° 49' 17.3"W (29.472517°N, -94.821472°W; corner marker buoy A); thence, to 29° 28' 08.3"N, 94° 49' 00.3"W (29.468971°N, -94.816744°W; corner marker buoy B); thence to 29° 27' 58.9"N, 94° 49' 09.7"W (29.466359°N, -94.81935°W; corner marker buoy C); thence to 29° 28' 12.0"N, 94° 49' 26.5"W (29.469989°N, -94.824025°W; corner marker buoy D); and thence and back to corner marker buoy A.

(B) Matagorda Bay - Noble Point Reef. The area within the boundaries of a line beginning at 28° 39' 38.79"N, -96° 36' 33.68"W (28.660774°N, -96.609355°W); thence to 28° 39' 38.79"N, -96° 36' 29.15"W (28.660774°N, -96.608098°W); thence to 28° 39' 33.38"N, -96° 36' 33.68"W (28.659270°N, -96.609355°W); thence to 28° 39' 33.38"N, -96° 36' 29.15"W (28.659270°N, -96.608098°W).

(C) Copano Bay.

(i) Sanctuary Reef. The area within the boundaries of a line beginning at 28° 8' 33.82"N, -97° 3' 6.47"W (28.142728°N, -97.051796°W; corner marker buoy A); thence to 28° 8' 34.5"N, -97° 3' 24.18"W (28.142917°N, -97.056718°W; corner marker buoy B); thence to 28° 8' 31.39"N, -97° 3' 29.1"W (28.142052°N, -97.058085°W; corner marker buoy C); thence to 28° 8' 23.32"N, -97° 3' 29.09"W (28.139812°N, -97.058081°W; corner marker buoy D); thence to 28° 8' 20.78"N, -97° 3' 26.77"W (28.139106°N, -97.057435°W; corner marker buoy E); and thence back to corner marker A.

(ii) Non-Sanctuary Reef. The area within the boundaries of a line beginning at 28° 8' 23.23"N, -97° 2' 53.02"W (28.139785°N, -97.048062°W; corner marker buoy A); thence to 28° 8' 24.76"N, -97° 3' 4.99"W (28.14021°N, -97.051387°W; corner marker buoy B); thence to 28° 8' 12.98"N, -97° 3' 6.69"W (28.136938°N, -97.051859°W; corner buoy C); thence to 28° 8' 8.61"N, -97° 2' 52.48"W (28.135726°N, -97.047912°W; corner buoy D); and thence back to corner marker A.

(D) Christmas Bay, Brazoria County.

(E) Carancahua Bay, Calhoun and Matagorda County.

(F) Powderhorn Lake, Calhoun County.

(G) Hynes Bay, Refugio County.

(H) St. Charles Bay, Aransas County.

(I) South Bay, Cameron County.

(J) Areas along all shorelines extending 300 feet from the water's edge, including all oysters (whether submerged or not) landward of this 300-foot line.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 21, 2019.

TRD-201901520

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Effective date: June 10, 2019

Proposal publication date: February 15, 2019

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

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TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 73. BENEFITS

The Employees Retirement System of Texas (ERS) adopts the repeal to 34 Texas Administrative Code (TAC), §73.9 (Additional Retirement Option) and adopts the amendment to §73.31 (Adjustment to Annuities) without changes to the proposed text as published in the April 5, 2019, issue of the *Texas Register* (44 TexReg 1709), and these sections will not be republished. The repeal and amendment were approved by the ERS Board of Trustees at its May 22, 2019, meeting.

Section 73.9, concerning Additional Retirement Option, is repealed since this section is no longer necessary and is redundant. Since §814.108(c)(5) of the Texas Government Code was added through Chapter 1308 (H.B. 2559), Acts of the 81st Legislature, Regular Session, 2009, this section is no longer necessary as a rule.

Section 73.31, concerning Adjustment to Annuities, is amended to remove a reference to a repealed statute, §814.1041 of the Texas Government Code.

No comments were received regarding the adoption of the repeal or amendment.

34 TAC §73.9

The repeal is adopted under the Texas Government Code, §815.102 which provides authorization for the ERS Board of Trustees to adopt rules for the administration of the funds of the retirement system and the transaction of any other business by the board.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2019.

TRD-201901530

Paula A. Jones

Deputy Executive Director and General Counsel

Employees Retirement System of Texas

Effective date: June 11, 2019

Proposal publication date: April 5, 2019

For further information, please call: (877) 275-4377



34 TAC §73.31

The amendment is adopted under the Texas Government Code, §815.102 which provides authorization for the ERS Board of Trustees to adopt rules for the administration of the funds of the retirement system and the transaction of any other business by the board.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2019.

TRD-201901531

Paula A. Jones

Deputy Executive Director and General Counsel

Employees Retirement System of Texas

Effective date: June 11, 2019

Proposal publication date: April 5, 2019

For further information, please call: (877) 275-4377



CHAPTER 82. HEALTH SERVICES IN STATE OFFICE COMPLEXES

34 TAC §82.3, §82.9

The Employees Retirement System of Texas (ERS) adopts amendments to 34 Texas Administrative Code (TAC) Chapter 82, concerning Health Services in State Office Complexes, §82.3 (Administration), and §82.9 (Termination) without changes to the proposed text as published in the April 5, 2019, issue of the *Texas Register* (44 TexReg 1710), and these sections will not be republished. The amendments were approved by the ERS Board of Trustees at its May 22, 2019, meeting.

Section 82.3 (Administration) and §82.9 (Termination), are amended to allow ERS the ability to work, within the general policy direction provided by the Board, with interested state agencies to plan, establish, and operate proposed on-site clinics with potential medical and financial value to the plan.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Government Code, §671.001(c), which authorizes the Board to adopt rules necessary to implement the on-site health clinic program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2019.

TRD-201901533

Paula A. Jones

Deputy Executive Director and General Counsel

Employees Retirement System of Texas

Effective date: June 11, 2019

Proposal publication date: April 5, 2019

For further information, please call: (512) 275-4377



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES SUBCHAPTER D. YOUTH RIGHTS AND REMEDIES

The Texas Juvenile Justice Department (TJJD) adopts the repeal of §380.9315, concerning Youth Mail. The repeal is adopted without changes to the proposed text as published in the February 8, 2019, issue of *Texas Register* (44 TexReg 544) and will not be republished. TJJD simultaneously adopts a new §380.9315, concerning Youth Mail. The new §380.9315 is adopted without changes to the proposed text as published in the February 8, 2019, issue of *Texas Register* (44 TexReg 544) and will not be republished.

JUSTIFICATION FOR CHANGES

The public benefit anticipated as a result of repealing §380.9315 is to allow a significantly revised rule to take its place. The public benefit anticipated as a result of administering the new §380.9315 is to ensure the safety of youth and staff through enhanced security processes.

SUMMARY OF CHANGES

The new §380.9315 includes changes grouped into several areas, which are described as follows:

Reading Youth Mail--The new rule: 1) adds that incoming and outgoing general correspondence may be read by staff; 2) adds that staff may read such correspondence outside the youth's presence; 3) clarifies that legal and special correspondence is not read *unless it contains contraband and will be used as evidence*; and 4) clarifies that only general and special correspondence (but not legal correspondence) may be read if it is abandoned following a youth's unauthorized departure.

Inspection for Contraband--The new rule: 1) adds that incoming general correspondence is inspected for contraband outside the youth's presence (rather than in the youth's presence); 2) adds that *all outgoing mail* (rather than just general correspondence) is inspected (rather than *may be* inspected) for contraband prior to sealing; and 3) adds that outgoing legal and special correspondence is inspected for contraband *in the youth's presence*.

Withholding or Censoring Mail--The new rule adds that mail may be withheld or otherwise censored if it contains contraband, refers to past criminal acts that have not been adjudicated or dismissed, refers to ongoing or future criminal acts, presents a direct threat to the safety or security of the facility or the youth, is sent to or received from a person who is listed in the rule as being prohibited from corresponding with youth, or is received from a person who has been issued a notice of stopped mail for reasons described in the rule. The rule also specifies that, for mail that presents a direct threat to the safety or security of the facility or youth, censorship of the mail may include, but is not limited to, withholding delivery.

The new rule also adds that mail containing contraband or references to criminal acts will be seized. If the mail will be used as evidence, chain-of-custody procedures are started. If the mail will not be used as evidence, the contraband is removed and the mail is delivered, unless another provision of the rule limits or prohibits delivering the mail.

Prohibited Correspondence--The new rule makes the following changes to the list of individuals a youth is prohibited from corresponding with: 1) adds anyone the youth is prohibited from contacting due to a court order; and 2) deletes a family member who is also under TJJJ jurisdiction who sent or received correspondence that involved facilitating, planning, or engaging in a law or rule violation.

The new rule also: 1) clarifies that incoming mail sent by anyone on the prohibited correspondence list will be returned to the sender or the post office *unless another provision of this rule limits or prohibits returning the mail*; and 2) adds that outgoing mail sent to anyone on the prohibited correspondence list will be returned to the youth unless another provision of this rule limits or prohibits returning the mail.

Stopped Mail Notices--The new rule adds that: 1) a notice of stopped mail may be issued if a person sends mail to a TJJJ youth that presents a direct threat to the safety or security of the facility or the youth; 2) when TJJJ issues a notice of stopped mail, the youth must be provided a copy of the notice; and 3) when the time period specified in a notice of stopped mail expires, the sender may resume corresponding with the youth (rather than first having to submit a request to resume correspondence).

Definitions--The new rule: 1) removes members of advocacy and support groups from the definition of *special correspondence*; 2) adds staff at embassies or consulates to the definition of *special correspondence*; 3) creates a definition for *legal correspondence* and clarifies that it includes mail to/from legal organizations (in addition to attorneys and courts); and 4) specifies that the executive director or designee (rather than the chief local administrator) may determine that an individual not listed in the definition should be considered a family member for mail purposes.

Other General Changes--The new rule: 1) clarifies that the return address on outgoing mail must contain the youth's name and TJJJ number, the agency's name, and the name and address

of the youth's current facility; 2) adds that written notice will be provided to the youth and to the sender when mail is *withheld* (in addition to when mail is returned) and that a grievance may be filed concerning the withheld mail; and 3) removes the deadlines for delivering mail and adds a statement that prohibits delaying the delivery of mail any longer than is necessary to accomplish the purposes of this rule.

PUBLIC COMMENTS

TJJJ did not receive any public comments on the proposed repeal of §380.9315 or on the addition of the new §380.9315.

37 TAC §380.9315

STATUTORY AUTHORITY

The repeal of §380.9315 is adopted under Section 242.003, Human Resources Code, which authorizes TJJJ to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJJ schools, facilities, and programs.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 23, 2019.

TRD-201901540

Christian von Wupperfeld

General Counsel

Texas Juvenile Justice Department

Effective date: July 1, 2019

Proposal publication date: February 8, 2019

For further information, please call: (512) 490-7278



37 TAC §380.9315

STATUTORY AUTHORITY

The new §380.9315 is adopted under Section 242.003, Human Resources Code, which authorizes TJJJ to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJJ schools, facilities, and programs.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 23, 2019.

TRD-201901541

Christian von Wupperfeld

General Counsel

Texas Juvenile Justice Department

Effective date: July 1, 2019

Proposal publication date: February 8, 2019

For further information, please call: (512) 490-7278



PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

SUBCHAPTER C. FORENSIC ANALYST
LICENSING PROGRAM

37 TAC §651.208

The Texas Forensic Science Commission ("Commission") adopts amendments to 37 Texas Administrative Code ("TAC") §651.208 without changes, as published in the April 19, 2019, issue of the *Texas Register* (43 TexReg 1976). The amended rule will not be republished. The adopted amendments add further details with respect to continuing education requirements for the Commission's forensic analyst licensing program. The amendments are necessary to reflect adoptions made by the Commission at its January 25, 2019, quarterly meeting. The amendments are made in accordance with the Commission's forensic analyst licensing authority under Tex. Code. Crim. Proc. art. 38.01§4-a.

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The amendments are adopted under Tex. Code Crim. Proc. art. 38.01 §4-a.

Cross reference to statute. The proposal affects 37 TAC §651.208.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 20, 2019.

TRD-201901501

Leigh Savage

Associate General Counsel

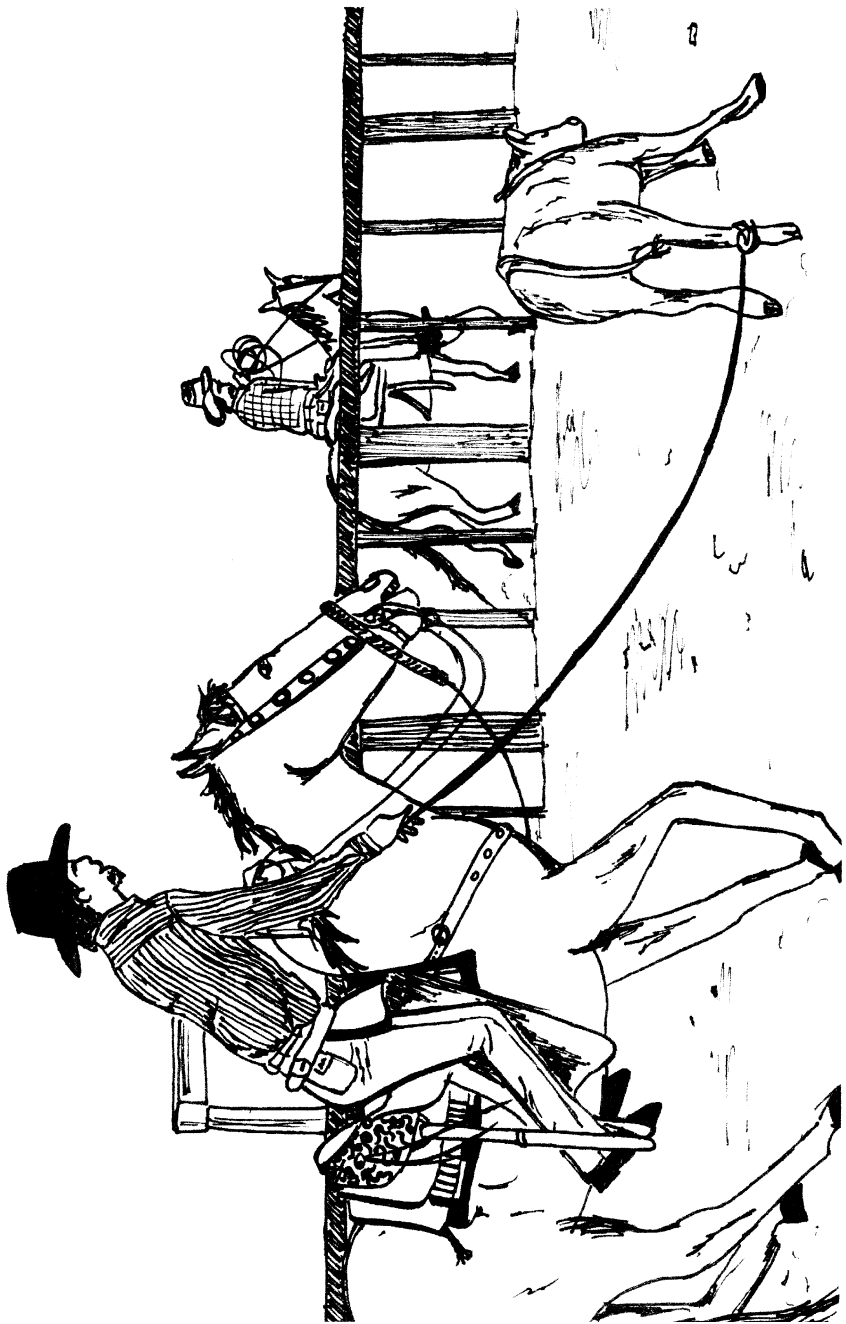
Texas Forensic Science Commission

Effective date: June 9, 2019

Proposal publication date: April 19, 2019

For further information, please call: (512) 936-0661





REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Commission on State Emergency Communications

Title 1, Part 12

The Commission on State Emergency Communications (CSEC) files this notice of intent to review and consider whether to readopt, readopt with amendments, or repeal the rules in Title 1, Part 12, Texas Administrative Code, Chapter 254, *Regional Poison Control Centers*. This review is conducted in accordance with Government Code §2001.039. Chapter 254 consists of the following rules:

§254.1: Designation and Funding of Regional Poison Control Centers

§254.2: Poison Control Coordinating Committee

§254.3: Regional Strategic Plans and Reporting for Poison Control Service

§254.4: Texas Poison Control Network Operations

Based on staff's preliminary review, the reasons for initially adopting the rules in the chapter continue to exist.

