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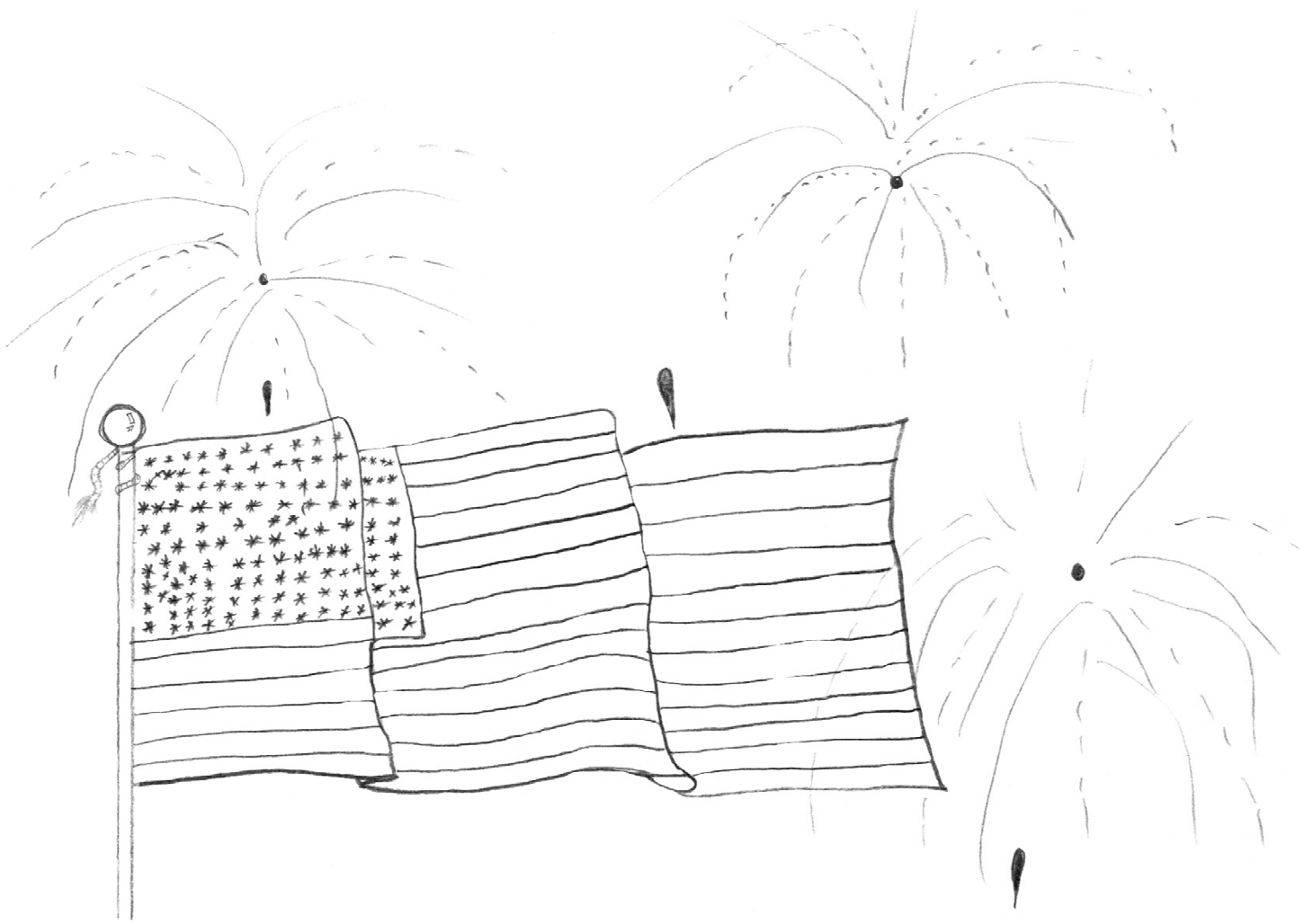
# TEXAS REGISTER

*Volume 44 Number 28*

*July 12, 2019*

*Pages 3479 - 3594*

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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*.

***Texas Register*, (ISSN 0362-4781, USPS 12-0090)**, is published weekly (52 times per year) for \$340.00 (\$502.00 for first class mail delivery) by Matthew Bender & Co., Inc., 3 Lear Jet Lane Suite 104, P O Box 1710, Latham, NY 12110.

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The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Easton, MD and at additional mailing offices.

**POSTMASTER:** Send address changes to the *Texas Register*, 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.

# TEXAS REGISTER

a section of the  
Office of the Secretary of State  
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Austin, TX 78711  
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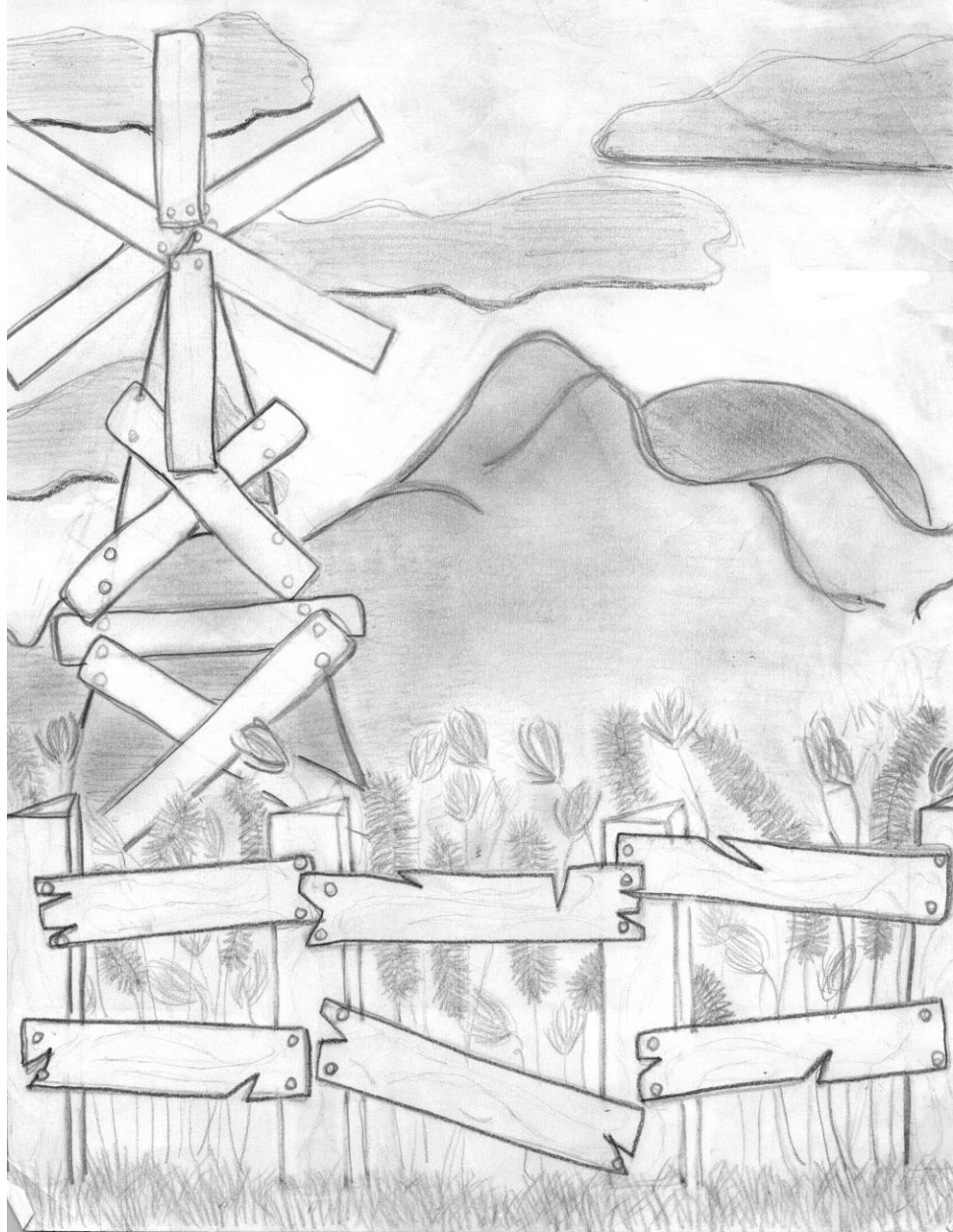
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# THE GOVERNOR

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 June 18, 2019

Appointed to the Aerospace and Aviation Advisory Committee, for a term to expire September 1, 2021, Jennifer Kurth Williamson of Southlake, Texas (replacing Shannon L. Massey of Canyon who resigned).

Appointed to the Texas Workforce Investment Council, for a term to expire September 1, 2019, Jerry Romero of El Paso, Texas (replacing Wesley L. Jurey of Arlington who resigned).

Appointed as the State Administrator for the Interstate Agreement on Detainers, for a term to expire at the pleasure of the Governor, Tara Burson of Huntsville, Texas (replacing Travis J. Turner of Huntsville who no longer qualifies).

Appointed to the Correctional Managed Health Care Committee, for a term to expire February 1, 2021, Jeffrey K. Beeson, D.O. of Crowley, Texas (replacing John G. Mills, D.O. of Corsicana who resigned).

Appointed to the State Independent Living Council, for a term to expire June 20, 2022, Jimmy D. Batchelor of Cooper, Texas (pursuant to the U.S. Rehabilitation Act).

Appointed to the State Independent Living Council, for a term to expire June 20, 2022, Garry L. Simmons, Jr. of San Antonio, Texas (pursuant to the U.S. Rehabilitation Act).

Appointed to the State Independent Living Council, for a term to expire June 20, 2022, Eva M. Storey of Houston, Texas (pursuant to the U.S. Rehabilitation Act).

Appointed to the Manufactured Housing Board, for a term to expire January 31, 2025, Jason R. Denny of Austin, Texas (replacing Donnie Wisenbaker of Sulphur Springs whose term expired).

Appointed to the Department of Information Resources, for a term to expire February 1, 2025, Stacey S. Napier of Austin, Texas (replacing James P. Dyer of Austin whose term expired).

Appointed to the Department of Information Resources, for a term to expire February 1, 2025, Kara J. Thompson of Austin, Texas (replacing Charles E. Bacarisse of Houston whose term expired).

Appointed to the Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments, for a term to expire February 1, 2025, Casey C. O'Neal, Ph.D. of Austin, Texas (replacing Martin Deleon, Jr. of Corpus Christi whose term expired).

Appointed to the Sulphur River Basin Authority Board of Directors, for a term to expire February 1, 2025, Robert Hayter of Paris, Texas (replacing Bradley K. Drake of Paris whose term expired).

Appointed to the Sulphur River Basin Authority Board of Directors, for a term to expire February 1, 2025, Wallace E. Kraft, II, D.V.M. of Paris, Texas (Dr. Kraft is being reappointed).

Appointed to the Upper Neches River Municipal Water Authority Board of Directors, for a term to expire February 1, 2025, Paul B.

Morris of Palestine, Texas (replacing William Barry James, D.D.S. of Palestine whose term expired).

Appointed to the Texas Mutual Insurance Company Board of Directors, effective July 1, 2019, for a term to expire July 1, 2025, Brett B. Flagg of Frisco, Texas (replacing Robert C. Barnes of Granbury whose term expired).

Appointed to the Texas Council for Developmental Disabilities, for a term to expire February 1, 2021, Rebecca Adkins of Lakeway, Texas (Ms. Adkins is being reappointed).

Appointed to the Texas Council for Developmental Disabilities, for a term to expire February 1, 2021, Kimberly Anne Blackmon of Forth Worth, Texas (Ms. Blackmon is being reappointed).

Appointed to the Texas Council for Developmental Disabilities, for a term to expire February 1, 2021, Kristen L. Cox of El Paso, Texas (Ms. Cox is being reappointed).

Appointed to the Texas Council for Developmental Disabilities, for a term to expire February 1, 2021, Scott A. McAvoy of Cedar Park, Texas (Mr. McAvoy is being reappointed).

Appointed to the Texas Council for Developmental Disabilities, for a term to expire February 1, 2021, Randell K. Resneder of Lubbock, Texas (replacing Richard A. Tisch of Spring whose term expired).

Appointed to the Texas Council for Developmental Disabilities, for a term to expire February 1, 2021, Molly K. Spratt of Austin, Texas (replacing Dana Smith Perry of Brownwood whose term expired).

Appointed to the Texas Council for Developmental Disabilities, for a term to expire February 1, 2021, Emmett T. Summers, III of San Antonio, Texas (replacing Diana Kern of Cedar Creek whose term expired).

Appointed to the Texas Council for Developmental Disabilities, for a term to expire February 1, 2023, Ronald W. Browning of Spring, Texas (replacing Kristine K. Clarke of San Antonio whose term expired).

Appointed to the Texas Council for Developmental Disabilities, for a term to expire February 1, 2023, Gladys A. Cortez of McAllen, Texas (Ms. Cortez is being reappointed).

Appointed to the Texas Council for Developmental Disabilities, for a term to expire February 1, 2023, Mary M. Durham of Spring, Texas (Ms. Durham is being reappointed).

Appointed to the Texas Council for Developmental Disabilities, for a term to expire February 1, 2023, Robert R. Schier, III of Elgin, Texas (replacing David J. Taylor of El Paso whose term expired).

Appointed to the Texas Council for Developmental Disabilities, for a term to expire February 1, 2023, John W. Thomas of Weatherford, Texas (Mr. Thomas is being reappointed).

Appointed to the Texas Council for Developmental Disabilities, for a term to expire February 1, 2025, Paul W. Cardarella of Abilene, Texas (replacing Stephen H. Gersuk of Plano whose term expired).

Appointed to the Texas Council for Developmental Disabilities, for a term to expire February 1, 2025, Maverick L. Crawford, III of San Antonio, Texas (replacing Mateo Delgado of El Paso whose term expired).

Appointed to the Texas Council for Developmental Disabilities, for a term to expire February 1, 2025, Andrew D. Crim of Fort Worth, Texas (Mr. Crim is being reappointed).

Appointed to the Texas Council for Developmental Disabilities, for a term to expire February 1, 2025, Michael J. Peace of Poteet, Texas (Mr. Peace is being reappointed).

Appointed to the Texas Council for Developmental Disabilities, for a term to expire February 1, 2025, Eric J. Shahid of Somerville, Texas (replacing Brandon Pharris of Beaumont whose term expired).

Appointed to the Texas Council for Developmental Disabilities, for a term to expire February 1, 2025, Lora L. Taylor of Katy, Texas (Ms. Taylor is being reappointed).

Appointed to the Texas Council for Developmental Disabilities, for a term to expire February 1, 2025, Kimberly S. Torres of Houston, Texas (replacing Ruth L. Mason of Houston whose term expired).

Appointed as the Texas Division of Emergency Management Chief, for a term to expire at the pleasure of the Governor, W. Nim Kidd of New Braunfels, Texas (pursuant to HB 2794, 86th Legislature, Regular Session).

Greg Abbott, Governor

TRD-201902055



Proclamation 41-3681

**TO ALL TO WHOM THESE PRESENTS SHALL COME:**

I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that the severe weather event that began on June 24, 2019, has caused widespread and severe property damage in Cameron, Hidalgo, and Willacy counties.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the previously listed counties. Pursuant to Section 418.017 of the code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 27th day of June, 2019.

Greg Abbott, Governor

TRD-201902023





# THE ATTORNEY GENERAL

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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>.)

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Requests for Opinions

**RQ-0292-KP**

**Requestor:**

John K. Hubbard, PhD, PT

Chairman

Anatomical Board of the State of Texas

Post Office Box 195895

Dallas, Texas 75219

Re: Authority of a commercial entity to operate a willed body program  
in Texas (RQ-0292-KP)

**Briefs requested by July 25, 2019**

*For further information, please access the website at [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) or call the Opinion Committee at (512) 463-2110.*

TRD-201902059

Ryan L. Bangert

Deputy Attorney General for Legal Counsel

Office of the Attorney General

Filed: July 1, 2019



Opinions

**Opinion No. KP-0259**

Mr. Barry Mahler

Chairman

Texas State Soil and Water Conservation Board

1497 Country View Lane

Temple, Texas 76504-8806

Re: Whether subsection 2261.252(e) of the Government Code allows  
a member of the State Soil and Water Conservation Board to receive  
funding through an agency program for land improvement measures  
(RQ-0264-KP)

**S U M M A R Y**

Government Code subsection 2261.252(e) does not abrogate common-  
law conflict-of-interest rules, which would prohibit a member of the  
State Soil and Water Conservation Board from receiving \$15,000 in  
financial assistance through a program administered by the agency.

*For further information, please access the website at [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) or call the Opinion Committee at (512) 463-2110.*

TRD-201902060

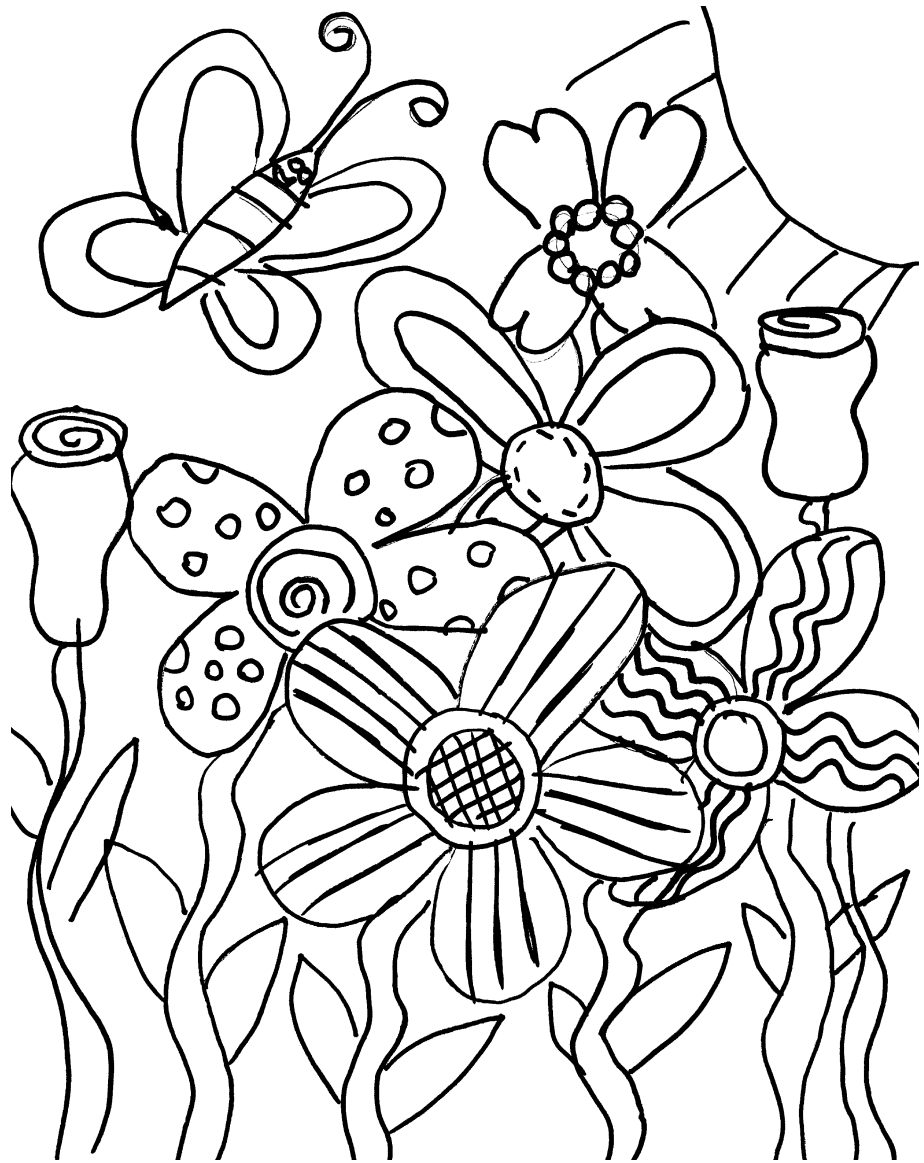
Ryan L. Bangert

Deputy Attorney General for Legal Counsel

Office of the Attorney General

Filed: July 1, 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 1. ADMINISTRATION

### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 355. REIMBURSEMENT RATES

##### SUBCHAPTER J. PURCHASED HEALTH SERVICES

##### DIVISION 5. GENERAL ADMINISTRATION

###### 1 TAC §355.8097

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes to amend §355.8097, concerning Reimbursement Methodology for Physical, Occupational, and Speech Therapy Services.

###### BACKGROUND AND PURPOSE

The proposed amendment to §355.8097 sets the reimbursement percentage for services provided by therapy assistants at 80 percent of the rate paid to a licensed therapist. Medicaid currently reimburses 70 percent of the rate paid to a licensed therapist for services provided by physical, occupational, and speech therapy assistants.

The proposed amendment is necessary to comply with House Bill (H.B.) 1, General Appropriations Act, 86th Legislature, Regular Session, 2019 (Article II, HHSC, Rider 47).

###### SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.8097(e) updates the reimbursement methodology for services provided by a physical therapy assistant, occupational therapy assistant, or speech language pathologist assistant under the supervision of a licensed physical therapist, licensed occupational therapist, or licensed speech language pathologist from 70 percent to 80 percent of the reimbursement paid to a licensed therapist for the same service provided.

###### FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years the proposed rule will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rule as proposed.

The effect on state government for each year of the first five years the proposed rule is in effect is an estimated cost of \$9,508,097 General Revenue (GR) (\$24,175,178 All Funds (AF)) for fiscal year (FY) 2020, \$9,366,036 GR (\$24,634,503 AF) for FY 2021, \$9,394,134 GR (\$24,708,407 AF) for FY 2022, \$9,422,317 GR (\$24,782,532 AF) for FY 2023, and \$9,450,583 GR (\$24,856,879 AF) for FY 2024.

There are no fiscal implications to local government.

###### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no increase or decrease in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create a new rule;
- (6) the proposed rule will not expand existing rules; and
- (7) the proposed rule will not change the number of individuals subject to the rule.

HHSC has insufficient information to determine if the proposed rule will affect the state's economy.

###### SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no requirement for small businesses, micro-businesses, or rural communities to alter current business practices.

###### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

###### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule:

- does not impose a cost on regulated persons; and
- is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

###### PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Rate Analysis, has determined that for each year of the first five years the rule is in effect, the public benefit will be that the proposed amendment enables HHSC to update a reimbursement methodology in compliance with H.B. 1, General Appropriations Act, 86th Legislature, Regular Session, 2019 (Article II, HHSC, Rider 47), which increases reimbursement rates paid to therapy assistants.

Trey Wood has determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule. The amendment updates an existing reimbursement methodology and does not require providers to alter their current business practices.

#### TAKINGS IMPACT ASSESSMENT

HHSC has determined that 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.

#### PUBLIC HEARING

A public hearing is scheduled for July 29, 2019, at 8:30 a.m. (central time) in the Public Hearing Room of the Brown-Healy Building located at 4900 North Lamar Boulevard in Austin. Persons requiring further information, special assistance, or accommodations should contact HHSC Rate Analysis Customer Information Center at (512) 424-6637.

#### Public Comment

Written comments on the proposal may be submitted to Dan Huggins, Acute Care, Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 149030, MC-H400, Austin, Texas 78714-9030; by fax to (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or e-mailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or e-mailed before midnight on the following business day to be accepted. When faxing or e-mailing comments, please indicate "Comments on Proposed 19R058" in the subject line.

#### Statutory Authority

The amended rule is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under Texas Human Resources Code, Chapter 32.

The proposed amended rule affects Texas Human Resources Code, Chapter 32, and Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

*§355.8097. Reimbursement Methodology for Physical, Occupational, and Speech Therapy Services*

(a) Introduction. This section describes the Texas Medicaid reimbursement methodology that the Texas Health and Human Services Commission (HHSC) uses to calculate payments for covered therapy services provided by home health agencies, comprehensive outpatient rehabilitation facilities or outpatient rehabilitation facilities, independent therapists (including Early Childhood Intervention) and physicians and other practitioners.

(b) HHSC reviews the fees for individual services at least every two years based upon:

(1) analysis of Medicare fees for the same or similar item or service;

(2) analysis of Medicaid fees for the same or similar item or service in other states; and

(3) analysis of fees paid under commercial insurance for the same or similar item or service.

(c) HHSC may use data sources or methodologies other than those listed in subsection (b) of this section to establish Medicaid fees for physical, occupational, and speech therapy services when HHSC determines that those methodologies are unreasonable or insufficient.

(d) Medicaid reimbursement methodologies for other applicable provider types are as follows:

(1) freestanding psychiatric facilities, under §355.8060 of this subchapter (relating to Reimbursement Methodology for Freestanding Psychiatric Facilities); and

(2) outpatient hospitals, under §355.8061 of this subchapter (relating to Outpatient Hospital Reimbursement).

(e) Reimbursement for services provided under the supervision of a licensed physical therapist, licensed occupational therapist, or licensed speech language pathologist. Reimbursement for services provided by a physical therapy assistant, occupational therapy assistant, or speech language pathologist assistant under the supervision of a licensed physical therapist, licensed occupational therapist, or licensed speech language pathologist is reimbursed at 80 [85] percent of the fee paid to a licensed therapist [therapists] for the same service [provided on and after December 1, 2017 and at 70 percent of the fee paid to the licensed therapist for the same service provided on or after September 1, 2018].

(f) Fees for physical, occupational, and speech therapy services are adjusted within available funding as described in §355.201 of this title (relating to Establishment and Adjustment of Reimbursement Rates by the Health and Human Services 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 July 1, 2019.

TRD-201902074

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: August 11, 2019

For further information, please call: (512) 707-6071

## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 20. COTTON PEST CONTROL

The Texas Department of Agriculture (the Department) proposes amendments to the Texas Administrative Code, Title 4, Part 1, Chapter 20, Subchapter B, Quarantine Requirements, §20.16

and §20.17; and amendments to Subchapter D, §20.30, relating to Hostable Cotton in Commercial Cotton Fields.

The proposed amendments to §20.16 and §20.17 update the inspection and certification requirements for the movement of cotton harvesting equipment from restricted areas in the cotton boll weevil quarantine.

Proposed amendments require an inspection certificate accompany cotton harvesting equipment from quarantined areas, certifying the equipment has been cleaned or fumigated and is free of hostable material that could harbor the cotton boll weevil. This ensures that equipment from quarantined areas has been verifiably cleaned prior to movement, thereby preventing the spread of this devastating cotton pest. The proposed amendments will aid ongoing cotton boll weevil eradication efforts.

Proposed amendments removing exception §20.16(c)(3) is necessary due to the USDA-APHIS lifting the domestic quarantine for pink bollworm in Texas on September 26, 2018. Previously, under the federal pink bollworm quarantine, a USDA inspection certificate (PPQ Form 540) could be issued for the movement of cotton harvesting equipment, certifying the equipment was found free of hostable material for cotton pests. As the federal quarantine has been lifted, this is no longer an option and must be removed as an exception to quarantine restrictions.

The proposed amendments to §20.30 were requested by the producers that make up the Cotton Producer Advisory Committee in Zone 1 (Zone 1 CPAC). The motion passed unanimously at the Zone 1 CPAC meeting on January 14, 2019, in San Juan, Texas, recommending increasing the hostable commercial cotton fee for fields containing planted stalks that remain undestroyed past the stalk destruction deadline in the boll weevil quarantined area. Pest Management Zone 1, as described in Title 4, Part 1, Chapter 20, Subchapter C, §20.20(b)(1), comprises the vast majority of cotton producing acreage in the boll weevil quarantined area, described in Title 4, Part 1, Chapter 20, Subchapter B, §20.11.

The proposed amendments modify the current fee structure for the hostable commercial cotton fee in the boll weevil quarantined area to reflect the current costs to the Texas Boll Weevil Eradication Foundation from undestroyed hostable cotton stalks past the stalk destruction deadline.

Dale Scott, Director of Environmental and Biosecurity Programs, has determined that for the first five-year period the proposal is in effect, there will be no fiscal implications for state or local government.

Mr. Scott has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of administering the proposed rules will be the continued eradication of cotton boll weevil in Texas. There will be no economic impact on small businesses, micro-businesses, rural communities or persons required to comply with the amended rules.

Mr. Scott has provided the following information related to the government growth impact statement, as required pursuant to Texas Government Code, §2001.0221. As a result of implementing the proposal, for the first five years the proposed rules are in effect:

(1) no new or current government or Department programs will be created or eliminated;

(2) no employee positions will be created, nor will any existing Department staff positions be eliminated; and

(3) there will not be an increase in future legislative appropriations to the Department.

Additionally, Mr. Scott has determined that for the first five years the proposed rules are in effect:

(1) there will be an increase in fees paid to the Department; however, all hostable cotton stalk fees paid to the Department are paid on behalf of and transferred to the Texas Boll Weevil Eradication Foundation;

(2) there will be no new regulations created by the proposal;

(3) there will be no expansion, limitation or repeal of existing regulations;

(4) there will be no increase or decrease to the number of individuals subject to the proposal; and

(5) the proposal will not have a positive nor negative impact on the Texas economy, as there are no costs associated with the proposal or its enforcement.

Written comments on the proposal may be submitted to Dale Scott, Director of Environmental and Biosecurity Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to: [RuleComments@TexasAgriculture.gov](mailto:RuleComments@TexasAgriculture.gov). Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

## SUBCHAPTER B. QUARANTINE REQUIREMENTS

### 4 TAC §20.16, §20.17

The amendments are proposed under §74.009 of the Texas Agriculture Code, which requires the Department to prevent the movement of equipment contaminated or reasonably suspected to be contaminated with cotton pests; §74.010, which requires the Department to inspect substances susceptible to cotton pest contamination that are being carried from quarantined territory into, through, or within this state; and §74.006, which authorizes the Department to adopt rules as necessary for the effective enforcement and administration of the cotton pest control program.

Chapter 74 of the Texas Agriculture Code is affected by the proposal.

#### §20.16. Restrictions.

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

(c) Exceptions. The following are exceptions to the restrictions in subsection (a) of this section if the regulated article is originating from an area participating in the boll weevil eradication program:

(1) Cotton harvesting equipment and other equipment associated with the production and transport of cotton as well as used gin equipment, otherwise prohibited from movement by these rules, may be moved to or through a restricted area provided the equipment is accompanied by a certificate of inspection certifying freedom [free] of hostable material, seed cotton and boll weevils in any stage of development, and has been [or] treated in one of the following manners:

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

(2) (No change.)

{(3) A USDA certificate of inspection (PPQ Form 540—used to certify equipment free of pink bollworm) showing that cotton

harvesting equipment or other equipment associated with the production and transport of cotton, as well as used gin equipment, has been cleaned or fumigated is acceptable to the department as an exception to the restrictions set forth in subsection (a) of this section.]

[(4) Movement of regulated articles through Sterling County is exempted from the requirements of this subchapter.]

§20.17. *Inspections and Certificates.*

(a) Inspections. An inspection for movement of regulated articles [within Texas is not required, but] may be obtained upon request to the department.

(b) (No change.)

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 June 24, 2019.

TRD-201901977

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: August 11, 2019

For further information, please call: (512) 463-4075



## SUBCHAPTER D. REGULATION OF VOLUNTEER AND OTHER NONCOMMERCIAL COTTON; HOSTABLE COTTON FEE

### 4 TAC §20.30

The amendments are proposed under §74.006 of the Texas Agriculture Code, which provides the Department with the authority to adopt rules as necessary for the effective enforcement and administration of the cotton pest control program, and §74.0032, which provides the Department with the authority to establish and collect a hostable cotton fee for fields in which hostable cotton stalks remain past the stalk destruction deadline set for the pest management zone.