Comments or questions regarding this review should be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Patrick Tyler, General Counsel, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942; by facsimile to (512) 305-6937; or by email to csecinfo@csec.texas.gov.

TRD-201901537

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Filed: May 22, 2019



State Securities Board

Title 7, Part 7

The State Securities Board (Agency), beginning June 2019, will review and consider for readoption, revision, or repeal Chapter 107, Terminology; Chapter 127, Miscellaneous; and Chapter 131, Guidelines for Confidentiality of Information, in accordance with Texas Government Code, §2001.039, which requires rule review every four years. The rules to be reviewed are located in Title 7, Part 7, of the Texas Administrative Code. The text of the rule sections will not be published. The text of these rules may be found in the Texas Administrative Code, Title 7, Part 7 or through the Board's website at www.ssb.texas.gov/texas-securities-act-board-rules.

The Agency has conducted a preliminary review of these chapters and determined the reasons for initially adopting the chapters continue to exist.

The Agency's Board will consider, among other things, whether the reasons for adoption of these rules continue to exist and whether any changes are needed. Changes to the rules proposed by the Agency's Board after reviewing the rules and considering the comments received in response to this notice will appear in the "Proposed Rules" section of a subsequent issue of the *Texas Register* and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001; thus this notice to review has no effect on the chapters as they currently exist. Readopted rules will be noted in a subsequent issue of the *Texas Register's* "Review of Agency Rules" section without publication of the text.

Comments or suggestions on the proposal must be in writing and will be accepted for 30 days following publication of this notice in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication. Comments received will be reviewed and discussed in a future Board meeting.

Issued in Austin, Texas on May 28, 2019.

TRD-201901586

Travis J. Iles

Securities Commissioner

State Securities Board

Filed: May 28, 2019



Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 112, Control of Air Pollution from Sulfur Compounds.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 112 continue to exist.

Comments regarding suggested changes to the rules in Chapter 112 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 112. Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Non-Rule Project Number 2019-089-112-AI. Comments must be received by July 9, 2019. For further information, please contact Graham Bates, Air Quality Division, at (512) 239-2606.

TRD-201901580

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: May 28, 2019



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 216, Water Quality Performance Standards for Urban Development.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 216 continue to exist.

Comments regarding suggested changes to the rules in Chapter 216 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 216. Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Non-Rule Project Number 2019-065-216-OW. Comments must be received by July 9, 2019. For further information, please contact Jill Csekitz, Water Quality Planning Division, at (512) 239-3136.

TRD-201901581

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: May 28, 2019



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 293, Water Districts.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 293 continue to exist.

Comments regarding suggested changes to the rules in Chapter 293 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 293. Written comments may be submitted to Paige Bond, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Non-Rule Project Number 2019-069-293-OW. Comments must be received by July 9, 2019. For further information, please contact Chris Ulmann, Water Supply Division, at (512) 239-0418.

TRD-201901577

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: May 28, 2019



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 331, Underground Injection Control.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 331 continue to exist.

Comments regarding suggested changes to the rules in Chapter 331 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 331. Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Non-Rule Project Number 2019-003-331-WS. Comments must be received by July 9, 2019. For further information, please contact Jan Bates, Radioactive Materials Division, at (512) 239-6627.

TRD-201901582

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: May 28, 2019

◆ ◆ ◆
Adopted Rule Reviews

Texas Animal Health Commission

Title 4, Part 2

The Texas Animal Health Commission (commission) adopts the review of Texas Administrative Code, Title 4, Part 2, Chapter 38, concerning Trichomoniasis, in its entirety, in accordance with Texas Government Code, §2001.039. The proposed notice of intent to review rules was published in the January 4, 2019, issue of the *Texas Register* (44 TexReg 119).

The commission received no comments on the rule review for this Chapter but makes the assessment that for disease control purposes the reasons for initially adopting these rules continue to exist. The Commission, therefore, readopts Chapter 38 with no changes.

TRD-201901552
Larissa Schmidt
Chief of Staff
Texas Animal Health Commission
Filed: May 23, 2019

◆ ◆ ◆
The Texas Animal Health Commission (commission) adopts the review of Texas Administrative Code, Title 4, Part 2, Chapter 43, concerning Tuberculosis, in its entirety, in accordance with Texas Government Code, §2001.039. The proposed notice of intent to review rules was published in the January 4, 2019, issue of the *Texas Register* (44 TexReg 119).

The commission received no comments on the rule review for this Chapter but makes the assessment that for disease control purposes the reasons for initially adopting these rules continue to exist. The Commission, therefore, readopts Chapter 43 with no changes.

TRD-201901553
Larissa Schmidt
Chief of Staff
Texas Animal Health Commission
Filed: May 23, 2019

◆ ◆ ◆
The Texas Animal Health Commission (commission) adopts the review of Texas Administrative Code, Title 4, Part 2, Chapter 47, concerning Authorized Personnel, in its entirety, in accordance with Texas Government Code, §2001.039. The proposed notice of intent to review rules was published in the January 4, 2019, issue of the *Texas Register* (44 TexReg 119).

The commission received no comments on the rule review for this Chapter but makes the assessment that for disease control purposes the reasons for initially adopting these rules continue to exist. The Commission, therefore, readopts Chapter 47 with no changes.

TRD-201901554
Larissa Schmidt
Chief of Staff
Texas Animal Health Commission
Filed: May 23, 2019

◆ ◆ ◆
The Texas Animal Health Commission (commission) adopts the review of Texas Administrative Code, Title 4, Part 2, Chapter 50, concerning Animal Disease Traceability, in its entirety, in accordance with Texas

Government Code, §2001.039. The proposed notice of intent to review rules was published in the January 4, 2019, issue of the *Texas Register* (44 TexReg 119).

The commission received no comments on the rule review for this Chapter but makes the assessment that for disease control purposes the reasons for initially adopting these rules continue to exist. The Commission, therefore, readopts Chapter 50 with no changes.

TRD-201901555
Larissa Schmidt
Chief of Staff
Texas Animal Health Commission
Filed: May 23, 2019

◆ ◆ ◆
The Texas Animal Health Commission (commission) adopts the review of Texas Administrative Code, Title 4, Part 2, Chapter 51, concerning Entry Requirements, in its entirety, in accordance with Texas Government Code, §2001.039. The proposed notice of intent to review rules was published in the January 4, 2019, issue of the *Texas Register* (44 TexReg 119).

The commission received no comments on the rule review for this Chapter but makes the assessment that for disease control purposes the reasons for initially adopting these rules continue to exist. The Commission, therefore, readopts Chapter 51 with no changes.

TRD-201901556
Larissa Schmidt
Chief of Staff
Texas Animal Health Commission
Filed: May 23, 2019

◆ ◆ ◆
State Board for Educator Certification

Title 19, Part 7

The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, pursuant to the Texas Government Code, §2001.039. The SBEC proposed the review of 19 TAC Chapter 249 in the March 15, 2019, issue of the *Texas Register* (44 TexReg 1449).

Relating to the review of 19 TAC Chapter 249, the SBEC finds that the reasons for the adoption continue to exist and readopts the rules. The SBEC received a comment relating to the review of Chapter 249. The following is a summary of the public comment received and the response.

Comment: The Texas State Teachers Association (TSTA) requested that the SBEC remove the language creating a rebuttable presumption "that an educator who violates written directives from school administrators regarding the educator's behavior toward a student is unworthy to instruct or to supervise the youth of this state" from 19 TAC §249.3(60) and §249.5(b)(2)(E). TSTA asserts that such directives are only opinions issued from one educator to another and can be unreliable, inaccurate, or made in bad faith. TSTA commented that shifting the burden of proof onto the educator who has violated a written directive regarding the educator's behavior toward a student is unfair and unwarranted. TSTA implies that these rules create illegal standards that are more burdensome than those of the controlling statute.

Response: The SBEC disagrees. As an initial matter, it is important to note that these provisions are among the most recent amendments to 19 TAC Chapter 249, only becoming effective on October 21,

2018. TSTA's comments on this rule review are substantively similar to the comments TSTA made before the SBEC voted to adopt these rule amendments in 2018.

It is essential to recognize that the existence of a directive regarding an educator's behavior toward students does not shift the burden of proof to the educator under these rules. Rather, it is the educator's subsequent violation of the written directive that creates a presumption that the educator is unworthy to instruct. An educator's violation of a directive regarding his or her behavior toward students shows that the educator received a warning and still could not stop the improper behavior. The educator's violation of a directive shows that there was no accident, misunderstanding, or simple misinterpretation: an administrator told the educator that his or her behavior was wrong, and the educator still chose to persist in the same inappropriate behavior toward a student. An educator who cannot stop himself or herself from misbehavior with students is an educator who should not be allowed in a classroom.

Moreover, an educator who has violated a directive regarding behavior toward a student still receives due process. The educator has an opportunity at the contested case hearing before the administrative law judge at the State Office of Administrative Hearings (SOAH) to show that the administrator who made the directive was biased or incorrect, that the directive was unreasonable, or that the directive in some other way does not show that the educator is unworthy to instruct. Such evidence would overcome and rebut the rebuttable presumption and would allow an innocent educator to escape discipline by the SBEC even if he or she had violated a directive regarding behavior toward students.

Furthermore, this rebuttable presumption is not a standard more burdensome than those of the controlling statute, as TSTA asserts. The Texas Education Code (TEC) gives the SBEC extremely broad latitude in educator discipline, setting out no specific standards outside of the conduct that causes automatic revocation under TEC, §21.058. The SBEC has broad rulemaking authority under TEC, §21.041(b)(1) and (7), to "provide for the regulation of educators" and to "provide for disciplinary proceedings, including the suspension or revocation of an educator certificate." That vast authority includes the ability to make rules that tell the administrative law judges at the SOAH what kinds of evidence are sufficient to prove violations of the Educators' Code of Ethics and what weight to put on certain types of evidence. These rules are squarely within the authority of the SBEC under TEC, §21.041.

TSTA's comments do not indicate that the reasons for initially adopting the rules do not continue to exist. The Texas Education Agency staff do not recommend any future changes in response to TSTA's comments.

This concludes the review of 19 TAC Chapter 249.

TRD-201901594

Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Filed: May 29, 2019



Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (TCEQ or commission) has completed its Rule Review of 30 TAC Chapter 17, Tax Relief for Property Used for Environmental Protection, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re adoption, re adoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the December 21, 2018, issue of the *Texas Register* (43 TexReg 8481).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 17 are required because the rules provide the process for eligible owners to apply for a determination of pollution control use for property installed to meet or exceed environmental laws, rules, or regulations. The rules also outline the procedures for the TCEQ to manage and process those applications. Additionally, the rules provide the process for pollution control property owners or county appraisal districts to appeal a determination made by the commission.

The rules are necessary to ensure that the TCEQ complies with Texas Tax Code, §11.31, Pollution Control Property, and the Texas Constitution Article 8, §1-1, Exemption from Ad Valorem Taxation of Property Used for Control of Air, Water, or Land Pollution.

Public Comment

The public comment period closed on January 25, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review, the commission finds that the reasons for adopting the rules in 30 TAC Chapter 17 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201901568

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 24, 2019



The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 18, Rollback Relief for Pollution Control Requirements, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re adoption, re adoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the December 21, 2018, issue of the *Texas Register* (43 TexReg 8481).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 18 are required because the rules implement the Rollback Relief for Pollution Control Requirements found in Texas Tax Code, §26.045, which helps ensure political subdivisions have funding to pay for facilities, devices, or methods for the control of air, water, or land pollution that is necessary to meet the requirements of a permit issued by the commission.

Public Comment

The public comment period closed on January 25, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review, the commission finds that the reasons for adopting the rules in 30 TAC Chapter 18 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201901569

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 24, 2019



The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 20, Rulemaking, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the December 7, 2018, issue of the *Texas Register* (43 TexReg 7919).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 20 are required because the rules provide the requirements for rulemaking. The rules are necessary to ensure future rulemakings comply with the Administrative Procedure Act requirements.

Public Comment

The public comment period closed on January 10, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 20 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201901572

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: May 24, 2019



The Texas Commission on Environmental Quality (commission or TCEQ) has completed its Rule Review of 30 TAC Chapter 122, Federal Operating Permits Program, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the December 7, 2018, issue of the *Texas Register* (43 TexReg 7919).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 122 are required because the rules implement the Federal Operating Permits Program established under Federal Clean Air Act (FCAA), Title V. Under Texas Health and Safety Code, §382.051 and §§382.054 - 382.0564, the Texas Legislature provided the commission with the authority to regulate federal sources through the issuance and enforcement of a federal operating permit. A federal operating permit is required for: an affected source as defined by FCAA, §402; a major source as defined by FCAA, Title III; a major source as defined by FCAA, Title V; a source subject to the standards or regulations under FCAA, §111 or §112; a source required to have a permit under FCAA, Title I, Part C or Part D; a major stationary source or major emitting facility under FCAA, §302; and any other stationary source in a category designated by the United States Environmental Protection Agency (EPA) through rulemaking as subject to the requirements of FCAA, Title V.

Texas received final interim approval from the EPA in 1996 to implement the Federal Operating Permits Program. In 2001, Texas was granted final full approval by EPA to implement the Federal Operating Permits Program. Maintaining Chapter 122 provides TCEQ the authority to implement, regulate, and enforce regulations for applicable sources. Without the rules codified in Chapter 122, the authority to administer this program would be remitted to the EPA and Region 6 would

have to take over the program and issue the permits. Ultimately, the result would be an increased burden on the regulated community, and the state would be subject to federal sanctions as specified in FCAA, §502(i) for failure to implement and enforce the required permitting program, which include loss of federal highway funds and the application of emission offset requirements for new or modified sources of emissions.

Public Comment

The public comment period closed on January 10, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 122 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201901567

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: May 24, 2019



The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 218, Brine Evaporation Pits, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the December 7, 2018, issue of the *Texas Register* (43 TexReg 7919).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 218 are required to implement Texas Water Code, §26.132 by regulating brine evaporation pit operations that are operated for the commercial production of brine product by solar evaporation and that were in operation on or after October 16, 2008. Chapter 218 prohibits discharge from the facility into or adjacent to water in the state; requires owners or operators to obtain an individual permit to operate the facility; establishes standards for design, construction, location, operation, and maintenance to prevent contamination of surface and groundwater resources; requires the owner or operator to provide financial assurance for proper closure of the evaporation pit; and requires the owner or operator to obtain pollution liability insurance for bodily injury and property damage to third parties.

Public Comment

The public comment period closed on January 11, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 218 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201901573

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: May 24, 2019



The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 298, Environmental

Flow Standards for Surface Water, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the December 21, 2018, issue of the *Texas Register* (43 TexReg 8482).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 298 contain the environmental flow standards and set-asides for each river basin and bay system in Texas. The rules establish the environmental flow standards for certain water rights applications and specify schedules of flow quantities and a schedule for revision of the environmental flow standards and set-asides. These rules are necessary to implement the requirements in the Texas Water Code, Chapter 11.

Public Comment

The public comment period closed on January 28, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 298 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201901571

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: May 24, 2019



The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 305, Consolidated Permits, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the December 7, 2018, issue of the *Texas Register* (43 TexReg 7920).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 305 are required because the rules set out the standards and requirements for applications, permits, executive director authorizations, and actions by the commission to carry out the responsibilities for the management of waste disposal activities and the National Pollutant Discharge Elimination System Program known as the Texas Pollutant Discharge Elimination System. In addition, there are references to air emissions interspersed in the chapter.

The rules generally set out requirements for signatories to the original or amendment applications, and describes what activities trigger amendments. The rules also contain application contents for permits, licenses, and waste post-closure orders.

The review resulted in a determination that the following rule is obsolete: §305.149, Time Limitation for Construction of Commercial Hazardous Waste Management Units. The rule is obsolete and no longer needed because the related statute in Texas Health and Safety Code, Chapter 361 expired.

Public Comment

The public comment period closed on January 11, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 305 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039. Changes to the rules identified as part of this review process may be addressed in a separate rulemaking action, in accordance with the Texas Administrative Procedure Act.

TRD-201901570

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: May 24, 2019



Employees Retirement System of Texas

Title 34, Part 4

Pursuant to the notice of the proposed rule review that was published in the May 18, 2018, issue of the *Texas Register* (43 TexReg 3249), the Employees Retirement System of Texas (ERS) reviewed 34 Texas Administrative Code (TAC), Chapter 73, Benefits, pursuant to Texas Government Code §2001.039, to determine whether the reason for adopting the rules in Chapter 73 continues to exist. No comments were received concerning the proposed review.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reason for adopting the rules in 34 TAC Chapter 73 continues to exist, and therefore, the Board readopts Chapter 73 with the amendment and repeal as published in the April 5, 2019, issue of the *Texas Register* (44 TexReg 1709) and adopted by the Board at its May 22, 2019, meeting. This completes ERS' review of 34 TAC Chapter 73, Benefits.

TRD-201901532

Paula A. Jones

Deputy Executive Director and General Counsel

Employees Retirement System of Texas

Filed: May 22, 2019



Pursuant to the notice of the proposed rule review published in the August 17, 2018, issue of the *Texas Register* (43 TexReg 5402), the Employees Retirement System of Texas (ERS) reviewed 34 Texas Administrative Code (TAC) Chapter 74, Qualified Domestic Relations Orders, pursuant to Texas Government Code §2001.039, to determine whether the reason for adopting the rules in Chapter 74 continues to exist. No comments were received concerning the proposed review.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reason for adopting the rules in 34 TAC Chapter 74 continues to exist, and therefore, the Board readopts Chapter 74. This completes ERS' review of 34 TAC Chapter 74, Qualified Domestic Relations Orders.

TRD-201901535

Paula A. Jones

Deputy Executive Director and General Counsel

Employees Retirement System of Texas

Filed: May 22, 2019



Pursuant to the notice of the proposed rule review that was published in the May 18, 2018, issue of the *Texas Register* (43 TexReg 3249), the Employees Retirement System of Texas (ERS) reviewed 34 Texas Administrative Code (TAC), Chapter 77, Judicial Retirement, pursuant to

Texas Government Code §2001.039, to determine whether the reason for adopting the rules in Chapter 77 continues to exist. No comments were received concerning the proposed review.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reason for adopting the rules in 34 TAC Chapter 77 continues to exist, and therefore, the Board readopts Chapter 77. This completes ERS' review of 34 TAC Chapter 77, Judicial Retirement.

TRD-201901536

Paula A. Jones

Deputy Executive Director and General Counsel

Employees Retirement System of Texas

Filed: May 22, 2019



Pursuant to the notice of the proposed rule review published in the August 17, 2018, issue of the *Texas Register* (43 TexReg 5403), the Employees Retirement System of Texas (ERS) reviewed 34 Texas Administrative Code (TAC) Chapter 82, Health Services in State Office

Complexes, pursuant to Texas Government Code §2001.039, to determine whether the reason for adopting the rules in Chapter 82 continues to exist. No comments were received concerning the proposed review.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reason for adopting the rules in 34 TAC Chapter 82 continues to exist, and therefore, the Board readopts Chapter 82, with the amendments as published in the April 5, 2019, issue of the *Texas Register* (44 TexReg 1710) and adopted by the Board at its May 22, 2019, meeting. This completes ERS' review of 34 TAC Chapter 82, Health Services in State Office Complexes.

TRD-201901534

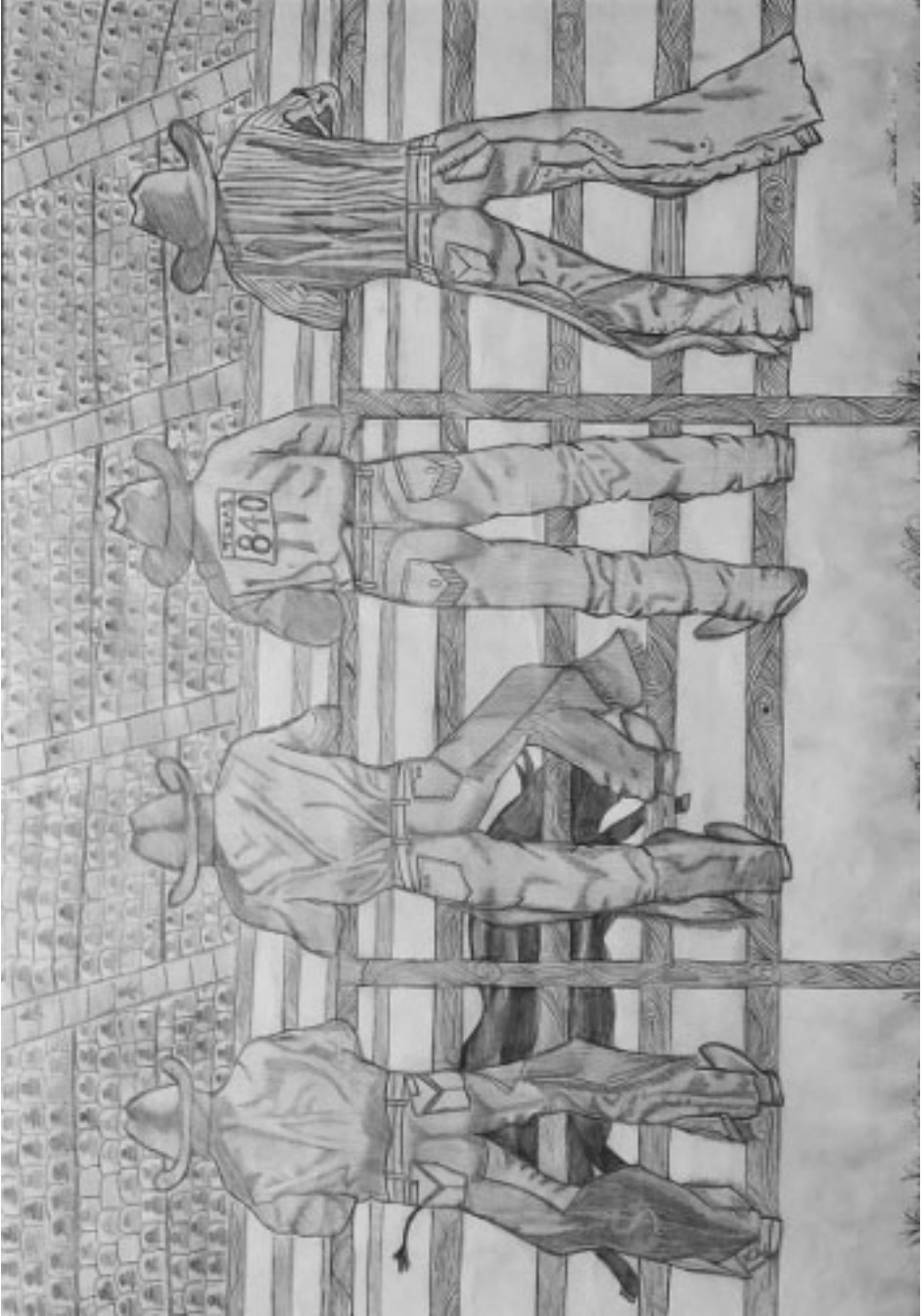
Paula A. Jones

Deputy Executive Director and General Counsel

Employees Retirement System of Texas

Filed: May 22, 2019





TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 4 TAC §45.2(a)

Multiple species diseases

Akabane - Akabane virus

Anthrax** - *Bacillus anthracis*

Aujeszky's disease - *Pseudorabies virus*, *herpesvirus suis*

Leishmaniasis** - *Leishmania infantum* and *L donavani*

Foot and mouth disease - *Aphthovirus*, types A,O,C, SAT, Asia

Heartwater - *Cowdria ruminantium*

African Trypanosomosis (Nagana) - *Trypanosoma brucei*, *T. vivax*,

T. brucei

Rinderpest – *Morbillivirus*

Rift Valley fever - *Bunya virus*

Vesicular stomatitis - *Rhabdovirus*; 2 serotypes; New Jersey and Indiana

Screwworm - *Cochliomyia hominivorax*

Schmallenberg virus

Cattle diseases (including Exotic Bovidae)

Bovine babesiosis - *B. bovis*, *B. divergens*, *Babesia microti*

Bovine brucellosis - *Brucella abortus*

Bovine ephemeral fever – *Rhabdovirus*

Bovine trichomonosis – trichomoniasis****

Bovine tuberculosis - *Mycobacterium bovis*

Bovine Viral Diarrhea (BVD)

East coast fever (Theileriosis) - Theileria parva

Malignant catarrhal fever (wildebeest associated) - Alcelaphine herpesvirus (AHV 1)

Contagious bovine pleuropneumonia - Mycoplasma mycoides

Lumpy skin disease - Neethling poxvirus

Bovine spongiform encephalopathy

Scabies - Sarcoptes scabiei, Psoroptes bovis, Chorioptes bovis

Cervidae

Brucellosis - Brucella abortus, Brucella suis (biotype 4)

Chronic Wasting Disease

Tuberculosis - Mycobacterium bovis

Sheep and goat diseases

Caprine and ovine brucellosis (not B. ovis infection) – Brucella melitensis

Contagious caprine pleuropneumonia - Mycoplasma capri (biotype 78)

Louping ill – Flavovirus

Nairobi sheep disease – Bunyaviridae

Peste des petits ruminants - Morbillivirus, Paramyxoviridae family

Sheep pox and goat pox – Capripoxvirus

Scrapie

Scabies - Sarcoptes scabiei

Equine diseases

African horse sickness – Orbivirus

Contagious equine metritis - Tayorella equigenitalis

Dourine - Trypanosoma equiperdum

Epizootic lymphangitis - Histoplasma farciminosum

Equine encephalomyelitis (Eastern and Western)** - Alphavirus

Equine infectious anemia – Lentivirus

Equine morbillivirus pneumonia - Morbillivirus

Equine piroplasmosis - Babesia equi, B. caballi

Glanders - Pseudomonas mallei

Japanese encephalitis - Flavivirus

Surra - Trypanosoma evansi

Venezuelan equine encephalomyelitis** - Alphavirus; Togaviridae family

Equine Viral Arteritis (EVA)***

Equine Herpes Virus-1 (EHV-1)

Swine diseases

African swine fever – Poxvirus

Classical swine fever (hog cholera) - Togovirus

Pseudorabies - Herpesvirus suis

Porcine brucellosis - Brucella suis

Swine vesicular disease - Picornavirus

Vesicular Exanthema – Calicivirus

Poultry diseases

Avian influenza – Orthomyxoviruse

Avian infectious laryngotracheitis - Orthomyxovirus, herpesvirus

Avian tuberculosis - *Mycobacterium avium* serovars 1,2

Duck virus hepatitis - Picornavirus

Fowl typhoid - *Salmonella gallinarum*

Highly pathogenic avian influenza (fowl plague) – Orthomyxovirus (type H5 or H7)

Infectious encephalomyelitis - Arbovirus

Ornithosis (psitticosis) - *Chlamydia psittaci*

Pullorum disease - *Salmonella pullorum*

Newcastle disease (VVND) - Paramyxovirus-1 (PMV-1)