Chapter 74 of the Texas Agriculture Code is affected by the proposal.

§20.30. *Hostable Cotton in Commercial Cotton Fields.*

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

(c) Fee rates for boll weevil quarantined areas. In a boll weevil quarantined area, as established by §20.11 of this chapter (relating to Quarantined Areas) in conjunction with §§20.12, 20.13 and 20.14 of this chapter (relating to Quarantine Requirements):

(1) For fields containing planted stalks that remain undestroyed, the hostable commercial cotton fee is calculated at:

(A) \$10.00 [~~\$8.00~~] per acre for each full or partial week through the end of the fifth week after the destruction deadline or any approved extension of the destruction deadline; and

(B) \$15.00 [~~\$12.00~~] per acre for each full or partial week beginning with the sixth week after the date of the destruction deadline or any approved extension of the destruction deadline.

(2) (No change.)

(d) - (e) (No change.)

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 June 24, 2019.

TRD-201901978

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: August 11, 2019

For further information, please call: (512) 463-4075



## TITLE 16. ECONOMIC REGULATION

### PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

#### CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

##### SUBCHAPTER B. RATES AND TARIFFS

###### 16 TAC §24.44

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §24.44, relating to rate-case expenses under Texas Water Code (TWC) §13.187 and §13.1871. The proposed amendments are based on the provisions applicable to electric utilities in 16 TAC §25.245 and propose adding titles to 16 TAC §24.44 (a) - (d) and new proposed §24.44(e) to mirror the structure of the electric rules. The proposed amendment to 16 TAC §24.44(b) removes the provision that currently prohibits a utility from recovering rate-case expenses when the commission-approved rate following a contested case hearing generates less than 51% of the utility's requested revenue requirement and replaces it with the requirements for recovery of rate-case expenses. The proposed amendment to 16 TAC §24.44(c) removes the provision that limits the recovery of rate-case expenses following a written settlement offer and replaces it with criteria for the review and determination of the reasonableness of rate-case expenses. Furthermore, the proposed amendments add new 16 TAC §24.44(e), which directs the presiding officer to order or recommend allowances or disallowances of rate-case expenses.

###### Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

(1) the proposed rule will not create a government program and will not eliminate a government program;

(2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;

(3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;

- (4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will not repeal an existing regulation;
- (7) the proposed rule will not change the number of individuals subject to the rule's applicability; and,
- (8) the proposed rule will not affect this state's economy.

#### Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

#### Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in Texas Government Code Chapter 2007.

#### Fiscal Impact on State and Local Government

Ms. Elisabeth English, Engineering Specialist, Water Utility Regulation, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

#### Public Benefits

Ms. Elisabeth English, Engineering Specialist, Water Utility Regulation Division, has also determined that for each year of the first five years the proposed section is in effect, the anticipated public benefits expected as a result of the adoption of the proposed rule will be clarity through restructured regulatory language that aligns with the commission's electric utility regulations for rate-case expense recovery. There will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

#### Local Employment Impact Statement

For each year of the first five years the proposed section is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

#### Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the Public Utility Commission is expressly excluded under subsection §2001.0045(c)(7).

#### Public Hearing

The commission staff will conduct a public hearing on this rulemaking, if requested in accordance with Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on September 19, 2019. The request for a public hearing must be received within 30 days after publication of the proposal.

#### Public Comments

Comments on the proposed amendment may be filed with the commission's filing clerk at 1701 North Congress Avenue, Austin, Texas or mailed to P.O. Box 13326, Austin, TX 78711-3326, within 30 days after publication of the proposal. Sixteen copies of comments to the proposed amendment are required to be filed by 16 TAC §22.71(c). Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to adopt the rule. All comments should refer to Project Number 48937.

#### Statutory Authority

This amendment is proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. (Supp.) (PURA), and TWC §13.041(b), which provide the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002 and TWC §13.041(b).

*§24.44. Rate-case Expenses [Pursuant to Texas Water Code §13.187 and §13.1871].*

(a) Recovery of rate-case expenses. A utility may recover rate-case expenses, including attorney fees, incurred as a result of filing a rate-change application pursuant to TWC §13.187 or TWC §13.1871, only if the expenses are [just,] reasonable[;] and necessary[; and in the public interest].

(b) Requirements for claiming recovery of or reimbursement for rate-case expenses. A utility requesting recovery of its rate-case expenses has the burden to prove the reasonableness of such rate-case expenses by a preponderance of the evidence. A utility seeking recovery of rate-case expenses must submit information that sufficiently details and itemizes all rate-case expenses, including, but not limited to, evidence verified by testimony or affidavit, showing:

(1) the nature, extent, and difficulty of the work done by the attorney or other professional in the rate case;

(2) the time and labor expended by the attorney or other professional;

(3) the fees or other consideration paid to the attorney or other professional for the services rendered;

(4) the expenses incurred for lodging, meals and beverages, transportation, or other services or materials;

(5) the nature and scope of the rate case, including:

(A) the size of the utility and number and type of consumers served;

(B) the amount of money or value of property or interest at stake;

(C) the novelty or complexity of the issues addressed;

(D) the amount and complexity of discovery;

(E) the occurrence and length of a hearing; and

(6) the specific issue or issues in the rate case and the amount of rate-case expenses reasonably associated with each issue.

[(b) A utility may not recover any rate-case expenses if the increase in revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than 51% of

the increase in revenue that would have been generated by a utility's proposed rate.]

(c) Criteria for review and determination of reasonableness. In determining the reasonableness of the rate-case expenses, the commission must consider the relevant factors listed in subsection (b) of this section and any other factor shown to be relevant to the specific case. The commission must decide whether and the extent to which the evidence shows that:

(1) the fees paid, tasks performed, or time spent on a task were extreme or excessive;

(2) the expenses incurred for lodging, meals and beverages, transportation, or other services or materials were extreme or excessive;

(3) there was duplication of services or testimony;

(4) the utility's proposal on an issue in the rate case had no reasonable basis in law, policy, or fact and was not warranted by any reasonable argument for the extension, modification, or reversal of commission precedent;

(5) rate-case expenses as a whole were disproportionate, excessive, or unwarranted in relation to the nature and scope of the rate case addressed by the evidence pursuant to subsection (b)(5) of this section; or

(6) the utility failed to comply with the requirements for providing sufficient information pursuant to subsection (b) of this section.

~~[(e) A utility may not recover any rate-case expenses incurred after the date of a written settlement offer by all ratepayer parties if the revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than or equal to the revenue that would have been generated by the rate contained in the written settlement offer.]~~

(d) Unamortized rate-case expenses. Unamortized rate-case expenses may not be a component of invested capital for calculation of rate-of-return purposes.

(e) Calculation of allowed or disallowed rate-case expenses.

(1) Based on the factors and criteria in subsections (b) and (c) of this section, the commission must allow recovery of rate-case expenses equal to the amount shown in the evidentiary record to have been actually and reasonably incurred by the requesting utility. The commission must disallow recovery of rate-case expenses equal to the amount shown to have been not reasonably incurred under the criteria in subsection (c) of this section. A disallowance may be based on cost estimates in lieu of actual costs if reasonably accurate and supported by the evidence.

(2) A disallowance pursuant to subsection (c)(5) of this section may be calculated as a proportion of a utility's requested rate-case expenses using the following ratio or an appropriate methodology:

(A) the amount of the increase in revenue requirement requested by the utility that was denied, to

(B) the total amount of the increase in revenue requirement requested in a proceeding by the utility.

(3) If the evidence presented pursuant to subsection (b)(6) of this section does not enable the commission to determine the appropriate disallowance of rate-case expenses reasonably associated with an issue with certainty and specificity, then the commission may dis-

allow or deny recovery of a proportion of a utility's requested rate-case expenses using the following ratio or an appropriate methodology:

(A) the amount of the increase in revenue requirement requested by the utility in the rate case related to the issues not reasonably supported by evidence of certainty and specificity, to

(B) the total amount of the increase in revenue requirement requested in a proceeding by the utility.

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 June 27, 2019.

TRD-201902017

Andrea Gonzalez

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: August 11, 2019

For further information, please call: (512) 936-7244



## PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

### CHAPTER 66. REGISTRATION OF PROPERTY TAX CONSULTANTS

#### 16 TAC §§66.20, 66.21, 66.25, 66.70, 66.80

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 66, §§66.20, 66.21, 66.25, 66.70, and 66.80, regarding the Property Tax Consultants Program. These proposed changes are referred to as "proposed rules."

#### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 66 implement Texas Occupations Code, Chapter 1152, Property Tax Consultants. The proposed rules clarify registration and regulatory provisions; increase the term length for a renewal certificate of registration from a one-year to two-year term; modify the number of continuing education hours to be consistent with the new registration term; and reduce fees on registrants. The proposed rules are necessary to address and finalize the Department's previous rule reviews, conducted pursuant to Texas Government Code §2001.039, and to implement changes recommended by Department staff and members of the Property Tax Consultants Advisory Council (Council).

#### 2014 Rule Review

The Department published a Notice of Intent to Review its Property Tax Consultants Program rules as part of the four-year rule review required under Texas Government Code §2001.039 in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10483). The Department received four public comments in response to this Notice of Intent to Review. The comments were considered in the drafting of the proposed rules and are summarized and addressed in this preamble to finalize the 2014 rule review. One commenter believes the rules are adequate as currently written. One commenter suggested removing the senior tax consultant sponsor requirement; however, this is a



statutory requirement that cannot be changed in the rule review process. One commenter recommended the continuing education be taken every other year instead of every year; however, the Department has determined that the current continuing education requirements adequately serve registrants in the program. One commenter is opposed to the 40-hour class and exam requirement; however, this is a statutory requirement that cannot be changed in the rule review process. At its meeting on April 1, 2015, the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC, Chapter 66, Registration of Property Tax Consultants, in their current form. No changes to the proposed rules have been made as a result of the comments received in this rule review.

#### 2018 Rule Review

The Department published a Notice of Intent to Review its Property Tax Consultants Program rules as part of the four-year rule review required under Texas Government Code §2001.039 in the August 24, 2018, issue of the *Texas Register* (43 TexReg 5545). The public comment period closed on September 24, 2018. The Department received one public comment in response to this Notice of Intent to Review. The comment was considered in the drafting of the proposed rules and is summarized and addressed in this preamble to finalize the 2018 rule review. The sole comment inquired about the Department's plans for future administrative rule changes for property tax consultants. In response, the proposed rules are the Department's plans for future rule changes. At its meeting on January 11, 2019, the Commission readopted the rules at 16 TAC, Chapter 66, Registration of Property Tax Consultants, in their current form. No changes to the proposed rules have been made as a result of the comment received in this rule review.

#### Proposed Rules

The Rules Workgroup of the Council met on August 16, 2018, and formulated the proposed rules, after considering comments received during the 2014 and 2018 rule reviews and recommendations by Department staff and Council members. The Council met on October 10, 2018, and recommended that the proposed rules be published for public comment. The proposed rules were published in the November 16, 2018, issue of the *Texas Register* (43 TexReg 7509). The public comment period closed on December 17, 2018. The Department received no public comments. The Council met on January 23, 2019, and recommended adoption of the proposed rules to the Commission as published. The Department withdrew the proposed rules in the March 15, 2019 issue of the *Texas Register* (44 TexReg 1435) to allow for modification of the implementation date for changes to continuing education hours associated with the increase in the registration term. The Department's Education, Examination and School Services Team met with the Council's Rules Workgroup on March 28, 2019, and recommended non-substantive changes to §66.25(b), (c) and (d) of the proposed rules that relate to continuing education.

The Department proposes amendments to the rules at 16 TAC, Chapter 66, as recommended by the Council at its meetings of October 10, 2018 and January 23, 2019, with non-substantive changes to §66.25(b), (c), and (d) as recommended by the Department's Education, Examination, and School Services Team, and the Council's Rules Workgroup.

#### SECTION-BY-SECTION SUMMARY

The proposed rules amend §66.20 to update language to be consistent with the format employed by the Texas Legislative Council Drafting Manual (September 2018).

The proposed rules amend §66.21 to extend the review date by Department staff for each educational program or course to every two years.

The proposed rules amend §66.25 to:

- increase the renewal term length for certificates of registration from one to two years;

- raise the continuing education requirement for registrants from 12 hours to 24 hours, consistent with the change in registration term length;

- increase the number of continuing education instruction hours in Texas law and ethics training;

- clarify the manner by which continuing education hours are computed for late renewal applications;

- modify the registrant retention time of certificates of course completion to two years; and

- remove inapplicable requirements for continuing education providers.

The proposed rules amend §66.70 to clarify the limitations imposed on a registered property tax consultant during his/her regular duties.

The proposed rules amend §66.80 to reduce fees on registrants and remove the imposition of fees on private providers.

#### FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there will be an increase in revenue to the State in Years 1, 3 and 5 and a loss of revenue to the State in Years 2 and 4 as a result of enforcing or administering the proposed rules.

In Year 1, the increase in revenue to the State from the proposed rules will be \$64,170; in Year 3, the increase will amount to \$31,710; and in Year 5, the increase will be \$33,930. In Year 2, the decrease in revenue from the proposed rules will be \$39,870; and in Year 4, the decrease will be \$43,410.

The proposed rules increase the registration renewal fee from \$75 to \$135, however, the renewal fee will be paid once every two years instead of annually. A renewing registrant will, therefore, pay ten percent less in fees every two years, and revenue to the State will also be reduced by approximately ten percent over the long term after the first five years.

The reduction in fees for private providers will not result in a loss of revenue, as no fees have previously been collected from them.

There is no estimated increase or loss in revenue to local governments as a result of the proposed rules as local governments are not responsible for administering the state regulation of property tax consultants under Texas Occupations Code, Chapter 1152.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

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

#### PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be changing from a one-year registration to a two-year registration. This would result in a reduction in regulatory burdens currently imposed on Property Tax Consultant registrants, as they would now renew their registrations every other year. Renewing registrants would also pay ten percent less in fees every two years.

#### 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 rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

#### 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 rules. Since the agency has determined that the proposed rules 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 rules do 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 Texas Government Code §2001.0045.

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) The proposed rules do not create or eliminate a government program.
- (2) Implementation of the proposed rules do not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed rules do not require an increase or decrease in future legislative appropriations to the agency.
- (4) The proposed rules do require an initial increase in fees paid to the agency in the PTC's first year due to extending the registration term. However, fees paid to the agency will decrease by ten percent each subsequent year.
- (5) The proposed rules do not create a new regulation.
- (6) The proposed rules do not expand, limit, or repeal an existing regulation.

(7) The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability.

(8) The proposed rules do not positively or adversely affect this state's economy.

#### TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules do 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 rules do not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

#### PUBLIC COMMENTS

Comments on the proposed rules may be submitted to Vanessa Vasquez, 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](mailto:erule.comments@tdlr.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 1152, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters 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 1152. No other statutes, articles, or codes are affected by the proposal.

#### §66.20. *Registration Requirements.*

(a) To register or renew a registration, a person must file a completed application on a form provided by the department and pay the applicable fees.

(b) An applicant for a senior property tax consultant registration must pass a department-approved examination for senior property tax consultants. The standard for passing the senior property tax consultant examination shall be a score of at least 70 percent [70%].

(c) An applicant for a property tax consultant registration must pass a department-approved examination for property tax consultants. The standard for passing the property tax consultant examination shall be a score of at least 70 percent [70%].

(d) (No change.)

#### §66.21. *Pre-registration and Upgrade Education.*

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

(e) Each educational program or course shall be reviewed in even-numbered years [annually].

(f) (No change.)

#### §66.25. *Continuing Education.*

(a) Terms used in this section have the meanings assigned by Chapter 59 of this title, unless the context indicates otherwise.

(b) To renew a registration expiring before May 1, 2021, a registrant must complete 12 hours of continuing education in courses approved or recognized by the department. Except as provided in Texas Occupations Code, §1152.204(b), the continuing education hours must include the following:

(1) three hours of instruction in Texas state law and rules that regulate the conduct of registrants;

(2) one hour of instruction in ethics;

(3) four hours of instruction in appraisal; and

(4) four hours of instruction in property tax consulting.

(c) To renew a registration expiring on or after May 1, 2021, a registrant must complete 24 hours of continuing education in courses approved or recognized by the department. Except as provided in Texas Occupations Code, §1152.204(b), the continuing education hours must include the following:

(1) eight hours of instruction in Texas state law and rules that regulate the conduct of registrants;

(2) four hours of instruction in ethics;

(3) six hours of instruction in appraisal; and

(4) six hours of instruction in property tax consulting.

(d) ~~[(e)]~~ The continuing education hours must be ~~[have been]~~ completed within the term of the current registration, in the case of a timely renewal. For a late renewal of a registration expiring before May 1, 2021, the continuing education hours must be ~~[have been]~~ completed within the one-year period immediately prior to the date of renewal. For a late renewal of a registration expiring on or after May 1, 2021, the continuing education hours must be completed within the two-year period immediately prior to the date of renewal.

(e) ~~[(d)]~~ A registrant may not receive continuing education credit for attending the same course more than once during the one-year period for which the course is approved.

(f) ~~[(e)]~~ A registrant shall retain a copy of the certificate of completion for a course for two years ~~[one year]~~ after the date of completion. In conducting any inspection or investigation of the registrant, the department may examine the registrant's records to determine compliance with this subsection.

(g) ~~[(f)]~~ To be approved under Chapter 59 of this title, a continuing education provider's course must be dedicated to instruction in one or more of the topics listed in subsections ~~[subsection]~~ (b) and (c) ~~[of this section]~~, and the continuing education provider must be registered under Chapter 59 of this title.

(h) ~~[(g)]~~ A continuing education course recognized by the department under Texas Occupations Code, §1152.204(b) is not required to be approved under Chapter 59 of this title, and the provider of such a course is not required to be registered under Chapter 59 of this title.

~~[(h) Except as provided in subsection (i) of this section, this section shall apply to continuing education providers and courses for registrants upon the effective date of this section.]~~

~~[(i) A continuing education provider that was approved by the department before the effective date of this section may continue to offer for credit continuing education courses that were approved by the department before the effective date of this section, until December 31, 2006.]~~

§66.70. *Responsibilities of Registrant--General.*

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

(d) Individuals who are registered under Texas Occupations Code, §1152.158 may not perform property tax consulting services for compensation in connection with personal ~~[a property that is not real]~~ property.

(e) (No change.)

(f) The requirements of subsection (e) ~~[of this section]~~ do not apply to a real estate property tax consultant.

(g) (No change.)

§66.80. *Fees.*

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

(e) The fee for the timely renewal of a property tax consultant's, senior property tax consultant's and real estate property tax consultant's registration is \$135 ~~[\$75]~~.

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

(h) The ~~[non-refundable application]~~ fee for recognition as a private provider is \$0 ~~[\$125]~~.

(i) A ~~[In addition to the application fee, a]~~ private provider shall pay no ~~[an]~~ annual fee ~~[of \$75, which shall be refunded if the department does not recognize the private provider's educational program or course]~~.

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 July 1, 2019.

TRD-201902073

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: August 11, 2019

For further information, please call: (512) 463-3671

## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 61. SCHOOL DISTRICTS

##### SUBCHAPTER II. COMMISSIONER'S RULES CONCERNING HIGH SCHOOL ALLOTMENT

###### 19 TAC §§61.1091 - 61.1099

The Texas Education Agency (TEA) proposes the repeal of §§61.1091 - 61.1099, concerning the high school allotment. The proposed repeal is necessary because the statutory authority for the subchapter was repealed by House Bill (HB) 3, 86th Texas Legislature, 2019, effective September 1, 2019.

BACKGROUND INFORMATION AND JUSTIFICATION: Texas Education Code (TEC), §42.2516(b)(3), added by the 79th Texas Legislature, Third Called Session, 2006, and amended by the 80th Texas Legislature, 2007, provided for an allotment of \$275 for each student in average daily attendance in Grades 9-12 in a school district. This allotment is known as the high school allotment. Statutory authority for the high school allotment was later codified in TEC, §42.160.

Additional legislation from the 79th Texas Legislature, Third Called Session, 2006, authorized the commissioner to adopt rules related to the recognition of high school completion and success and college readiness programs and required the commissioner to adopt rules related to permissible uses of the high school allotment.

HB 3, 81st Texas Legislature, Regular Session, 2009, revised the criteria a district must meet to be able to use high school allotment funds on any instructional program in Grades 6-12 other than an athletic program.

The commissioner exercised rulemaking authority to implement the high school allotment by adopting Chapter 61, Subchapter II, effective November 9, 2006. Amendments to the rules were adopted effective March 3, 2010, and April 26, 2016.

HB 3, §4.001, 86th Texas Legislature, 2019, removed the statutory authority for the high school allotment by repealing TEC, §§39.233, 39.234, and 42.160, effective September 1, 2019. The repeal of Chapter 61, Subchapter II, is necessary since there is no longer statutory authority for the rules.

**FISCAL IMPACT:** Lily Laux, deputy commissioner for school programs, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this rulemaking. During the first five years the rulemaking would be in effect, it would repeal an existing regulation. Rules in 19 TAC Chapter 61, Subchapter II, would be repealed since HB 3, 86th Texas Legislature, 2019, removed the statutory authority for the rules.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand or limit an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Ms. Laux has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be removing rules for which TEA no longer has statutory authority. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have no data and reporting impact.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** The TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal begins July 12, 2019, and ends August 12, 2019. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on July 12, 2019. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

**STATUTORY AUTHORITY.** The repeals are proposed under Texas Education Code (TEC), §39.233, which permits the commissioner of education to adopt rules to recognize high school completion and success and college readiness programs; TEC, §39.234, which requires the commissioner to adopt rules related to the permissible use of funds allocated under the annual high school allotment; TEC, §42.160, which requires the commissioner to adopt rules to administer the annual high school allotment; and House Bill 3, §4.001, 86th Texas Legislature, 2019, which repealed TEC, §§39.233, 39.234, and 42.160.

**CROSS REFERENCE TO STATUTE.** The repeals implement Texas Education Code, §§39.233, 39.234, and 42.160, repealed by House Bill 3, §4.001, 86th Texas Legislature, 2019.

§61.1091. *Definitions.*

§61.1092. *Payment of the High School Allotment.*

§61.1093. *Use of Funds.*

§61.1094. *Exceptions for Alternative Uses of Funds.*

§61.1095. *Allowable Expenditures.*

§61.1096. *Unallowable Expenditures.*

§61.1097. *Additional High School Completion and Success Initiatives Approved by the Commissioner.*

§61.1098. *Policy Advisory Group.*

§61.1099. *School District Annual Performance Review.*

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 July 1, 2019.

TRD-201902061

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: August 11, 2019

For further information, please call: (512) 475-1497

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**TITLE 22. EXAMINING BOARDS**

**PART 3. TEXAS BOARD OF  
CHIROPRACTIC EXAMINERS**

## CHAPTER 72. FEES, LICENSE APPLICATIONS, AND RENEWALS

### 22 TAC §72.19

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §72.19 (Fees). The Board will propose new §72.19 in a separate rulemaking action. The purpose of the Board's repeal and replacement of the rule is to remove fees related to registering radiologic technologists as the Board no longer has jurisdiction over that profession under Senate Bill (SB) 674 (85th Legislature, Regular Session). As the number of Board fees is small, the repeal and replacement will also move the fee schedule from the attached graphic into the main text of the rule to make the information more accessible. The Board is also removing superfluous language from the rule for clarity.

The repeal and replacement will also raise the two late renewal fees to make them conform to statutory requirements. Under Occupations Code §201.354(d), the Board is required to set late renewal fees at one and a half times the standard renewal fee (currently \$300) for renewals submitted late 90 days or less, and at twice the standard renewal fee for renewals submitted late more than 90 days but less than one year. By statute, those fees should be \$450 and \$600, respectively. However, the Board's current fee schedule has those fees set at \$435 and \$570. The Board is proposing raising those fees by \$15 and \$30 to bring them into compliance with Occupations Code §201.354(d).

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to remove fees related to registering radiologic technologists, move the fee schedule from the attached graphic into the main text of the rule, make the information more accessible, remove superfluous language for clarity, and make late renewal fees conform to statute.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §72.19. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

- (1) The proposed repeal does not create or eliminate a government program.
- (2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.
- (4) The proposed repeal does require an increase and decrease in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposed repeal does not repeal an existing Board rule for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: [rules@tbce.state.tx.us](mailto:rules@tbce.state.tx.us); or fax: (512) 305-6705, no later than 30 days from the date when this proposal is published in the *Texas Register*. Please include the proposed rule section number and name in the subject line of any emailed comments.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

§72.19. *Fees.*

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 June 28, 2019.

TRD-201902028

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: August 11, 2019

For further information, please call: (512) 305-6700



### 22 TAC §72.19

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §72.19 (Fees). The Board will propose repealing the current §72.19 in a separate rulemaking action. The purpose of the Board's repeal and replacement of the rule is to remove fees related to registering radiologic technologists, as the Board no longer has jurisdiction over that profession under Senate Bill (SB) 674 (85th Legislature, Regular Session). As the number of Board fees is small, the repeal and replacement will also move the fee schedule from the attached graphic into the main text of the rule to make the information more accessible. The Board is also removing superfluous language from the rule for clarity.

The repeal and replacement will also raise the two late renewal fees to make them conform to statutory requirements. Under Occupations Code §201.354(d), the Board is required to set late renewal fees at one and a half times the standard renewal fee (currently \$300) for renewals submitted late 90 days or less, and at twice the standard renewal fee for renewals submitted late more than 90 days but less than one year. By statute, those fees should be \$450 and \$600, respectively. However, the Board's current fee schedule has those fees set at \$435 and \$570. The Board is proposing raising those fees by \$15 and \$30 to bring them into compliance with Occupations Code §201.354(d).

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed new rule is in effect, there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the new rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed new rule will be in effect, the public benefit is to remove fees related to registering radiologic technologists, move the fee schedule from the attached graphic into the main text of the rule, make the information more accessible, remove superfluous language for clarity, and make late renewal fees conform to statute.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §72.19. For each year of the first five years the proposed new rule is in effect, Mr. Fortner has determined:

- (1) The proposed new rule does not create or eliminate a government program.
- (2) Implementation of the proposed new rule does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed new rule does not require an increase or decrease in future legislative appropriations to the Board.
- (4) The proposed new rule does require an increase and decrease in fees paid to the Board.
- (5) The proposed new rule does not create a new regulation.
- (6) The proposed new rule does not repeal an existing Board rule for an administrative process.
- (7) The proposed new rule does not decrease the number of individuals subject to the rule's applicability.
- (8) The proposed new rule does not positively or adversely affect the state economy.

Comments on the proposed new rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: [rules@tbce.state.tx.us](mailto:rules@tbce.state.tx.us); or fax: (512) 305-6705, no later than 30 days from the date when this proposal is published in the *Texas Register*. Please include the proposed rule section number and name in the subject line of any emailed comments.

The new rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

§72.19. Fees.

(a) Current Board fees:

- (1) License application--\$200 (includes online jurisprudence education course)

- (2) Initially issued license--\$10 - \$120 (prorated)
- (3) Biennial license renewal--\$300
- (4) Late license renewal:
  - (A) Less than 90 days--\$450
  - (B) 90 days up to 1 year--\$600
  - (C) 1 year to 3 years--calculated (only for good cause)
- (5) Reinstatement--\$145
- (6) Inactive status request--\$0
- (7) Renewal from inactive--\$300
- (8) Duplicate wall certificate--\$25
- (9) Duplicate pocket certificate--\$10
- (10) College faculty license--\$75
- (11) College faculty license renewal--\$75
- (12) Online jurisprudence exam--\$150
- (13) Repeat jurisprudence exam --\$250 (\$100 to the Board, \$150 to vendor)
- (14) Jurisprudence education course--\$55
- (15) Letter of good standing--\$25
- (16) Criminal history eligibility letter--\$150
- (17) Continuing education course approval--\$100
- (18) Returned check--\$25

(b) Fees for a returned check may only be paid by cashier's check, certified check, money order, or online.

(c) All other fees may be paid by cashier's check, certified check, money order, personal or company check, or online.

(d) All payments shall be made out to the Texas Board of Chiropractic Examiners.

(e) No checks from foreign financial institutions will be accepted.

(f) Any fees paid will first be applied to any outstanding fees, previously assessed costs, or penalties owed to the Board.

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 June 28, 2019.

TRD-201902029

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: August 11, 2019

For further information, please call: (512) 305-6700



## CHAPTER 75. BUSINESS PRACTICES

### 22 TAC §75.2

The Texas Board of Chiropractic Examiners (Board) proposes the repeal of 22 TAC §75.2 (Out-of-Facility Practice). The Board is replacing this rule with new 22 TAC §75.2 (Place of Business)

in a separate rulemaking action. The new rule removes references to chiropractic facilities and clarifies what information a licensee must maintain about locations where services are provided.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to make the rule clearer and to provide a copy of the mandatory notice for use by licensees.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §75.2. For each year of the first five years the proposed repeal rule is in effect, Mr. Fortner has determined:

- (1) The proposed repeal does not create or eliminate a government program.
- (2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.
- (4) The proposed repeal does not require an increase or decrease in fees paid to the Board.
- (5) The proposed repeal does not create a new regulation.
- (6) The proposed repeal does not repeal an existing Board rule for an administrative process.
- (7) The proposed repeal rule does not decrease the number of individuals subject to the rule's applicability.
- (8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, TX 78701, via email: [rules@tbce.state.tx.us](mailto:rules@tbce.state.tx.us); or fax: (512) 305-6705, no later than 30 days from the date when this proposal is published in the *Texas Register*. Please include the rule number and rule name in the subject line of any comments regarding this proposal submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

§75.2. *Out-of-Facility Practice.*

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 June 28, 2019.

TRD-201902037

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: August 11, 2019

For further information, please call: (512) 305-6700



## 22 TAC §75.2

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §75.2 (Place of Business) to replace and rename the current rule. The Board is repealing the current rule (Out-of-Facility Practice) in a separate rulemaking action.

The rule removes references to chiropractic facilities, over which the Board no longer has any jurisdiction following passage of the Board's Sunset bill (Senate Bill 304) in the 85th Regular Legislative Session. The rule clarifies what information a licensee must maintain about locations where services are provided, including those provided at a licensee's residence or by a licensee operating a mobile-only practice. Under the rule, a licensee must keep the required location information for six years.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed new rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the new rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed new rule will be in effect the public benefit is to clarify what information a licensee must maintain about locations where services are provided.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §75.2. For each year of the first five years the proposed new rule is in effect, Mr. Fortner has determined:

- (1) The proposed new rule does not create or eliminate a government program.
- (2) Implementation of the proposed new rule does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed new rule does not require an increase or decrease in future legislative appropriations to the Board.
- (4) The proposed new rule does not require an increase or decrease in fees paid to the Board.
- (5) The proposed new rule does not create a new regulation.
- (6) The proposal new rule does not repeal an existing Board rule for an administrative process.

(7) The proposed new rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed new rule does not positively or adversely affect the state economy.

Comments on the proposed new rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: [rules@tbce.state.tx.us](mailto:rules@tbce.state.tx.us); or fax: (512) 305-6705, no later than 30 days from the date when this proposal is published in the *Texas Register*. Please include the rule number and rule name in the subject line of any comments regarding this proposal submitted by email.

The new rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

§75.2. Place of Business.

(a) Upon request, a licensee shall provide to the Board the following information for the primary location where the licensee provides chiropractic services:

- (1) physical address;
- (2) telephone number, if any; and
- (3) business name, if applicable.