Paramyxovirus infections (other than Newcastle disease) - PMV-2 to PMV-9

Rabbit diseases

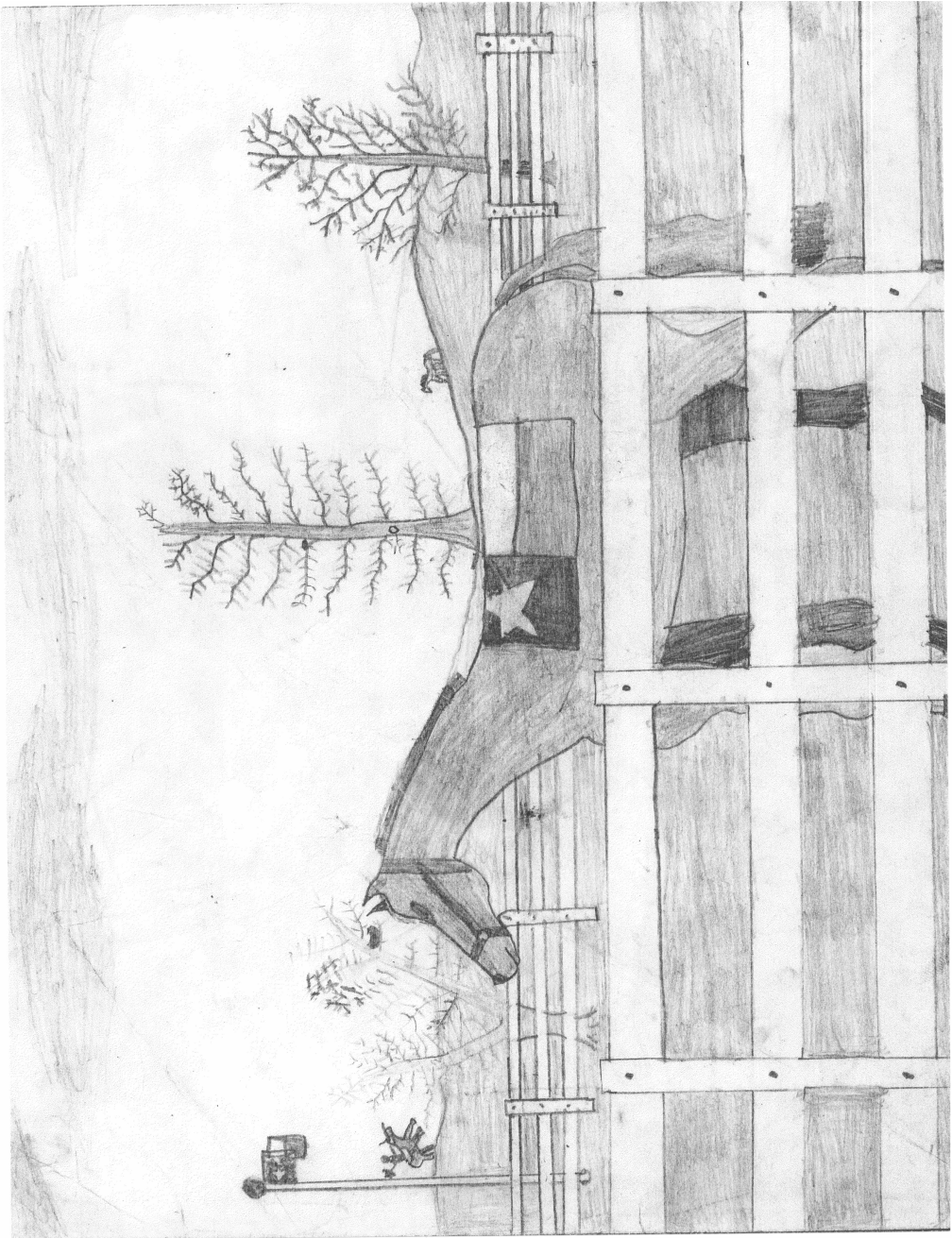
Myxomatosis - Myxomatosis virus

Viral haemorrhagic disease of rabbits - Calciviral disease

**These diseases are also reportable to the Department of State Health Services (DSHS)

***This disease has reporting standards in Chapter 49, §49.4 of this title.

****Results of tests for this disease shall be reported within 48 hours of completion of the tests.



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Water Code and Texas Health and Safety Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and the Texas Health and Safety Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code and the Texas Health and Safety Code.

Case Title and Court: *Harris County, Texas, and the State of Texas v. Quala Wash Holdings, LLC, Cletex Trucking, Inc., and Cletex Real Estate Partnership*; Cause No. 2018-07249, in the 334th Judicial District Court, Harris County, Texas.

Nature of the Suit: Defendants own and operate a tank and container cleaning facility located at 2700 Appelt Drive, Houston, Harris County ("the Facility") and hold an Air Permit issued by the Texas Commission on Environmental Quality ("TCEQ"). In late 2014, a spill of ethyl acrylate resulted in unauthorized air emissions and air quality nuisance, in violation of the Texas Clean Air Act and Permit conditions. Subsequent investigations alleged more violations of the Air Permit and TCEQ rules - including the failure to maintain complete records and reports. After suit was filed, Defendants provided all information and documents requested, including documentation of employee training on the proper handling of ethyl acrylate and recordkeeping practices. The State of Texas is a necessary and indispensable party to the suit.

Proposed Agreed Judgment: The proposed Agreed Final Judgment and Permanent Injunction requires Defendants to ensure proper maintenance of operation records, and to submit periodic reports. It assesses against Defendants civil penalties in the amount of \$15,000, to be equally divided between Harris County and the State; and awards respective attorney's fees to Harris County and the State.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment and Permanent Injunction should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Amy Rodriguez, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, phone (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201901596

Ryan L. Bangert

Deputy Attorney General for Legal Counsel

Office of the Attorney General

Filed: May 29, 2019

◆ ◆ ◆
State Bar of Texas

Correction of Error

The Committee on Disciplinary Rules and Referenda published proposed changes to the Texas Disciplinary Rules of Professional Conduct in the May 31, 2019, issue of the *Texas Register* (44 TexReg 2755). Due to an editing error on page 2763, subsections (a), (b), and (c) of proposed Rule 7.06 each included the incorrect strikethrough text "7.045", which should have read "7.05". With the correction, the proposed rule change reads as follows:

Rule 7.06. Prohibited Employment

(a) A lawyer shall not accept or continue employment in a matter when that employment was procured by conduct prohibited by any of Rules 7.01 through 7.04 ~~7.05~~, 8.04(a)(2), or 8.04(a)(9), engaged in by that lawyer personally or by another any other person whom the lawyer ordered, encouraged, or knowingly permitted to engage in such conduct.

(b) A lawyer shall not accept or continue employment in a matter when the lawyer knows or reasonably should know that employment was procured by conduct prohibited by any of Rules 7.01 through 7.04 ~~7.05~~, 8.04(a)(2), or 8.04(a)(9), engaged in by another any other person or entity that is a shareholder, partner, or member of, an associate in, or of counsel to that lawyer's firm; or by any other person whom any of the foregoing persons or entities ordered, encouraged, or knowingly permitted to engage in such conduct.

(c) A lawyer who has not violated paragraph (a) or (b) in accepting employment in a matter shall not continue employment in that matter once the lawyer knows or reasonably should know that the person procuring the lawyer's employment in the matter engaged in, or ordered, encouraged, or knowingly permitted another to engage in, conduct prohibited by any of Rules 7.01 through 7.04 ~~7.05~~, 8.04(a)(2), or 8.04(a)(9) in connection with the matter unless nothing of value is given thereafter in return for that employment.

TRD-201901575

Brad Johnson

Disciplinary Rules and Referenda Attorney

State Bar of Texas

Filed: May 24, 2019

◆ ◆ ◆ Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - April 2019

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting period April 2019 is \$39.37 per barrel for the three-month period beginning on January 1, 2019, and ending March 31, 2019. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of April 2019, from a qualified low-producing oil lease, is not eligible for a credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for re-

porting period April 2019 is \$1.93 per mcf for the three-month period beginning on January 1, 2019, and ending March 31, 2019. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of April 2019, from a qualified low-producing well, is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of April 2019 is \$63.87 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of April 2019 from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of April 2019 is \$2.60 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of April 2019, from a qualified low-producing gas well.

Inquiries should be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

This agency hereby certifies that legal counsel has reviewed this notice and found it to be within the agency's authority to publish.

Issued in Austin, Texas, on May 29, 2019.

TRD-201901598
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Filed: May 29, 2019

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, 303.008, 303.009, 304.003, and 346.101, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/03/19 - 06/09/19 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/03/19 - 06/09/19 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005³ for the period of 05/01/19 - 05/31/19 is 18% or Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 05/01/19 - 05/31/19 is 18% for Commercial over \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 07/01/19 - 09/30/19 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 07/01/19 - 09/30/19 is 18% for Commercial over \$250,000.

The retail credit card quarterly rate as prescribed by §303.009¹ for the period of 07/01/19 - 09/30/19 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The lender credit card quarterly rate as prescribed by §346.101¹ for the period of 07/01/19 - 09/30/19 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009⁴ for the period of 07/01/19 - 09/30/19 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 07/01/19 - 09/30/19 is 18% for Commercial over \$250,000.

The retail credit card annual rate as prescribed by §303.009¹ for the period of 07/01/19 - 09/30/19 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 06/01/19 - 06/30/19 is 5.50% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed §304.003 for the period of 06/01/19 - 06/30/19 is 5.50% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

³ For variable rate commercial transactions only.

⁴ Only for open-end credit as defined in §301.002(14), Texas Finance Code.

TRD-201901585
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 28, 2019

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State Board of Dental Examiners

Disciplinary Matrix

The Texas State Board of Dental Examiners' (Board) Disciplinary Matrix was developed to outline Board policy when the Board takes public action in accordance with the Dental Practice Act (Texas Occupations Code, Chapters 251 - 267) and Board rules (22 Texas Administrative Code Chapters 100 - 125). The matrix also provides licensees, attorneys, the public and Administrative Law Judges ready access to the Board's enforcement policies. Further, the matrix is intended to maintain flexibility in determining the most appropriate sanction for each violation and allows the Board to take into account aggravating and mitigating factors (i.e., the licensee's compliance history, the seriousness of the violation, the threat to the public health and safety, etc.) when determining sanctions.

The matrix is organized by violation type and distinguished by violation tiers. The violations described in the matrix mirror the violations specified in the Texas Occupations Code (Dental Practice Act). The corresponding sanction description describes each of the sanctions that could be imposed.

The matrix was first published in the September 3, 2010, issue of the *Texas Register* (35 TexReg 8152) and was subsequently amended and published in the December 21, 2012, September 27, 2013, September 5, 2014, and June 12, 2015, issues of the *Texas Register*. At the May 22, 2019, Board meeting, the Board voted to adopt the revised Disci-

plinary Matrix as attached to this notice. The Board republishes the matrix here to provide notice to the public of the revised document; the matrix will also be available on the public website of the board at www.tsbde.texas.gov.

This amended matrix is effective immediately upon filing in the *Texas Register*.

Texas State Board of Dental Examiners - Disciplinary Matrix

Purpose and Definitions

The Purpose of this document is to provide a guideline to common violations and appropriate disciplinary and non-disciplinary actions of the Texas State Board of Dental Examiners (Board). This document serves as a guideline for resolution of complaints through informal disposition and contested case hearings, but does not contain an exhaustive list of all possible violations of the laws and rules of dentistry.

When a conflict exists between the terms of this document and Texas statutes or rules of the Board, the terms of a statute or rule shall control. The guidelines provided in this document are advisory in nature, and all offers of settlement, compromise, mediation agreements, or other resolutions are not final until adopted by a vote of the full Board at an open meeting. Nothing in this document shall be construed to prevent the Board from applying any public action, sanction, or denial, if justified by the findings of fact and conclusions of law necessary to support such actions.

For purposes of this document, "license" means a license, certificate, registration, permit, or other authorization that is issued under Subtitle D of the Texas Occupations Code. Additionally, any reference to "licensee" means a person holding a license, certificate, registration, permit, or other authorization issued under Subtitle D of the Texas Occupations Code.

All references to Board rules refer to the rules of the Board found in Title 22 of the Texas Administrative Code and in effect at the time of the violation, unless otherwise noted.

Public Actions of the Board

When resolving matters before the Board regarding discipline of licensees, the Board shall utilize the public actions found in 22 Tex. Admin. Code § 107.206. These public actions are as follows, in order of increasing severity:

- (1) **Remedial Plan:** The Board may issue a non-disciplinary Remedial Plan pursuant to Texas Occupations Code § 263.0077 and Board rule § 107.204.
- (2) **Administrative Penalty:** The Board may issue an Administrative Penalty pursuant to the procedures of Chapter 264, Subchapter A of the Texas Occupations Code, and Board rule §107.201. An administrative penalty is a disciplinary action.
- (3) **Warning:** A Warning is a disciplinary action and may be accompanied by the imposition of an Administrative Fine.
- (4) **Reprimand:** A Reprimand is a disciplinary action and may be accompanied by the imposition of an Administrative Fine.
- (5) **Probated Suspension:** A Probated Suspension is a heightened level of disciplinary action issued for a period of years as identified in the Board's order; however, a licensee under a Probated Suspension may continue to practice. A Probated Suspension may be accompanied by the imposition of an Administrative Fine.
- (6) **Enforced Suspension:** An Enforced Suspension is a heightened level of disciplinary action. An Enforced Suspension may be issued for a period of days or years as identified in the Board's order. A licensee may not practice while under an Enforced Suspension. An Enforced Suspension may be accompanied by the imposition of an Administrative Fine.
- (7) **Revocation:** Revocation is the highest level of disciplinary action taken by the Board. After the Board imposes an order of Revocation upon a licensee, the licensee must cease the practice authorized under the license that has been revoked. A person whose license has been revoked by Board order must apply for the issuance of a new license pursuant to Board requirements.

The Board may accept voluntary surrender of a license instead of further disciplinary proceedings against a licensee. Voluntary surrender of a license in lieu of further disciplinary action shall be reported to the National Practitioner Data Bank and shall be available as a public action on the Board's website. A person who has voluntarily surrendered a license must apply for the issuance of a new license pursuant to Board requirements.

Jurisprudence Assessment: All public actions of the Board shall require the licensee to complete the Jurisprudence Assessment. This requirement may be waived upon a showing that the licensee completed the Jurisprudence Assessment within the last six months.

Record of Settlement: All public actions shall record (1) the date of the informal settlement conference and the composition of the panel, if an informal settlement conference occurred; (2) the counsel of record that represented the licensee at any settlement conference or in negotiations with the Board, and (3) any State Office of Administrative Hearings docket numbers for contested case hearings or mediations and the date of any hearings held on complaints associated with the public action.

AGGRAVATING AND MITIGATING FACTORS

Aggravating Factors: Pursuant to Board rule § 107.203, in any public action, the following may be considered as aggravating factors that warrant more severe or restrictive action by the Board. A Board Order may include a finding of fact on each applicable aggravating factor. Aggravating factors may include:

- (1) harm to one or more patients;
- (2) the severity of patient harm;
- (3) one or more violations that involve more than one patient;
- (4) economic harm to any individual or entity and the severity of such harm;
- (5) increased potential for harm to the public;
- (6) attempted concealment of the act constituting the violation;
- (7) intentional, premeditated, knowing, or grossly negligent act constituting a violation;
- (8) prior similar violations;
- (9) previous disciplinary action by the Board, any government agency, peer review organization, or health care entity;
- (10) violation of a Board Order; or
- (11) other relevant circumstances increasing the seriousness of the misconduct.

Mitigating Factors: Pursuant to Board rule § 107.203, in any public action, the following may be considered as mitigating factors that warrant less severe or restrictive action by the Board. The licensee shall have the burden to present evidence regarding any mitigating factors that may apply in the particular case. A Board Order may include a finding of fact on each applicable mitigating factor.

Mitigating factors may include:

- (1) self-reported and voluntary admission of violation(s);
- (2) implementation of remedial measures to correct or mitigate harm from the violation(s);
- (3) acknowledgment of wrongdoing and willingness to cooperate with the Board, as evidenced by the acceptance of an Agreed Order;
- (4) rehabilitative potential;
- (5) prior community service and present value to the community;
- (6) other relevant circumstances reducing the seriousness of the misconduct; or
- (7) other relevant circumstances lessening responsibility for the misconduct.

Board Order Stipulations

For each tier of violation, the following stipulations may be applied through Board order, as justified by the conduct and applicable aggravating and mitigating factors. The justified stipulations shall be at the discretion of the Board.

- (1) Continuing Education in applicable areas of practice;
- (2) Administrative Fine;
- (3) Restitution to patient as permitted by Board rules;
- (4) Community Service;
- (5) If the matter involves misuse or addiction to drugs or alcohol, request for evaluation by Professional Recovery Network (PRN), and requiring continuous participation in PRN for a period of years recommended by PRN evaluator.
- (6) Restriction or revocation of sedation/anesthesia permits;
- (7) Restriction or required surrender of DEA controlled substances privileges;
- (8) Restriction on the prescription and/or in-office use of controlled substances and dangerous drugs;
- (9) Mandatory group practice requirement;
- (10) Restriction on the scope of practice or procedures permitted under license;
- (11) Restrictions on the delegation or performance of delegated tasks under license;
- (12) Audits of practice procedures or patient records created during practice; and
- (13) Remedial education and demonstrations of competency.

Monetary Fines and Penalties

Administrative Fines: An administrative fine is a monetary fine assessed pursuant to Texas Occupations Code § 263.002(a) in connection with the issuance of a disciplinary action by the Board that is not an administrative penalty. Administrative fines shall not be assessed when issuing a Remedial Plan. The Board shall not assess an administrative fine without the issuance of a Warning, Reprimand, Probated Suspension, or Enforced Suspension. The Board may reduce the amount assessed as an administrative fine after applying appropriate mitigating factors, or upon a showing that the Licensee has paid, or by agreed settlement will pay, an amount of restitution to the patient. The amount of restitution ordered may not exceed the amount the patient paid to the licensee for the service or services from which the complaint arose.

| Schedule of Administrative Fines | | |
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| First Offense: | Second Offense: | Third Offense: |
| ≤ \$3,000 | ≤ \$4,000 | ≤ \$5,000 |

Remedial Plan Fees: Pursuant to Texas Occupations Code § 263.0077(e), the Board has established the amount of five hundred dollars (\$500.00) as the amount necessary to administer a remedial plan. This amount shall be applied to all remedial plans issued by the Board.

Administrative Penalty Schedule: The amount of an administrative penalty shall not exceed \$5,000 for each violation, in accordance with Tex. Occ. Code § 264.002(a). The Board shall assess an administrative penalty in accordance with Board rule § 107.202. The type and base amount of each penalty are as follows:

| Type of Penalty | Violations | Base Amount of Penalty |
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| Violation of a Board Administrative Rule (a violation involving purely administrative requirements that does not involve the care of patients) | <ul style="list-style-type: none"> • Failure to timely complete continuing education requirements • Practicing with an expired license, permit or registration • Failure to comply with Board advertising rules and restrictions • Permitting a staff member to practice with an expired license, permit, or registration • Failure to maintain a current and accurate contact address with the Board | \$100.00 |
| Basic Record Keeping and Patient Communication (a violation involving maintenance of patient records, providing patient records upon request, and required communication with a patient) | <ul style="list-style-type: none"> • Failure to provide records to a patient within 30 days of request • Failure to provide adequate intent to discontinue undertaken treatment notice to the patient as required by 22 Tex. Admin. Code § 108.5 (each missing element represents a separate violation) • Failure to review and update patient medical history annually • Failure to record patient vital signs as required by Board rule | \$250.00 |
| Preparedness, Patient Safety, and Sanitation (a violation involving failure to adequately clean and prepare the dental office or location where patients will be treated) | <ul style="list-style-type: none"> • Failure to prepare adequate emergency protocols and ensure staff training for emergencies • Failure to comply with sanitation requirements and testing • Failure to maintain adequate supplies of emergency response medications and supplies as required by the licensee's practice type and sedation/anesthesia permit level | \$500.00 |

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| <p>Standard of Care and Fair Dealing (a violation involving direct clinical treatment or lack of treatment for the patient)</p> | <ul style="list-style-type: none"> • Falling below the minimum standard of care when performing endodontic, orthodontic, restorative, or other dental treatment • Provision of sedation/anesthesia below the minimum standard of care, where the violations did not pose a danger to the health and safety of the patient • Violation of the duty of fair dealing by overcharging, overbilling, or over treating the patient • Misleading a patient as to the gravity of their dental needs | <p>\$1000.00</p> |
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Grounds for Disciplinary Action in General

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| <p>Licensee is adjudged under the law to be insane. Tex. Occ. Code § 263.002(a)(1).</p> | |
| <p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Denial, revocation of license, or request for voluntary surrender. • Consideration of emergency temporary suspension of license. | |
| <p>Licensee practices dentistry or dental hygiene in a manner that constitutes dishonorable conduct. Tex. Occ. Code § 263.002(a)(3).</p> | |
| <p><u>First Tier Violation:</u></p> <ul style="list-style-type: none"> • Isolated dishonorable conduct; violation (1) presents no risk or a low risk of patient harm, and (2) caused no harm to a patient or another person. | <p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Remedial Plan or Administrative Penalty, including continuing education and/or restitution to patient for service rendered. |
| <p><u>Second Tier Violation:</u></p> <ul style="list-style-type: none"> • Repeated or continuous acts of dishonorable conduct; violations (1) present no risk or a low risk of patient harm, and (2) caused no harm to a patient or another person. • Isolated dishonorable conduct; violation (1) presents risk of serious patient harm, or (2) caused harm to a patient or another person. | <p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Warning, Reprimand, or Probated Suspension. |
| <p><u>Third Tier Violation:</u></p> <ul style="list-style-type: none"> • Repeated or continuous acts of dishonorable conduct; violations (1) present risk of serious patient harm, or (2) caused harm to a patient or another person. • Dishonorable conduct which results in the death of a patient or another person. | <p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Enforced Suspension until adequate remedial measures have been completed and licensee has demonstrated competency, followed by Probated Suspension. • Denial, revocation of license, or request for voluntary surrender. • Consideration of emergency temporary suspension of license. |

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| Licensee fails to treat a patient according to the standard of care in the practice of dentistry or dental hygiene. Tex. Occ. Code § 263.002(a)(4). | |
| <u>First Tier Violation:</u> | <ul style="list-style-type: none"> Practice below minimum standard of care; violation (1) presents a low risk of patient harm, or (2) caused minimal patient harm. |
| <u>Second Tier Violation:</u> | <ul style="list-style-type: none"> Practice below minimum standard of care; violation (1) presents a significant risk of patient harm, or (2) caused significant patient harm. Act or omission that demonstrates level of incompetence suggesting that the person should not practice without remediation and subsequent demonstration of competency. |
| <u>Third Tier Violation:</u> | <ul style="list-style-type: none"> Practice below minimum standard of care; violation caused serious patient harm or patient death. Any intentional act or omission that risks or results in serious harm to a patient or other person. |
| <u>Sanction:</u> | <ul style="list-style-type: none"> Remedial Plan or Administrative Penalty, including continuing education and/or restitution to patient for service rendered below minimum standard. Warning or Reprimand. |
| <u>Sanction:</u> | <ul style="list-style-type: none"> Reprimand or Probated Suspension. |
| <u>Sanction:</u> | <ul style="list-style-type: none"> Enforced Suspension until adequate remedial measures have been completed and licensee has demonstrated competency, followed by Probated Suspension. Denial, revocation of license, or request for voluntary surrender. Consideration of emergency temporary suspension of license. |

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| Unlawful Advertising; Licensee engages in deception or misrepresentation in soliciting or obtaining patronage. Tex. Occ. Code Chapter 259 and § 263.002(a)(5). | |
| <u>First Tier Violation:</u> | <ul style="list-style-type: none"> Isolated violation of applicable advertising restrictions with no intentional misrepresentation. Misrepresentation which causes no or minimal monetary loss or harm to the patient. |
| <u>Sanction:</u> | <ul style="list-style-type: none"> For a first violation of advertising restrictions, no sanction will be pursued until an opportunity to cure has been provided pursuant to statutory requirements. Remedial Plan or Administrative Penalty, including continuing education and/or restitution to patient for patronage obtained through misrepresentation. |
| <u>Second Tier Violation:</u> | |
| <u>Sanction:</u> | |

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| <ul style="list-style-type: none"> • Violation of applicable advertising restrictions; violation is continuous, widespread, or continues after opportunity to cure is given by Board. • Misrepresentation which causes significant (greater than \$100) monetary loss or harm to the patient. • Deception intended to obtain financial gain from a patient or a patient's third-party payor, including fraudulent or unjustified billing, alteration of patient records or billing statements, and other behavior intended to deceive a patient or third-party payor for financial gain. Violation is isolated. | <ul style="list-style-type: none"> • Warning, Reprimand, or Probated Suspension. |
| <p><u>Third Tier Violation:</u></p> <ul style="list-style-type: none"> • Deception intended to obtain financial gain from a patient or a patient's third-party payor, including fraudulent or unjustified billing, alteration of patient records or billing statements, and other behavior intended to deceive a patient or third-party payor for financial gain. Violation is widespread or systemic in licensee's practice. | <p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Enforced suspension of license until adequate remedial measures have been completed and licensee has demonstrated remediation, followed by Probated Suspension. • Denial, revocation of license, or request for voluntary surrender. |
| <p>Licensee obtains a license by fraud or misrepresentation. Tex. Occ. Code § 263.002(a)(6), Tex. Gov't Code § 2005.052.</p> | |
| <p><u>First Tier Violation:</u></p> <ul style="list-style-type: none"> • Failure to fully provide information requested on an application to the Board or through a request by the Board for further information related to licensure. No intentional misrepresentation or alteration of documentation. | <p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Remedial Plan or Administrative Penalty, including continuing education. • Warning or Reprimand. |
| <p><u>Second Tier Violation:</u></p> <ul style="list-style-type: none"> • Intentional misrepresentation or alteration of documentation associated with any information submitted on an application to the Board or through a request by the Board for further information related to licensure. | <p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Enforced suspension of license until adequate remedial measures have been completed and licensee has demonstrated remediation, followed by Probated Suspension. • Denial, revocation of license, or request for voluntary surrender. • Consideration of emergency temporary suspension of license. |

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| <p>Licensee is addicted to or habitually intemperate in the use of alcoholic beverages or drugs or has improperly obtained, possessed, used, or distributed habit-forming drugs or narcotics. Tex. Occ. Code §§ 258.053 and 263.002(a)(7).</p> | |
| <p><u>First Tier Violation:</u></p> <ul style="list-style-type: none"> Misuse of drugs or alcohol without patient interaction and no risk of patient harm or adverse patient effects. Licensee is cooperative and has not been diagnosed with impairment or other conditions posing a risk to patient safety. Licensee improperly prescribes, provides, dispenses, or otherwise allows access to a controlled substance or dangerous drug; violation is isolated and does not represent ongoing diversion or distribution. | <p><u>Sanction:</u></p> <ul style="list-style-type: none"> Reprimand or Probated Suspension. |
| <p><u>Second Tier Violation:</u></p> <ul style="list-style-type: none"> Licensee improperly prescribes, provides, dispenses, or otherwise allows access to a controlled substance or dangerous drug; repeated or widespread violations. | <p><u>Sanction:</u></p> <ul style="list-style-type: none"> Probated Suspension or Enforced Suspension followed by Probated Suspension. |
| <p><u>Third Tier Violation:</u></p> <ul style="list-style-type: none"> Misuse of drugs or alcohol; licensee's conduct (1) presents a risk of patient harm or (2) caused harm to a patient or another person. | <p><u>Sanction:</u></p> <ul style="list-style-type: none"> Enforced Suspension pending PRN evaluation or other source of evaluation acceptable to the Board determining licensee is safe to practice. If evaluation determining licensee is safe to practice is received, then Probated Suspension with stipulations requiring continuous participation in PRN for a period of years recommended by PRN evaluator, regular evaluations for ability to practice safely. Denial, revocation of license, or request for voluntary surrender. Consideration of emergency temporary suspension of license. |

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| <p>Licensee holds a dental license and employs, permits, or has employed or permitted a person not licensed to practice dentistry to practice dentistry in an office of the dentist that is under the dentist's control or management. Tex. Occ. Code §§ 258.001, 259.004, and 263.002(a)(8).</p> | |
| <p><u>First Tier Violation:</u></p> <ul style="list-style-type: none"> • Impermissible delegation resulting in no patient harm and presenting a minimal risk of patient harm. | <p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Remedial Plan or Administrative Penalty, including continuing education. • Warning or Reprimand. |
| <p><u>Second Tier Violation:</u></p> <ul style="list-style-type: none"> • Impermissible delegation resulting in actual patient harm, or presenting a serious risk of patient harm. • Repeated or widespread impermissible delegations representing a systemic violation in licensee's practice. • Knowingly aiding and abetting another to practice dentistry without a license. | <p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Probated Suspension or Enforced Suspension followed by Probated Suspension. • Denial, revocation of license or request for voluntary surrender. • Consideration of emergency temporary suspension of license. • Referral of conduct to local or state law enforcement and Office of the Attorney General for appropriate criminal and civil actions. |
| <p>Licensee fails to use proper diligence in practice or fails to safeguard patients against avoidable infections. Tex. Occ. Code § 263.002(a)(9).</p> | |
| <p><u>First Tier Violation:</u></p> <ul style="list-style-type: none"> • Failure to properly document compliance with health and sanitation requirements. Office premises are maintained in compliance with health and sanitation requirements. Violation presents a low risk of patient harm. • Failure to properly document controlled substance inventories or prescription records. No loss or theft of controlled substances. | <p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Remedial Plan or Administrative Penalty, including continuing education and/or restitution to patient for service rendered below minimum standard. • Warning or Reprimand. |
| <p><u>Second Tier Violation:</u></p> <ul style="list-style-type: none"> • Office premises are not maintained in compliance with health and sanitation requirements. Violation presents a significant risk of patient harm. • Failure to properly document controlled substance inventories or prescription records. Documented loss or theft of controlled substances. | <p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Reprimand, or Probated Suspension. |

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| <ul style="list-style-type: none"> • Failure to use reasonable diligence in preventing unauthorized persons from utilizing DEA permit privileges. | |
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| <p>Licensee violates or refuses to comply with a law relating to the regulation of dentists or dental hygienists. Tex. Occ. Code § 263.002(a)(10).</p> | |
| <p><u>First Tier Violation:</u></p> <ul style="list-style-type: none"> • Failure to adequately observe the applicable laws and rules related to licensee's practice; violation represents minimal risk of harm or monetary loss to the patient or another person. | <p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Remedial Plan or Administrative Penalty, including continuing education and/or restitution to patient for service rendered below minimum standard. |
| <p><u>Second Tier Violation:</u></p> <ul style="list-style-type: none"> • Failure to adequately observe the applicable laws and rules related to licensee's practice; violation represents significant risk of harm or causes significant monetary loss (greater than \$100) to the patient. | <p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Warning or Reprimand. |
| <p><u>Third Tier Violation:</u></p> <ul style="list-style-type: none"> • Failure to adequately observe the applicable laws and rules related to licensee's practice; violation causes actual harm to a patient or another person, or causes significant monetary loss (greater than \$100) to multiple patients. | <p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Probated Suspension or Enforced Suspension followed by Probated Suspension. • Denial, revocation of license, or request for voluntary surrender. • Consideration of emergency temporary suspension of license. |