(b) A licensee shall document and maintain the following information for each secondary location where the licensee provides chiropractic services:

- (1) physical address;
- (2) business name, if applicable; and
- (3) date range when chiropractic services were provided.

(c) A licensee providing chiropractic services out of the licensee's personal residence shall ensure that:

- (1) all mandatory notices to the public required by the Board are posted; and
- (2) a patient's safety, privacy, and health information is protected.

(d) A licensee operating only a mobile practice that provides chiropractic services at a patient's residence shall only comply with subsection (b)(1) and (3) of this section.

(e) In addition to the requirements of subsection (b)(1) and (3) of this section, a licensee conducting spinal screenings at a temporary location shall display all required disclosures.

(f) A licensee shall provide the information required under subsection (b) of this section to the Board if requested.

(g) A licensee shall maintain the information required under subsection (b) of this section for 6 years.

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 June 28, 2019.  
TRD-201902038

Christopher Burnett  
General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: August 11, 2019

For further information, please call: (512) 305-6700



**22 TAC §75.6**

The Texas Board of Chiropractic Examiners (Board) proposes the repeal of 22 TAC §75.6 (Mandatory Notice to Public). The Board will propose a new §75.6 in a separate rulemaking action.

The replacement rule updates language for clarity. It also includes a copy of the notice (as required by Occupations Code §201.203) as an attached graphic for licensees to print, thus ensuring uniformity. The replacement rule removes language about a licensee's obligation to display a chiropractic licensee; that language will be moved to new stand-alone 22 TAC §75.7 (Mandatory Display of License).

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to make the rule clearer and to provide a copy of the mandatory notice for use by licensees.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §75.6. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

- (1) The proposed repeal does not create or eliminate a government program.
- (2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.
- (4) The proposed repeal does not require an increase or decrease in fees paid to the Board.
- (5) The proposed repeal does not create a new regulation.
- (6) The proposed repeal does not repeal an existing Board rule for an administrative process.
- (7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.
- (8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel,



Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: [rules@tbce.state.tx.us](mailto:rules@tbce.state.tx.us); or fax: (512) 305-6705, no later than 30 days from the date when this proposal is published in the *Texas Register*.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

*§75.6. Mandatory Notice to the Public.*

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 June 28, 2019.

TRD-201902039

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: August 11, 2019

For further information, please call: (512) 305-6700



**22 TAC §75.6**

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §75.6 (Mandatory Notice to Public). The new rule updates language for clarity. The new rule also includes a copy of the notice (as required by Occupations Code §201.203) as an attached graphic for licensees to print, thus ensuring uniformity. The new rule removes language about a licensee's obligation to display a chiropractic licensee; that language will be moved to new stand-alone 22 TAC §75.7 (Mandatory Display of License). The Board is repealing the current rule in a separate rulemaking action.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed new rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the new rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed new rule will be in effect the public benefit is to make the rule clearer and to provide a copy of the mandatory notice for use by licensees.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §75.6. For each year of the first five years the proposed new rule is in effect, Mr. Fortner has determined:

- (1) The proposed new rule does not create or eliminate a government program.
- (2) Implementation of the proposed new rule does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed new rule does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed new rule does not require an increase or decrease in fees paid to the Board.

(5) The proposed new rule does not create a new regulation.

(6) The proposed new rule does not repeal an existing Board rule for an administrative process.

(7) The proposed new rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed new rule does not positively or adversely affect the state economy.

Comments on the proposed new rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: [rules@tbce.state.tx.us](mailto:rules@tbce.state.tx.us); or fax: (512) 305-6705, no later than 30 days from the date when this proposal is published in the *Texas Register*. Please include the rule number and rule name in the subject line of any comments regarding this proposal submitted by email.

The new rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

*§75.6. Mandatory Notice to the Public.*

(a) A licensee shall ensure the attached graphic below is prominently displayed to the public at every location where the licensee provides chiropractic services.

(b) A licensee who provides services at a non-primary location shall ensure the notice is visible to the public.

Figure: 22 TAC §75.6(b)

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 June 28, 2019.

TRD-201902040

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: August 11, 2019

For further information, please call: (512) 305-6700



**22 TAC §75.7**

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §75.7 (Mandatory Display of License). The purpose is to move and update existing language from 22 TAC §75.6 (Mandatory Notice to Public) about a licensee's obligation to prominently display a current chiropractic license into a stand-alone rule. The new rule will make it easier for licensees and the public to find the information. The Board will repeal and replace §75.6 to remove references to the displaying of a license in a separate rulemaking action.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed new rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the new rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed new rule will be in effect the public benefit is to make it easier for licensees and the public to find the information about the displaying of a chiropractic license.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §75.7. For each year of the first five years the proposed new rule is in effect, Mr. Fortner has determined:

- (1) The proposed new rule does not create or eliminate a government program.
- (2) Implementation of the proposed new rule does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed new rule does not require an increase or decrease in future legislative appropriations to the Board.
- (4) The proposed new rule does not require an increase or decrease in fees paid to the Board.
- (5) The proposed new rule does not create a new regulation.
- (6) The proposal new rule does not repeal an existing Board rule for an administrative process.
- (7) The proposed new rule does not decrease the number of individuals subject to the rule's applicability.
- (8) The proposed new rule does not positively or adversely affect the state economy.

Comments on the proposed new rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date when this proposal is published in the *Texas Register*. Please include the rule number and rule name in the subject line of any comments regarding this proposal submitted by email.

The new rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

*§75.7. Mandatory Display of License.*

(a) A licensee shall prominently display the licensee's current license or Board-issued wallet-sized license at every location where the licensee provides chiropractic services.

(b) At a non-primary location, a licensee may satisfy the requirements of subsection (a) of this section by ensuring a copy of the current license is visible to the public.

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 June 28, 2019.

TRD-201902036

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: August 11, 2019

For further information, please call: (512) 305-6700



**22 TAC §75.8**

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §75.8 (Unsafe and Unsanitary Conditions). The purpose of the new rule is to establish basic sanitary and safety standards for locations where chiropractic is practiced. This rule-making is also in response to a recommendation made by the Texas Sunset Commission as part of its review of agency policies, procedures, and operations.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed new rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new rule. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the new rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the new rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the new rule will be in effect that the public benefit is to establish basic guidance to licensees for providing safe and sanitary chiropractic services to the public.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §75.8. For each year of the first five years the new rule will be in effect, Mr. Fortner has determined:

- (1) The new rule does not create or eliminate a government program.
- (2) Implementation of the new rule does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the new rule does not require an increase or decrease in future legislative appropriations to the Board.
- (4) The new rule does not require an increase or decrease in fees paid to the Board.
- (5) The new rule does create a new regulation.
- (6) The proposed new rule does not expand or limit an existing Board rule for an administrative process.
- (7) The new rule does not increase or decrease the number of individuals subject to the rule's applicability.
- (8) The new rule does not positively or adversely affect the state economy.

Comments on the proposed new rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed new rule is published in the *Texas Register*. Please include the rule number and name in the subject line of any comments submitted by email.

The new rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statute, article, or code is affected by this proposal.

§75.8. Unsafe and Unsanitary Conditions.

(a) "Unsanitary" means a condition that could reasonably pose a risk of harm to the health of a patient, employee, or contractor of a licensee, or the public.

(b) "Unsafe" means a condition that could reasonably pose a risk of injury to a patient, employee, or contractor of a licensee, or the public.

(c) Reasonable and normal wear and tear or aging of chiropractic equipment does not constitute an unsafe or unsanitary condition.

(d) Any location where a licensee practices chiropractic shall be free of unsafe and unsanitary conditions.

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 June 28, 2019.

TRD-201902035

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: August 11, 2019

For further information, please call: (512) 305-6700



## CHAPTER 80. COMPLAINTS

### 22 TAC §80.1

The Texas Board of Chiropractic Examiners (Board) proposes the repeal of 22 TAC §80.1 (Duty to Respond to Complaint). The Board is replacing this rule with new 22 TAC §80.1 in a separate rulemaking action. The new rule removes references to chiropractic facilities and makes the rule more readable.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal and replacement will be in effect the public benefit is to remove references to chiropractic facilities and make the rule more readable.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §80.1. For each year of the first five years the proposed repeal rule is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

(2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require an increase or decrease in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposed repeal does not repeal an existing Board rule for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, TX 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date when this proposal is published in the *Texas Register*. Please include the rule number and rule name in the subject line of any comments regarding this proposal submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

§80.1. Duty to Respond to Complaint.

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 June 28, 2019.

TRD-201902043

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: August 11, 2019

For further information, please call: (512) 305-6700



### 22 TAC §80.1

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §80.1 (Duty to Respond to Complaint) to replace

and rename the current rule. The Board is repealing the current rule in a separate rulemaking action.

The new rule is intended to remove previous references to chiropractic facilities, over which the Board no longer has jurisdiction following passage of the Board's Sunset bill (Senate Bill 304) in the 85th Regular Legislative Session. The new rule also removes unnecessary language and makes it more readable.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed new rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the new rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed new rule will be in effect the public benefit is to remove references to chiropractic facilities and make the rule more readable.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §80.1. For each year of the first five years the proposed new rule is in effect, Mr. Fortner has determined:

- (1) The proposed new rule does not create or eliminate a government program.
- (2) Implementation of the proposed new rule does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed new rule does not require an increase or decrease in future legislative appropriations to the Board.
- (4) The proposed new rule does not require an increase or decrease in fees paid to the Board.
- (5) The proposed new rule does not create a new regulation.
- (6) The proposal new rule does not repeal an existing Board rule for an administrative process.
- (7) The proposed new rule does not decrease the number of individuals subject to the rule's applicability.
- (8) The proposed new rule does not positively or adversely affect the state economy.

Comments on the proposed new rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: [rules@tbce.state.tx.us](mailto:rules@tbce.state.tx.us); or fax: (512) 305-6705, no later than 30 days from the date when this proposal is published in the *Texas Register*. Please include the rule number and rule name in the subject line of any comments regarding this proposal submitted by email.

The new rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

#### §80.1. Duty to Respond to Complaint.

(a) A licensee shall fully cooperate with the Board in its investigation of any complaint.

(b) A licensee shall fully cooperate with any Board request for information or documents relating to any complaint.

(c) The Board shall send notice of a complaint by registered mail and email to a licensee's physical address and email address on file with the Board.

(d) A licensee's last known physical and email address filed with the Board is presumed current.

(e) A licensee's response to a complaint or request for information or documents shall be in writing and sent to the Board no later than the 15th day after receipt of the notice of complaint or request.

(f) A licensee's response to a complaint or request for information or documents shall be complete.

(g) A licensee shall make any request to extend the time to respond in writing before the deadline in subsection (e) of this section expires.

(h) A licensee who fails to timely respond to a complaint or request is subject to disciplinary action.

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 June 28, 2019.

TRD-201902044

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: August 11, 2019

For further information, please call: (512) 305-6700



#### **22 TAC §80.2**

The Texas Board of Chiropractic Examiners (Board) proposes the repeal of 22 TAC §80.2 (Complaint Procedures). The Board is replacing this rule with new 22 TAC §80.2 in a separate rulemaking action.

The new rule is intended to remove previous references to radiologic technologists. The new rule also removes the Board's complaint form out of the rule to allow the Board to update it without going through rulemaking. The new rule also removes language regarding temporary license suspensions, which will be placed in new 22 TAC §80.9 in a separate rulemaking.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal and replacement will be in effect the

public benefit is to remove references to radiologic technologists, remove the Board's complaint form out of the rule, and remove language regarding temporary license suspensions, which will be placed in a new rule in a separate rulemaking.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §80.2. For each year of the first five years the proposed repeal rule is in effect, Mr. Fortner has determined:

- (1) The proposed repeal does not create or eliminate a government program.
- (2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.
- (4) The proposed repeal does not require an increase or decrease in fees paid to the Board.
- (5) The proposed repeal does not create a new regulation.
- (6) The proposed repeal does not repeal an existing Board rule for an administrative process.
- (7) The proposed repeal does not decrease the number of individuals subject to the repealed rule's applicability.
- (8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: [rules@tbce.state.tx.us](mailto:rules@tbce.state.tx.us); or fax: (512) 305-6705, no later than 30 days from the date when this proposal is published in the *Texas Register*. Please include the rule number and rule name in the subject line of any comments regarding this proposal submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

#### §80.2. *Complaint Procedures.*

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 June 28, 2019.

TRD-201902045

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: August 11, 2019

For further information, please call: (512) 305-6700



#### 22 TAC §80.2

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §80.2 (Complaint Procedures) to replace and re-

name the current rule. The Board is repealing the current rule in a separate rulemaking action.

The new rule is intended to remove previous references to radiologic technologists, over which the Board no longer has jurisdiction following passage of Senate Bill 674 in the 85th Regular Legislative Session. The new rule also removes the Board's complaint form out of the rule to allow the Board to update it as needed without going through rulemaking. The new rule also removes language regarding temporary license suspensions, which will be placed in new 22 TAC §80.9 in a separate rulemaking.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed new rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the new rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed new rule will be in effect the public benefit is to remove references to radiologic technologists, remove the Board's complaint form out of the rule, and remove language regarding temporary license suspensions, which will be placed in a new rule in a separate rulemaking.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §80.2. For each year of the first five years the proposed new rule is in effect, Mr. Fortner has determined:

- (1) The proposed new rule does not create or eliminate a government program.
- (2) Implementation of the proposed new rule does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed new rule does not require an increase or decrease in future legislative appropriations to the Board.
- (4) The proposed new rule does not require an increase or decrease in fees paid to the Board.
- (5) The proposed new rule does not create a new regulation.
- (6) The proposed new rule does not repeal an existing Board rule for an administrative process.
- (7) The proposed new rule does decrease the number of individuals subject to the rule's applicability.
- (8) The proposed new rule does not positively or adversely affect the state economy.

Comments on the proposed new rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: [rules@tbce.state.tx.us](mailto:rules@tbce.state.tx.us); or fax: (512) 305-6705, no later than 30 days from the date when this proposal is published in the *Texas Register*. Please include the rule number and rule name in the subject line of any comments regarding this proposal submitted by email.

The new rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

§80.2. Complaint Procedures.

(a) A person may file a complaint on the complaint form available on the Board's website or upon request to the Board office.

(b) The Board shall investigate all complaints.

(c) A complaint shall contain all necessary information available, including:

(1) the complainant's name, address, phone number, and email address;

(2) the name, address, phone number, and email address of the licensee or other person against whom the complaint is made;

(3) the date, time, and location where the alleged violation occurred; and

(4) a description of the incident giving rise to the complaint.

(d) A complainant shall cooperate in the investigation of a complaint.

(e) The Board's executive director may dismiss a complaint if:

(1) the allegation is not under the Board's jurisdiction;

(2) the complainant is uncooperative;

(3) the complainant withdraws the complaint in writing;

(4) there are insufficient facts or evidence to support the allegation; or

(5) continued investigation could interfere with a criminal investigation or judicial proceeding.

(f) The Board shall notify a complainant within 30 days if a complaint is dismissed under subsections (e) and (l) of this section.

(g) The Board shall prioritize investigations of complaints that allege criminal acts or serious physical or economic harm to patients.

(h) Board staff may initiate complaints.

(i) The Board president shall appoint an Enforcement Committee to initially consider all complaints not dismissed under subsection (e) of this section.

(j) The executive director, under the direction of the Enforcement Committee, shall oversee all investigations.

(k) Upon completion of an investigation, staff shall present their evidence and recommendation to the Enforcement Committee.

(l) Based on Board staff's evidence and recommendation, the Enforcement Committee shall:

(1) find no violation occurred and dismiss the complaint;

(2) order additional investigation; or

(3) find a violation occurred.

(m) If the Enforcement Committee finds a violation occurred, staff shall send written notice within 14 days to the licensee or other person that includes:

(1) the specific statutes or rules that were violated;

(2) a description of the facts and evidence supporting the finding of a violation;

(3) the maximum penalty under the law the licensee may be subject to;

(4) how the licensee can request an administrative hearing to contest the alleged violation; and

(5) the process for informally settling the complaint without an administrative hearing.

(n) A licensee shall respond in writing to the notice of violation within 20 days of receipt.

(o) If possible, staff shall seek to informally settle a complaint without an administrative hearing.

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 June 28, 2019.

TRD-201902046

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: August 11, 2019

For further information, please call: (512) 305-6700



**22 TAC §80.3**

The Texas Board of Chiropractic Examiners (Board) proposes the repeal of 22 TAC §80.3 (Disciplinary Guidelines). The Board is replacing this rule with new 22 TAC §80.3 in a separate rule-making action. The new rule is intended to make clear when the Board will not report minor administrative violations to national databases. The new rule also removes unnecessary language for clarity.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal and replacement will be in effect the public benefit is to make clear when the Board will not report minor administrative violations to national databases and to remove unnecessary language for clarity.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §80.3. For each year of the first five years the proposed repeal rule is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

(2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require an increase or decrease in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposed repeal does not repeal an existing Board rule for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, TX 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date when this proposal is published in the *Texas Register*. Please include the rule number and rule name in the subject line of any comments regarding this proposal submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

*§80.3. Disciplinary Guidelines.*

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 June 28, 2019.

TRD-201902047

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: August 11, 2019

For further information, please call: (512) 305-6700



**22 TAC §80.3**

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §80.3 (Disciplinary Guidelines) to replace the current rule. The Board is repealing the current rule in a separate rulemaking action.

The new rule is intended to make clear when the Board will not report minor administrative violations to national databases. The new rule also removes unnecessary language to make it more readable.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed new rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to com-

ply with the new rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed new rule will be in effect the public benefit is to make clear when the Board will not report minor administrative violations to national databases and to remove unnecessary language to make it more readable.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §80.3. For each year of the first five years the proposed new rule is in effect, Mr. Fortner has determined:

(1) The proposed new rule does not create or eliminate a government program.

(2) Implementation of the proposed new rule does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed new rule does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed new rule does not require an increase or decrease in fees paid to the Board.

(5) The proposed new rule does not create a new regulation.

(6) The proposed new rule does not repeal an existing Board rule for an administrative process.

(7) The proposed new rule does decrease the number of individuals subject to the rule's applicability.

(8) The proposed new rule does not positively or adversely affect the state economy.

Comments on the proposed new rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date when this proposal is published in the *Texas Register*. Please include the rule number and rule name in the subject line of any comments regarding this proposal submitted by email.

The new rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

*§80.3. Disciplinary Guidelines.*

(a) The Board may take disciplinary action against a licensee or other person who violates a statute or rule under the Board's jurisdiction.

(b) The Board's disciplinary actions shall consider the seriousness of the violation, any harm to a patient, the circumstances of the licensee, and the Board's duty to protect the public.

(c) Disciplinary action may include one or more of the following:

(1) revocation of license;

- (2) suspension of license;
- (3) suspension with probation;
- (4) written formal reprimand;
- (5) administrative penalty;
- (6) repeat taking of the jurisprudence exam; and
- (7) additional continuing education.

(d) The Board may impose additional conditions or restrictions to aid a licensee's rehabilitation and education, including:

- (1) completion of specific continuing education beyond the minimum required of all licensees;
- (2) passing a specific examination;
- (3) restrictions on the type of treatment, treatment procedures, or class of patients to be treated;
- (4) restrictions on the supervision of others; or
- (5) undergoing a psychological or medical evaluation and undergoing any recommended treatment.

(e) During a suspension, a licensee may not:

- (1) receive any remuneration from the practice of chiropractic;
- (2) communicate with any patients;
- (3) provide any chiropractic services to any person; or
- (4) be present at any location where chiropractic services are provided.

(f) The Board shall memorialize all final disciplinary actions in a Board order.

(g) All Board final disciplinary actions are public record unless otherwise exempted by law.

(h) The Board shall publish final disciplinary actions.

(i) The Board shall transmit all final disciplinary actions involving criminal acts, physical or economic harm to patients, or serious violations of statute or rule to the Chiropractic Information Network-Board Action Data Bank (CIN-BAD) or other national data bank as required by law.

(j) To the extent allowed by law, the Board shall only transmit final disciplinary actions that involve criminal acts, physical or economic harm to patients, or serious violations of statute or rule.

(k) The Board shall consider reinstating a license that has been finally revoked for more than a year.

(l) The Board may deny reinstatement of a revoked license or grant reinstatement with or without conditions.

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 June 28, 2019.  
 TRD-201902048  
 Christopher Burnett  
 General Counsel  
 Texas Board of Chiropractic Examiners  
 Earliest possible date of adoption: August 11, 2019  
 For further information, please call: (512) 305-6700

## 22 TAC §80.5

The Texas Board of Chiropractic Examiners (Board) proposes the repeal of 22 TAC §80.5 (Expert Review Process). The Board is replacing this rule with new 22 TAC §80.5 in a separate rule-making action. The new rule requires the Board to provide an expert review report to a licensee and an opportunity to respond before the report is considered by the Board's enforcement committee. The new rule also makes non-substantive changes for clarity.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal and replacement will be in effect the public benefit is to provide an expert review report to a licensee and an opportunity to respond and to make non-substantive changes for clarity.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §80.5. For each year of the first five years the proposed repeal rule is in effect, Mr. Fortner has determined:

- (1) The proposed repeal does not create or eliminate a government program.
- (2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.
- (4) The proposed repeal does not require an increase or decrease in fees paid to the Board.
- (5) The proposed repeal does not create a new regulation.
- (6) The proposed repeal does not repeal an existing Board rule for an administrative process.
- (7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.
- (8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: [rules@tbce.state.tx.us](mailto:rules@tbce.state.tx.us); or fax: (512) 305-6705, no later than 30 days from the date when this proposal is published in the *Texas Register*. Please include the rule number and rule name in the subject line of any comments regarding this proposal submitted by email.



The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

*§80.5. Expert Review Process.*

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 June 28, 2019.

TRD-201902049

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: August 11, 2019

For further information, please call: (512) 305-6700



**22 TAC §80.5**

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §80.5 (Expert Review Process) to replace the current rule. The new rule requires the Board to provide an expert review report to a licensee and an opportunity to respond before the report is considered by the Board's enforcement committee. The new rule also makes non-substantive changes for clarity. The Board is repealing the current rule in a separate rulemaking action.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed new rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the new rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed new rule will be in effect the public benefit is to provide an expert review report to a licensee and an opportunity to respond before the report is considered by the Board's enforcement committee and to make non-substantive changes for clarity.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §80.5. For each year of the first five years the proposed new rule is in effect, Mr. Fortner has determined:

- (1) The proposed new rule does not create or eliminate a government program.
- (2) Implementation of the proposed new rule does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed new rule does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed new rule does not require an increase or decrease in fees paid to the Board.

(5) The proposed new rule does not create a new regulation.

(6) The proposed new rule does not repeal an existing Board rule for an administrative process.

(7) The proposed new rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed new rule does not positively or adversely affect the state economy.

Comments on the proposed new rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: [rules@tbce.state.tx.us](mailto:rules@tbce.state.tx.us); or fax: (512) 305-6705, no later than 30 days from the date when this proposal is published in the *Texas Register*. Please include the rule number and rule name in the subject line of any comments regarding this proposal submitted by email.

The new rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

*§80.5. Expert Review Process.*

(a) During the investigation of a complaint, the Board may require expert review of a licensee's standard of patient care or billing practices.

(b) To qualify as an expert, a person shall:

(1) have an active license with the Board;

(2) have no prior violations of Board statutes or rules;

(3) have no open complaints;

(4) have no felony convictions or no misdemeanor convictions for a crime of moral turpitude;

(5) show sufficient training or experience to offer an expert opinion;

(6) show knowledge of accepted standards of chiropractic care related to the alleged violation; and

(7) have an acceptable malpractice complaint history.

(c) An expert may not review a complaint if the expert has:

(1) a direct financial interest or relationship with any party or witness to the complaint that gives the appearance of a conflict of interest;

(2) a familial relationship within the third degree of affinity with any party or witness;

(3) personal knowledge of any information about any party or witness related to the complaint; or

(4) any other reason where the expert could not fairly and impartially consider the complaint.

(d) The Board shall maintain a list of experts and shall periodically audit the list to confirm the experts' qualification.

(e) Board staff shall select an expert when an investigator identifies a standard of care or related issue in the complaint.

(f) Board staff shall randomly select an expert from the list and based on the expert's qualifications to review the type of complaint.

(g) The executive director shall remove an expert from the list for:

- (1) failure to maintain the required qualifications;
- (2) failure to timely complete reports;
- (3) failure to inform the Board of potential or apparent conflicts of interest; or
- (4) failure to maintain confidentiality of any matter.

(h) The Board shall provide to the expert:

- (1) the complaint;
- (2) the investigator's report;
- (3) the Board's expert report form; and
- (4) a contract for services.

(i) The expert shall review all relevant information to determine if a licensee violated the applicable standard of care and prepare a written report.

(j) The expert's report shall include:

- (1) the expert's qualifications;
- (2) the relevant facts of the complaint;
- (3) the applicable standard of care;
- (4) an application of the standard of care to the facts;
- (5) a finding of whether the standard of care was met; and
- (6) the clinical basis for the findings, including the use of any peer-reviewed journals, studies, or reports.

(k) The expert shall complete and return the review within 30 days, unless the expert requests more time due to the complaint's complexity.

(l) The Board shall give the expert's report to the licensee within 30 days of receipt.

(m) The Enforcement Committee shall review the report and the licensee's response in determining if a violation occurred.

(n) The Enforcement Committee may order additional expert reviews if necessary.

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 June 28, 2019.

TRD-201902050

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: August 11, 2019

For further information, please call: (512) 305-6700



## 22 TAC §80.6

The Texas Board of Chiropractic Examiners (Board) proposes the repeal of 22 TAC §80.6 (Undercover Investigations). The Board is replacing this rule with new 22 TAC §80.6 in a sep-

arate rulemaking action. The new rule makes non-substantive changes to the text for clarity.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal and replacement will be in effect the public benefit is to make the rule easier to read.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §80.6. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

- (1) The proposed repeal does not create or eliminate a government program.
- (2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.
- (4) The proposed repeal does not require an increase or decrease in fees paid to the Board.
- (5) The proposed repeal does not create a new regulation.
- (6) The proposed repeal does not repeal an existing Board rule for an administrative process.
- (7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.
- (8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: [rules@tbce.state.tx.us](mailto:rules@tbce.state.tx.us); or fax: (512) 305-6705, no later than 30 days from the date when this proposal is published in the *Texas Register*. Please include the rule number and rule name in the subject line of any comments regarding this proposal submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

§80.6. *Undercover Investigations.*

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 June 28, 2019.

TRD-201902051  
Christopher Burnett  
General Counsel  
Texas Board of Chiropractic Examiners  
Earliest possible date of adoption: August 11, 2019  
For further information, please call: (512) 305-6700



## 22 TAC §80.6

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §80.6 (Undercover Investigations) to replace the current rule. The new rule makes non-substantive changes to the text for clarity. The Board is repealing the current rule in a separate rulemaking action.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed new rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the new rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed new rule will be in effect the public benefit is to make the rule easier to read.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §80.6. For each year of the first five years the proposed new rule is in effect, Mr. Fortner has determined:

- (1) The proposed new rule does not create or eliminate a government program.
- (2) Implementation of the proposed new rule does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed new rule does not require an increase or decrease in future legislative appropriations to the Board.
- (4) The proposed new rule does not require an increase or decrease in fees paid to the Board.
- (5) The proposed new rule does not create a new regulation.
- (6) The proposed new rule does not repeal an existing Board rule for an administrative process.
- (7) The proposed new rule does not decrease the number of individuals subject to the rule's applicability.
- (8) The proposed new rule does not positively or adversely affect the state economy.

Comments on the proposed new rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: [rules@tbce.state.tx.us](mailto:rules@tbce.state.tx.us); or fax: (512) 305-6705, no later than 30 days from the date when this proposal is published in the *Texas Register*. Please include the rule number and rule name in the

subject line of any comments regarding this proposal submitted by email.

The new rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

### §80.6. Undercover Investigations.

(a) The Board shall permit undercover investigations only when other investigative techniques have failed or are not appropriate.

(b) If an undercover investigation is needed, a Board investigator shall submit to the Enforcement Committee a written request containing:

(1) the specific complaint;

(2) the information which the investigator believes an undercover investigation may reveal;

(3) the relevance of the information;

(4) why other techniques have not been successful or are not appropriate; and

(5) the investigative acts to be performed.

(c) The Enforcement Committee shall evaluate the request and make its decision in writing.

(d) If the request is approved, the executive director shall be responsible for the investigation until undercover activities are completed.

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 June 28, 2019.

TRD-201902052  
Christopher Burnett  
General Counsel  
Texas Board of Chiropractic Examiners  
Earliest possible date of adoption: August 11, 2019  
For further information, please call: (512) 305-6700



## 22 TAC §80.7

The Texas Board of Chiropractic Examiners (Board) proposes the repeal of 22 TAC §80.7 (Cease and Desist Orders). The Board is replacing this rule with new 22 TAC §80.7 in a separate rulemaking action. The new rule makes non-substantive changes to the text for clarity.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal and replacement will be in effect the public benefit is to make the rule easier to read.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §80.7. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

- (1) The proposed repeal does not create or eliminate a government program.
- (2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.
- (4) The proposed repeal does not require an increase or decrease in fees paid to the Board.
- (5) The proposed repeal does not create a new regulation.
- (6) The proposed repeal does not repeal an existing Board rule for an administrative process.
- (7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.
- (8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, TX 78701, via email: [rules@tbce.state.tx.us](mailto:rules@tbce.state.tx.us); or fax: (512) 305-6705, no later than 30 days from the date when this proposal is published in the *Texas Register*. Please include the rule number and rule name in the subject line of any comments regarding this proposal submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

*§80.7. Cease and Desist Orders.*

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 June 28, 2019.

TRD-201902053

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: August 11, 2019

For further information, please call: (512) 305-6700



**22 TAC §80.7**

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §80.7 (Cease and Desist Orders) to replace the

current rule. The new rule makes non-substantive changes to the text for clarity. The Board is repealing the current rule in a separate rulemaking action.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed new rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the new rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed new rule will be in effect the public benefit is to make the rule easier to read.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §80.7. For each year of the first five years the proposed new rule is in effect, Mr. Fortner has determined:

- (1) The proposed new rule does not create or eliminate a government program.
- (2) Implementation of the proposed new rule does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed new rule does not require an increase or decrease in future legislative appropriations to the Board.
- (4) The proposed new rule does not require an increase or decrease in fees paid to the Board.
- (5) The proposed new rule does not create a new regulation.
- (6) The proposed new rule does not repeal an existing Board rule for an administrative process.
- (7) The proposed new rule does not decrease the number of individuals subject to the rule's applicability.
- (8) The proposed new rule does not positively or adversely affect the state economy.

Comments on the proposed new rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: [rules@tbce.state.tx.us](mailto:rules@tbce.state.tx.us); or fax: (512) 305-6705, no later than 30 days from the date when this proposal is published in the *Texas Register*. Please include the rule number and rule name in the subject line of any comments regarding this proposal submitted by email.

The new rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

*§80.7. Cease and Desist Orders.*

The Board delegates authority to the Enforcement Committee to issue cease and desist orders against individuals practicing chiropractic without a license.

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 June 28, 2019.