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| <p>Licensee is physically or mentally incapable of practicing in a manner that is safe for the person's dental patients. Tex. Occ. Code § 263.002(a)(11).</p> | |
| <p><u>Second Tier Violation</u></p> <ul style="list-style-type: none"> • Licensee is cooperative and currently under professional treatment. Agreement settlement is reached and licensee has shown commitment to compliance with Board order. | <p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Reprimand or Probated Suspension. |
| <p><u>Third Tier Violation</u></p> | <p><u>Sanction:</u></p> |

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| <ul style="list-style-type: none"> • Licensee is uncooperative, rejects need for treatment, or has terminated professional treatment previously required by law or Board order. • Licensee rejects settlement and Board Order must be imposed through temporary suspension or other contested case proceeding. | <ul style="list-style-type: none"> • Enforced Suspension pending PRN evaluation or other source of evaluation acceptable to the Board determining licensee is safe to practice. If evaluation determining licensee is safe to practice is received, then Probated Suspension with stipulations requiring continuous participation in PRN for a period of years recommended by PRN evaluator, regular evaluations for ability to practice safely. • Denial, revocation of license, or request for voluntary surrender. • Consideration of emergency temporary suspension of license. • Referral of conduct to local or state law enforcement and Office of the Attorney General for appropriate criminal and civil actions. |
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| <p>Licensee is negligent in performing dental services and that negligence causes injury or damage to a dental patient. Tex. Occ. Code § 263.002(a)(12).</p> <p><u>Second Tier Violation</u></p> <ul style="list-style-type: none"> • Act of negligence that causes minor harm to a patient. | |
| <p><u>Third Tier Violation</u></p> <ul style="list-style-type: none"> • Act of negligence that causes significant harm or death of a patient. | <p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Reprimand or Probated Suspension. <p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Enforced suspension of license until adequate remedial measures have been completed and licensee has demonstrated competency, followed by Probated Suspension. • Denial, revocation of license, or request for voluntary surrender. • Consideration of emergency temporary suspension of license. |

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| <p>Licensee holds a license or certificate in another state and that state reprimands the licensee, suspends or revokes the licensee's license or certificate or places the licensee on probation, or imposes another restriction on the licensee's practice. Tex. Occ. Code § 263.002(a)(13).</p> <p><u>First Tier Violation:</u></p> | |
| | <p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Reprimand. |

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| <ul style="list-style-type: none"> • Within the last 10 years, license or certificate is reprimanded in another jurisdiction, with no suspension or revocation of license permissions or permits. | |
| <p><u>Second Tier Violation:</u></p> <ul style="list-style-type: none"> • Within the last 10 years, License or certificate is restricted, suspended, or placed on probationary status in another jurisdiction. Suspension, restriction, or probation is no longer active or in force. • Failure to report disciplinary action received in another jurisdiction. | <p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Reprimand or Probated Suspension. |
| <p><u>Third Tier Violation:</u></p> <ul style="list-style-type: none"> • License or certificate is restricted, suspended, or placed on probationary status in another jurisdiction. Suspension, restriction, or probation is still active or in force. • Revocation or voluntary surrender in lieu of disciplinary action of license or certificate in another jurisdiction. | <p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Probated Suspension or Enforced Suspension followed by Probated Suspension; stipulations should mirror the remaining suspension period or restrictions applied in another jurisdiction as possible. • Denial, revocation of license, or request for voluntary surrender. • Consideration of emergency temporary suspension of license. |
| <p>Licensee knowingly provides or agrees to provide dental care in a manner that violates a federal or state law that regulates a plan to provide, arrange for, pay for, or reimburse any part of the cost of dental care services; or regulates the business of insurance. Tex. Occ. Code § 263.002(a)(14).</p> | <p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Probated Suspension or Enforced Suspension until adequate remedial measures have been completed and licensee has demonstrated remediation, followed by Probated Suspension. • Denial, revocation of license, or request for voluntary surrender. • Consideration of emergency temporary suspension of license. |

Owner Responsibility

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| <p>Owner is responsible for all professional acts performed under the name of the owner. Tex. Occ. Code § 259.004.</p> | |
| <p><u>First Tier Violation:</u></p> <ul style="list-style-type: none"> • Violation of the Dental Practice Act or Board Rules – owner not personally involved or management of the entity was not a cause of the violation. | <p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Remedial Plan or Administrative Penalty, including continuing education and/or restitution to patient for service rendered below minimum standard. • |
| <p><u>Second Tier Violation:</u></p> <ul style="list-style-type: none"> • Violation of the Dental Practice Act or Board Rules – owner not personally involved, but management of the entity was a cause of the violation. | <p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Warning or Reprimand. |
| <p><u>Third Tier Violation</u></p> <ul style="list-style-type: none"> • Repeated Violations of the or Board Rules – owner not personally involved, but management of the entity was a cause of the violation. | <p><u>Sanction:</u></p> <ul style="list-style-type: none"> • Probated Suspension or Enforced Suspension until adequate remedial measures have been completed and licensee has demonstrated remediation, followed by Probated Suspension. • Denial, revocation of license, or request for voluntary surrender. • Consideration of emergency temporary suspension of license. |

Criminal History

The Board shall apply the relevant portions of the Texas Occupations Code and Board rules related to criminal history when determining a disciplinary sanction for licensure applications or active licensees. Board rule § 101.8 contains the Board's mandatory and recommended sanctions for criminal history. When a conflict exists between relevant portions of Texas law and the mandatory or recommended sanctions of Board rules, the terms of any applicable Texas law shall control.

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 9, 2019**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **July 9, 2019**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Albemarle Corporation; DOCKET NUMBER: 2019-0115-AIR-E; IDENTIFIER: RN100211523; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: catalyst manufacturing plant; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air emissions; and 30 TAC §116.116(a)(1) and §122.143(4), Federal Operating Permit Number O1559, General Terms and Conditions and Special Terms and Conditions Number 9, and THSC, §382.085(b), by failing to comply with representations with regard to construction plans and operation procedures in a permit application; PENALTY: \$7,687; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Beattie Cattle, LLC; DOCKET NUMBER: 2018-1626-AGR-E; IDENTIFIER: RN101610640; LOCATION: Comanche, Comanche County; TYPE OF FACILITY: concentrated animal feeding operation; RULES VIOLATED: 30 TAC §305.125(1) and §321.31(a), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXG921253,

Part III, A.12(c)(1), by failing to prevent an unauthorized discharge of agricultural waste into or adjacent to water in the state; 30 TAC §305.125(1) and §321.36(b) and TPDES General Permit Number TXG921253, Part III, A.5(c), by failing to collect and analyze samples from a discharge to surface water in the state from retention control structures and land management units; and 30 TAC §305.125(1) and §321.39(g)(3) and TPDES General Permit Number TXG921253, Part III, A.11(c), by failing to collect carcasses within 24 hours of death and properly dispose of them within three days of death; PENALTY: \$4,876; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(3) COMPANY: CEDAR BAYOU CHURCH OF CHRIST, INCORPORATED; DOCKET NUMBER: 2019-0059-PWS-E; IDENTIFIER: RN108331901; LOCATION: Baytown, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(e), by failing to provide the results of asbestos sampling to the executive director (ED) for the January 1, 2017 - December 31, 2017, monitoring period; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the ED by the tenth day of the month following the end of each quarter for the fourth quarter of 2017 through the second quarter of 2018; and 30 TAC §290.117(c)(2)(A), (h), and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2018 - June 30, 2018, monitoring period; PENALTY: \$500; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: City of Aransas Pass; DOCKET NUMBER: 2018-1300-MWD-E; IDENTIFIER: RN102076452; LOCATION: Aransas Pass, San Patricio County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §30.350(d) and §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010521002, Operational Requirements Number 9., by failing to employ or contract with one or more licensed wastewater treatment facility operators or wastewater system operations companies holding a valid Class B license or higher; 30 TAC §210.33(2)(A) and Authorization for Reclaimed Water Number R10521002, III. Specific Uses and Quality Standards for Reclaimed Water Number 2., by failing to transfer Type II reclaimed water meeting the quality limits for a system other than a pond system; 30 TAC §305.125(1) and TPDES Permit Number WQ0010521002, Monitoring and Reporting Requirements Number 3.b., by failing to maintain monitoring and reporting records at the facility and make them readily available for review by a TCEQ representative for a period of three years; 30 TAC §305.125(1) and TPDES Permit Number WQ0010521002, Monitoring and Reporting Requirements Number 7.c., by failing to report to the TCEQ in writing, any effluent violation which deviates from the permitted effluent limitation by more than 40% within five working days of becoming aware of noncompliance; 30 TAC §305.125(1) and TPDES Permit Number WQ0010521002, Sludge Provisions, Section II.F., by failing to submit the annual sludge report for the monitoring period ending July 31, 2017, by September 30, 2017; 30 TAC §305.125(1) and §317.4(b)(4) and TPDES Permit Number WQ0010521002, Operational Requirements Number 1., by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and (17) and §319.7(d), and TPDES Permit Number WQ0010521002, Monitoring and Reporting Requirements Number 1., by failing to timely submit monitoring results at intervals specified in the permit; 30 TAC §317.7(i), by failing to provide atmospheric vacuum breakers on all potable water washdown hoses; 30 TAC §217.33(a) and §305.125(1) and TPDES Permit Num-

ber WQ0010521002, Monitoring and Reporting Requirements Number 5, by failing to annually calibrate all automatic flow measuring or recording devices and all totalizing meters for measuring flows; 30 TAC §319.6 and §319.9(d), by failing to assure the quality of all measurements through the use of blanks, standards, duplicates, and spikes; 30 TAC §319.11(a) and (b), by failing to comply with test procedures for the analysis of pollutants; and 30 TAC §319.11(c), by failing to collect and analyze effluent samples according to test methods specified in 40 Code of Federal Regulations Part 136 or more recent additions of Standard Methods for the Examination of Waste and Wastewater; PENALTY: \$93,350; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$74,680; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(5) COMPANY: City of Chillicothe; DOCKET NUMBER: 2019-0244-PWS-E; IDENTIFIER: RN101389542; LOCATION: Chillicothe, Hardeman County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code (THSC), §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter (mg/L) for nitrate; 30 TAC §290.110(b)(4) and (f)(6) and THSC, §341.0315(c), by failing to maintain a minimum disinfectant residual of 0.2 mg/L free chlorine throughout the distribution system in more than 5.0% of the samples collected each month, for any two consecutive months; and 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director by the tenth day of the month following the end of the quarter for the third quarter of 2018; PENALTY: \$1,547; ENFORCEMENT COORDINATOR: Julianne Dewar, (512) 239-1001; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(6) COMPANY: City of Garland Power & Light; DOCKET NUMBER: 2018-1307-AIR-E; IDENTIFIER: RN100219203; LOCATION: Nevada, Collin County; TYPE OF FACILITY: power plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), and §122.143(4), New Source Review Permit Number 807, Special Conditions Number 1, Federal Operating Permit (FOP) Number O17, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 7, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the maximum allowable emissions rates; 30 TAC §117.1345(d) and §122.143(4), FOP Number O17, GTC and STC Number 1.A, and THSC, §382.085(b), by failing to submit semiannual reports within 30 days after the end of each calendar semiannual period; 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O17, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; and 30 TAC §122.143(4) and §122.145(2)(C), FOP Number O17, GTC, and THSC, §382.085(b), by failing to submit deviation reports no later than 30 days after the end of the reporting periods; PENALTY: \$31,275; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: City of George West; DOCKET NUMBER: 2018-1733-PWS-E; IDENTIFIER: RN103778528; LOCATION: George West, Live Oak County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(d)(4)(B), (formerly §290.109(c)(4)(B)) and §290.122(c)(2)(A) and (f), by failing to collect, within 24 hours of notification of the routine distribution total coliform-positive samples on September 27, 2016 and September 28, 2017, at least one raw groundwater source *Escherichia coli* (*E.coli*), or other approved fecal indicator, sample from each groundwater source in use at the time the distribution coliform-positive samples were collected, and failing to provide public notification and submit a copy

of the notification to the executive director (ED) regarding the failure to collect a raw groundwater source *E. coli* sample during the month of September 2016; 30 TAC §290.117(c)(2)(A), (h), and (i)(1), by failing to collect lead and copper tap samples at the required 20 sample sites, have the samples analyzed, and report the results to the ED for the July 1, 2017 - December 31, 2017, and January 1, 2018 - June 30, 2018, monitoring periods; 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification has been distributed for the January 1, 2012 - December 31, 2014, monitoring period; and 30 TAC §290.117(n), by failing to comply with the additional requirements as required by the ED to ensure that minimal levels of corrosion are maintained in the distribution system; PENALTY: \$3,099; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$2,480; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(8) COMPANY: City of Roma; DOCKET NUMBER: 2019-0335-PST-E; IDENTIFIER: RN102008737; LOCATION: Roma, Starr County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2)(B)(i)(II), and TWC, §26.3475(b) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases in a manner which will detect a release at a frequency of at least once every 30 days, and failing to monitor the suction piping associated with the UST system in a manner which will detect a release from any portion of the piping system at a frequency of at least once every 30 days; 30 TAC §334.50(d)(9)(A)(iv) and (v) and §334.72, by failing to report a suspected release due to Inconclusive Statistical Inventory Reconciliation results to the TCEQ within 72 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release within 30 days of discovery; PENALTY: \$16,500; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(9) COMPANY: JW Rentals INC; DOCKET NUMBER: 2019-0691-WQ-E; IDENTIFIER: RN108775610; LOCATION: Robstown, Nueces County; TYPE OF FACILITY: stormwater facility; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: \$875; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(10) COMPANY: Karen Risler; DOCKET NUMBER: 2019-0163-MSW-E; IDENTIFIER: RN110378270; LOCATION: Trinity, Trinity County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §330.15(a) and (c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of MSW; PENALTY: \$1,312; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(11) COMPANY: Knox Sullivan Co., LLC; DOCKET NUMBER: 2019-0351-AIR-E; IDENTIFIER: RN110604725; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: air curtain incinerator; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$938; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(12) COMPANY: LAKE BONANZA WATER SUPPLY CORPORATION; DOCKET NUMBER: 2019-0333-PWS-E; IDENTIFIER:

RN102673282; LOCATION: Willis, Montgomery County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.108(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 15 picocuries per liter for gross alpha particle activity based on the running annual average; PENALTY: \$172; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: NAVASOTA OIL CO., INCORPORATED; DOCKET NUMBER: 2019-0370-PST-E; IDENTIFIER: RN101672996; LOCATION: Navasota, Grimes County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to deposit a regulated substance into a regulated underground storage tank system that was covered by a valid, current TCEQ delivery certificate; PENALTY: \$6,021; ENFORCEMENT COORDINATOR: Tyler Gerhardt, (512) 239-2506; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(14) COMPANY: Nogalus-Centralia Water Supply Corporation; DOCKET NUMBER: 2019-0126-PWS-E; IDENTIFIER: RN101452076; LOCATION: Apple Springs, Trinity County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes based on the locational running annual average; PENALTY: \$420; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-1437; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(15) COMPANY: Pradhan and Company, Incorporated dba Express Food; DOCKET NUMBER: 2019-0097-PST-E; IDENTIFIER: RN102261773; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; and 30 TAC §334.605(a) and (b), by failing to ensure that a certified Class A, Class B, and Class C Operator was re-trained within three years of their last training date; PENALTY: \$6,453; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: S.L.C. Water Supply Corporation; DOCKET NUMBER: 2019-0081-PWS-E; IDENTIFIER: RN101265908; LOCATION: Groesbeck, Limestone County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.5 milligrams per liter of chloramine (measured as total chlorine) throughout the distribution system at all times; and 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals; PENALTY: \$140; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(17) COMPANY: Southside Independent School District; DOCKET NUMBER: 2019-0396-PST-E; IDENTIFIER: RN101766210; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Berenice

Munoz, (915) 834-4976; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(18) COMPANY: SUDDUTH WATER SUPPLY, INCORPORATED; DOCKET NUMBER: 2019-0187-MLM-E; IDENTIFIER: RN104168984; LOCATION: Golinda, Falls County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §288.20(c), by failing to review and update, as appropriate, the drought contingency plan at least every five years; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement that covers the land within 150 feet of the facility's well; 30 TAC §290.41(c)(3)(N), by failing to provide a flow measuring device for each well to measure production yields and provide for the accumulation of water production data; 30 TAC §290.42(e)(4)(A), by failing to provide a full-faced self-contained breathing apparatus or supplied air respirator that meets Occupational Safety and Health Administration standards for construction and operation and is readily accessible outside the chlorinator room and immediately available to the operator in the event of an emergency; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; 30 TAC §290.46(q)(1) and (2), by failing to issue a boil water notification (BWN) to customers of the facility within 24 hours of a water outage using one or more of the Tier 1 delivery methods as described in 30 TAC §290.122(a)(2) using the applicable BWN language and format specified in 30 TAC §290.47(c)(1); 30 TAC §290.46(r), by failing to operate the system to maintain a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system under normal operating conditions and a minimum pressure of 20 psi during emergencies such as firefighting; and 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with monitoring requirements; PENALTY: \$1,193; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(19) COMPANY: The Methodist Hospital; DOCKET NUMBER: 2019-0325-AIR-E; IDENTIFIER: RN102962446; LOCATION: Houston, Harris County; TYPE OF FACILITY: hospital; RULES VIOLATED: 30 TAC §117.340(a) and §122.143(4), Federal Operating Permit (FOP) Number O3400, General Terms and Conditions (GTC) and Special Terms and Conditions Number 1.A, and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain the fuel flow meter calibration records; and 30 TAC §122.143(4) and §122.145(2)(A) and (C), FOP Number O3400, GTC, and THSC, §382.085(b), by failing to submit a deviation report no later than 30 days after the end of each reporting period, and failing to report all instances of deviations; PENALTY: \$11,285; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$9,028; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: Twin Lakes Petroleum Enterprises, Incorporated dba Twin Stop 3; DOCKET NUMBER: 2019-0278-PST-E; IDENTIFIER: RN103077699; LOCATION: Canton, Van Zandt County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$2,563; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-201901578
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 28, 2019



Notice of Hearing K & K Construction, Inc.: SOAH Docket
No. 582-19-4961; TCEQ Docket No. 2018-0710-AIR;
Proposed Permit No. 141957

APPLICATION.

K & K Construction, Inc., 13757 E FM 1097 Rd, Willis, Texas 77378-4345, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of Proposed Air Quality Permit Number 141957, which would authorize construction of a Concrete Crusher located at 10300 Farrell Rd, Willis, Montgomery County, Texas 77378. This application was submitted to the TCEQ on August 2, 2016. The proposed facility will emit the following contaminants: carbon monoxide, nitrogen oxides, organic compounds, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less and sulfur dioxide.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision to issue the permit because it meets all rules and regulations. The permit application, executive director's preliminary decision, and draft permit will be available for viewing and copying at the TCEQ central office, the TCEQ Houston regional office, and at the Montgomery County Memorial Library System - R. F. Meador Branch, 709 West Montgomery St., Willis, Montgomery County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Houston Regional Office, 5425 Polk St., Ste. H, Houston, Texas. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: <<http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=30.39659&lng=-95.43835&zoom=13&type=r>>. For the exact location, refer to the application.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

10:00 a.m. - July 8, 2019

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The contested case hearing will be a legal proceeding similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on April 27, 2019. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with the Chapter 2001, Texas Government Code; Chapter 382, Texas Health and Safety Code; TCEQ rules including 30 Texas Administrative Code (TAC) Chapter 116, Subchapters A and B; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be affected by the application in a way not common to the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

MAILING LIST.

You may ask to be placed on a mailing list to obtain additional information on this application by sending a request to the Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION.

Public comments and requests must be submitted either electronically at www.tceq.texas.gov/goto/comments, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application, the permitting process, or the contested case hearing process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040. General information regarding the TCEQ may be obtained electronically at <http://www.tceq.texas.gov>.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information regarding the TCEQ can be found at <http://www.tceq.texas.gov/>.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Further information may also be obtained from K & K Construction, Inc. at the address stated above or by calling Ms. Barbara Bason, Office Manager at (936) 856-2335.

Issued: May 24, 2019

TRD-201901595

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 29, 2019



Notice of Water Quality Application

The following notices were issued on May 9, 2019 through May 23, 2019.

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

VAL VERDE UTILITY COMPANY, LLC has applied for a minor amendment to the Texas Pollutant Discharge Elimination System Per-

mit No. WQ0014777001 to authorize a decrease in flow from 0.99 million gallons per day (MGD) to 0.15 MGD. The facility will be located between the City of Del Rio and Laughlin Air Force Base, approximately 1,000 feet northwest of U.S. Highway 277 and approximately 500 feet west of Spur 317, in Val Verde County, Texas 78840.

BRAZORIA COUNTY MUNICIPAL UTILITY DISTRICT No. 21 has applied for a minor amendment to Texas Pollutant Discharge Elimination System Permit No. WQ0014222001 to authorize the removal of the 625,000 gallons per day (gpd) phase in the existing permit and the addition of a 1,050,000 gpd phase in the draft permit. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,200,000 gallons per day. The facility is located approximately 600 feet north and 2,000 feet east of the intersection of Highway 6 and Savannah Parkway in Brazoria, County, Texas 77583.

GREENWOOD UTILITY DISTRICT has applied for a major amendment to Texas Pollutant Discharge Elimination System Permit No. WQ0011061001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 950,000 gallons per day to an annual average flow not to exceed 2,250,000 gallons per day. The facility is located at 11702 Tidwell Road, Houston, in Harris County, Texas 77044.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-201901597
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 29, 2019

Texas Health and Human Services Commission

Public Notice - Texas State Plan for Medical Assistance Amendment, under Title XIX of the Social Security Act

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective June 1, 2019.

The purpose of the amendment is to remove recent revisions to the inflation projection methodology for the Intermediate Care Facilities for Individuals with an Intellectual Disability (ICF/IID) and to the nursing wage inflation methodology, which affect ICF/IID programs. The proposed amendment reflects HHSC's decision to not use the revised methodology for the nurse inflator calculations at this time.

The proposed amendment is estimated to have no fiscal impact.

To obtain copies of the proposed amendment, interested parties may contact Courtney Pool, State Plan Program Specialist, by mail at the Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 424-6889; by facsimile at (512) 730-7472; or by e-mail at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposed amendment will be available for review at the local county offices of the Texas Health and Human Services Commission.

TRD-201901593

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: May 29, 2019

Texas Department of Housing and Community Affairs

2019 Emergency Solutions Grant Notice of Funding Availability

The ESG Program is funded by HUD to assist people to regain stability in permanent housing quickly after experiencing a housing crisis and/or homelessness. ESG funds can be used for the administration of the ESG grant, including utilization of a Homeless Management Information System, rehabilitation or conversion of buildings for use as emergency shelter for persons experiencing homelessness; the payment of certain expenses related to operating emergency shelters; essential services related to emergency shelters and street outreach for persons experiencing homelessness; and homelessness prevention and rapid re-housing assistance.

The Texas Department of Housing and Community Affairs received notice of an allocation of \$9,127,824 from HUD for 2019. From the allocation, \$8,717,072 will be made available for awards to subrecipients through the 2019 ESG NOFA.

Some of the awards made through the NOFA may be as a result of the recommendation of ESG Coordinators, which are contractors procured to administer a Local Competition on behalf of the Department. The Department has released a Request for Proposal for ESG Coordinators, and will post the list of ESG Coordinators and CoC regions with Local Competitions at <https://www.tdca.state.tx.us/home-division/esgp/applications.htm>.

Federal program rules require the Department to commit all funds within 60 days of receipt of an award letter from HUD; the Department anticipates receipt of each letter during the late summer or fall of 2019. The contract period is subject to receipt of funds from the annual ESG allocation. The Department's anticipated Contract Term for Program Year (PY) 2019 ESG will be October 1, 2019, through September 30, 2020, subject to receipt of adequate funding and any additional terms and conditions from HUD.

Applicants may request up to \$345,000 in ESG funds, per 10 TAC §7.33(d). Applicants must meet the minimum threshold requirements established in 10 TAC §7.36 to be considered for award.

The availability and use of these funds are subject to the Department's rules governing under Title 10, Part 1, Chapter 1, Administration; Chapter 2, Enforcement; and Chapter 7, Homelessness Programs, Subchapter A, General Policies and Procedures, and Subchapter C, Emergency Solutions Grants (ESG) of the Texas Administrative Code. For Units of Local Government, the Uniform Grant Management Standards (UGMS) as outlined in Chapter 783 in the Texas Local Government Code also govern the availability and use of these funds. Federal laws and regulations that apply to these funds include the Homeless Emergency Assistance and Rapid Transition to Housing Act (42 U.S.C. §11302 *et. seq.*), as amended; the HUD regulations codified in 24 Code of Federal Regulations (CFR) Part 576; 24 CFR Part 58, for environmental requirements; 2 CFR Part 200 for Uniform Administrative Requirements; 24 CFR §135.38 for Section 3 requirements; and 24 CFR Part 5, Subpart A for fair housing.

Details on the award selection process, handling of administrative deficiencies, funding limitations, eligible and ineligible applicants and activities, threshold requirements, award selection criteria, and applica-

tion submission requirements are included in the NOFA provided with this action item and, upon approval, will be posted to the Department's website with notification of the NOFA posting in the *Texas Register*.

Applications for areas without Local Competitions will be accepted statewide beginning June 7, 2019, at 8:00 a.m., Austin local time, until Friday, June 21, 2019, at 5:00 p.m., Austin local time. Questions can be directed to Naomi Cantu, Coordinator for Homelessness Programs and Policy, at esg@tdhca.state.tx.us or (512) 475-3975.

TRD-201901559

David Cervantes

Acting Director

Texas Department of Housing and Community Affairs

Filed: May 23, 2019



Release of the Notice of Funding Availability (NOFA) for the Texas Department of Housing and Community Affairs "Amy Young Barrier Removal Program Statewide Allocation - Amendment One"

I. Source of Funds.

The Amy Young Barrier Removal (AYBR) Program is funded through the Housing Trust Fund which was established by the 72nd Legislature, Senate Bill 546, Tex. Gov't Code, §2306.201, to create affordable housing for low- and very low-income households. Funding sources consist of appropriations or transfers made to the fund, unencumbered fund balances, and public or private gifts, grants, or donations.

II. Notice of Funding Availability (NOFA) Summary.

The Texas Department of Housing and Community Affairs (the Department) announces the availability of \$1,618,332 of State of Texas Housing Trust Funds for the "Statewide Allocation" for the AYBR Program to be released on February 19, 2019, with amendments to the NOFA effective on June 7, 2019. Funds are available through the Department's first-come, first-served online Reservation System. Additional funds may be added to this NOFA from loan repayments, interest earnings and deobligations from prior years.

The AYBR Program provides one-time grants of up to \$20,000 to Persons with Disabilities in a household qualified as earning 80% or less of the applicable Area Median Family Income. Grants are for home modifications that increase accessibility, eliminate life-threatening hazards and correct unsafe conditions.

To be able to reserve AYBR Program funds on behalf of an eligible Person with Disabilities, eligible Administrators, such as nonprofit organizations, units of local government, councils of government, local mental health authorities, and public housing authorities, must apply for access to the Reservation System and then execute a new AYBR Program Reservation System Agreement.

III. Additional Information.

The AYBR Program Statewide Allocation NOFA (Amendment One) is posted on the Department's website at <http://www.tdhca.state.tx.us/hf/single-family/amy-young.htm>. Please contact Diana Velez at (512) 475-4828 or htf@tdhca.state.tx.us for additional information.

TRD-201901558

David Cervantes

Acting Director

Texas Department of Housing and Community Affairs

Filed: May 23, 2019



Request for Qualifications #332-RFQ20-1001

The Texas Department of Housing and Community Affairs (Department) has posted Request for Qualifications (RFQ) #332-RFQ20-1001, for a law firm to serve as outside bond counsel for its single and multifamily bond programs. If you are interested in providing a response to this RFQ please view the Request for Qualifications posting on the *Electronic State Business Daily* (ESBD). The website is <http://esbd.cpa.state.tx.us/>. You can search by the RFQ number listed above. The RFQ is also posted on the Department's website <http://tdhca.state.tx.us>.

TRD-201901587

David Cervantes

Acting Director

Texas Department of Housing and Community Affairs

Filed: May 29, 2019



Request for Qualifications #332-RFQ20-1002

The Texas Department of Housing and Community Affairs (Department) has posted Request for Qualifications (RFQ) #332-RFQ20-1002, for a law firm to serve as outside bond securities disclosure counsel for its single and multifamily bond programs. If you are interested in providing a response to this RFQ please view the Request for Qualifications posting on the *Electronic State Business Daily* (ESBD). The website is <http://esbd.cpa.state.tx.us/>. You can search by the RFQ number listed above. The RFQ is also posted on the Department's website <http://tdhca.state.tx.us>.

TRD-201901588

David Cervantes

Acting Director

Texas Department of Housing and Community Affairs

Filed: May 29, 2019



Request for Qualifications #332-RFQ20-1003

The Texas Department of Housing and Community Affairs (Department) has posted Request for Qualifications (RFQ) #332-RFQ20-1003, for a law firm to serve as outside document preparation counsel to prepare real estate loan and related documents. If you are interested in providing a response to this RFQ please view the Request for Qualifications posting on the *Electronic State Business Daily* (ESBD). The website is <http://esbd.cpa.state.tx.us/>. You can search by the RFQ number listed above. The RFQ is also posted on the Department's website <http://tdhca.state.tx.us>.

TRD-201901589

David Cervantes

Acting Director

Texas Department of Housing and Community Affairs

Filed: May 29, 2019



Request for Qualifications #332-RFQ20-1004

The Texas Department of Housing and Community Affairs (Department) has posted Request for Qualifications (RFQ) #332-RFQ20-1004, for a law firm to serve as low-income housing tax credit outside counsel for its tax credit programs. If you are interested in providing a response to this RFQ please view the Request for Qualifications posting on the *Electronic State Business Daily* (ESBD). The website is

<http://esbd.cpa.state.tx.us/>. You can search by the RFQ number listed above. The RFQ is also posted on the Department's website <http://tdhca.state.tx.us>.