TRD-201902054

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: August 11, 2019

For further information, please call: (512) 305-6700



## 22 TAC §80.9

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §80.9 (Temporary License Suspension). The rule transfers existing language concerning the Board's emergency license suspension procedures (authorized by Occupations Code §201.507) from 22 TAC §80.2 (Complaint Procedures) into a new stand-alone rule. The new rule retains the basic procedures currently in §80.2 and removes superfluous language for clarity. The new rule also makes clear the only purpose of the 14-day hearing is to determine whether there are reasonable grounds for the temporary suspension to remain in effect.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed new rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new rule. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the new rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the new rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the new rule will be in effect that the public benefit is to make the Board's temporary suspension procedures easier to read and to find.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §80.9. For each year of the first five years the new rule will be in effect, Mr. Fortner has determined:

- (1) The new rule does not create or eliminate a government program.
- (2) Implementation of the new rule does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the new rule does not require an increase or decrease in future legislative appropriations to the Board.
- (4) The new rule does not require an increase or decrease in fees paid to the Board.
- (5) The new rule does not create a new regulation.
- (6) The new rule does not expand or limit an existing Board rule for an administrative process.
- (7) The new rule does not increase or decrease the number of individuals subject to the rule's applicability.

(8) The new rule does not positively or adversely affect the state economy.

Comments on the proposed new rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: [rules@tbce.state.tx.us](mailto:rules@tbce.state.tx.us); or fax: (512) 305-6705, no later than 30 days from the date that this proposed new rule is published in the *Texas Register*. Please include the rule number and name in the subject line of any comments submitted by email.

The new rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statute, article, or code is affected by this proposal.

### §80.9. Temporary License Suspension.

(a) The Enforcement Committee may temporarily suspend a license if the committee reasonably believes a licensee is a continuing or imminent threat to the public.

(b) A temporary suspension may occur without notice if a hearing on the suspension is scheduled at the State Office of Administrative Hearings (SOAH) not later than the 14th day after the date of suspension.

(c) At the 14-day hearing, the only issue is whether the temporary suspension should remain in effect.

(d) If the SOAH administrative law judge (ALJ) finds the Board has reasonable information that the licensee is a continuing or imminent threat to the public, the ALJ shall issue an order to keep the temporary suspension in effect pending the initiation of disciplinary proceedings against the licensee.

(e) A second hearing on the suspension shall be held not later than the 60th day after the date the suspension was ordered.

(f) The 60-day hearing shall determine only whether the suspension shall remain in effect pending the final determination of disciplinary proceedings against the licensee.

(g) If the 60-day hearing is not timely held, the suspension is dissolved.

(h) The Board shall notify a licensee of a suspension by certified mail, regular mail, and email.

(i) A licensee may waive the 14-day or 60-day hearings.

(j) A licensee may not practice chiropractic during a temporary suspension.

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 June 28, 2019.

TRD-201902034

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: August 11, 2019

For further information, please call: (512) 305-6700



# PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

## CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING AND ENFORCEMENT RULES

### SUBCHAPTER B. P.G. LICENSING, FIRM REGISTRATION, AND GIT CERTIFICATION

The Texas Board of Professional Geoscientists (TBPG) proposes amendments concerning the licensure and regulation of Professional Geoscientists in Texas. TBPG proposes to repeal 22 TAC §851.24, and proposes amendments to 22 TAC §§851.20, 851.22, 851.23, 851.40, and 851.41, to comply with statutory changes to Texas Occupations Code, Chapter 1002, the Texas Geoscience Practice Act (the Act).

#### BACKGROUND, PURPOSE, AND SUMMARY OF CHANGES

The 2019 Legislature recently amended the Act after TBPG's Sunset review. The 86th Legislature (2019) enacted HB 1311, which amended the Act, effective September 1, 2019. TBPG now proposes changes to its rules to implement the statutory changes. The proposed repeal and amendments will implement the statutory removal of the requirement that applicants for a P.G. license submit references, and the removal of the statutory requirement that P.G. applications be notarized. Proposed amendments will also remove the reference requirement for applicants seeking certification as Geoscientists-in-Training to be consistent with the requirements for P.G. applicants. The amendments also re-number the subsections accordingly.

TBPG proposes to repeal 22 TAC §851.24 in its entirety, removing the requirement that applicants for a license provide at least five reference statements to the TBPG. These references were required for an applicant for a P.G. license to demonstrate that the applicant is of "good moral character." The legislature removed this requirement from the Act, effective September 1, 2019, and TBPG's proposed repeal makes corresponding changes to its rules.

TBPG proposes amendments to 22 TAC §851.20 to remove language that requires applicants for a license to submit reference statements. It also removes the requirement that a P.G. license application be notarized.

The proposed amendment to subsection (a)(2) inserts the phrase, "Has a documented record of at least..." and removes the words "A minimum of," when referring to the qualifying experience for the applicant. It also removes the wording to indicate that experience is "documented and verified through professional references." The proposed amendment in subsection (a)(3) removes the statement regarding the licensure requirement of: "Good moral character as demonstrated by the submission of a minimum of five reference statements submitted on behalf of the applicant attesting to the good moral and ethical character of the applicant as specified in 851.24 of this chapter or as otherwise determined by the Appointed Board," and it renumbers the subsection. The proposed amendment to subsection (d)(1) removes the word "notarized" when referring to an application for licensure as a Professional Geoscientist. Proposed deletion of subsection (d)(4) removes the licensure requirement of "A minimum of five (5) reference statements as specified in 851.24 of this chapter." The subsection is renumbered accordingly.

TBPG proposes amendments to 22 TAC §851.22 to remove the reference requirement for a P.G. applicant who requests a waiver of the examination requirement. The proposed change to subsection (a)(2) removes the word "references" and replaces the word with the phrase "qualifying experience record" when referring to supporting documentation for a P.G. application that requests an examination waiver. The proposed amendment to subsection (e)(1)(a) removes the word "references," when referring to qualifications for licensure for an applicant that requests an examination waiver. The proposed amendment to subsection (h)(1) removes the words, "submits two acceptable personal references," for request for waiver of the Fundamentals of Geology examination, and renumbers the subsection. The proposed amendment to subsection (i)(2) removes the words, "required number/type of acceptable references required for licensure verifying the" and now reads, "Submits the qualifying work experience claimed (or has verified qualifying work experience claimed through an alternate means, as provided by TBPG rules)," for request for waiver of the Practice of Geology examination. The proposed amendment to subsection (j)(2), which concerns requests for waiver of the Geophysics examination requirement, removes the words, "required number/type of acceptable references required for licensure verifying the" and now reads, "Submits the qualifying work experience claimed (or has verified qualifying work experience claimed through an alternate means, as provided by TBPG rules)."

TBPG proposes amendments to 22 TAC §851.23(c) to clarify that the experience record must include enough information "to cover at least the minimum amount of time needed by the applicant for issuance of a license." The proposed amendment removes subsection (d), which refers to the reference requirements for P.G. applicants. The proposed amendment to subsection (e) removes more references to the reference requirement, and now reads, "The experience record shall be written in sufficient detail to allow the Board staff to document the minimum amount of experience required." The proposed amendment adds new subsection (h), which states, "The Executive Director may require an applicant to provide additional information to adequately verify the applicant's experience." The previous subsection (h) is now re-sequenced to be subsection (i).

TBPG proposes an amendment to 22 TAC §851.40 to remove subsection (b)(3), which states that a Geoscientist-in-Training must submit "the required reference statements as detailed in 851.24 of this chapter," when submitting an application for P.G. licensure, and the subsection is renumbered accordingly.

TBPG proposes an amendment to 22 TAC §851.41 to remove subsection (a)(3), which currently requires a Geoscientist-in-Training to submit "One reference statement addressing the applicant's moral and ethical character." The proposed amendment to subsection (b)(3) removes the requirement that the applicant "submit one GIT Personal Reference Statement (Form III)," and renumbers the subsection accordingly.

#### FISCAL NOTE

##### STATE AND LOCAL GOVERNMENT

Rene D. Truan, Executive Director of the Texas Board of Professional Geoscientists, has determined that for each fiscal year of the first five years the section is in effect there is no cost to the state and local governments as a result of enforcing or administering the section as proposed. There is no anticipated negative impact on state or local government. There are no estimated

reductions in cost to the state and to local governments as a result of enforcing or administering the proposed sections. There is no estimated loss or increase in revenue to the state or local governments as a result of enforcing or administering these sections. These proposals have no foreseeable implications relating to cost or revenues of the state or local governments.

#### PUBLIC BENEFIT AND COST

Mr. Truan has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the sections includes ensuring that TBPG rules are consistent with the new changes to the Act, regarding requirements for P.G. license applicants. There will be no anticipated economic cost to individuals who are required to comply with the proposed sections.

#### SMALL, MICRO-BUSINESS, LOCAL ECONOMY, AND RURAL COMMUNITIES ECONOMIC IMPACT ANALYSIS

Mr. Truan has determined that the proposed rule will not have an adverse effect on small businesses, micro-businesses, local economy, or rural communities. Consequently, neither an economic impact statement, a local employment impact statement, nor a regulatory flexibility analysis is required.

#### GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the rule would be in effect:

- (1) the proposed rules do not create or eliminate a government program;
- (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed rules do not require an increase or decrease in fees paid to the agency;
- (5) the proposed rules do not create a new regulation;
- (6) the proposed rules do not expand or limit an existing regulation; §851.24 is being repealed;
- (7) the proposed rules do not increase or decrease the number of individuals that are subject to the rules' applicability; and
- (8) the proposed rules do not positively or adversely affect this state's economy.

#### REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Truan has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. Although Professional Geoscientists and Registered Geoscience Firms play a key role in environmental protection for the state of Texas, this proposal is not specifically intended to protect the environment nor reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

Mr. Truan has determined that 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, do not constitute a taking under Texas Government Code, §2007.043.

#### PUBLIC COMMENT

Comments on the proposed amendments and new rules may be submitted in writing to Rene D. Truan, Executive Director, Texas Board of Professional Geoscientists, 333 Guadalupe Street, Tower I-530, Austin, Texas 78701 or by mail to P.O. Box 13225, Austin, Texas 78711 or by e-mail to rtruan@tbpgeos.org. Please indicate "Comments on Proposed Rules" in the subject line of all e-mails submitted. Please submit comments within 30 days following publication of the proposal in the *Texas Register*.

#### 22 TAC §§851.20, 851.22, 851.23, 851.40, 851.41

#### STATUTORY AUTHORITY

These sections are proposed under the Texas Geoscience Practice Act, Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules and regulations consistent with the Act as necessary for the performance of its duties, and the regulation of the practice of geoscience in this state; Occupations Code §1002.154, which provides that Board shall enforce the Act; Occupations Code §1002.253, which no longer requires that applications for a license under this chapter be sworn to by the applicant before a notary public, or the requirement of submission of five letters of reference; and Occupations Code §1002.255, which no longer requires the submission of letters of reference to attest to the applicant's good moral and ethical character.

These sections affect the Texas Geoscience Practice Act, Occupations Code §§1002.151, 1002.154, 1002.253, and 1002.255.

§851.20. *Professional Geoscientist Licensing Requirements and Application Procedure.*

##### (a) Requirements for licensure:

(1) Passing score on an examination or examinations required by the Texas Board of Professional Geoscientists (TBPG) covering the fundamentals and practice of the appropriate discipline of geoscience documented as specified in §851.21 of this chapter;

(2) Has a documented record of at least [A minimum of] five years of qualifying work experience during which the applicant has demonstrated being qualified to assume responsible charge of geoscience services [documented and verified through professional references] as specified in §851.23 of this chapter and Texas Occupations Code (TOC) §1002.256:

(A) A total of one year of qualifying work experience credit may be granted for each full-time year of graduate study in a discipline of geoscience, not to exceed two years;

(B) The Appointed Board may accept qualifying work experience in lieu of the education requirement as provided in TOC §1002.255;

(3) [Good moral character as demonstrated by the submission of a minimum of five reference statements submitted on behalf of the applicant attesting to the good moral and ethical character of the applicant as specified in §851.24 of this chapter or as otherwise determined by the Appointed Board;]

[(4)] Academic requirements for licensure as specified in TOC §1002.255 and §851.25 of this chapter; and

(4) [(5)] Supporting documentation of any license requirement, as determined by Board staff or the Appointed Board, relating to criminal convictions as specified in §851.108 of this chapter; relating to substance abuse issues as specified in §851.109 of this chapter; and relating to issues surrounding reasons the Appointed Board may deny a license as specified in the Geoscience Practice Act at TOC §1002.401 and §1002.402.

(b) An applicant may request a waiver of any licensure requirement by submitting a Waiver Request (Form VI) and any additional information needed to substantiate the request for waiver with the application. If the Appointed Board determines that the applicant meets all the other requirements, the Appointed Board may waive any licensure requirement except for the payment of required fees.

(c) An application is active for one year including the date that it is filed with the Appointed Board.

(d) Professional Geoscientist application procedure. To be eligible for a Professional Geoscientist license under this chapter, an applicant must submit or ensure the transmission (as applicable) of the following to the TBPG:

(1) A completed, signed[, notarized] application for licensure as a Professional Geoscientist;

(2) Documentation of having passed an examination as specified in §851.21 of this chapter;

(3) Documentation of having met the experience requirements as specified in §851.23 of this chapter;

(4) [A minimum of five (5) reference statements as specified in §851.24 of this chapter;]

[(5)] Official transcript(s), as specified in §851.25 of this chapter;

(5) [(6)] The application/first year licensing fee as specified in §851.80(b) of this chapter;

(6) [(7)] Verification of every license, current or expired, in any regulated profession related to the public practice of geoscience in any jurisdiction (for example, Professional Engineer, licensed Water Well Driller, etc.); and

(7) [(8)] Any written explanation and other documentation as required by instructions on the application or as communicated by Board staff, if applicable.

(e) Any transcripts, evaluations, experience records or other similar documents submitted to the TBPG in previous applications may be included in a current application provided the applicant requests its use in writing at the time the application is filed and the Executive Director authorizes its use.

(f) An application may be forwarded to the Appointed Board at the Executive Director's discretion.

(g) Obtaining or attempting to obtain a license by fraud or false misrepresentation is grounds for an administrative sanction and/or penalty.

(h) An applicant who is a citizen of another country and is physically present in this country shall show sufficient documentation to the TBPG to verify the immigration status for the determination of their eligibility for a professional license in accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. In most cases, a copy of a current visa or something equivalent will be sufficient. For applicants from countries that have a standing trade agreement with the US that specifically and adequately addresses professional licensure, such as NAFTA or AUSFTA, a copy of a visa

is not required; however, the applicant must identify the trade agreement under which the applicant would be working in the US, and must establish the applicant has the required legal status to work in Texas.

(i) Applications are not reviewed until the application and fee have been received in the TBPG office. Applicants are initially notified of any deficiencies in the application within approximately thirty (30) days after the receipt of the application and fee.

(j) An applicant should respond to a deficiency notice within forty-five (45) days from the date of notification for applicants to correct deficiencies. If an applicant does not respond to a deficiency notice or does not ensure that necessary documents are provided to the TBPG office, the application will expire as scheduled one year after the date it became active.

(k) Upon receipt of all required materials and fees and satisfying all requirements in this section, the applicant shall be licensed and a unique Professional Geoscientist license number shall be assigned to the license. A new license shall be set to expire at the end of the calendar month occurring one year after the license is issued. Board staff shall send a new license certificate, license certificate expiration card, and a wallet license expiration card as provided in subsection (p) of this section.

(l) A new license is valid for a period of one year from the date it is issued. Upon the first timely renewal of a license, the renewal period shall be from the date the license is renewed until the last day of the next birth month for the licensee. A license that is renewed late (one day after the expiration date of the license through the end of the 36th month past the expiration date of the license) is renewed in accordance to the rules set forth in §851.28 of this chapter.

(m) A license number is not transferable.

(n) Any violation of the law or the rules and regulations resulting in disciplinary action for one license may result in disciplinary action for any other license.

(o) Altering a license wall certificate, license certificate expiration card, or wallet license expiration card in any way is prohibited and is grounds for a sanction and/or penalty.

(p) The Professional Geoscientist license is the legal authority granted the holder to actively practice geoscience upon meeting the requirements as set out in the Act and this chapter. When a license is issued, a license wall certificate, the first license certificate expiration card, and the first wallet license expiration card are provided to the new licensee.

(1) The license wall certificate shall bear the name of the licensee, the licensee's unique Professional Geoscientist license number, the discipline in which the individual is licensed, and the date the license was originally issued.

(2) The license wall certificate is not valid proof of licensure unless the license certificate expiration card is accompanying the license certificate and the date on the license certificate card is not expired.

(3) The license certificate expiration card shall bear the name of the licensee, the licensee's unique Professional Geoscientist license number, and the date the license will expire, unless it is renewed.

(4) The wallet license expiration card shall bear the name of the licensee, the licensee's unique Professional Geoscientist license number, the discipline in which the individual is licensed, and the date the license will expire, unless it is renewed.



(q) Once the requirements for licensure have been satisfied and the new license and license certificate have been issued, within sixty (60) days of notification the new licensee must then:

(1) Obtain a seal and submit TBPG Seal Submission (Form X) to the TBPG; and

(2) Register as a Geoscience Firm, if appropriate, as described in §851.30 of this chapter.

(r) An applicant who is a military service member, military veteran or a military spouse is directed to TBPG rule §851.26 of this chapter for additional licensing provisions.

*§851.22. Waivers and Substitutions: Policy, Procedures, and Criteria.*

(a) Introduction: The Texas Board of Professional Geoscientists is charged with the responsibility of issuing a license to engage in the public practice of geoscience in the state of Texas only to those individuals who meet the qualifications for licensure, as provided by Texas law. The successful completion of the required examination for the specific discipline is an essential element in the Professional Geoscientist licensure process and, to date, the Board has found extremely limited circumstances that would cause the Board to consider waiving this requirement.

(1) The Texas Geoscience Practice Act (TGPA) (Occupations Code, Chapter 1002), §1002.259 provides that "Except for the payment of required fees, the board may waive any of the requirements for licensure by a two-thirds vote of the entire board if the applicant makes a written request and shows good cause and the board determines that the applicant is otherwise qualified for a license."

(2) An applicant for licensure as a Professional Geoscientist may request a waiver by submitting a copy of "REQUEST FOR WAIVER OF LICENSING REQUIREMENT-BOARD POLICY AND PROCEDURES", along with supporting documentation. Only an applicant for licensure may request a waiver. An applicant must have submitted a complete application, supporting documentation (such as transcripts and qualifying experience record [references]), and applicable fees in order for a waiver request to be considered.

(3) Once a request for a waiver and all relevant documents and information supporting the request have been received, subject to scheduling logistics, the request will be placed on the next available meeting of the TBPG's Application Review and Continuing Education Committee.

(b) Guidance Policy: The following policy was developed by the TBPG Board and is intended to be guidance for the Application Review and Continuing Education Committee and the Board in consideration of a request for waiver. In accordance with TOC §1002.259, an approval of a waiver request requires a vote of 2/3 of the TBPG Appointed Board (6 affirmative votes), regardless of the number of Board members in attendance. A request for the substitution of experience for education (provided by TOC §1002.255(b)) requires a simple majority vote of a quorum of the TBPG Appointed Board to be approved.

(c) TBPG's Application Review And Continuing Education Committee Review: TBPG's Application Review and Continuing Education Committee will review the request and supporting documentation and recommend to the full TBPG Board whether or not to grant the requested waiver. An applicant should provide a written justification, along with supporting documentation. An applicant may also appear before the Committee and the full Board to provide testimony to support the request. All requests the Committee recommends for approval will be scheduled for review by the full Board. Requests the Committee does not recommend for approval will not be submitted to the full board for review, unless the applicant requests review by the full Board.

(d) TBPG's Board Initial Review: TBPG Appointed Board will review requests the Committee recommends for approval and supporting documentation and will determine whether or not to approve the request (grant the requested waiver). An applicant whose request for a waiver or substitution was denied and who believes that there is additional information that was not available to the Board when it reviewed the request, may submit additional information to staff regarding the current application, along with a written request that the Board reconsider the request. If staff determines that new information has been submitted that may be relevant to the Board's review of an application/request, then staff will schedule the application/waiver request for reconsideration. In the review of a request to reconsider its decision on an application/waiver request, because new information has been submitted, the Board will first determine by a simple majority vote whether to reconsider the application/waiver request, based on whether relevant new information has been submitted. If the Board were to determine by vote that the new information warrants reconsideration of an application/waiver request, the Board would then reconsider the waiver request, including all of the new information available at that time. An applicant may appear before the Board and present information related to the request. The Board will reconsider its decision on a waiver request only once.

(e) Examination Waiver Requirements and Criteria.

(1) For TBPG's Appointed Board to waive an examination, an applicant must:

(A) Meet all other qualifications for licensure (qualifying work experience, [references,] education, documentation relating to criminal, disciplinary, and civil litigation history);

(B) Meet the criteria in the policy for the specific examination that is the subject of the waiver request; and

(C) Have not failed the examination that is the subject of the waiver request.

(2) Work experience an applicant submits pursuant to the following examination waiver policies must meet the criteria for qualifying work experience under TBPG rule §851.23 regarding qualifying experience record.

(3) ASBOG® Fundamentals of Geology Examination Waiver. An applicant must have acquired one of the following combinations of education and work experience:

(A) B.S. and 15 years qualifying work experience;

(B) M.S. and 13 years qualifying work experience; and

(C) Ph.D. and 10 years qualifying work experience.

(4) ASBOG® Practice of Geology Examination Waiver. An applicant must meet Minimum Criteria (a person may qualify for a waiver by meeting either "Generalized" Practice Experience or "Specialized" Practice Experience):

(A) Generalized practice experience (must meet all four criteria):

(i) Twenty (20) years of geosciences work experience;

(ii) Ten (10) years of supervisory experience (three or more individuals under supervision);

(iii) Coursework in six of the eight following ASBOG® task domains:

(I) Field geology;

(II) Mineralogy, petrology, and geochemistry;

(III) Sedimentology, stratigraphy, and paleontology;

(IV) Geomorphology, surficial processes, and quaternary geology;

(V) Structure, tectonics, and seismology;

(VI) Hydrogeology;

(VII) Engineering geology; and

(VIII) Economic geology and energy resources.

(iv) Demonstrate the ability to plan and conduct geosciences investigations considering human health and safety.

(B) Specialized practice experience: The applicant demonstrates twenty years or more of specialized work history in only one or two of the ASBOG® task domains. One factor TBPG will consider is whether the examination is irrelevant or largely beyond the scope of the applicant's specialized experience and the applicant's intended field of practice.

(5) Council of Soil Science Examination (CSSE) - Fundamentals of Soil Science Waiver. An applicant must have acquired one of the following combinations of education and work experience:

(A) B.S. and 15 years qualified work experience;

(B) M.S. and 13 years of qualified work experience; and

(C) Ph.D. and 10 years of qualified work experience.

(6) Council of Soil Science Examination (CSSE) - Professional Practice. No waiver is available.

(7) Texas Geophysics Examination (TGE). No Waiver is available.

(f) Substitution of Work Experience for Educational Requirements. Before the Appointed Board considers an application for substitution of work experience for an education requirement, the applicant seeking approval of the substitution must meet all of the following minimum criteria:

(1) The applicant must pass, within three (3) attempts, the appropriate qualifying licensing examination (or a substantially similar examination), depending on the discipline in which the applicant seeks to be licensed, as follows:

(A) Geology discipline: both the Fundamentals and Practice examinations administered by National Association of State Boards of Geology (ASBOG®);

(B) Geophysics discipline: the Texas Geophysics Examination (TGE); or

(C) Soil Science discipline: both the Fundamentals and Practice examinations administered by the Council of Soil Science Examiners (CSSE);

(2) The applicant must have at least 15 years of qualifying work experience;

(3) The applicant must demonstrate the following:

(A) Ability to work with others;

(B) Ability to apply scientific methods;

(C) Ability to solve problems;

(D) Honest and ethical behavior;

(E) Ability to communicate effectively; and

(F) Relevant continuing education activities that advance knowledge throughout the applicant's professional career.

(4) The applicant is highly encouraged to appear before the Application Review and Continuing Education Committee for presentation of qualifications.

(g) Waiver of Education Requirement - Generally. Before the Appointed Board considers an application for education waiver, the applicant seeking a waiver of the education requirement must demonstrate mastery of a minimum required knowledge base in geoscience by meeting the following criteria:

(1) The applicant must demonstrate both of the following:

(A) A four-year degree in a field of basic or applied science that includes at least 15 hours of courses in geosciences from an accredited institution of higher education or the equivalent of a total of at least 15 hours of courses in geoscience from an accredited institution of higher education and/or other educational sources, as determined by the Appointed Board;

(B) An established record of continuing education and workshop participation in geoscience fields; and

(C) The Appointed Board may also determine that an individual applicant has satisfactorily completed other equivalent educational requirements after reviewing the applicant's educational credentials.

(2) The applicant must have at least eight years of qualifying geoscience work experience;

(3) The applicant must pass the appropriate qualifying examination, depending on the discipline in which the applicant seeks to be licensed, as follows:

(A) Geology discipline: both the Fundamentals and Practice examinations administered by National Association of State Boards of Geology (ASBOG®);

(B) Geophysics discipline: the Texas Geophysics Examination (TGE); or

(C) Soil Science discipline: both the Fundamentals and Practice examinations administered by the Council of Soil Science Examiners (CSSE).

(h) Education Waiver for License in Geology Discipline - Fundamentals. An individual who plans to apply for licensure as a Professional Geoscientist in the discipline of geology who does not fully meet the education requirement for licensure may take the ASBOG® Fundamentals of Geology examination as long as the applicant:

(1) [~~Submits two acceptable personal references;~~]

[~~(2)~~] Has submitted any other necessary forms, documents, and fees; and

[~~(2)~~] [~~(3)~~] Has acknowledged that the Appointed Board must approve an education waiver request or approve the substitution of experience for education before the applicant may be licensed as a Professional Geoscientist and that the Appointed Board will not consider an education waiver or a request to substitute experience for education until after both the ASBOG® Fundamentals of Geology and Practice of Geology examinations have been passed.

(i) Education Waiver for License in Geology Discipline - Practice. An applicant for licensure as a Professional Geoscientist in the discipline of geology who does not fully meet the education requirement for licensure may take the ASBOG® Practice of Geology examination as long as the applicant:

(1) Meets or is within six months of meeting the qualifying experience requirement for licensure;

(2) Submits the [required number/type of acceptable references required for licensure verifying the] qualifying work experience claimed (or has verified qualifying work experience claimed through an alternate means, as provided by TBPG rules);

(3) Has submitted a request for an education waiver or a substitution of experience for education;

(4) Has submitted any other necessary forms, documents, and fees; and

(5) Has acknowledged that the Appointed Board must approve the education waiver request or a request to substitute experience for education before the applicant may be licensed as a Professional Geoscientist and that the Appointed Board will not consider an education waiver or a request for substitution of experience for education until after both the ASBOG® Fundamentals of Geology and Practice of Geology examinations have been passed.

(j) Education Waiver for License in Geophysics Discipline. An applicant for licensure as a Professional Geoscientist in the discipline of geophysics who does not fully meet the education requirement for licensure may take the Texas Geophysics Examination as long as the applicant:

(1) Meets or is within six months of meeting the qualifying experience requirement for licensure;

(2) Submits the [required number/type of acceptable references required for licensure verifying the] qualifying work experience claimed (or has verified qualifying work experience claimed through an alternate means, as provided by TBPG rules);

(3) Has submitted a request for an education waiver or a substitution of experience for education;

(4) Has submitted any other necessary forms, documents, and fees; and

(5) Has acknowledged that the Appointed Board must approve the education waiver request or a request to substitute experience for education before the applicant may be licensed as a Professional Geoscientist and that the Appointed Board will not consider an education waiver or a request for substitution of experience for education until after the Texas Geophysics Examination has been passed.

#### §851.23. *Qualifying Experience Record.*

(a) Applicants shall complete the Qualifying Experience Record on Application Form A and provide supplemental information to demonstrate the dates qualifying experience began and ended.

(b) The experience record shall be written by the applicant, shall clearly describe the geoscience work that the applicant personally performed in each setting, and shall delineate the role of the applicant in any group geoscience activity.

(c) The experience record should provide an overall description of the nature and scope of the work with emphasis on detailed descriptions of the geoscience work personally performed by the applicant to cover at least the minimum amount of time needed by the applicant for issuance of a license.

(d) The [Professional geoscience references must be provided to verify enough of the experience record to cover at least the minimum amount of time needed by the applicant for issuance of a license. If an applicant cannot obtain a reference that verifies qualifying work experience needed to cover the minimum amount of time needed to demonstrate having met the experience requirement, the applicant shall work

with TBPG staff to identify some alternate form of verification of the work experience.]

~~(e)~~ [Parts of the] experience record [that are to be verified by references] shall be written in sufficient detail to allow the Board staff to document the minimum amount of experience required [and to allow the reference provider to recognize and verify the quality and quantity of the experience claimed].

~~(e)~~ [(f)] The experience record must demonstrate evidence of the applicant's competency to be placed in responsible charge of geoscience services of a similar character.

~~(f)~~ [(g)] Experience is qualifying if the applicant's duties and responsibilities included the performance of geoscience tasks or is acceptable to the TBPG. TBPG may accept research in or the teaching of a discipline of geoscience at the college or university level as qualifying work experience if the research or teaching, in the judgment of the TBPG, is comparable to work experience obtained in the practice of geoscience.

~~(g)~~ [(h)] The Executive Director may require an applicant to provide additional information to adequately verify the applicant's experience.

~~(h)~~ Waiver of the Required Qualifying Work Experience. The Appointed Board has determined that the qualifying work experience required by statute for licensure is a necessary requirement that should not be waived. The Appointed Board does not offer waiver of this requirement for licensure.

#### §851.40. *Geoscientist-in-Training (GIT).*

(a) The GIT certification is intended for individuals who wish to express the intent to become a Professional Geoscientist while they are gaining qualifying geoscience work experience. Individuals who meet the educational requirements of §1002.255(a)(2)(A) of the Act and have successfully passed an examination as specified in §851.21 of this chapter are eligible to apply for GIT certification. This certification does not entitle an individual to practice as a licensed Professional Geoscientist.

(b) Upon accruing 5 years of post graduate geoscience work experience, individuals who are GIT certified and in good standing with the TBPG may apply for licensure as a Professional Geoscientist by submitting the following:

(1) TBPG Application for P.G. Licensure (Form A);

(2) The application fee as detailed in §851.80 of this chapter;

~~(3) [The required reference statements as detailed in §851.24 of this chapter;]~~

~~[(4)]~~ The required evidence of qualifying work experience as described in §851.23 of this chapter; and

~~(4)~~ [(5)] Proof of having passed one of the following discipline specific examinations:

(A) National Association of State Boards of Geology (ASBOG®) Practice of Geology;

(B) Council of Soil Science Examiners (CSSE) Soil Science Practice Examination; or

(C) Texas Geophysics Examination.

#### §851.41. *Geoscientist-in-Training Certification Requirements and Application Procedure.*

(a) To qualify for certification, an applicant must meet the following requirements:

(1) Educational requirements for licensure as a P.G. as established in §851.25(a) of this chapter.

(2) Passed one of the following examinations:

(A) Geology discipline: National Association of State Boards of Geology (ASBOG®) Fundamentals of Geology Examination;

(B) Soil Science discipline: Council of Soil Science Examiners (CSSE) Soil Science Fundamentals Examination; or

(C) Geophysics discipline: The Texas Geophysics Examination.

(3) [One Reference Statement addressing the applicant's moral and ethical character.]

[(4)] Application fee published in §851.80 of this chapter.

(b) Application Procedure:

(1) Submit a GIT Certification Application (Form H);

(2) Submit an official academic transcript in accordance with §851.25(b) of this chapter; and

(3) [Submit one GIT Personal Reference Statement (Form HH); and]

[(4)] Pay the application fee.

(c) An applicant who has been granted an exemption from an examination described by (a)(2) of this section is not eligible to become a GIT.

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 June 28, 2019.

TRD-201902057

Rene D. Truan

Executive Director

Texas Board of Professional Geoscientists

Earliest possible date of adoption: August 11, 2019

For further information, please call: (512) 936-4405



## 22 TAC §851.24

### STATUTORY AUTHORITY

This section is repealed under the Texas Geoscience Practice Act, Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules and regulations consistent with the Act as necessary for the performance of its duties, and the regulation of the practice of geoscience in this state; Occupations Code §1002.154, which provides that Board shall enforce the Act; Occupations Code §1002.253, which no longer requires that applications for a license under this chapter be sworn to by the applicant before a notary public, or the requirement of submission of five letters of reference; and Occupations Code §1002.255, which no longer requires the submission of letters of reference to attest to the applicant's good moral and ethical character.

This section affects the Texas Geoscience Practice Act, Occupations Code §§1002.151, 1002.154, 1002.253, and 1002.255.

§851.24. *References.*

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 June 28, 2019.

TRD-201902056

Rene D. Truan

Executive Director

Texas Board of Professional Geoscientists

Earliest possible date of adoption: August 11, 2019

For further information, please call: (512) 936-4405



## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 61. DESIGN AND CONSTRUCTION

The Texas Parks and Wildlife Department (the department) proposes the repeal of §§61.81, 61.121, 61.131, and 61.133 - 61.139, an amendment to §61.132, and new §§61.133 - 61.136, concerning Guidelines for Administration of Texas Local Parks, Recreation, and Open Space Fund Program.

The proposed repeals, amendments, and new sections are a result of the department's continual outreach and communication efforts with the regulated community. As part of that ongoing process, the department has assessed the efficacy of the current rules and concluded that the current rules are problematic in several respects and can be improved by streamlining them and focusing more closely on the articulation of the department's administrative priorities and the goals of the regulated community. Accordingly, the proposed new rules emphasize the importance of quality over all other considerations in the preparation and evaluation of project proposals. Additionally, the department seeks to locate all rules governing local park and outreach grants in a single subchapter, as opposed to the current structure, which locates applications procedures in one subchapter, a policy statement in another subchapter, and additional policy and rules governing evaluation of grants in yet another subchapter. The proposed repeals, amendments, and new sections are intended to modernize references and designations, eliminate cumbersome and abstruse regulatory structures and language, make the rules easier to interpret, and in general replace the current rules with rules that are more intuitive, navigable, and helpful.

The proposed repeal of §61.81, concerning Application Procedures, §61.121, concerning Policy, and §61.131, concerning Policy, are necessary to relocate the contents of those sections to a single section within Subchapter E (which is being retitled as Local Parks and Outdoor Recreation Grants), with modifications intended to modernize and streamline those rules.

The proposed amendment of §61.132, concerning Texas Local Park Grants Programs Manual, would incorporate the contents of current §61.81, modified to reflect the current title of the federal publication containing the procedural guide governing applications for federal funds through the department's grants program, and §61.121, concerning Policy, modified to remove deadlines and administrative provisions that are no longer applicable. The

proposed amendment also would rename the section as Grants Manual and Federal Procedural Guide and specify that the documents be made available on the department's website.

Proposed new §61.133, concerning General Provisions, would set forth provisions of universal applicability to the grant programs contained in the subchapter.

Proposed new subsection (a) would set forth the department policy guiding the administration of the local park and outreach grant programs, which is to provide high-quality outdoor and indoor recreational opportunities for Texas, consistent with Parks and Wildlife Code, Chapter 24, and the priorities and policies articulated in the department's Land and Water Resources Conservation and Recreation Plan and the Texas Outdoor Recreation Plan (required for federal funding), as applicable. The department believes that because the financial resources made available by the legislature in any given biennium are almost always insufficient to fund every request for assistance, it is therefore important to ensure that the greatest number of projects with achievable maximal beneficial outcomes be approved.

Proposed new subsection (b) would stipulate that the department will not accept or evaluate a project proposal that is not submitted to the department via the department's on-line application process. The department has utilized technology to create a single portal for submission of project proposals. Requiring all proposals to be submitted via the electronic portal increases administrative efficiencies for both the department and the regulated community.

Proposed new subsection (c) would provide that the department will not score an application that is not in substantive compliance with the requirements of the subchapter, as determined by the department. The provision is necessary because the department believes it is important to maximize administrative efficiency by not investing time and effort on project proposals that are incomplete and therefore unable to be evaluated thoroughly.

Proposed new subsection (d) would provide that applications will be scored only if the applicant is in compliance with the conditions of existing or previous grant agreements. Sometimes it is the case that an application for a grant is received from an entity that has not fulfilled the obligations of a previous grant or has otherwise not complied with applicable administrative provisions. The department reasons that a project proposal from such an entity should not be processed until all deficiencies are resolved or a credible plan of action to achieve compliance is submitted.

Proposed new subsection (e) would establish the methodology for scoring applications, specifying that the department will evaluate proposed projects on a qualitative basis, awarding points within the specified range from 0 (no points) to the maximum allowable for each criterion, according to the department's determination of how the applicant's treatment of any given component places along a continuum from poor to excellent. The provision would also establish that the department will not automatically award points for cursory, mechanical attempts to amass as many criteria as possible solely in an effort to increase the numerical score of a project. As previously discussed, the department believes that the quality of projects is more important than the number of projects or simply the number of persons affected by a project. The goal of the local park and outreach grants programs is to create meaningful, lifelong participatory relationships between the public and the mission of the agency, in the process enriching and informing the lives of citizens and

communities. The department has noticed that the primary motivation of some applicants is simply to receive funds, as opposed to a bona fide intent to work cooperatively with the department to advance shared goals and priorities. In such instances, the application is merely a pretense, an exercise engaged in to obtain funds, irrespective of the goals of the program. The department seeks to encourage all entities with an authentic and genuine desire for service but will not fund project applications that in the view of the department are not in good faith. To that end, the scoring system will not simply award points for "checking a box" but for earnest attempts to provide quality recreational opportunity.

Proposed subsection (f) would stipulate that applications be scored according to the provisions of the subchapter and ranked in relation to the scores of other proposals. Because the nature of the availability of funds is such that not every eligible project can be funded, the department uses a competitive system to determine the ultimate funding of approved projects; therefore, projects are scored and then ranked in comparison to each other, with funding going to the highest scoring projects first, and then in descending order until all available funds are expended.

Proposed new subsection (g) would require funded projects to be pursued by the sponsor in accordance with the timelines established by the department for each project, unless the department determines that circumstances beyond the sponsor's control warrant timeline extension, and would stipulate that failure to meet timelines or timeline extensions constitutes grounds for the department to initiate cancellation of the affected project. The department has determined that it is necessary to explicitly state in rule that sponsors are expected to abide by the conditions of grant agreements, which establish timelines for the accomplishment of grant-funded activities, and that such agreements are subject to cancellation in the event that a sponsor is clearly unable to discharge its obligations under a grant agreement.

Proposed new subsection (h) would provide that grant awards are dependent on the availability of grant funds. It is intuitively obvious that the department cannot fund projects if there are insufficient funds to do so, but in any case the department believes it is necessary to state the fact by rule.

Proposed new §61.134, concerning Local Park Grants, would replace current §61.133, concerning Grants for Outdoor Recreation Programs; §61.134, concerning Grants for Indoor Recreation Programs; §61.138, concerning Outdoor Urban Park Grants Program; and §61.139, concerning Indoor Urban Park Grants Program. The current rules governing these grant programs are complex and confusing, consisting of multi-leveled parameters that distract from the central ideas driving the application and review process. Additionally, the department has determined that the distinctions nominally represented by the rules are misleading, because each rule imposes essentially the same scoring criteria and all four grant programs are really just one grant program with four subcategories of application. The department believes that the scoring criteria should simply address the fundamental components of a project proposal and stress the importance of the qualitative analysis used by the department to evaluate and score project applications, while the department's grants manual can be used to develop a more granular and nuanced understanding of both how to prepare and evaluate a given grant application.

Proposed new subsection (a) would establish the purpose for which the section exists, which is to provide a mechanism for determining the suitability of project proposals for funding the ac-

quisition of land and the development of public indoor and outdoor recreation facilities. The new subsection is necessary to clearly define the ambit of the proposed new section.

Proposed new subsection (b) would set forth the scoring criteria used by the department to evaluate local park grant project proposals, describing each component criterion and establishing a potential point award range for each. In general, the point range for each category reflects the relative importance of that category within the overall scheme of criteria.

Proposed new subsection (b)(1) would award up to 10 points for the category of Community Need, subdivided into an automatic five-point award for a current Recreation and Open Space Comprehensive Plan or other comparable plan on file with the department and a 0-5 point award for the quality of the application's description of how the applicant determined the need for the project. This includes how need influenced the site design, a description of the public input process and the applicant's decisions in response to public comment, and a description of other needs assessments impacting the applicant's decisions. The department has determined that because the recreation needs of Texas communities are broad, nuanced, and diverse, the mission of the department and the program is best served by encouraging communities to engage in long-term parks planning by inventorying existing resources and using public input to evaluate recreation needs. Parks and Wildlife Code, §24.007 and §24.057, condition the award of grants on the existence of present or future needs and a statement from a planning authority that a proposed project is consistent with local needs; therefore, the needs assessment component is intended to specifically identify an applicant's needs, verify the processes used to engage the public in arriving at that determination, and illustrate how the proposed project addresses the need. The point range is intended to allow the department to award points based on the thoroughness of the applicant's efforts.

Proposed new subsection (b)(2) would award 0-10 points for the applicant's ability to identify specific, well-defined goals and objectives that both clearly explain the local priorities to be addressed by the proposed project and illustrate how the proposed project, if funded, will support the department's likely Land and Water Resources Conservation and Recreation Plan, Texas Outdoor Recreation Plan, and Local Park Grant program objectives, as applicable. The department's Land and Water Resources Conservation and Recreation Plan is the master planning document that guides all agency decisions regarding the best and highest use of state resources to provide land and water conservation and related recreational activities. The department believes that grant applications consistent with the department's mission and goals should receive preference. Similarly, the Texas Outdoor Recreation Plan is a state planning document required by federal law as a condition of receiving federal funds that are passed through the department for local park and recreation projects. It is therefore necessary for grant applications to be consistent with the priorities established in that document. Additionally, preference will be given to proposed projects that would provide direct recreational opportunity for citizens, which the department believes is the most efficacious use of grant funds.

Proposed new subsection (b)(3) would award 0-5 points for the quality of the applicant's timeline and budget for a proposed project. It is intuitively obvious that a thoughtful, realistic budget that correlates to a timeline for project completion is a good predictor of the likelihood of project success, as well as an in-

dicator that a prospective project will not place excessive demands on administrative personnel. Budgets that reflect realistic understanding and expectations (based on the department's experience with similar projects) are far more likely to succeed and far less likely to require time-consuming amendments. The department understands that expenditures during project development and implementation are likely to diverge from application budgets; however, the more realistic a budget is, the better able the department is to evaluate the true competitiveness of the prospective project and the more likely it is that the project, if funded, will succeed.

Proposed new subsection (b)(4) would allow 0-10 points for the quality and thoroughness of a proposed project's site design. The department believes that a well-considered site design is crucial for assisting the department in understanding a project and a good indicator of the overall quality and effectiveness of the project. Vague plans that do not enable the department to envision the unity of a project's physical manifestation make it difficult to assess the fullness of the project's impact. Therefore, the proposed new rule would reward applications that provide a thorough accounting of the basic physical layout of the proposed project, identify significant natural or cultural features, and provide evidence of emphasis on recreation. The proposed new provision also would award up to five points for the extent to which the project maximizes the use of funds, determined by dividing the direct acquisition, recreational, and conservation costs by the total construction costs and multiplying the result by five. This formula was derived as a result of consultations with the regulated community in an effort to determine an appropriate method for creating a useful coefficient for determining funds maximization.

Proposed new subsection (b)(5) would award 0-5 points for organizational capacity. Organizational capacity is the applicant's ability to responsibly implement, manage, and maintain the project once funding has been acquired. The department believes it is irresponsible to fund projects that are beyond the applicant's ability to bring to fruition and/or operate moving forward. Therefore, the proposed new provision would require applicants to prove or offer reasonable assurance that the necessary resources for project completion and continuing success are in place.

Proposed new subsection (b)(6) would award 0-10 points for past performance. The department believes that an applicant with a history of competent performance on previous grants represents a lower risk of failure than an applicant with a history of problematic performance. Therefore, up to ten points could be awarded to an applicant that either is in full compliance with previous grant agreements or can offer reasonable assurances that existing deficiencies with prior grant performance will be remedied. First-time applicants would receive an automatic award of ten points, since there is no history of unresolved compliance issues. Applicants with existing compliance issues would be awarded up to ten points in accordance with their past performance. The department wishes to encourage participation by all legitimate entities and believes that a ten-point award for first-time participants will provide an incentive for potential applicants for grants. Similarly, the department believes that an entity with a history of unresolved compliance issues should be given an incentive to develop and implement appropriate corrective measures.

Proposed new subsection (b)(7) would award from 0-5 points for projects that improve the geographic distribution of recre-

ational opportunities within the applicant's service area. Five points would automatically be awarded to a project providing the first public park in a jurisdiction. There are still many communities in Texas without public park or recreation facilities. The department believes that such communities deserve preference in scoring. For proposals that do not meet criteria for a first park, up to five points could be awarded based on the project's ability to fill a critical recreation gap and to provide for safe access to the park. Of these five points, up to three could be awarded to projects that fill a critical recreation need. There are many communities in Texas with identified gaps in recreational opportunity that should receive points. Up to two points could be awarded for projects that are safely accessible to the public via multiple modes of transportation. The department believes that accessibility is a key component of park and recreational opportunity enjoyment; therefore, projects that show accessibility by multiple means of transportation are more desirable than projects that are difficult for the public to access.

Proposed new subsection (b)(8) would award 0-10 points to projects that improve access to parks and outreach facilities for underserved populations (defined by Parks and Wildlife Code, §24.002, as "any group of people that is low income, inner city, or rural as determined by the last census, or minority, physically or mentally challenged, youth at risk, youth, or female"). Parks and Wildlife Code, §24.005 requires the department to make grants of money to "a political subdivision or nonprofit corporation for recreation, conservation, or education programs for underserved populations to encourage and implement increased access to and use of parks, recreational areas, cultural resource sites or areas, and open space areas by underserved populations." Local parks are often the key or gateway to a love of outdoor recreation and the department believes it is important to ensure that all segments of the population are provided with the opportunity to experience first-hand the valuable benefits of outdoor recreation. The point total would be determined by multiplying the sum of percentage of population qualifying as low-income and percentage of population qualifying as minority by 5. This formula was derived as a result of consultations with the regulated community in an effort to determine an appropriate method for creating a useful coefficient for determining a project's involvement of underserved populations.

Proposed new subsection (b)(9) would award 0-5 points for projects that provide opportunities for physically/mentally challenged citizens that exceed federal and state required accessibility standards. As discussed with respect to underserved populations, the department believes that the benefits of outdoor recreation should be available to all citizens, and that projects eliminating barriers to participation by citizens with physical and mental challenges should receive preference. Therefore, the proposed new provision would allow up to five points to be awarded to projects based on the extent to which meaningful accessibility to such citizens is provided.

Proposed new subsection (b)(10) would award 0-10 points to projects that protect or conserve sensitive ecosystems and natural and/or cultural resources. The department's mission is to manage and conserve natural and cultural resources; thus, it is axiomatic that proposed projects containing components to protect or restore sensitive ecosystems or incorporate elements that cultivate support for and awareness of natural and/or cultural resources should receive preference. The department also intends for the criterion to encourage local communities to identify and include sensitive ecosystems and/or cultural resources in their

application and to incorporate them if possible into the site design of prospective projects.

Proposed new subsection (b)(11) would award 0-10 points for sustainable park design. The department believes that sustainability is an important concept, as it improves efficiency, lowers costs, and reduces negative impacts to the environment. Therefore, the proposed provision would allow the award of points based on the extent to which a prospective project incorporates sustainable design and operation features.

Proposed new subsection (b)(12) would award 0-5 points for the quality of and degree to which a proposed project involves coordination with subject matter experts. The department concludes that successful projects contemplate the need for subject matter experts where necessary and effective, such as permitting processes, consultants, professional services, and associated factors that impact the development and operation of a project. Proposed projects that reflect engagement with this criterion are likely to require less administrative assistance from the department and are therefore desirable.

Proposed new subsection (b)(13) would award 0-5 points for the extent to which the proposed project involves the contribution of resources from sources other than the applicant to serve as all or part of the applicant's matching share of funds. The criterion is subdivided into two subcategories, either documented guarantees of support from external entities (up to three points) or evidence of community engagement and mobilization greater than the required match (up to two points). The department does not wish to impede communities from obtaining matching funds in any way possible. Therefore, the proposed provision would allow the department to recognize non-traditional or unorthodox methods of raising matching funds in addition to the traditional methods.

Proposed new §61.135, concerning Grants for Community Outreach Outdoor Programs (CO-OP), would set forth the scoring criteria for CO-OP grants.

Proposed new subsection (a) would establish the purpose for which the section exists, which is to provide a mechanism for determining the suitability of project proposals to award funding to tax-exempt organizations for programming that engages underserved populations in outdoor recreation, conservation, and environmental education activities that support the department's mission. The department believes that because the financial resources made available by the legislature in any given biennium are almost always insufficient to fund every request for assistance, it is therefore important to ensure that the greatest number of projects with achievable maximal beneficial outcomes be approved; therefore, there must be some objective method of comparing and ranking applications for grants in order to determine those projects most deserving of funding.

Proposed new subsection (b) would set forth the scoring criteria used by the department to evaluate CO-OP grant project proposals, describing each component criterion and establishing a potential point award range for each. In general, the point range for each category reflects the relative importance of that category within the overall scheme of criteria.

Proposed new subsection (b)(1) would allow the department to award 0-15 points on the basis of the extent to which a project proposal aligns with the mission priorities of the CO-OP program, subdivided into a range of 0-8 points awarded for the department's assessment of the proposal's quality and efficacy relative to program priorities, and a 0-7 point award for the department's

assessment of the quality of the project's involvement of participants in sustained direct connections to the department, including department sites, programs, and personnel. Based on input from the regulated community and staff review, the department has determined that the current scoring criteria are a measure of the quantitative relationships with department personnel, programs and sites for each application. The proposed new criteria would place greater weight on the qualitative aspect of these relationships, one dimension of which is sustained contact with department programs, sites, and personnel. As a state agency designated for the conservation and management of outdoor resources, the department considers that it is uniquely positioned to provide optimal benefits to the regulated community and the constituents for whom they advocate.

Proposed new subsection (b)(2) would allow the award of 0-30 points to projects that improve access to parks and outreach facilities for underserved populations (defined by Parks and Wildlife Code, §24.002, as "any group of people that is low income, inner city, or rural as determined by the last census, or minority, physically or mentally challenged, youth at risk, youth, or female"). Parks and Wildlife Code, §24.005, requires the department to make grants of money to "a political subdivision or nonprofit corporation for recreation, conservation, or education programs for underserved populations to encourage and implement increased access to and use of parks, recreational areas, cultural resource sites or areas, and open space areas by underserved populations." Local parks are often the key or gateway to a love of outdoor recreation and the department believes it is important to ensure that all segments of the population are provided with the opportunity to experience first-hand the valuable benefits of outdoor recreation. The proposed criterion would be subdivided into subcategories for award of points. The first would be the extent to which the proposed project includes target populations (0-6 points per underserved segment of the population served, up to a maximum of 24 points). The department believes that the majority of the points potential for this criterion should be awarded for the diversity of underserved population served by the proposed project. For projects that have a clearly articulated plan of action that convinces the department that the project will reach the target demographic, there would be a 0-3 point award, and evidence of an effective tracking and reporting function to allow for assessment would also be awarded 0-3 points. The department believes that it is important that a proposed project be realistic and measurable.

Proposed new subsection (b)(3) would award 0-30 points based on the extent to which the department, based on the application, is able to gauge the probable impact of the proposed project. The point awards for this criterion would be subdivided into five subcategories: a project narrative (0-5 points), the potential for the development of life-long behaviors (0-5 points), the likelihood of professional development (0-5 points), activities that utilize a hands-on, active engagement approach to skill development (0-5 points), and the quality of tangible environmental benefits resulting from the project (0-10 points). The department, based on many years of experience managing grant programs, believes that a project narrative illustrating goals that are feasible, fully developed, specific, measurable, attainable, and relevant is a predictor of likely success. The department also believes that grant programs with the potential to inculcate in participants lifelong behaviors that create environmentally responsible stewards of natural resources are very important, as those behaviors are key in developing future generations of environmentally responsible citizens. Similarly, the department wishes to encour-

age in participants a desire to make outdoor recreation a career path, which is beneficial to future generations for obvious reasons. The department also considers that direct, hands-on activities provide the most direct method for program participants to become engaged in subject matter, and finally, that the extent to which a project will result in tangible environmental benefits is worthy of preference.

Proposed new subsection (b)(4) would award 0-20 points for the quality of the applicant's timeline and budget for a proposed project. It is important that an application contain a thoughtful, realistic budget that correlates to a timeline for project completion. Budgets that reflect realistic understanding and expectations (based on the department's experience with similar projects) are far more likely to succeed. The more realistic a budget is, the better able the department is to evaluate the true competitiveness of the prospective project and the more likely it is that the project, if funded, will succeed.

Proposed new subsection (b)(5) would award 0-5 points for organizational capacity. Organizational capacity is the applicant's ability to responsibly implement, manage, and maintain the project once funding has been acquired. The department believes it is irresponsible to fund projects that are beyond the applicant's ability to bring to fruition and/or operate moving forward. Therefore, the proposed new provision would require applicants to prove or offer reasonable assurance that the necessary resources for project completion and continuing success are in place.

Proposed new subsection (b)(6) would provide for a deduction of 0-20 points for past performance. The department believes that an applicant with a history of competent performance on previous grants represents a lower risk of failure than an applicant with a history of problematic performance. Similarly, the department believes that an entity with a history of unresolved compliance issues should be provided an incentive for developing and implementing appropriate corrective measures on previous grants.

Proposed new §61.136, concerning Small Community Grant Program, would set forth the criteria for small community grants.

Proposed new subsection (a) would establish the purpose for which the section exists, which is to provide a mechanism for determining the suitability of project proposals for funding the acquisition of land and the development of public outdoor recreation facilities by small communities.

Proposed new subsection (b) would set forth the scoring criteria used by the department to evaluate project proposals.

Proposed new subsection (b)(1) would award 0-10 points for the extent to which the project proposal identifies specific, well-defined goals and objectives that both clearly explain the local priorities to be addressed by the proposed project and illustrate how the proposed project, if funded, will support the department's Land and Water Resources Conservation and Recreation Plan, Texas Outdoor Recreation Plan, and Local Park Grant program objectives, as applicable.

Proposed new subsection (b)(2) would allow the award of 0-10 points for the category of Community Need. The criterion would allow a 0-5 point award for the quality of the application's description of how the applicant determined the need for the project, the influence of that need on the site design, the public input process and the applicant's decisions in response to public comment, and a description of other needs assessments impacting the appli-



cant's decisions. The department has determined that because the recreation needs of Texas communities are broad, nuanced, and diverse, the mission of the department and the program is best served by encouraging communities to engage in long-term parks planning by inventorying existing resources and using public input to evaluate recreation needs. Parks and Wildlife Code, §24.007 and §24.057, condition the award of grants on the existence of present or future needs and a statement from a planning authority that a proposed project is consistent with local needs; therefore, the needs assessment component is intended to specifically identify an applicant's needs, verify the processes used to engage the public in arriving at that determination, and illustrate how the proposed project addresses the need. The point range is intended to allow the department to award points based on the thoroughness of the applicant's efforts.

Proposed new subsection (b)(3) would award 0-5 points for the quality of the applicant's timeline and budget for a proposed project. It is intuitively obvious that a thoughtful, realistic budget that correlates to a timeline for project completion is a good predictor of the likelihood of project success, as well as an indicator that a prospective project will not place excessive demands on administrative personnel. Budgets that reflect realistic understanding and expectations (based on the department's experience with similar projects) are far more likely to succeed and far less likely to require time-consuming amendments. The department understands that expenditures during project development and implementation are likely to diverge from application budgets; however, the more realistic a budget is, the better able the department is to evaluate the true competitiveness of the prospective project and the more likely it is that the project, if funded, will succeed.

Proposed new subsection (b)(4) would allow 0-10 points for the quality and thoroughness of a proposed project's site design. The department believes that a well-considered site design is crucial for assisting the department in understanding a project and a good indicator of the overall quality and effectiveness of the project. Vague plans that do not enable the department to envision the unity of a project's physical manifestation make it difficult to assess the fullness of the project's impact. Therefore, the proposed new rule would reward applications that provide a thorough accounting of the basic physical layout of the proposed project, identify significant natural or cultural features, and provide evidence of emphasis on recreation. The proposed new provision also would award up to five points for the extent to which the project maximizes the use of funds, determined by dividing the direct acquisition, recreational, and conservation costs by the total construction costs and multiplying the result by five. This formula was derived as a result of consultations with the regulated community in an effort to determine an appropriate method for creating a useful coefficient for determining funds maximization.

Proposed new subsection (b)(5) would award 0-5 points for organizational capacity. Organizational capacity is the applicant's ability to responsibly implement, manage, and maintain the project once funding has been acquired. The department believes it is irresponsible to fund projects that are beyond the applicant's ability to bring to fruition and/or operate moving forward. Therefore, the proposed new provision would require applicants to prove or offer reasonable assurance that the necessary resources for project completion and continuing success are in place.

Proposed new subsection (b)(6) would award 0-5 points for projects that improve the geographic distribution of recreational opportunities the applicant's service area. Five points would automatically be awarded to a project providing the first public park. There are still many communities in Texas without public park or recreation facilities. The department believes that such communities deserve preference in scoring. For proposals that do not meet criteria for a first park, up to five points could be awarded based on the project's ability to fill a critical recreation gap and to provide for safe access to the park. Of these five points, up to three points could be awarded to projects that fill a critical recreation need. There are many communities in Texas with existing parks, but with identified gaps in recreational opportunity and access challenges that should receive points. Up to two points could be awarded for projects that are safely accessible to the public via multiple modes of transportation. The department believes that accessibility is a key component of park and recreational opportunity enjoyment; therefore, projects that show accessibility by multiple means of transportation are more desirable than projects that are difficult for the public to access.

Proposed new subsection (b)(7) would award 0-10 points to projects that improve access to parks and outreach facilities for underserved populations (defined by Parks and Wildlife Code, §24.002, as "any group of people that is low income, inner city, or rural as determined by the last census, or minority, physically or mentally challenged, youth at risk, youth, or female"). Parks and Wildlife Code, §24.005 requires the department to make grants of money to "a political subdivision or nonprofit corporation for recreation, conservation, or education programs for underserved populations to encourage and implement increased access to and use of parks, recreational areas, cultural resource sites or areas, and open space areas by underserved populations." Local parks are often the key or gateway to a love of outdoor recreation and the department believes it is important to ensure that all segments of the population are provided with the opportunity to experience first-hand the valuable benefits of outdoor recreation. The point total would be determined by multiplying the sum of percentage of population qualifying as low-income and percentage of population qualifying as minority by 5. This formula was derived as a result of consultations with the regulated community in an effort to determine an appropriate method for creating a useful coefficient for determining a project's involvement of underserved populations.

Proposed new subsection (b)(8) would award 0-5 points for projects that provide opportunities for physically/mentally challenged citizens that exceed federal and state required accessibility standards. As discussed with respect to underserved populations, the department believes that the benefits of outdoor recreation should be available to all citizens, and that projects eliminating barriers to participation by citizens with physical and mental challenges should receive preference. Therefore, the proposed new provision would allow up to five points to be awarded to projects based on the extent to which meaningful accessibility to such citizens is provided.

Proposed new subsection (b)(9) would award 0-10 points to projects that protect or conserve sensitive ecosystems and natural and/or cultural resources. The department's mission is to manage and conserve natural and cultural resources; thus, it is axiomatic that proposed projects containing components to protect or restore sensitive ecosystems or incorporate elements that cultivate support for and awareness of natural and/or cultural resources should receive preference. The department

also intends for the criterion to encourage local communities to identify and include sensitive ecosystems and/or cultural resources in their application and to incorporate them if possible into the site design of prospective projects.

Proposed new subsection (b)(10) would award 0-10 points for sustainable park design. The department believes that sustainability is an important concept, as it improves efficiency, lowers costs, and reduces negative impacts to the environment. Therefore, the proposed provision would allow the award of points based on the extent to which a prospective project incorporates sustainable design and operation features.

Proposed new subsection (b)(11) would award 0-5 points for the quality of and degree to which a proposed project involves coordination with subject matter experts. The department concludes that successful projects contemplate the need for subject matter experts where necessary and effective, such as permitting processes, consultants, professional services, and associated factors that impact the development and operation of a project. Proposed projects that reflect engagement with this criterion are likely to require less administrative assistance from the department and are therefore desirable.

Proposed new subsection (b)(12) would award 0-5 points for the extent to which the proposed project involves the contribution of resources from sources other than the applicant to serve as all or part of the applicant's matching share of funds. The criterion is subdivided into two subcategories, either documented guarantees of support from external entities (up to three points) or evidence of community engagement and mobilization greater than the required match (up to two points). The department does not wish to impede communities from obtaining matching funds in any way possible. Therefore, the proposed provision would allow the department to recognize non-traditional or unorthodox methods of raising matching funds in addition to the traditional methods.

Proposed new subsection (b)(13) would award 0-10 points for past performance. The department believes that an applicant with a history of competent performance on previous grants represents a lower risk of failure than an applicant with a history of problematic performance. Therefore, up to ten points could be awarded to an applicant that either is in full compliance with previous grant agreements or can offer reasonable assurances that existing deficiencies with prior grant performance will be remedied. Applicants with existing compliance issues could be awarded up to ten points in accordance with their past performance. The department wishes to encourage participation by all legitimate entities and believes that a ten-point award for first-time participants will provide an incentive for potential applicants for grants. Similarly, the department believes that an entity with a history of unresolved compliance issues should be provided an incentive for developing and implementing appropriate corrective measures on previous grants.

Dana Lagarde, Director of Recreation Grants, has determined that for the first five years that the repeals, amendment, and new sections as proposed are in effect, there will be no additional fiscal implications to state or local governments as a result of enforcing or administering the rules as proposed.

Ms. Lagarde also has determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be administrative efficiency in the operation and administration of the local parks and outreach grants programs operated by the

agency, which ultimately results in the provision of high-quality public recreational opportunity.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and microbusinesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to determine if any further analysis is required. The department considers "direct adverse economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rules do not directly affect small businesses, micro-businesses, or rural communities. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

There also will be no adverse economic effect on persons required to comply with the rules as proposed.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

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

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

The department has determined that because the rule as proposed does not impose a cost on regulated persons, it is not necessary to repeal or amend any existing rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation, but replace existing regulations; not expand or limit an existing regulation, but will repeal and replace existing regulations; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rules may be submitted via the department website at [www.tpwd.texas.gov](http://www.tpwd.texas.gov) or by email to Dana Lagarde at (512) 389-8175, e-mail: [dana.lagarde@tpwd.texas.gov](mailto:dana.lagarde@tpwd.texas.gov).