TRD-201901590

David Cervantes

Acting Director

Texas Department of Housing and Community Affairs

Filed: May 29, 2019



Second Amendment to 2019-1 Multifamily Direct Loan Annual Notice of Funding Availability

I. Sources of Multifamily Direct Loan Funds.

Multifamily Direct Loan funds are made available through program income generated from prior year HOME allocations, de-obligated funds from prior year HOME allocations, the 2018 Grant Year HOME allocation, the 2017 and 2018 Grant Year National Housing Trust Fund (NHTF) allocations, loan repayments from the Tax Credit Assistance Program (TCAP Repayment funds or TCAP RF), and program income generated by Neighborhood Stabilization Program Round 1 (NSP1) loan repayments. The Department may amend this NOFA or the Department may release a new NOFA upon receiving its 2019 HOME or 2019 NHTF allocation(s) from HUD, additional TCAP or NSP1 loan repayments, or approval of the 2019 One Year Action Plan (OYAP) from HUD. These funds have been programmed for multifamily activities including acquisition and/or refinance of affordable housing involving new construction, rehabilitation, and/or preservation.

II. Notice of Funding Availability (NOFA).

The Texas Department of Housing and Community Affairs (the Department) announces the availability of up to \$44,241,262 in Multifamily Direct Loan funding for the development of affordable multifamily rental housing for low-income Texans.

Of that amount, at least \$500,000 will be available for eligible Community Housing Development Organizations (CHDO) meeting the requirements of the definition of Community Housing Development Organization found in 24 CFR §92.2 and the requirements of this NOFA; up to \$11,638,041 will be available for applications proposing Supportive Housing in accordance with 10 TAC §11.1(d)(121) and §11.302(g)(3) of the 2019 Qualified Allocation Plan (QAP) or applications that commit to setting aside units for extremely low income households as required by 10 TAC §13.4(a)(1)(A)(ii). Additionally, at least \$2,000,000 will be available in a Preservation set-aside for applications proposing rehabilitation to assist developments at risk of losing their affordability and/or to ensure an extended affordability period with an investment of Direct Loan Funds. The remaining funds will be available under the General set-aside for applications proposing eligible activities, including those mentioned in the Preservation set-aside as well as New Construction.

An additional \$8,401,779 in proposed 2019 HOME Program Income may become available to add to the General set-aside exclusively for award to 2019 9% HTC-layered applications. The proposed funds are contingent on approval of the Department's 2019 OYAP from HUD, and staff's completion of the financial mechanisms to allow the expenditure of the proposed funds. The additional funds will become available at or before the Board meeting on July 25, 2019.

The Multifamily Direct Loan program provides loans to for-profit and nonprofit entities to develop affordable housing for low-income Texans

qualified as earning 80 percent or less of the applicable Area Median Family Income. All funding is currently available on a statewide basis within each set-aside until November 26, 2019.

III. Application Deadline and Availability.

Based on the availability of funds, Applications may be accepted until 5:00 p.m. Austin local time on November 26, 2019. The "Amended 2019-1 Multifamily Direct Loan Annual NOFA" is posted on the Department's website: <http://www.tdhca.state.tx.us/multifamily/nofa-rules.htm>. Subscribers to the Department's LISTSERV will receive notification that the Second Amendment to the NOFA is posted. Subscription to the Department's LISTSERV is available at <http://mail-list.tdhca.state.tx.us/list/subscribe.html?lui=f9mu0g2g&mContainer=2&mOwner=G382s2w2r2p>.

Questions regarding the 2019-1 Multifamily Direct Loan Annual NOFA may be addressed to Andrew Sinnott at (512) 475-0538 or andrew.sinnott@tdhca.state.tx.us.

TRD-201901591

David Cervantes

Acting Director

Texas Department of Housing and Community Affairs

Filed: May 29, 2019



Texas Lottery Commission

Scratch Ticket Game Number 2147 "\$100 Grand"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2147 is "\$100 GRAND". The play style is "multiple games".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2147 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2147.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, ARMORED CAR SYMBOL, MONEY BAG SYMBOL, BANK SYMBOL, BILL SYMBOL, COIN SYMBOL, REGISTER SYMBOL, VAULT SYMBOL, WALLET SYMBOL, \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100, \$500, \$1,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2147 - 1.2D

| PLAY SYMBOL | CAPTION |
|--------------------|----------|
| 01 | ONE |
| 02 | TWO |
| 03 | THR |
| 04 | FOR |
| 05 | FIV |
| 06 | SIX |
| 07 | SVN |
| 08 | EGT |
| 09 | NIN |
| 10 | TEN |
| 11 | ELV |
| 12 | TLV |
| 13 | TRN |
| 14 | FTN |
| 15 | FFN |
| 16 | SXN |
| 17 | SVT |
| 18 | ETN |
| 19 | NTN |
| 20 | TWY |
| 21 | TWON |
| 22 | TWTO |
| 23 | TWTH |
| 24 | TWFR |
| 25 | TWV |
| ARMORED CAR SYMBOL | ARMCAR |
| MONEY BAG SYMBOL | BAG |
| BANK SYMBOL | BANK |
| BILL SYMBOL | BILL |
| COIN SYMBOL | COIN |
| REGISTER SYMBOL | REGISTER |
| VAULT SYMBOL | VAULT |

| WALLET SYMBOL | WALLET |
|---------------|-------------------|
| \$5.00 | FIV\$ |
| \$10.00 | TEN\$ |
| \$20.00 | TWY\$ |
| \$25.00 | TWV\$ |
| \$50.00 | FFTY\$ |
| \$100 | ONHN |
| \$500 | FVHN |
| \$1,000 | ONTH |
| \$100,000 | 100 TH |

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2147), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2147-0000001-001.

H. Pack - A Pack of "\$100 GRAND" Scratch Ticket Game contains 075 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "\$100 GRAND" Scratch Ticket Game No. 2147.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each

Scratch Ticket. A prize winner in the "\$100 GRAND" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 46 (forty-six) Play Symbols. GAME 1: If the player matches any of the YOUR NUMBERS Play Symbols to either of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. GAME 2: If the player reveals three matching prize amounts, the player wins that amount. GAME 3: If the player reveals two matching Play Symbols in the same ROW, the player wins the PRIZE for that ROW. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 46 (forty-six) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly 46 (forty-six) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 46 (forty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 46 (forty-six) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: A Ticket can win up to seventeen (17) times in accordance with the approved prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. GAME 1: Each Ticket will have two (2) different WINNING NUMBERS Play Symbols.

E. GAME 1: Non-winning YOUR NUMBERS Play Symbols will all be different.

F. GAME 1: Non-winning Prize Symbols will never appear more than three (3) times.

G. GAME 1: Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

H. GAME 1: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and \$20).

I. GAME 2: Winning tickets can have only one (1) set of three (3) matching Prize Symbols.

J. GAME 2: Winning Tickets cannot have more than three (3) matching Prize Symbols.

K. GAME 2: No Ticket will contain two (2) sets of three (3) matching Prize Symbols.

L. GAME 3: There will be a random distribution of all Play Symbols on the Ticket, unless restricted by other parameters, play action, or prize structure.

M. GAME 3: There will be no matching non-winning ROWS on a Ticket. ROWS are considered matching if they have the same Play Symbols in the same spots.

N. GAME 3: No two (2) or more matching non-winning Play Symbols will appear in adjacent positions diagonally or vertically, unless restricted by play action, prize structure or other parameters.

O. GAME 3: Non-winning Prize Symbols will never appear more than two (2) times.

P. GAME 3: Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

2.3 Procedure for Claiming Prizes.

A. To claim a "\$100 GRAND" Scratch Ticket Game prize of \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$100 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$100 GRAND" Scratch Ticket Game prize of \$1,000 or \$100,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$100 GRAND" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "\$100 GRAND" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "\$100 GRAND" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2147. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2147 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in ** |
|--------------|--------------------------------|------------------------------|
| \$5 | 864,000 | 8.33 |
| \$10 | 576,000 | 12.50 |
| \$20 | 192,000 | 37.50 |
| \$25 | 96,000 | 75.00 |
| \$50 | 96,000 | 75.00 |
| \$100 | 24,000 | 300.00 |
| \$500 | 480 | 15,000.00 |
| \$1,000 | 120 | 60,000.00 |
| \$100,000 | 60 | 1,200,000.00 |

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.89. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2147 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2147, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-201901584
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: May 28, 2019

◆ ◆ ◆

Texas Department of Transportation
 Aviation Division - Request for Qualifications (RFQ) for
 Professional Engineering Services

The City of Brownwood, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a professional engineering firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualification statements for the current aviation project as described below.

Current Project: City of Brownwood; TxDOT CSJ No.: 1923BWOOD. The TxDOT Project Manager is Steve Harp, P.E.

Scope: Provide engineering and design services, including construction administration, to:

1. Rehabilitate taxiways;
2. Rehabilitate public apron;
3. Rehabilitate eligible areas of hangar access taxiways;
4. Mark taxiways; and
5. Mark aprons.

The Agent, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The proposed contract is subject to 49 CFR Part 26 concerning the participation of Disadvantaged Business Enterprises (DBE).

The DBE goal for the design phase of the current project is 12%. The goal will be re-set for the construction phase.

Utilizing multiple engineering/design and construction grants over the course of the next five years, future scope of work items at the Brownwood Regional Airport may include the following: rehabilitate and mark runways and construct hardstand parking pad.

The City of Brownwood reserves the right to determine which of the services listed above may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation, the criteria, project diagram, and most recent Airport Layout Plan are available online by selecting "Brownwood Regional Airport" at:

<http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm>

The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects.

AVN-550 Preparation Instructions:

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at:

<http://www.txdot.gov/inside-txdot/division/aviation/projects.html>

The form may not be altered in any way. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight pages of data plus one optional illustration page. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, or submits a cover page with the AVN-550, that provider will be disqualified. Responses to this solicitation WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

The completed Form AVN-550 must be received in the TxDOT Aviation eGrants system no later than June 28, 2019, 11:59 p.m. (CDST).

Electronic facsimiles or forms sent by email or regular/overnight mail will not be accepted.

Firms that wish to submit a response to this solicitation must be a user in the TxDOT Aviation eGrants system no later than one business day before the solicitation due date. To request access to eGrants, please complete the Contact Us web form located at:

<http://txdot.gov/government/funding/egrants-2016/aviation.html>

An instructional video on how to respond to a solicitation in eGrants is available at:

<http://txdot.gov/government/funding/egrants-2016/aviation.html>

Step by step instructions on how to respond to a solicitation in eGrants will also be posted in the RFQ packet at:

<http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm>

The consultant selection committee will be composed of local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found under Information for Consultants at:

<http://www.txdot.gov/inside-txdot/division/aviation/projects.html>

All firms will be notified and the top rated firm will be contacted to begin fee negotiations for the design and bidding phases. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68- PILOT (74568). For procedural questions, please contact Anna Ramirez, Grant Manager. For technical questions, please contact Steve Harp, P.E. Project Manager.

For questions regarding responding to this solicitation in eGrants, please contact the TxDOT Aviation help desk at (800) 687-4568 or avn-egrantshelp@txdot.gov.

TRD-201901592

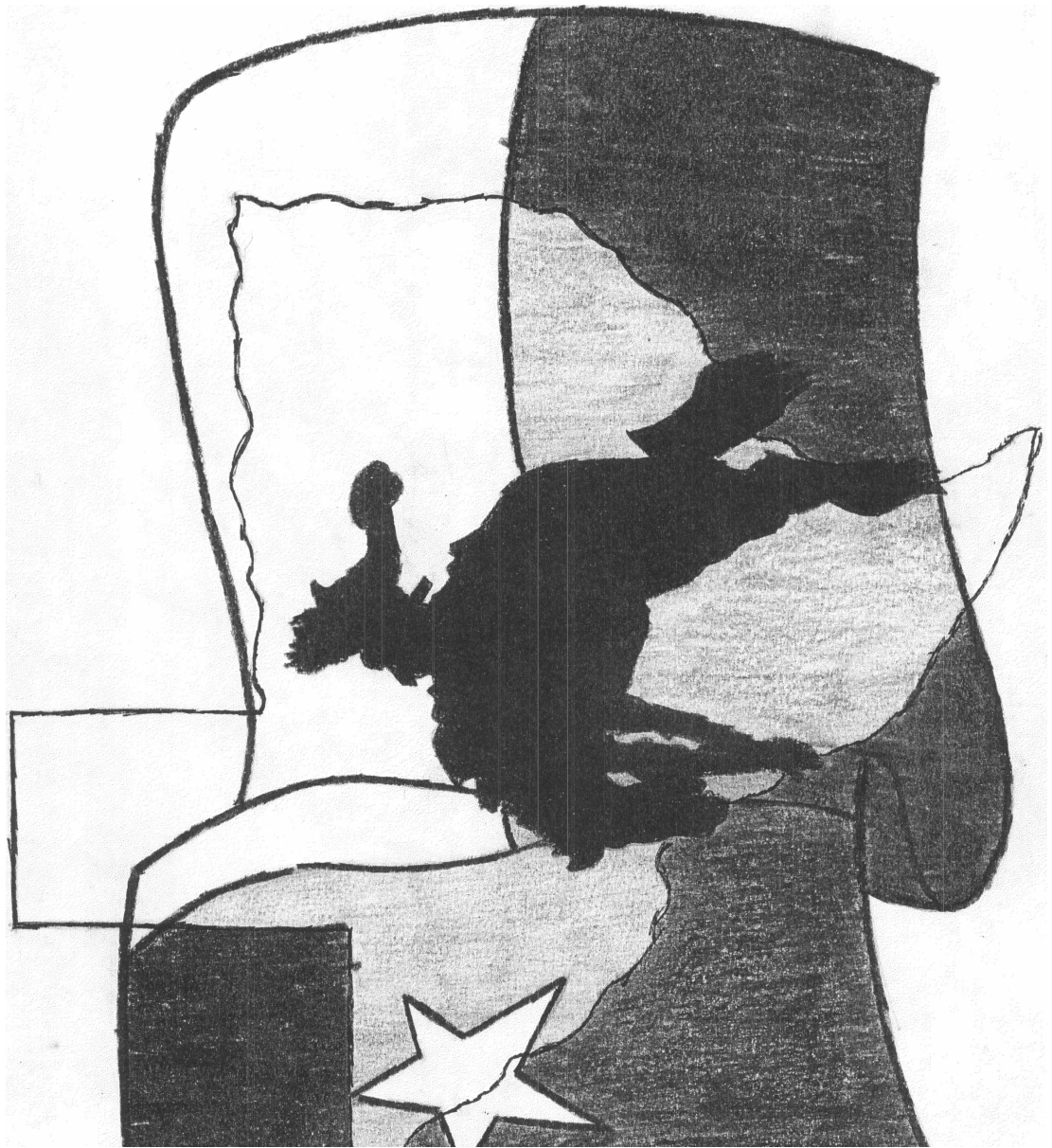
Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: May 29, 2019





How to Use the Texas Register

Information Available: The 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.

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

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

Proposed Rules - sections proposed for adoption.

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

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

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

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

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

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

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 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 "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 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, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

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

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

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

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

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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