## SUBCHAPTER B. PROCEDURAL GUIDE FOR LAND AND WATER CONSERVATION FUND PROGRAM

31 TAC §61.81

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

The proposed repeal affects Parks and Wildlife Code, Chapter 24.

*§61.81. Application Procedures.*

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 July 1, 2019.

TRD-201902064

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: August 11, 2019

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



## SUBCHAPTER D. GUIDELINES FOR ADMINISTRATION OF LOCAL LAND AND WATER CONSERVATION FUND PROJECTS

### 31 TAC §61.121

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

The proposed repeal affects Parks and Wildlife Code, Chapter 24.

*§61.121. Policy.*

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 July 1, 2019.

TRD-201902065

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: August 11, 2019

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



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

### 31 TAC §§61.131, 61.133 - 61.139

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

The proposed repeals affect Parks and Wildlife Code, Chapter 24.

*§61.131. Policy.*

*§61.133. Grants for Outdoor Recreation Programs.*

*§61.134. Grants for Indoor Recreation Programs.*

*§61.135. Grants for Community Outreach Outdoor Programs.*

*§61.136. Small Community Grant Program.*

*§61.137. Grants for Regional Parks Grant Programs.*

*§61.138. Outdoor Urban Park Grants Program.*

*§61.139. Indoor Urban Park Grants Program.*

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 July 1, 2019.

TRD-201902066

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: August 11, 2019

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



### 31 TAC §§61.132 - 61.136

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

The proposed amendment and new rules affect Parks and Wildlife Code, Chapter 24.

*§61.132. Grants Manual and Federal Procedural Guide [Texas Local Park Grants Programs Manual].*

(a) The Recreation Grants [Texas Local Park Grants Programs] Manual contains the standards and requirements for the application, evaluation and award of all grants made under this subchapter and [-]

[(b)] [The Texas Local Park Grants Programs Manual] is adopted by reference [and may be obtained by contacting the Texas Parks and Wildlife Department at 4200 Smith School Road, Austin, Texas 78744; (512) 389-8224; or at rec-grants@tpwd.state.tx.us].

(b) The department is the state agency designated to cooperate with the federal government in the administration of the provisions of the Land and Water Conservation Fund Act of 1965. The federal procedural guide is designed to assist local governments in making application for federal funds, and describes the rules and regulations governing the disbursement of such funds for the Land and Water Conservation Fund Program and is adopted by reference.

(c) Copies of the Recreation Grants Manual and the federal procedural guide are available at the Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 and on the department's website.

*§61.133. General Provisions.*

(a) It is the policy of the Texas Parks and Wildlife Commission that the department award and administer projects under this subchapter in accord with the provisions of this subchapter, with the intent to provide the greatest number of high-quality outdoor and indoor recreational opportunities for Texas, consistent with Parks and Wildlife Code, Chapter 24, and the priorities and policies articulated in the department's Land and Water Resources Conservation and Recreation Plan and the Texas Outdoor Recreation Plan (required for federal funding), as applicable.

(b) The department will not accept or evaluate a project proposal that is not submitted to the department via the department's on-line application process.

(c) The department will not score an application that is not administratively complete. An administratively complete application is an application that is in substantive compliance with the requirements of this subchapter, as determined by the department.

(d) If an applicant is in compliance with the conditions of existing or previous grant agreements with the department, the application will be scored and considered for funding. If the applicant is not in compliance with existing or previous grant agreements, the department may request the applicant to submit an action plan for addressing deficiencies or problematic issues. If the applicant is unable to provide, to the department's satisfaction, evidence that the deficiencies or problematic issues in question can or will be resolved, the department may choose not to score the application or consider it further.

(e) The department will evaluate prospective projects on a qualitative basis, awarding points within the specified range (from 0 (no points) to the maximum allowable for each criterion) according to the department's determination of how the applicant's treatment of any given component places along a continuum from poor to excellent. The department will not automatically award points for cursory, mechanical attempts to address as many criteria as possible in order to accrue points.

(f) Applications for grants under this subchapter shall be scored according to the provisions of this subchapter and shall be ranked in relation to the scores of other applications under consideration.

(g) Projects funded under this subchapter shall be pursued by the sponsor in accordance with the timelines established by the department for each project, unless the department determines that circumstances beyond the sponsor's control warrant timeline extension. Failure to meet timelines or timeline extensions shall be grounds for the department to initiate cancellation of the affected project.

(h) Grant awards are dependent on the availability of grant funds.

§61.134. Local Park and Recreation Grant Program.

(a) The purpose of this section is to provide a mechanism for determining the suitability of project proposals for funding the acquisition of land and the development of public indoor and outdoor recreation facilities.

(b) Scoring Criteria.

(1) Community Need (Total Range: 0-10 points).

(A) Applicant has a current Park, Recreation, and Open Space Comprehensive Plan or other comparable plan on file with the department at the time of application. (5 points)

(B) Applicant:

(i) describes the needs-assessment process used for this project;

(ii) explains the influence of community needs on the site design;

(iii) provides a detailed description of the public input process (including the timing of public comment opportunity, methods for obtaining and analyzing public comment, and the results/impacts of public comment); or

(iv) identifies other methods of needs assessment such as staff recommendations or threat of a lost opportunity. (0-5 points)

(2) Goals and Objectives (Total Range: 0-10 points). The project proposal identifies specific, well-defined goals and objectives

that both clearly explain the local priorities to be addressed by the proposed project and illustrate how the proposed project, if funded, will support the department's Land and Water Resources Conservation and Recreation Plan, Texas Outdoor Recreation Plan, and Local Park Grant program objectives, as applicable. Proposed projects that provide direct recreational opportunities will receive priority.

(3) Timeline and Cost (Total Range: 0-5 points). The project proposal includes a detailed timeline and budget that identify, on a step-by-step basis, the waypoints along the continuum of the project's progress from start to finish and all expected project costs associated with the proposed project, correlated chronologically to the timeline. The department will evaluate proposed projects with respect to this criterion based on the feasibility of the project in the context of the department's understanding of similar projects and the consistency of the submitted budget with that understanding, particularly with respect to acquisition and/or construction costs.

(4) Site Design (Total Range: 0-10 points). An application must include a site plan/boundary map that is clear, easy-to-read, and contains all information required by and identified in the funding application. Acquisition-only projects must describe plans to protect natural and cultural resources and include plans depicting anticipated future development.

(A) Site design takes into consideration the character and special features (including features of natural, cultural, or historical importance) of the site and clearly identifies street names, total acreage, true north arrow, utilities, easements, special features, boundaries of existing parkland, and boundaries of acquisition tracts. Site maps correlate with the project components described in the application and outlined in the itemized budget. (0-5 points)

(B) Project maximizes the use of funds for acquisition, recreation and conservation opportunities, determined by dividing the direct acquisition, recreational, and conservation costs by the total construction costs and multiplying the result by 5. (0-5 points)

(5) Organizational capacity (Total Range: 0-5 points).

(A) The applicant demonstrates to the department's satisfaction that qualified staff and resources are in place to manage the grant from inception to completion, or, alternatively, evidence that the applicant is partnered with an entity to provide staff and/or resources necessary to manage the grant from inception to completion.

(B) The applicant demonstrates to the department's satisfaction that resources are in place to properly operate and maintain facilities supported by the grant following completion, or, alternatively, a feasible plan and timeline for obtaining resources to properly operate and maintain the facilities supported by the grant following completion.

(6) Past Performance (Total Range: 0-10 points).

(A) Applicant is a first-time applicant. (10 points); or

(B) Applicant is in full compliance with the conditions of previously-funded and active recreation grants awarded by the department under this subchapter. (10 points); or

(C) Applicant is not in compliance with the conditions of previously-funded and active recreation grants awarded by the department under this subchapter but provides a credible and feasible action plan and timeline for achieving compliance. (0-10 points).

(7) Geographic Distribution (Total Range: 0-5 points). The project will improve the geographic distribution of park and recreation lands and facilities in the project's service area or within the applicant's jurisdiction.

(A) Project provides the first public park in the applicant's jurisdiction or intended service area (5 points); or

(B) Project fills a critical parks and recreation gap as identified through research, public input, or other means. (0-3 points).

(C) Project is safely accessible to the public via multiple modes of transportation (e.g., walking, biking, public transportation system). (0-2 points).

(8) Under-served Populations (Total Range: 0-10 points). The proposed project increases opportunity and improves access to parks and recreation facilities for under-served populations.

(A) Project improves opportunities for low-income citizens, defined as the percent of households making less than \$35,000 per year, based on economic and demographic data for the service area from the most recent federal census data; and/or

(B) Project improves opportunities for ethnic minority citizens, defined as the percent of a population that does not select "white alone" on the U.S. Census, based on economic and demographic data for the service area from the most recent census data; determined by multiplying the sum of percentage of population qualifying as low-income and percentage of population qualifying as minority by 5.

(9) Accessibility (Total Range: 0-5 points). The proposed project provides park and recreation opportunities for physically/mentally challenged citizens that exceed federal and state required accessibility standards.

(10) Conservation (Total Range: 0-10 points). The proposed project actively protects or restores sensitive ecosystems and incorporates elements that cultivate support for and awareness of natural and/or cultural resources.

(11) Sustainable Park Design (Total Range: 0-10 points). The applicant demonstrates that the proposed project uses or incorporates sustainable design features and practices.

(12) Coordination with Subject Matter Experts (Total Range: 0-5 points).

(A) The applicant demonstrates meaningful input to the proposed project by subject matter experts in acquisition, planning, design, natural resource protection, and construction.

(B) The proposed project reflects consideration and inclusion of best management practices in all phases of project development.

(13) Outside Partnerships (Total Range: 0-5 points). The extent to which the proposed project involves the contribution of resources from sources other than the applicant to serve as all or part of the applicant's matching share of funds.

(A) Current, signed letters of commitment providing detailed descriptions of the nature and value of contributions, including methodologies employed to determine those values. Points shall be awarded on a percentage basis, determined by dividing the total outside contribution value by the total match and multiplying the result by 3. (0-3 points); and/or

(B) Applicant demonstrates and documents external support greater than the required match, including overmatch and/or community mobilization. (0-2 points)

§65.135. Grants for Community Outreach Outdoor Programs (CO-OP).

(a) Program purpose. The purpose of this section is to provide a mechanism for determining the suitability of project proposals to award funding to tax-exempt organizations for programming that

engages under-served populations in outdoor recreation, conservation, and environmental education activities that support the department's mission.

(b) Scoring Criteria:

(1) CO-OP Priorities (Total Range: 0-15 points).

(A) The quality and efficacy of proposed project outcomes relative to CO-OP priorities. (0-8 point range)

(B) The quality of the proposed project's involvement of participants in sustained direct connections to the department, including department sites, programs, and personnel. (0-7 point range)

(2) Under-served Populations (Total Range: 0-30 points).

(A) The extent to which the proposed project includes target populations, including female, ethnic minority, low-income, and physically or mentally challenged populations. (0-6 point range per target population for a maximum of 24 points).

(B) A clearly articulated plan demonstrating a reasonable probability that the proposed project will reach the target demographic. (0-3 point range)

(C) A feasible plan to track and report demographic information. (0-3 point range)

(3) Expected Impact (Total Range: 0-30 points). The expected project results in terms of participant and environmental impact, including:

(A) A project narrative illustrating goals that are feasible, fully developed, specific, measurable, attainable, relevant, and present a high potential for success. (0-5 point range)

(B) The extent to which the project will develop life-long behaviors consistent with the program mission, with preference for projects that engage participants in multiple experiences over an extended period of time. (0-5 point range)

(C) The extent to which the proposed project will contribute to the development of successive generations of natural resource and outdoor recreation leaders or professionals. (0-5 point range)

(D) Activities utilize a hands-on, active engagement approach to skill development. (0-5 point range)

(E) The quality of the tangible environmental benefits resulting from the activities conducted by participants. (0-10 point range)

(4) Timeline and Budget (Total Range: 0-20 points).

(A) The project has an acceptable timeline including a detailed timeline that accounts for all project phases, is achievable, and correlates with the project narrative. (0-8 point range)

(B) The identified budget items are allowable under the administrative guidelines of §61.132 of this title (relating to Grants Manual and Federal Procedural Guide), are reasonable, and clearly support the proposed activities. (0-7 point range)

(C) The budget reflects consciousness of cost effectiveness and provides a reasonable return on investment with respect to participant impact. (0-5 point range)

(5) Organizational Capacity (Total Range: 0-5 points). The applicant demonstrates the capacity to manage and implement the grant project:

(A) The proposed project is within the scope of the applicant's mission. (0-2 point range)

(B) The applicant demonstrates to the department's satisfaction that qualified staff and resources are in place to manage the grant from inception to completion, or, alternatively, evidence that the applicant is partnered with an entity to provide staff and/or resources necessary to manage the grant from inception to completion. (0-2 point range)

(C) The organization plans to continue similar activities and will maintain grant-supported supplies and equipment after the grant period ends. (0-1 point range)

(6) Past Performance (Total Range: Deduction of 0-20 points). A scoring deduction will be imposed if the applicant is not in compliance with the conditions of previously-funded grants awarded by the department under this subchapter that were closed within two years from the current application deadline. Non-compliance includes failure to spend CO-OP grant funds, unfulfilled project elements or grant agreement requirements, unresponsiveness to department requests for information, and consistently missing, late or incomplete reports required by agreement with the department.

§61.136. Small Community Grant Program.

(a) Program purpose. The purpose of this section is to provide a mechanism for determining the suitability of project proposals for funding the acquisition of land and the development of public outdoor recreation facilities by small communities.

(b) Scoring Criteria.

(1) Goals and Objectives (Total Range: 0-10 points). The project proposal identifies specific, well-defined goals and objectives that both clearly explain the local priorities to be addressed by the proposed project and illustrate how the proposed project, if funded, will support the department's Land and Water Resources Conservation and Recreation Plan, Texas Outdoor Recreation Plan, and Local Park Grant program objectives, as applicable.

(2) Community Need (Total Range: 0-10 points). Applicant:

(A) describes the needs-assessment process used for this project;

(B) explains the influence of community needs on the site design;

(C) provides a detailed description of the public input process (including the timing of public comment opportunity, methods for obtaining and analyzing public comment, and the results/impacts of public comment) (0-5 points); and/or

(D) identifies other methods of needs assessment such as staff recommendations or threat of a lost opportunity. (0-5 points)

(3) Timeline and Cost (Total Range: 0-5 points). The project proposal includes a detailed timeline and budget that identify, on a step-by-step basis, the waypoints along the continuum of the project's progress from start to finish and all expected project costs associated with the proposed project, correlated chronologically to the timeline and site plan. The department will evaluate proposed projects with respect to this criterion based on the feasibility of the project in the context of the department's understanding of similar projects and the consistency of the submitted budget with that understanding, particularly with respect to acquisition and/or construction costs.

(4) Site Design (Total Range: 0-10 points). An application must include a site plan/boundary map that is clear, easy-to-read, and contains all information required by and identified in the funding application. Acquisition-only projects must include plans depicting anticipated future development.

(A) Site design takes into consideration the character and special features (including features of natural, cultural, or historical importance) of the site and clearly identifies street names, total acreage, true north arrow, utilities, easements, special features, boundaries of existing parkland, and boundaries of acquisition tracts. (0-5 points)

(B) Project maximizes the use of funds for acquisition, recreation and conservation opportunities, determined by dividing the direct acquisition, recreational, and conservation costs by the total construction costs and multiplying the result by 5. (0-5 points)

(5) Organizational capacity (Total Range: 0-5 points).

(A) The applicant demonstrates to the department's satisfaction that qualified staff and resources are in place to manage the grant from inception to completion, or, alternatively, evidence that the applicant is partnered with an entity to provide staff and/or resources necessary to manage the grant from inception to completion.

(B) The applicant demonstrates to the department's satisfaction that resources are in place to properly operate and maintain facilities supported by the grant following completion, or, alternatively, a feasible plan and timeline for obtaining resources to properly operate and maintain the facilities supported by the grant following completion.

(6) Geographic Distribution (Total Range: 0-5 points). The project will improve the geographic distribution of park and recreation lands and facilities in the project's service area or within the applicant's jurisdiction.

(A) Project provides the first public park in the applicant's jurisdiction or intended service area (5 points); or

(B) Project fills a critical parks and recreation gap as identified through research, public input, or other means. (0-3 points).

(C) Project is safely accessible to the public via multiple modes of transportation (e.g., walking, biking, public transportation system). (0-2 points).

(7) Under-served Populations (Total Range: 0-10 points). The proposed project increases opportunity and improves access to parks and recreation facilities for under-served populations.

(A) Project improves opportunities for low-income citizens, defined as the percent of households making less than \$35,000 per year, based on economic and demographic data for the service area from the most recent federal census data; or

(B) Project improves opportunities for ethnic minority citizens, defined as the percent of a population that does not select "white alone" on the U.S. Census, based on economic and demographic data for the service area from the most recent census data; determined by multiplying the sum of percentage of population qualifying as low-income and percentage of population qualifying as minority by 5.

(8) Accessibility (Total Range: 0-5 points). The proposed project provides park and recreation opportunities for physically/mentally challenged citizens that exceed federal and state required accessibility standards.

(9) Conservation (Total Range: 0-10 points). The proposed project actively protects or restores sensitive ecosystems and incorporates elements that cultivate support for and awareness of natural and cultural resources.

(10) Sustainable Park Design (Total Range: 0-10 points). The applicant demonstrates that the proposed project incorporates sustainable design features and practices.

(11) Coordination with Subject Matter Experts (Total Range: 0-5 points).

(A) The applicant demonstrates meaningful input to the proposed project by subject matter experts in natural and cultural resource protection, acquisition, planning, design, and construction.

(B) The proposed project reflects consideration and inclusion of best practices in all phases of project development.

(12) Outside Partnerships (Total Range: 0-5 points). The extent to which the proposed project involves the contribution of resources from sources other than the applicant to serve as all or part of the applicant's matching share of funds.

(A) Current, signed letters of commitment providing detailed descriptions of the nature and value of contributions, including methodologies employed to determine those values. Points shall be awarded on a percentage basis, determined by dividing the total outside contribution value by the total match and multiplying the result by 3. (0-3 points); and/or

(B) Applicant demonstrates and documents external support greater than the required match, including overmatch and/or community mobilization. (0-2 points).

(13) Past Performance (Total Range: 0-10 points).

(A) Applicant is a first-time applicant. (10 points); or

(B) Applicant is in full compliance with the conditions of previously-funded and active recreation grants awarded by the department under this subchapter. (10 points); or

(C) Applicant is not in compliance with the conditions of previously-funded and active recreation grants awarded by the department under this subchapter but provides credible and feasible action plan and timeline for achieving compliance. (0-10 points).

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 July 1, 2019.

TRD-201902067

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: August 11, 2019

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



## CHAPTER 65. WILDLIFE

The Texas Parks and Wildlife Department proposes amendments to §65.329, concerning Permit Application, and §65.376, concerning Possession of Live Fur-bearing Animals.

The proposed amendment to §65.329 would allow the department to refuse permit issuance or renewal to any person who has been finally convicted of, pleaded *nolo contendere* to, received deferred adjudication, or been assessed an administrative penalty for a violation of: Parks and Wildlife Code, Chapter 43, Subchapter C, E, L, R, or R-1; Parks and Wildlife Code, Chapter 67; a provision of the Parks and Wildlife Code other than Chapter 43, Subchapter C, E, L, R, or R-1, or Chapter 67 that is a Parks and Wildlife Code Class A or B misdemeanor, state jail felony, or felony; Parks and Wildlife Code, §63.002; or the Lacey Act (16 U.S.C. §§3371-3378). In addition, the proposed amend-

ment would allow the department to prevent a person from acting on behalf of or as a surrogate for a person prevented from obtaining a permit under the proposed new provision and provide for a review process for agency decisions to refuse permit issuance or renewal.

The proposed amendment to §65.376 would allow the department to refuse permit issuance or renewal to any person who has been finally convicted of, pleaded *nolo contendere* to, received deferred adjudication, or been assessed an administrative penalty for a violation of: Parks and Wildlife Code, Chapter 43, Subchapter C, E, L, R, or R-1; Parks and Wildlife Code, Chapter 71; a provision of the Parks and Wildlife Code other than Chapter 43, Subchapter C, E, L, R, or R-1, or Chapter 71 that is a Parks and Wildlife Code Class A or B misdemeanor, state jail felony, or felony; Parks and Wildlife Code, §63.002; or the Lacey Act (16 U.S.C. §§3371-3378). In addition, the proposed amendment would allow the department to prevent a person from acting on behalf of or as a surrogate for a person prevented from obtaining a permit under the proposed new provision and provide for a review process for agency decisions to refuse permit issuance or renewal.

The department has determined that the decision to issue a permit to hold protected live wildlife or to collect and possess wildlife for commercial purposes should take into account an applicant's history of violations involving the capture and possession of live animals, major violations of the Parks and Wildlife Code (Class B misdemeanors, Class A misdemeanors, and felonies), and Lacey Act violations. The department reasons that it is appropriate to deny the privilege of taking or allowing the take of wildlife resources to persons who exhibit a demonstrable disregard for the regulations governing wildlife. Similarly, it is appropriate to deny the privilege of holding wildlife to a person who has exhibited demonstrable disregard for wildlife law in general by committing more egregious (Class B misdemeanors, Class A misdemeanors, and felonies) violations of wildlife law.

The Lacey Act (16 U.S.C. §§3371-3378) is a federal law that, among other things, prohibits interstate trade in or movement of wildlife, fish, or plants taken, possessed, transported or sold in violation of state law. Lacey Act prosecutions are normally conducted by the United States Department of Justice in federal courts. Although a Lacey Act conviction or civil penalty is often predicated on a violation of state law, the federal government need only prove that a state law was violated; there is no requirement for there to be a record of conviction in a state jurisdiction. Rather than expending resources and time conducting concurrent state and federal prosecutions, the department believes that it is reasonable to use a Lacey Act conviction or civil penalty as the basis for refusing to issue or renew a permit. Because the elements of the underlying state criminal offense must be proven to establish a conviction or assessment of a civil penalty for a Lacey Act violation, the department reasons that such conviction or assessment constitutes legal proof that a violation of state law occurred and it is therefore redundant and wasteful to pursue a conviction in state jurisdiction to prove something that has already been proven in a federal court.

The denial of permit issuance or renewal as a result of an adjudicative status listed in the proposed amendment would not be automatic, but within the discretion of the department. Factors that may be considered by the department in determining whether to refuse permit issuance based on adjudicative status include, but are not limited to: the number of final convictions or administrative violations; the seriousness of the conduct on

which the final conviction or administrative violation is based; the existence, number and seriousness of offenses or administrative violations other than offenses or violations that resulted in a final conviction; the length of time between the most recent final conviction or administrative violation and the application for enrollment or renewal; whether the final conviction, administrative violation, or other offenses or violations were the result of negligence or intentional conduct; whether the final conviction or administrative violations resulted from the conduct committed or omitted by the applicant, an agent of the applicant, or both; the accuracy of information provided by the applicant; for renewal, whether the applicant agreed to any special provisions recommended by the department as conditions; and other aggravating or mitigating factors.

The proposed amendment would retain a provision, current subsection (c), allowing the department to refuse permit issuance or renewal to any person who is not in compliance with applicable recordkeeping or reporting requirements, but relocate in the body of the amendment.

The proposed amendment also would provide for department review of a decision to refuse permit issuance or renewal. The amendment would require the department to notify an applicant not later than the 10th day following a decision to refuse permit issuance or denial and to set a time and date for conducting a review of an agency decision to refuse permit issuance or renewal within 10 days of receiving a request for a review. The amendment would stipulate that a review panel consist of three department managers with appropriate expertise in the activities conducted under the permit in question. The new provision is intended to help ensure that decisions affecting permit issuance and renewal are correct.

Meredith Longoria, Nongame and Rare Species Program Leader, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the proposed amendments.

Ms. Longoria also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be a standardized method of addressing the refusal to issue or renew various wildlife permits.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), in April 2008, the Office of the Attorney General issued guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. These guidelines state that "[g]enerally, there is no need to examine the indirect effects of a proposed rule on entities outside of an agency's regulatory jurisdiction." The guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. The guidelines also list examples of the types of costs that may result in a "direct economic impact." Such costs may include costs associated with additional recordkeeping or reporting requirements; new taxes or fees; lost sales

or profits; changes in market competition; or the need to purchase or modify equipment or services.

The department has determined that the rules as proposed will not affect small businesses, micro-businesses, or rural communities, since the rules do not impose any direct economic impacts on the regulated community. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

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

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

The department has determined that because the rule as proposed does not impose a cost on regulated persons, it is not necessary to repeal or amend any existing rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; will create a new regulation (a standardized process for refusal of permit issuance or denial); not expand, limit, or repeal an existing regulation; not increase the number of individuals subject to regulation; and neither positively nor adversely affect the state's economy.

Comments on the proposed rule may be submitted to Meredith Longoria, e-mail: [meredith.longoria@tpwd.texas.gov](mailto:meredith.longoria@tpwd.texas.gov). Comments also may be submitted via the department's website at [http://www.tpwd.texas.gov/business/feedback/public\\_comment/](http://www.tpwd.texas.gov/business/feedback/public_comment/).

## SUBCHAPTER O. COMMERCIAL NONGAME PERMITS

### 31 TAC §65.329

The amendment is proposed under the authority of Parks and Wildlife Code, Chapter 67, which authorizes the department to issue permits for the taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species of fish or wildlife if necessary to properly manage that species.

The proposed amendment affects Parks and Wildlife Code, Chapter 67.

§65.329. *Permit Application.*

(a) (No change.)

{(b) The department reserves the right to refuse permit issuance to any person finally convicted of any violation of Parks and Wildlife Code during the five-year period immediately prior to an application for a permit under this subchapter. This paragraph does not apply to convictions under Parks and Wildlife Code, Chapter 31-}



~~[(c) The department shall not issue a permit to any person who has not complied with the applicable requirements of §65.330 of this title (relating to Reporting Requirements).]~~

~~(b) [(d)] Permits shall be issued to named individuals only, resident or nonresident as applicable, and shall not be issued in the name of any firm, organization, or institution.~~

~~(c) The department may refuse permit issuance or renewal to any person who has been finally convicted of, pleaded *nolo contendere* to, received deferred adjudication, or been assessed an administrative penalty for a violation of:~~

~~(1) Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R;~~

~~(2) Parks and Wildlife Code, Chapter 67;~~

~~(3) a provision of the Parks and Wildlife Code that is punishable as a Class A or B Parks and Wildlife Code misdemeanor, a Parks and Wildlife Code state jail felony, or a Parks and Wildlife Code felony;~~

~~(4) Parks and Wildlife Code, §63.002; or~~

~~(5) the Lacey Act (16 U.S.C. §§3371-3378).~~

~~(d) The department may prohibit any person from acting as an agent of any permittee if the person has been convicted of, pleaded *nolo contendere* to, received deferred adjudication, or been assessed an administrative penalty for an offense listed in subsection (c) of this section.~~

~~(e) The department may refuse to issue a permit to any person the department has evidence is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this section from engaging in permitted activities.~~

~~(f) The department may refuse to issue or renew a permit to any person who is not in compliance with applicable reporting or recordkeeping requirements.~~

~~(g) An applicant for a permit or permit renewal may request a review of a decision of the department to refuse issuance of a permit or permit renewal (as applicable).~~

~~(h) An applicant seeking review of a decision of the department with respect to permit issuance must request the review within 10 working days of being notified by the department that the application for a permit or permit renewal has been denied.~~

~~(1) Within 10 working days of receiving a request for review under this section, the department shall establish a date and time for the review.~~

~~(2) The department shall conduct the review within 30 days of receipt of the request required by subsection (g) of this section, unless another date is established in writing by mutual agreement between the department and the requestor.~~

~~(3) The request for review shall be presented to a review panel. The review panel shall consist of three department managers with expertise in the subject of the permit, appointed or approved by the executive director, or designee.~~

~~(4) The decision of the review panel is final.~~

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 July 1, 2019.

TRD-201902068

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: August 11, 2019

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

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SUBCHAPTER Q. STATEWIDE FUR-BEARING ANIMAL PROCLAMATION

**31 TAC §65.376**

The amendment is proposed under the authority of Parks and Wildlife Code, Chapter 71, which authorizes the department to regulate permit application procedures and hearing procedures for permits to take, possess, propagate, transport, export, import, or sell fur-bearing animals.

The proposed amendment affects Parks and Wildlife Code, Chapter 71.

*§65.376. Possession of Live Fur-bearing Animals.*

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

~~(g) The department may refuse permit issuance or renewal to any person who has been finally convicted of, pleaded *nolo contendere* to, received deferred adjudication, or been assessed an administrative penalty for a violation of:~~

~~(1) Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R;~~

~~(2) Parks and Wildlife Code, Chapter 71;~~

~~(3) a provision of the Parks and Wildlife Code that is punishable as a Class A or B Parks and Wildlife Code misdemeanor, a Parks and Wildlife Code state jail felony, or a Parks and Wildlife Code felony;~~

~~(4) Parks and Wildlife Code, §63.002; or~~

~~(5) the Lacey Act (16 U.S.C. §§3371-3378).~~

~~(h) The department may prohibit any person from acting as an agent of any permittee if the person has been convicted of, pleaded *nolo contendere* to, received deferred adjudication, or been assessed an administrative penalty for an offense listed in subsection (g) of this section.~~

~~(i) The department may refuse to issue a permit to any person the department has evidence is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this section from engaging in permitted activities.~~

~~(j) The department may refuse to issue or renew a permit to any person who is not in compliance with applicable reporting or recordkeeping requirements.~~

~~(k) An applicant for a permit or permit renewal may request a review of a decision of the department to refuse issuance of a permit or permit renewal (as applicable).~~

~~(l) An applicant seeking review of a decision of the department with respect to permit issuance must request the review within 10 working days of being notified by the department that the application for a permit or permit renewal has been denied.~~

~~(1) Within 10 working days of receiving a request for review under this section, the department shall establish a date and time for the review.~~

(2) The department shall conduct the review within 30 days of receipt of the request required by subsection (k) of this section, unless another date is established in writing by mutual agreement between the department and the requestor.

(3) The request for review shall be presented to a review panel. The review panel shall consist of three department managers with expertise in the subject of the permit, appointed or approved by the executive director, or designee.

(4) The decision of the review panel is final.

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 July 1, 2019.

TRD-201902069

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: August 11, 2019

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



## CHAPTER 69. RESOURCE PROTECTION

The Texas Parks and Wildlife Department proposes amendments to §69.4, concerning Renewal; §69.47, concerning Qualifications; and §69.303, concerning Application for Permit and Permit Issuance, and new §69.6, concerning Refusal of Issuance or Renewal of Permit; Review of Agency Decision. The proposed amendments would, collectively, eliminate provisions governing the issuance or renewal of various permits on the basis of convictions for previous criminal conduct involving activities regulated by the department or failure to comply with reporting and recordkeeping requirements and replace with them with a single standard governing such refusals, similar to current standards in effect for other permit programs administered by the department. Proposed new §69.6, concerning Refusal of Issuance or Renewal of Permit; Review of Agency Decision, would establish a similar regulation applicable to plant permits.

The proposed amendment to §69.4 would alter the provisions of the section to replace "shall" with "may" with respect to the renewal of scientific and commercial plant permits and eliminate a provision allowing the department to refuse permit issuance to any person finally convicted of any violation of Parks and Wildlife Code during the five-year period immediately prior to an application for a commercial plant permit. The changing of "may" to "shall" is necessary to emphasize that permit privileges are not automatic, but dependent upon a number of factors that the department evaluates prior to deciding whether to issue a permit or not. The proposed removal of paragraph (4) is necessary, as has been mentioned previously in this preamble, because the department is implementing a standardized set of provisions regarding refusal of permit issuance or renewal.

Proposed new §69.6 would allow the department to refuse permit issuance or renewal to any person who has been finally convicted of, pleaded *nolo contendere* to, received deferred adjudication, or been assessed an administrative penalty for a violation of: Parks and Wildlife Code, Chapter 88; a provision other than Parks and Wildlife Code Chapter 88 that is a Parks and Wildlife Code Class A or B misdemeanor, state jail felony, or felony; or a

violation of the Lacey Act (16 U.S.C. §§3371-3378). In addition, the proposed new section would allow the department to prevent a person from acting on behalf of or as a surrogate for a person prevented from obtaining a permit under the proposed new provision and provides for a review process for agency decisions to refuse permit issuance or renewal.

The department has determined that the decision to issue or renew a permit should take into account an applicant's history of violations involving plant permits, serious violations of the Parks and Wildlife Code (Class B misdemeanors, Class A misdemeanors, and felonies), and Lacey Act violations. The department reasons that it is appropriate to deny the privilege of collecting plant resources to persons who exhibit a demonstrable disregard for the regulations governing plant resources. Similarly, it is appropriate to deny permit privileges to a person who has exhibited demonstrable disregard for natural resource law in general by committing more egregious (Class B misdemeanors, Class A misdemeanors, and felonies) violations of natural resource law.

The Lacey Act (16 U.S.C. §§3371-3378) is a federal law that, among other things, prohibits interstate trade in or movement of wildlife, fish, or plants taken, possessed, transported or sold in violation of state law. Lacey Act prosecutions are normally conducted by the United States Department of Justice in federal courts. Although a Lacey Act conviction or civil penalty is often predicated on a violation of state law, the federal government need only prove that a state law was violated; there is no requirement for there to be a record of conviction in a state jurisdiction. Rather than expending resources and time conducting concurrent state and federal prosecutions, the department believes that it is reasonable to use a Lacey Act conviction or civil penalty as the basis for refusing to issue or renew a permit. Because the elements of the underlying state criminal offense must be proven to establish a conviction or assessment of a civil penalty for a Lacey Act violation, the department reasons that such conviction or assessment constitutes legal proof that a violation of state law occurred and it is therefore redundant and wasteful to pursue a conviction in state jurisdiction to prove something that has already been proven in a federal court.

The denial of a permit or permit renewal as a result of an adjudicative status listed in the proposed new rule would not be automatic, but within the discretion of the department. Factors that may be considered by the department in determining whether to refuse permit issuance or renewal based on adjudicative status include, but are not limited to: the number of final convictions or administrative violations; the seriousness of the conduct on which the final conviction or administrative violation is based; the existence, number and seriousness of offenses or administrative violations other than offenses or violations that resulted in a final conviction; the length of time between the most recent final conviction or administrative violation and the application for enrollment or renewal; whether the final conviction, administrative violation, or other offenses or violations was the result of negligence or intentional conduct; whether the final conviction or administrative violations resulted from the conduct committed or omitted by the applicant, an agent of the applicant, or both; the accuracy of information provided by the applicant; for renewal, whether the applicant agreed to any special provisions recommended by the department as conditions; and other aggravating or mitigating factors.

The proposed new rule also would include a provision allowing the department to refuse permit issuance or renewal to any per-

son who is not in compliance with applicable recordkeeping or reporting requirements. The provision is necessary because the department believes that a person who is unable to comply with regulatory requirements that allow the department to monitor the performance of permit activities should not be entrusted with the privilege of permit issuance or renewal.

The proposed new rule also would provide for department review of a decision to refuse permit issuance or renewal. The proposed new rule would require the department to notify an applicant not later than the 10th day following a decision to refuse permit issuance or denial and to set a time and date for conducting a review of an agency decision to refuse permit issuance or renewal within 10 days of receiving a request for a review. The proposed new rule would stipulate that a review panel consist of three department managers with appropriate expertise in the activities conducted under the permit in question. The new provision is intended to help ensure that decisions affecting permit issuance and renewal are correct.

The proposed amendments to §69.47 and §69.303 would eliminate a provision in each section authorizing the department to refuse issuance or renewal of wildlife rehabilitation permits for a person convicted of any violation of state or federal law applicable to fish or wildlife. The department has determined that the current provision, in addition to allowing for permit issuance refusal for minor violations of fish and game law, is not as comprehensive as the template used for similar provisions in more recent rulemakings.

The proposed amendments to §69.47 and §69.303 would allow the department to refuse permit issuance or renewal to any person who has been finally convicted of, pleaded *nolo contendere* to, received deferred adjudication, or been assessed an administrative penalty for a violation of: Parks and Wildlife Code, Chapter 43, Subchapter C, E, L, R, or R-1; a provision of the Parks and Wildlife Code other than Chapter 43, Subchapter C, E, L, R, or R-1 that is a Parks and Wildlife Code Class A or B misdemeanor, state jail felony, or felony; Parks and Wildlife Code, §63.002; or the Lacey Act (16 U.S.C. §§3371-3378). In addition, the proposed amendment would allow the department to prevent a person from acting on behalf of or as a surrogate for a person prevented from obtaining a permit and provide for a review process for agency decisions to refuse permit issuance or renewal.

The department has determined that the decision to issue a permit to hold protected live wildlife should take into account an applicant's history of violations involving the capture and possession of live animals, major violations of the Parks and Wildlife Code (Class B misdemeanors, Class A misdemeanors, and felonies), and Lacey Act violations. The department reasons that it is appropriate to deny the privilege of possession of wildlife resources to persons who exhibit a demonstrable disregard for the regulations governing wildlife. Similarly, it is appropriate to deny the privilege of holding wildlife to a person who has exhibited demonstrable disregard for wildlife law in general by committing more egregious (Class B misdemeanors, Class A misdemeanors, and felonies) violations of wildlife law.

The Lacey Act (16 U.S.C. §§3371-3378) is a federal law that, among other things, prohibits interstate trade in or movement of wildlife, fish, or plants taken, possessed, transported or sold in violation of state law. Lacey Act prosecutions are normally conducted by the United States Department of Justice in federal courts. Although a Lacey Act conviction or civil penalty is often predicated on a violation of state law, the federal government

need only prove that a state law was violated; there is no requirement for there to be a record of conviction in a state jurisdiction. Rather than expending resources and time conducting concurrent state and federal prosecutions, the department believes that it is reasonable to use a Lacey Act conviction or civil penalty as the basis for refusing to issue or renew a permit. Because the elements of the underlying state criminal offense must be proven to establish a conviction or assessment of a civil penalty for a Lacey Act violation, the department reasons that such conviction or assessment constitutes legal proof that a violation of state law occurred and it is therefore redundant and wasteful to pursue a conviction in state jurisdiction to prove something that has already been proven in a federal court.

The denial of permit issuance or renewal as a result of an adjudicative status listed in the proposed amendment would not be automatic, but within the discretion of the department. Factors that may be considered by the department in determining whether to refuse permit issuance based on adjudicative status include, but are not limited to: the number of final convictions or administrative violations; the seriousness of the conduct on which the final conviction or administrative violation is based; the existence, number and seriousness of offenses or administrative violations other than offenses or violations that resulted in a final conviction; the length of time between the most recent final conviction or administrative violation and the application for enrollment or renewal; whether the final conviction, administrative violation, or other offenses or violations was the result of negligence or intentional conduct; whether the final conviction or administrative violations resulted from the conduct committed or omitted by the applicant, an agent of the applicant, or both; the accuracy of information provided by the applicant; for renewal, whether the applicant agreed to any special provisions recommended by the department as conditions; and other aggravating or mitigating factors.

The proposed amendment also would include a provision allowing the department to refuse permit issuance or renewal to any person who is not in compliance with applicable recordkeeping or reporting requirements. The provision is necessary because the department believes that a person who is unable to comply with regulatory requirements that allow the department to monitor the performance of permit activities should not be entrusted with the privilege of holding a permit, depending on the circumstances.

Additionally, the proposed amendment would provide for department review of a decision to refuse permit issuance or renewal. The proposed new rule would require the department to notify an applicant not later than the 10th day following a decision to refuse permit issuance or denial and to set a time and date for conducting a review of an agency decision to refuse permit issuance or renewal within 10 days of receiving a request for a review. The proposed amendment would stipulate that a review panel consists of three department managers with appropriate expertise in the activities conducted under the permit in question. The amendment is intended to help ensure that decisions affecting permit issuance and renewal are correct.

Meredith Longoria, Nongame and Rare Species Program Leader, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the proposed rules.

Ms. Longoria also has determined that for each of the first five years that the rules as proposed are in effect the public benefit

anticipated as a result of enforcing or administering the proposed rules will be a standardized method of addressing the refusal to issue or renew various permits.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), in April 2008, the Office of the Attorney General issued guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. These guidelines state that "(g)enerally, there is no need to examine the indirect effects of a proposed rule on entities outside of an agency's regulatory jurisdiction." The guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. The guidelines also list examples of the types of costs that may result in a "direct economic impact." Such costs may include costs associated with additional record-keeping or reporting requirements; new taxes or fees; lost sales or profits; changes in market competition; or the need to purchase or modify equipment or services.

The department has determined that the rules as proposed will not affect small businesses, micro-businesses, or rural communities, since the rules do not impose any direct economic impacts on the regulated community. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

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

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

The department has determined that because the rules as proposed do not impose a cost on regulated persons, it is not necessary to repeal or amend any existing rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; create new regulations (implementing a standardized process for refusal of permit issuance or denial); not expand, limit, or repeal an existing regulation; not increase the number of individuals subject to regulation; and neither positively nor adversely affect the state's economy.

Comments on the proposed rule may be submitted to Meredith Longoria, via email at [meredith.longoria@tpwd.texas.gov](mailto:meredith.longoria@tpwd.texas.gov). Comments also may be submitted via the department's website at [http://www.tpwd.texas.gov/business/feedback/public\\_comment/](http://www.tpwd.texas.gov/business/feedback/public_comment/).

## SUBCHAPTER A. ENDANGERED, THREATENED, AND PROTECTED NATIVE PLANTS

### 31 TAC §69.4, §69.6

The amendment and new section are proposed under the authority of Parks and Wildlife Code, Chapter 88, which requires the commission to adopt regulations, including regulations to provide for permit application, forms, fees, procedures, and hearing procedures.

The proposed amendment and new section affect Parks and Wildlife Code, Chapter 88.

#### §69.4. Renewal.

The department may require information in addition to that required by paragraphs (1)-(4) of this section. Scientific plant permits may ~~shall~~ be renewed, provided:

(1) (No change.)

(2) the permittee has complied with all permit provisions;

and

(3) the permittee has demonstrated reasonable progress toward the completion of research activities authorized by the permit.~~;~~  
and

~~[(4) the permittee has not been convicted of a violation of Parks and Wildlife Code].~~

#### §69.6. Refusal of Issuance or Renewal of Permit; Review of Agency Decision.

(a) The department may refuse permit issuance or renewal to any person who has been finally convicted of, pleaded *nolo contendere* to, received deferred adjudication, or assessed an administrative penalty for a violation of:

(1) Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R;

(2) Parks and Wildlife Code, Chapter 67;

(3) a provision of the Parks and Wildlife Code that is punishable as a Class A or B Parks and Wildlife Code misdemeanor, a Parks and Wildlife Code state jail felony, or a Parks and Wildlife Code felony;

(4) Parks and Wildlife Code, §63.002; or

(5) the Lacey Act (16 U.S.C. §§3371-3378).

(b) The department may prohibit any person from acting as an agent of any permittee if the person has been convicted of, pleaded *nolo contendere* to, received deferred adjudication, or assessed an administrative penalty for an offense listed in subsection (a) of this section.

(c) The department may refuse to issue a permit to any person the department has evidence is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this section from engaging in permitted activities.

(d) The department may refuse to issue or renew a permit to any person who is not in compliance with applicable reporting or recordkeeping requirements.

(e) An applicant for a permit or permit renewal may request a review of a decision of the department to refuse issuance of a permit or permit renewal (as applicable).

(f) An applicant seeking review of a decision of the department with respect to permit issuance must request the review within 10

working days of being notified by the department that the application for a permit or permit renewal has been denied.

(1) Within 10 working days of receiving a request for review under this section, the department shall establish a date and time for the review.

(2) The department shall conduct the review within 30 days of receipt of the request required by subsection (e) of this section, unless another date is established in writing by mutual agreement between the department and the requestor.

(3) The request for review shall be presented to a review panel. The review panel shall consist of three department managers with expertise in the subject of the permit, appointed or approved by the executive director, or designee.

(4) The decision of the review panel is final.

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 July 1, 2019.

TRD-201902070

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: August 11, 2019

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



## SUBCHAPTER C. WILDLIFE REHABILITATION PERMITS

### 31 TAC §69.47

The amendments are proposed under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter C, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation.

The proposed amendments affect Parks and Wildlife Code, Chapter 43, Subchapter C.

§69.47. *Qualifications.*

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

(c) The department may refuse permit issuance or renewal to any person who has been finally convicted of, pleaded *nolo contendere* to, received deferred adjudication, or been assessed an administrative penalty for a violation of: [The department reserves the right to refuse permit issuance to persons who have been finally convicted of any violation of state or federal law applicable to fish and wildlife.]

(1) Parks and Wildlife Code, Chapter 88;

(2) a provision of the Parks and Wildlife Code that is punishable as a Class A or B Parks and Wildlife Code misdemeanor, a Parks and Wildlife Code state jail felony, or a Parks and Wildlife Code felony; or

(3) the Lacey Act (16 U.S.C. §§3371-3378).

(d) The department may prohibit any person from acting as an agent of any permittee if the person has been convicted of, pleaded *nolo*

*contendere* to, received deferred adjudication, or assessed an administrative penalty for an offense listed in subsection (c) of this section.

(e) The department may refuse to issue a permit to any person the department has evidence is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this section from engaging in permitted activities.

(f) The department may refuse to issue or renew a permit to any person who is not in compliance with applicable reporting or recordkeeping requirements.

(g) An applicant for a permit or permit renewal may request a review of a decision of the department to refuse issuance of a permit or permit renewal (as applicable).

(h) An applicant seeking review of a decision of the department with respect to permit issuance must request the review within 10 working days of being notified by the department that the application for a permit or permit renewal has been denied.

(1) Within 10 working days of receiving a request for review under this section, the department shall establish a date and time for the review.

(2) The department shall conduct the review within 30 days of receipt of the request required by subsection (g) of this section, unless another date is established in writing by mutual agreement between the department and the requestor.

(3) The request for review shall be presented to a review panel. The review panel shall consist of three department managers with expertise in the subject of the permit, appointed or approved by the executive director, or designee.

(4) The decision of the review panel is final.

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 July 1, 2019.

TRD-201902071

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: August 11, 2019

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



## SUBCHAPTER J. SCIENTIFIC, EDUCATIONAL, AND ZOOLOGICAL PERMITS

### 31 TAC §69.303

The amendments are proposed under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter C, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation.

The proposed amendments affect Parks and Wildlife Code, Chapter 43, Subchapter C.

§69.303. *Application for Permit and Permit Issuance.*

(a) (No change.)

(b) The department may refuse permit issuance or renewal to any person who has been finally convicted of, pleaded *nolo contendere* to, received deferred adjudication, or been assessed an administrative penalty for a violation of: [The department reserves the right to refuse issuance of an initial permit or of any subsequent permits to persons who have been finally convicted of any violation of state or federal law applicable to fish and wildlife.]

(1) Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R;

(2) a provision of the Parks and Wildlife Code that is punishable as a Class A or B Parks and Wildlife Code misdemeanor, a Parks and Wildlife Code state jail felony, or a Parks and Wildlife Code felony;

(3) Parks and Wildlife Code, §63.002; or

(4) the Lacey Act (16 U.S.C. §§3371-3378).

(c) The department may prohibit any person from acting as an agent of any permittee if the person has been convicted of, pleaded *nolo contendere* to, received deferred adjudication, or assessed an administrative penalty for an offense listed in subsection (b) of this section.

(d) The department may refuse to issue a permit to any person the department has evidence is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this section from engaging in permitted activities.

(e) The department may refuse to issue or renew a permit to any person who is not in compliance with applicable reporting or recordkeeping requirements.

(f) An applicant for a permit or permit renewal may request a review of a decision of the department to refuse issuance of a permit or permit renewal (as applicable).

(g) An applicant seeking review of a decision of the department with respect to permit issuance must request the review within 10 working days of being notified by the department that the application for a permit or permit renewal has been denied.

(1) Within 10 working days of receiving a request for review under this section, the department shall establish a date and time for the review.

(2) The department shall conduct the review within 30 days of receipt of the request required by subsection (f) of this section, unless another date is established in writing by mutual agreement between the department and the requestor.

(3) The request for review shall be presented to a review panel. The review panel shall consist of three department managers with expertise in the subject of the permit, appointed or approved by the executive director, or designee.

(4) The decision of the review panel is final.

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 July 1, 2019.

TRD-201902072

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: August 11, 2019

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

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# 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 28. INSURANCE

TRD-201901991

### PART 1. TEXAS DEPARTMENT OF INSURANCE

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#### CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

### DIVISION 2. EXCLUSIVE PROVIDER BENEFIT PLAN REQUIREMENTS

#### SUBCHAPTER X. PREFERRED AND EXCLUSIVE PROVIDER PLANS

#### 28 TAC §3.3725

#### DIVISION 1. GENERAL REQUIREMENTS

Proposed amended §3.3725, published in the December 21, 2018, issue of the *Texas Register* (43 TexReg 8228), is automatically withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

#### 28 TAC §§3.3702, 3.3705, 3.3708

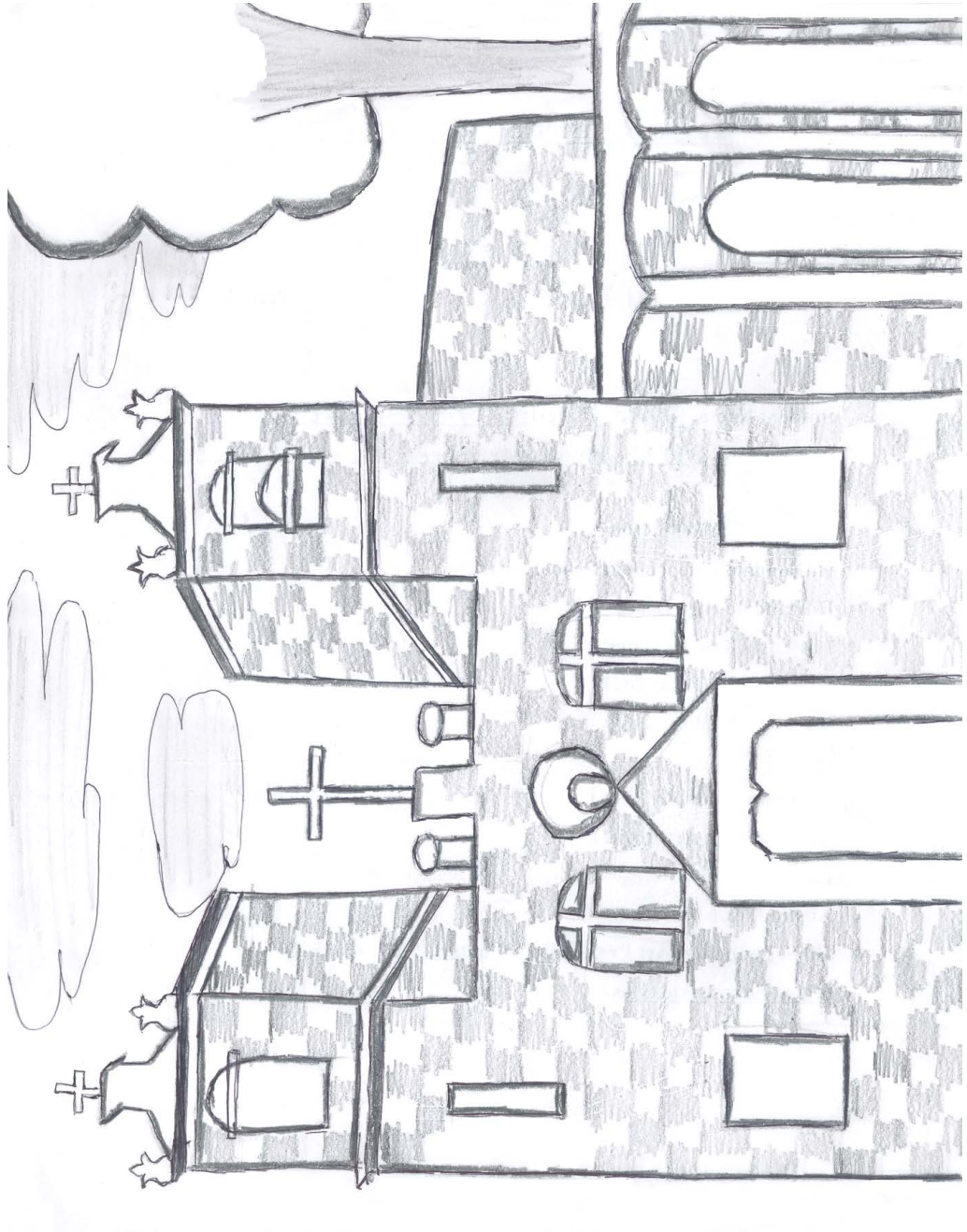
Proposed amended §§3.3702, 3.3705, and 3.3708, published in the December 21, 2018, issue of the *Texas Register* (43 TexReg 8228), is automatically withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on June 25, 2019.

TRD-201901992

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Published by the Office of the Secretary of State on June 25, 2019.





# 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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER F. SPECIAL INVESTIGATIVE UNITS

##### 1 TAC §353.502, §353.505

The Texas Health and Human Services Commission (HHSC) adopts amendments to §353.502, concerning Managed Care Organization's Plans and Responsibilities in Preventing and Reducing Waste, Abuse, and Fraud; and §353.505, concerning Recovery of Funds.

The amendments to §353.502 and §353.505 are adopted without changes to the proposed text as published in the March 22, 2019, issue of the *Texas Register* (44 TexReg 1491), and therefore will not be republished.

##### BACKGROUND AND JUSTIFICATION

The purpose of the amendments is to implement various provisions of House Bill (H.B.) 2379, 85th Legislature, Regular Session, 2017, and update procedures which a managed care organization (MCO) must follow to refer cases to the HHSC Office of the Inspector General (HHSC-OIG).

H.B. 2379 amended Chapter 531, Texas Government Code, regarding the recovery and retention of funds paid to providers as a result of fraud or abuse. The bill allows an MCO to retain half of the funds they recover under certain circumstances and remit the remainder to HHSC-OIG for deposit in the general revenue fund. When HHSC-OIG pursues fraud or abuse cases referred to it by an MCO, the MCO is entitled to half of the money recovered for each payment the MCO reported in detail, less any applicable federal share. The remainder of the recovered funds are deposited in the general revenue fund by HHSC-OIG. In addition, the bill requires HHSC-OIG and the MCO to coordinate efforts to ensure recovery efforts for the same case of waste, abuse, or fraud are not duplicated.

H.B. 2379 also requires an MCO to provide a detailed description of the fraud or abuse and each payment made to a provider as a result of the fraud or abuse, when the MCO notifies HHSC-OIG of a fraud or abuse case. The amendments clarify the information that must be included in an MCO's referral to HHSC-OIG concerning fraud, waste, or abuse.

Finally, the amendments modify the requirements for an MCO to review 30 recipients or 15 percent of a provider's claims when investigating fraud, waste, or abuse. An MCO can review fewer recipients or claims if the MCO's referral to HHSC-OIG includes

written justification for the decision. HHSC-OIG reserves the right to request additional information if the agency deems it necessary.

##### COMMENTS

The 30-day comment period ended April 21, 2019. During this period, HHSC received comments regarding the rules from the Texas Dental Association. A summary of comments relating to the rules and HHSC's responses follows.

Comment: Commenter cautions OIG to carefully evaluate an MCO's written justification for reducing the number of recipients or claims to sample for review of possible waste, abuse, and fraud, as required under amended §353.502(c)(2)(C).

Response: HHSC agrees with this comment. No change was made to the rule based on this comment.

Comment: Commenter agrees that providing an MCO's special investigative unit 30 days to refer its report, along with additional information required under amended §353.502(c)(5)(D), to OIG is a reasonable amount of time.

Response: HHSC agrees with this comment. No change was made in response to this comment.

Comment: Commenter does not agree with striking the word "immediately" before the word "notify" in amended §353.505(a)(1), as that word is used in §531.1131, Government Code, upon which this rule is based. Commenter asserts that striking this word contradicts legislative intent.

Response: HHSC disagrees and declines to revise the rule in response to this comment. Removing the word "immediately" resolves confusion between the requirement that an MCO notify OIG of investigations into alleged waste, abuse, and fraud and the requirement that the MCO provide detailed information about those investigations at the same time. Under current rules, an MCO must follow a timeline while compiling the required information, which includes 15 days to select recipients or claims for review and 45 days to review those recipients or claims. As noted above, 30 days is a reasonable amount of time to provide that information to OIG, and so this amendment clarifies the statute by allowing sufficient time to satisfy both requirements.

Comment: Commenter supports the requirement that an MCO reports discoveries of waste, abuse, and fraud in Medicaid or CHIP to OIG and the Office of the Attorney General. Commenter also supports allowing managed care organizations to retain half of the funds recovered under certain circumstances, while also halting an MCO's recovery efforts if the potential amount in question exceeds \$100,000, and the organization receives notice from either HHSC-OIG or OAG to stand down. The commenter also supports coordination of effort between HHSC-OIG and an MCO so that they do not both begin recovery efforts for the same case of waste, abuse, and fraud.

Response: HHSC agrees with these comments. No change was made in response to these comments.

Comment: Commenter expresses concern about ongoing illegal Medicaid solicitation.

Response: HHSC considers this comment beyond the scope of the MCO recovery rules.

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.102 (a), which provides HHSC-OIG with the authority to obtain any information or technology necessary to enable it to meet its responsibilities; Texas Government Code §531.102(a-2), which requires the Executive Commissioner to work in consultation with the Office of the Inspector General to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.033 which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provides HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program; and Texas Government Code §531.1131(e) HHSC with the authority to adopt rules necessary to implement this section.

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 June 27, 2019.

TRD-201902018

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: July 18, 2019

Proposal publication date: March 22, 2019

For further information, please call: (512) 491-4052



## CHAPTER 371. MEDICAID AND OTHER HEALTH AND HUMAN SERVICES FRAUD AND ABUSE PROGRAM INTEGRITY SUBCHAPTER F. INVESTIGATIONS

### 1 TAC §371.1311

The Texas Health and Human Services Commission (HHSC) adopts amendments to §371.1311, concerning the Role of the Office of the Inspector General (OIG) and Special Investigative Units (SIUs).

The amendments to §371.1311 are adopted without changes to the proposed text as published in the March 22, 2019, issue of the *Texas Register* (44 TexReg 1496), and therefore will not be republished.

#### BACKGROUND AND JUSTIFICATION

The purpose of the amendments is to implement various provisions of House Bill (H.B.) 2379, 85th Legislature, Regular Ses-

sion, 2017, and update procedures which a managed care organization (MCO) must follow to refer cases to the HHSC Office of the Inspector General (HHSC-OIG).

H.B. 2379 amended Chapter 531, Texas Government Code, regarding the recovery and retention of funds paid to providers as a result of fraud or abuse. The bill allows an MCO to retain half of the funds they recover under certain circumstances and remit the remainder to HHSC-OIG for deposit in the general revenue fund. When HHSC-OIG pursues fraud or abuse cases referred to it by an MCO, the MCO is entitled to half of the money recovered for each payment the MCO reported in detail, less any applicable federal share. The remainder of the recovered funds are deposited in the general revenue fund by HHSC-OIG. In addition, the bill requires HHSC-OIG and an MCO to coordinate efforts to ensure recovery efforts for the same case of waste, abuse, or fraud are not duplicated.

#### COMMENTS

The 30-day comment period ended April 21, 2019. During this period, HHSC received one comment regarding the rule from the Texas Dental Association. A summary of the comment relating to the rule and HHSC's response follows.

Comment: Section 371.1311 is amended to incorporate the referral process as outlined and amended in §353.505(a)(1). Commenter does not agree with striking the word "immediately" before the word "notify" in amended §353.505(a)(1), as that word is used in §531.1131, Government Code, upon which this rule is based. Commenter asserts that striking this word contradicts legislative intent.

Response: HHSC disagrees and declines to revise the rule in response to this comment. Removing the word "immediately" resolves confusion between the requirement that an MCO notify OIG of investigations into alleged waste, abuse, and fraud, and the requirement that the MCO provide detailed information about those investigations at the same time. Under current rules, an MCO must follow a timeline while compiling the required information, which includes 15 days to select recipients or claims for review and 45 days to review those recipients or claims.

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.102 (a), which provides HHSC-OIG with the authority to obtain any information or technology necessary to enable it to meet its responsibilities; Texas Government Code §531.102(a-2), which requires the Executive Commissioner to work in consultation with the Office of the Inspector General to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.033 which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provides HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program; and Texas Government Code §531.1131(e) HHSC with the authority to adopt rules necessary to implement this section.

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 June 27, 2019.  
TRD-201902020  
Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Effective date: July 18, 2019  
Proposal publication date: March 22, 2019  
For further information, please call: (512) 491-4052



## TITLE 19. EDUCATION

### PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

#### CHAPTER 235. CLASSROOM TEACHER CERTIFICATION STANDARDS SUBCHAPTER F. SUPPLEMENTAL CERTIFICATE STANDARDS

##### 19 TAC §235.115

The State Board for Educator Certification (SBEC) adopts new §235.115, concerning supplemental certificate standards. The new rule is adopted without changes to the proposed text as published in the March 15, 2019 issue of the *Texas Register* (44 TexReg 1421). The new rule specifies the certification standards for the English as Second Language (ESL) Supplemental Certificate.

**REASONED JUSTIFICATION:** The SBEC is statutorily authorized to ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse population of this state. The SBEC is also statutorily required to appoint advisory committee members to recommend standards for each class of certificate. The standards are the basis for the certification examinations and set the requirements for educator preparation program (EPP) curriculum and delivery. The development committees include practicing educators, school district personnel, experts, and EPP faculty. These individuals collaborate to draft or review existing educator standards to ensure that the educator standards reflect best practices, align with the commissioner's educator standards, and where applicable, align with the current versions of the Texas Essential Knowledge and Skills that are adopted by the State Board of Education (SBOE).

*English as a Second Language Standards*

§235.115. *English as a Second Language Standards.*

The adopted educator standards for the classroom teacher class update the standards for ESL. Given the student demographics of our state and the datedness of the current ESL exam, Texas Education Agency (TEA) staff engaged in a process with stakeholders to draft educator standards for ESL that better align with relevant and rigorous best practices and research. The standards are a part of adopted new Subchapter F, which is where all rules for supplemental certificate standards are codified.

**SUMMARY OF COMMENTS AND RESPONSES.** The public comment period on the proposal began March 15, 2019, and ended April 15, 2019. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the

April 26, 2019 meeting in accordance with the SBEC board operating policies and procedures. The following is a summary of the public comments received on the proposal and the responses.

**Comment:** One teacher and the director of bilingual/ESL education of Socorro Independent School District (ISD) asked if current teachers on a Bilingual exception or ESL waiver could extend to more than one year.

**Response:** The comment is outside the scope of the proposed rulemaking, as the new rule only sets out the certification standards for the ESL Supplemental certificate. Educator Leadership and Quality (ELQ) staff has directed the commenters to the staff in the TEA Division of Special Populations.

**Comment:** One teacher asked if his/her Special Education certification would allow him/her to serve in an ESL setting.

**Response:** The comment is outside the scope of the proposed rulemaking. The TEA staff will consider this feedback for future rulemaking under the jurisdiction of the SBEC or the commissioner of education.

**Comment:** The director of bilingual/ESL education of Socorro ISD asked about the requirement of an ESL certification in special education units.

**Response:** The comment is outside the scope of the proposed rulemaking. ELQ staff has directed the commenter to the staff in the TEA Division of Special Populations.

**Comment:** The director of bilingual/ESL education of Socorro ISD asked about the funding available to districts for students coded as limited English proficiency not currently certified by an ESL or a bilingual education certified teacher.

**Response:** The comment is outside the scope of the proposed rulemaking. ELQ staff has directed the commenter to the staff in the TEA Division of Special Populations.

**Comment:** The director of bilingual/ESL education of Socorro ISD asked about the assignment of teachers currently under an ESL waiver after the waiver expires.

**Response:** The comment is outside the scope of the proposed rulemaking. The TEA staff will consider this feedback for future rulemaking under the jurisdiction of the SBEC or the commissioner of education.

The SBOE took no action on the review of new §235.115 at the June 14, 2019 SBOE meeting.

**STATUTORY AUTHORITY.** The new section is adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state;

TEC, §21.040(4), which states that the SBEC shall, for each class of educator certificate, appoint an advisory committee com-

posed of members of that class to recommend standards for that class to the board;

TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §§21.003(a), 21.031, 21.040(4), and 21.041(b)(1), (2), and (4).

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 July 1, 2019.

TRD-201902062

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Effective date: July 21, 2019

Proposal publication date: March 15, 2019

For further information, please call: (512) 475-1975



## CHAPTER 241. CERTIFICATION AS PRINCIPAL SUBCHAPTER B. PRINCIPAL CERTIFICATE 19 TAC §241.41

The State Board for Educator Certification (SBEC) adopts an amendment to §241.41, concerning general provisions of the Principal certificate. The amendment is adopted without changes to the proposed text as published in the March 15, 2019 issue of the *Texas Register* (44 TexReg 1424). The amendment provides a deadline for candidates to qualify and apply for the current principal certification and to take the corresponding certification examination, after which time the Principal as Instructional Leader certificate will become the only principal certification available to candidates.

REASONED JUSTIFICATION: The SBEC is statutorily authorized to regulate and oversee all aspects of the certification of public school educators. The SBEC is also statutorily authorized to ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse population of this state.

The SBEC rules in 19 Texas Administrative Code (TAC) Chapter 241, Certification as Principal, establish all of the requirements for certification and EPP minimum standards for issuance of a principal certificate.

At the April 2016 SBEC meeting, the SBEC adopted new principal standards that better align with contemporary principal practices, principal appraisal, and professional development standards. With the adoption of new standards that reflect the knowledge and skills necessary for today's principal, there was careful consideration of the changes to the essential role of a principal to

schools, students, communities, and teachers from 2002 (when the standards began to be used for assessment purposes) to the current role in 2018, as illustrated below.

Figure: 19 TAC Chapter 241 - Preamble

At the March 2018 SBEC meeting, Texas Education Agency (TEA) staff presented the SBEC with a comprehensive approach to a principal certification redesign that includes 1) a new certificate name that better reflects current reality along with a new principal certification assessment; 2) an optional tiered process for obtaining standard certification; and 3) an endorsement for currently certified principals and assistant principals.

At the October 5, 2018 SBEC meeting, the SBEC adopted the new principal certificate program. The adopted amendment to §241.41(e) formally ends issuance of the Principal certificate on October 30, 2019. This date has been communicated to the field consistently since Fall 2017 through direct communication with each EPP through multiple trainings, regional forums, discussion at SBEC meetings and stakeholder meetings, and on SBEC's website. This amendment allows sufficient time for current candidates to finish out their applications, while ensuring that the transition to the Principal as Instructional Leader certification is complete by November 1, 2019.

To ensure programs are aligned to the new standards and assessments, programs had to provide evidence of alignment with key knowledge, skills, and mindsets to the Principal as Instructional Leader (268) required standards that were organized around nine pillars for principal preparation, including: (1) Communication with Stakeholders, (2) Curriculum Alignment, (3) Diversity and Equity, (4) Data-Driven Instruction, (5) Hiring, Selection, and Retention, (6) Observation and Feedback, (7) Professional Development, (8) School Vision and Culture, and (9) Strategic Problem-Solving.

Sixty-five EPPs that offer principal preparation have applied for the new certification, and currently there are 52 EPPs that have been approved.

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began March 15, 2019, and ended April 15, 2019. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the April 26, 2019 meeting in accordance with the SBEC board operating policies and procedures. The following is a summary of the public comments received on the proposal and the responses.

Comment: A current principal candidate at The University of Texas at San Antonio requested extending the deadline for the current Principal (068) examination to the end of July 2019, in lieu of the newly designed Principal as Instructional Leader (268) certification. The commenter stated that the educator preparation program (EPP) did not communicate the deadline for the 068 examination until December 2018.

Response: The SBEC disagrees. TEA staff provided the deadline for the Principal (068) examination to the commenter's EPP in the fall of 2017. Additionally, TEA staff contacted the EPP and determined that the EPP had not provided the cohort students with the pertinent information related to the transition to the new certification. At that time, TEA staff recommended that the EPP assist candidates in pursuing the intern certification for potential employment.

The State Board of Education (SBOE) took no action on the review of the amendment to §241.41 at the June 14, 2019 SBOE meeting.

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.040(4), which states that the State Board for Educator Certification (SBEC) shall, for each class of educator certificate, appoint an advisory committee composed of members of that class to recommend standards for that class to the SBEC; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2)-(4), which require the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.046(b), which requires the SBEC to allow outstanding teachers to substitute approved experience and professional training for part of the educational requirements in lieu of classroom hours; TEC, §21.046(c), which requires the SBEC to ensure that principal candidates are of the highest caliber and that there is a multi-level screening process, along with assessment programs, and flexible internships to determine whether a candidate has the necessary skills for success; TEC, §21.046(d), which states that the SBEC shall consider competencies developed by relevant national organizations and the State Board of Education; and TEC, §21.054(a), (e), and (e-2), as amended by Senate Bills 7, 179, and 1839, 85th Texas Legislature, Regular Session, 2017, which require the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements, including particular continuing education requirements for principals.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §§21.003(a), 21.040(4), 21.041(b)(1)-(4), 21.046(b)-(d), and 21.054(a), (e), and (e-2), as amended by Senate Bills 7, 179, and 1839, 85th Texas Legislature, Regular Session, 2017.

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 July 1, 2019.

TRD-201902063

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Effective date: July 21, 2019

Proposal publication date: March 15, 2019

For further information, please call: (512) 475-1497



## TITLE 22. EXAMINING BOARDS

### PART 9. TEXAS MEDICAL BOARD

#### CHAPTER 185. PHYSICIAN ASSISTANTS

#### 22 TAC §185.32

The Texas Medical Board approves the Texas Physician Assistant Board (Board) adoption of new rule §185.32, concerning Training and Registration Requirements for Physician Assistants Performing Radiologic Procedures. The new rule is being adopted without changes to the proposed text as published in the January 25, 2019, issue of the *Texas Register* (44 TexReg 401). The adopted rule will not be republished.

The new rule is set forth to implement requirements for physician assistants performing medical radiologic procedures under a physician's order, in accordance with Texas Occupations Code, Section 601.254. The rule refers to Texas Occupations Code, Section 157.001 requirements, as physicians must in all cases delegate medical acts, including medical radiologic procedures and dangerous and hazardous procedures, only to individuals who are qualified through education and training and who are able to perform the delegated procedure safely, properly, and in the customary manner. The rule is intended to ensure patient safety by requiring physician assistants to be properly educated and trained prior to performing radiologic procedures, while allowing for delegating physicians the discretion to determine training programs appropriate for medical radiologic procedures being performed by physician assistants.

Written comments were received regarding new rule §185.32 from the American Society of Radiologic Technologists and 23 individuals. Two representatives from the Texas Academy of Physician Assistants and one representative of the Radiology Associates of North Texas appeared in person to testify in support of the rule at the public hearings held on March 29, 2019, and June 14, 2019. One representative of the American Society of Radiologic Technologists appeared in person to testify in opposition to the rule at the public hearing on June 14, 2019.

#### SUMMARY OF WRITTEN COMMENTS AND BOARD RESPONSES

##### Comment No. 1--American Society of Radiologic Technologists (ASRT)

ASRT opposed the rule in part, recommending that the rule require competency assessment guidelines, completion of additional education in specific topics related to radiologic technology, and a secondary registry for PAs who have completed the education. ASRT provided information showing that the American Association of Physician Assistants (AAPA) and the ASRT have set forth an agreed upon framework on minimum education required to perform fluoroscopy procedures, stating that the development of the agreed upon curriculum and examination evidences the need for specific education in fluoroscopy.

##### Board Response:

The Physician Assistant Board disagrees that specific training and educational requirements should be set forth through the rule and declines to make recommended changes. The basis for rule was a result of stakeholder input and review by the Physician Assistant Board. The Physician Assistant Board determined that physician assistant medical education and post graduate training programs include medical radiologic technology. Because each training program may have some variation in structuring of such training, it is impractical to set a minimum number of hours in certain topics, or dictate examination requirements. Further, the quality and value of required training may decline over time if specific requirements are strictly dictated through regulations, as technology advancements and changes to the standard of

care guidelines may quickly outpace the Board's ability to appropriately respond to those changes and update the regulations accordingly. The utilization of physician assistants for medical radiologic technology practice and procedures is a long-standing and widely accepted practice in the medical community. A physician assistant's registration with the Texas Medical Board will function as the same registry, as the physician assistant's registration must include notice of the supervising and delegating physician delegating medical acts, including medical radiologic procedures.

**Comment No. 2--Individual**

An individual who is a registered radiologic technologist opposed the rule in part, stating that completion of additional education and training in specific topics related to radiologic technology and a secondary registry for PAs who have completed the education should be defined and set forth through the rule. The individual provided information showing that the American Association of Physician Assistants (AAPA) and ASRT have set forth an agreed upon framework on minimum education required to perform fluoroscopy procedures. The individual recommended adopting the AAPA/ASRT's requirements, or language similar or identical to language previously in effect under Title 25, Chapter 140. The individual stated that physician assistants should not be allowed to perform other dangerous or hazardous procedures unless they hold a general certificate.

**Board Response:**

The Physician Assistant Board disagrees that specific training and educational requirements should be set forth through the rule and declines to make recommended changes. The basis for rule was a result of stakeholder input and review by the Physician Assistant Board. The Physician Assistant Board determined that physician assistant medical education and post graduate training programs include medical radiologic technology. Because each training program may have some variation in structuring of such training, it is impractical to set a minimum number of hours in certain topics, or dictate examination requirements. Further, the quality and value of required training may decline over time if specific requirements are strictly dictated through regulations, as technology advancements and changes to the standard of care guidelines may quickly outpace the Board's ability to appropriately respond to those changes and update the regulations accordingly. The utilization of physician assistants for medical radiologic technology practice and procedures is a long-standing and widely accepted practice in the medical community. A physician assistant's registration with the Texas Medical Board will function as the same registry, as the physician assistant's registration must include notice of the supervising and delegating physician delegating medical acts, including medical radiologic procedures.

**Comment No. 3--Individual**

An individual who is a medical physicist opposed the rule in part, stating that completion of additional education and training in specific topics related to radiologic technology should be defined and set forth through the rule. The individual opposed allowing physician assistants to perform radiologic procedures that are defined as dangerous or hazardous, including fluoroscopy, stating that the rules related to dangerous or hazardous procedures do not expressly allow such delegation. The individual recommended adopting language similar or identical to language previously in effect under Title 25, Chapter 140.

**Board Response:**

The Physician Assistant Board disagrees that specific training and educational requirements should be set forth through the rule and declines to make recommended changes. The basis for rule was a result of stakeholder input and review by the Physician Assistant Board. The Physician Assistant Board determined that physician assistant medical education and post graduate training programs include medical radiologic technology. Because each training program may have some variation in structuring of such training, it is impractical to set a minimum number of hours in certain topics, or dictate examination requirements. Further, the quality and value of required training may decline over time if specific requirements are strictly dictated through regulations, as technology advancements and changes to the standard of care guidelines may quickly outpace the Board's ability to appropriately respond to those changes and update the regulations accordingly. The utilization of physician assistants for medical radiologic technology practice and radiologic procedures, including dangerous and hazardous procedures, is a long-standing and widely accepted practice in the medical community. While the rules addressing dangerous and hazardous procedures do not yet correctly reflect physician delegation of such procedures to physician assistants and other qualified mid-level providers, such as advance practice registered nurses, which is permitted under delegation statutes and rules, this is a known issue and will be addressed through future stakeholder meetings and rule-making procedures.

**Comment No. 4--Individual**

An individual who is the Program Director for Radiation and Occupational Safety at the University of Texas Medical Branch opposed the rule in part, stating that additional education and training in specific topics related to radiologic technology should be defined and set forth through the rule. The individual recommended adopting language similar or identical to language previously in effect under Title 25, Chapter 140.

**Board Response:**

The Physician Assistant Board disagrees that specific training and educational requirements should be set forth through the rule and declines to make recommended changes. The basis for rule was a result of stakeholder input and review by the Physician Assistant Board. The Physician Assistant Board determined that physician assistant medical education and post graduate training programs include medical radiologic technology. Because each training program may have some variation in structuring of such training, it is impractical to set a minimum number of hours in certain topics, or dictate examination requirements, and may have the opposite effect and to complete training that reflects the most up to date information and technology. Further, the quality and value of required training may decline over time if specific requirements are strictly dictated through regulations, as technology advancements and changes to the standard of care guidelines may quickly outpace the Board's ability to appropriately respond to those changes and update the regulations accordingly. The utilization of physician assistants for medical radiologic technology practice and radiologic procedures, including dangerous and hazardous procedures, is a long-standing and widely accepted practice in the medical community.

**Comment No. 5--Twenty Physicians Associated with the University of Texas MD Anderson Cancer Center**

Twenty physicians associated with the University of Texas MD Anderson Cancer Center expressed support for the rule, stating that physician assistants at MD Anderson are required to

complete an advanced training program in the safe use of fluoroscopy, which includes a radiation safety course and hands on training in the safe use of fluoroscopy for anatomical visualization as part of interventional procedures prior to performing fluoroscopy. The physicians further stated that healthcare system leaders, physicians, physician assistants and other practitioners are best situated for determining how to form teams, delegate and authorize patient care responsibilities, and ensure patient safety and practitioner competency through training, credentialing, and privileging within their practices and institutions.

For these reasons, the Board declines to make any changes in the rule as published and proceeds with the adoption of rule §185.32 as published in the *Texas Register*.

The new rule is adopted under the authority of the Texas Occupations Code Annotated, §601.254.

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 June 28, 2019.

TRD-201902042

Scott Freshour

General Counsel

Texas Medical Board

Effective date: July 18, 2019

Proposal publication date: January 25, 2019

For further information, please call: (512) 305-7016



## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 15. TEXAS FORENSIC SCIENCE COMMISSION**

#### **CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES**

##### **SUBCHAPTER A. ACCREDITATION**

###### **37 TAC §651.5, §651.7**

The Texas Forensic Science Commission ("Commission") adopts amendments without changes to 37 Texas Administrative Code §651.5 and §651.7 to remove the forensic discipline "document examination" from the list of forensic disciplines subject to Commission accreditation. The amendments are necessary to reflect adoptions made by the Commission at its May 3, 2019, quarterly meeting. The proposal appeared in the May 24, 2019, issue of the *Texas Register* (44 TexReg 2590). The amendments are made in accordance with the Commission's accreditation authority under Tex. Code. Crim. Proc. art. 38.01 §4-d(c).

Summary of Comments. No comments were received regarding the amendments to these sections.

Statutory Authority. The amendments are adopted under Tex. Code Crim. Proc. art. 38.01 §4-d(c).

Cross reference to statute. The adoption affects 37 Texas Administrative Code §651.5 and §651.7.

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 June 25, 2019.

TRD-201901988

Leigh Savage

Associate General Counsel

Texas Forensic Science Commission

Effective date: July 15, 2019

Proposal publication date: May 24, 2019

For further information, please call: (512) 936-0661



### **SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM**

#### **37 TAC §651.207**

The Texas Forensic Science Commission ("Commission") adopts amendments without changes to 37 Texas Administrative Code §651.207 to remove references to any pre-January 1, 2019, forensic analyst licensing requirements. The amended rule will not be republished.

The pre-January 1, 2019, requirements are no longer applicable. The amendments are non-substantial edits that do not change what is required of any particular analyst. The proposal appeared in the May 24, 2019, issue of the *Texas Register* (44 TexReg 2592). The amendments were adopted at the Commission's May 3, 2019, quarterly meeting and 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 adoption affects 37 Texas Administrative Code §651.207.

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 June 25, 2019.

TRD-201901987

Leigh Savage

Associate General Counsel

Texas Forensic Science Commission

Effective date: July 15, 2019

Proposal publication date: May 24, 2019

For further information, please call: (512) 936-0661



#### **37 TAC §651.216**

The Texas Forensic Science Commission ("Commission") adopts an amendment without changes to 37 Texas Administrative Code §651.216 related to its forensic analyst licensing program to provide clarification that the Commission may take disciplinary action in the form of a license denial for a person who has never held a forensic analyst license upon a finding

of professional misconduct by the applicant. The amendment appeared in the May 24, 2019, issue of the *Texas Register* (43 TexReg 2596). The amendment is necessary to reflect adoptions made by the Commission at its May 3, 2019, quarterly meeting. The adoption is made in accordance with the Commission's authority under Article 38.01 §4-a(d), Code of Criminal Procedure which requires the Commission to create a forensic analyst licensing program.

Summary of Comments. No comments were received regarding the amendment to this section.

Statutory Authority. The amendment is adopted under Tex. Code Crim. Proc. art 38.01 §4-a.

Cross reference to statute. The amendment affects 37 Texas Administrative Code §651.216.

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 June 25, 2019.

TRD-201901986

Leigh Savage

Associate General Counsel

Texas Forensic Science Commission

Effective date: July 15, 2019

Proposal publication date: May 24, 2019

For further information, please call: (512) 936-0661



## SUBCHAPTER D. PROCEDURE FOR PROCESSING COMPLAINTS AND LABORATORY SELF-DISCLOSURES

### 37 TAC §651.302

The Texas Forensic Science Commission ("Commission") adopts amendments with nonsubstantive changes to 37 Texas Administrative Code §651.302, related to its procedure for processing complaints and laboratory self-disclosures, to provide clarification in its definitions of professional negligence and professional misconduct to reflect definitions in Code of Criminal Procedure 38.01 that were not available when the Commission first defined the terms professional negligence and professional misconduct. The proposal appeared in the May 24, 2019, issue of the *Texas Register* (44 TexReg 2598). The amendments are necessary to reflect adoptions made by the Commission at its May 3, 2019, quarterly meeting. The adoptions were made in accordance with the Commission's authority under Article 38.01 §4(a)(3), Code of Criminal Procedure which requires the Commission to investigate, in a timely manner, any allegation of professional negligence or professional misconduct that would substantially affect the integrity of the results of a forensic analysis conducted by a crime laboratory.

Summary 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)(3).

Cross reference to statute. The adoption affects 37 Texas Administrative Code §651.302.

§651.302. *Definitions.*

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

(1) Accredited field of forensic science--means a specific forensic method or methodology validated or approved by the Commission under Article 38.01, Code of Criminal Procedure §4-d as part of the accreditation process for crime laboratories.

(2) Crime laboratory--has the meaning assigned by Article 38.35, Code of Criminal Procedure.

(3) Forensic analysis--has the meaning assigned by Article 38.35, Code of Criminal Procedure. The term does not include:

(A) latent print examination;

(B) a test of a specimen of breath under Chapter 724, Transportation Code;

(C) digital evidence;

(D) an examination or test excluded by rule under Article 38.01, Code of Criminal Procedure;

(E) a presumptive test performed for the purposes of determining compliance with a term or condition of community supervision or parole and conducted by or under contract with a community supervision and corrections department, the parole division of the Texas Department of Criminal Justice, or the Board of Pardons and Paroles; or

(F) an expert examination or test conducted principally for the purpose of scientific research, medical practice, civil or administrative litigation, or other purpose unrelated to determining the connection of physical evidence to a criminal action;

(4) Forensic pathology--includes that portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician.

(5) Accredited laboratory--includes a public or private laboratory or other entity that conducts forensic analysis as defined in Article 38.35, Code of Criminal Procedure and is accredited by a national accrediting body recognized by the Commission and listed in §651.4 of this title (relating to List of Recognized Accrediting Bodies).

(6) Physical evidence--has the meaning assigned by Article 38.35, Code of Criminal Procedure.

(7) Professional misconduct--means the forensic analyst or crime laboratory, through a material act or omission, deliberately failed to follow a standard of practice that an ordinary forensic analyst or crime laboratory would have followed, and the deliberate act or omission would substantially affect the integrity of the results of a forensic analysis. An act or omission was deliberate if the forensic analyst or crime laboratory was aware of and consciously disregarded an accepted standard of practice.

(8) Professional negligence--means the forensic analyst or crime laboratory, through a material act or omission, negligently failed to follow the standard of practice that an ordinary forensic analyst or crime laboratory would have followed, and the negligent act or omission would substantially affect the integrity of the results of a forensic analysis. An act or omission was negligent if the forensic analyst or crime laboratory should have been but was not aware of an accepted standard of practice.

(9) For purposes of these definitions, the term "standard of practice" includes any of the activities engaged in by a "forensic analyst" as those activities are defined in Article 38.01, Code of Criminal Procedure. "Forensic analyst" means a person who on behalf of



a crime laboratory accredited under Article 38.01, Code of Criminal Procedure technically reviews or performs a forensic analysis or draws conclusions from or interprets a forensic analysis for a court or crime laboratory.

(10) The term "would substantially affect the integrity of the results of a forensic analysis" does not necessarily require that a criminal case be impacted or a report be issued to a customer in error. The term includes acts or omissions that would call into question the integrity of the forensic analysis, the forensic analyst or analysts, or the crime laboratory as a whole regardless of the ultimate outcome in the underlying criminal case.

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 June 25, 2019.

TRD-201901985

Leigh Savage

Associate General Counsel

Texas Forensic Science Commission

Effective date: July 15, 2019

Proposal publication date: May 24, 2019

For further information, please call: (512) 936-0661



## TITLE 43. TRANSPORTATION

### PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

#### CHAPTER 15. FINANCING AND CONSTRUCTION OF TRANSPORTATION PROJECTS

##### SUBCHAPTER E. FEDERAL, STATE, AND LOCAL PARTICIPATION

###### 43 TAC §§15.50 - 15.53, 15.55

The Texas Department of Transportation (department) adopts amendments to §§15.50 - 53 and 15.55, concerning Federal, State, and Local Participation. The amendments to §§15.50 - 15.53 and 15.55 are adopted without changes to the proposed text as published in the April 12, 2019, issue of the *Texas Register* (44 TexReg 1824) and will not be republished.

###### EXPLANATION OF ADOPTED AMENDMENTS

Amendments to §15.50, Purpose, expand the applicability of the subchapter to all transportation projects, in order to ensure that the responsibilities of the parties are clear for all types of projects for which federal, state, and local cost participation is available under current federal and state transportation programs.

Amendments to §15.51, Definitions, expand various definitions to include all transportation projects for which federal, state and local cost participation is available, rather than only highway improvement projects. Multiple definitions are removed because they define terms that are no longer used in this subchapter.

Amendments to §15.52, Agreements, rearrange and reword the text for clarity, and remove references to the chart in §15.55(c) that designates funding participation ratios because that portion

of the rule is being amended to remove the chart. This section is further amended to provide for the department to designate the type of funding arrangement to be used under a funding agreement to allow the department to allocate most appropriately the risk of cost overruns to the party that has the greater ability to manage the cost of the project. Inclusion in the Statewide Transportation Improvement Program is added as a condition under which a project may be authorized by the commission to align with federal requirements. The designation of the fixed price funding arrangement as being the standard funding type is removed and the requirement for executive director approval for the use of specified percentage funding arrangement is removed in order to allow the department to allocate most appropriately the risk of cost overruns to the party that has the greater ability to manage the cost of the project. The criteria the department will consider in determining the fixed price amount is amended in §15.52(4)(A) in order to reduce financial risk to the department. The amendment also adds flexibility by providing for an adjustment to a fixed price amount when further definition of a local government's requested scope of work identifies greatly differing costs than those initially estimated. Subparagraph §15.52(4)(B)(i) related to specified percentage funding is revised to state minimum percentage local government participation amounts for various state and federal funding programs will be designated by the department and that the local government is responsible for all project costs that are greater than the maximum state and federal participation specified in the funding agreement between the department and the local government. Paragraph (8) expands the conditions for termination to indicate conditions under which the department may terminate the agreement when the local government and the department are not able to execute a mutually agreeable amendment.

Amendments to §15.53, Preliminary and Construction Engineering Expenses, remove a reference to §15.55(c) to reflect amendments made to §15.55.

Amendments to §15.55, Construction Cost Participation, remove the chart establishing federal, state, and local cost participation ratios and provides that the department will establish the ratios. The removal provides flexibility by allowing the department to timely update the federal, state, and local cost participation ratios when the required participation ratios change in federal legislation.

###### COMMENTS

No comments on the proposed amendments were received.

###### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

###### CROSS REFERENCE TO STATUTES

Transportation Code, Chapter 221; Transportation Code, Chapter 222, Subchapter C; and Transportation Code, Chapter 224.

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 June 27, 2019.

TRD-201902015

Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Effective date: July 17, 2019  
Proposal publication date: April 12, 2019  
For further information, please call: (512) 463-8630



# 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

Office of the Governor

### Title 1, Part 1

The Office of the Governor files this notice of intention to review 1 TAC Chapter 5, General Administration. The review is being conducted in accordance with Texas Government Code § 2001.039.

An assessment will be made as to whether the reasons for adopting the rules continue to exist. Each rule will be reviewed to determine whether to readopt, change, or repeal the rule.

Comments may be submitted for 30 days following the publication of this notice by mail to General Counsel Division, Office of the Governor, P.O. Box 12428, Austin, Texas 78711-2428 or electronically at <https://gov.texas.gov/apps/contact/rule-review.aspx>.

TRD-201902092

Jordan Hale

Deputy Chief of Staff

Office of the Governor

Filed: July 2, 2019



## Adopted Rule Reviews

Texas Education Agency

### Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 62, Commissioner's Rules Concerning the Equalized Wealth Level, pursuant to Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 62 in the October 12, 2018, issue of the *Texas Register* (43 TexReg 6851).

Relating to the review of 19 TAC Chapter 62, the TEA finds that the reasons for adopting the rules continue to exist and readopts the rules. The TEA received one comment related to the review. Following is a summary of the comment received and the response.

Comment: The Equity Center commented that 19 TAC Chapter 62 serves as an outline for school districts impacted by wealth equalization and details the actions those districts must take and how the various elements of school funding must be calculated under current law.

Response: The agency agrees.

At a later date, the TEA plans to propose changes to 19 TAC Chapter 62 to implement House Bill 3, 86th Texas Legislature, 2019.

This concludes the review of 19 TAC Chapter 62.

TRD-201902100

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: July 3, 2019



Texas Commission on Environmental Quality

### Title 30, Part 1

The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 117, Control of Air Pollution from Nitrogen Compounds, 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 January 18, 2019, issue of the *Texas Register* (44 TexReg 335).

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 117 for controlling nitrogen oxides (NO<sub>x</sub>) emissions were specifically developed to meet the Federal Clean Air Act requirements for attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) for ozone established by the United States Environmental Protection Agency (EPA).

States are primarily responsible for ensuring attainment and maintenance of the NAAQS once the EPA has established those standards. Under 42 United States Code, §7410 and related provisions, states must submit revisions to the state implementation plan (SIP) for EPA approval that provide for the attainment and maintenance of the NAAQS through control programs directed to sources of the pollutants involved. NO<sub>x</sub> emissions are precursor pollutants in the formation of ozone, and the rules in Chapter 117 form a significant component of the Texas SIP to attain and maintain the NAAQS for ozone.

Additional rules in Chapter 117 are needed to regulate carbon monoxide and ammonia emissions that result from the required NO<sub>x</sub> controls, as well as rules that give the executive director the authority to approve alternative case-specific specifications when owners or operators can demonstrate that an affected unit cannot attain certain rule requirements in Chapter 117.

Public Comment

The public comment period closed on February 19, 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 117 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201902030

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: June 28, 2019



The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 222, Subsurface Area Drip Dispersal Systems, 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 January 18, 2019, issue of the *Texas Register* (44 TexReg 335).

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 222 are required in order to implement Texas Water Code, Chapter 32 by establishing a permit application process for subsurface area drip dispersal systems (SADDSs) and standards for the design, construction, location, operation, and maintenance of SADDSs. A SADDS is a waste disposal system that injects processed commercial, industrial, or municipal wastewater into the ground at a depth of not more than 48 inches and spreads the waste over a large enough area that the soil hydrologic absorption rate and crop/plant root absorption rate are not exceeded.

#### Public Comment

The public comment period closed on February 19, 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 222 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201902025

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: June 28, 2019



The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 318, Marine Seawater Desalination Discharges, 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 January 18, 2019, issue of the *Texas Register* (44 TexReg 335).

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 318 are required to implement Texas Water Code, Chapter 18 by establishing an expedited permitting process for the discharge of treated marine seawater and waste resulting from the desalination of marine seawater.

#### Public Comment

The public comment period closed on February 19, 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 318 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201902026

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: June 28, 2019



The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 327, Spill Prevention and Control, 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 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 327 are required because the rules implement Texas Water Code, §§26.039, 26.121, 26.262, and 26.264 by establishing reporting requirements and response action guidelines, intended to ensure the timeliness, adequacy, coordination, efficiency, and effectiveness of responses to discharges or spills subject to the commission's regulatory jurisdiction. The rules are necessary to prevent the spill or discharge of oil, hazardous substances, or other substances into or adjacent to the waters of the state and to ensure the timely removal of such spills and discharges.

#### 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 327 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201902031

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: June 28, 2019



The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 332, Composting, 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 January 18, 2019, issue of the *Texas Register* (44 TexReg 336).

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 332 are required because the rules establish regulations that will divert organic materials from the typical municipal solid waste stream and promote the beneficial reuse of those materials

while maintaining standards for human health and safety and environmental protections.

Public Comment

The public comment period closed on February 19, 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 332 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201902032

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: June 28, 2019



The Texas Commission on Environmental Quality (TCEQ or commission) has completed its Rule Review of 30 TAC Chapter 334, Underground and Aboveground Storage Tanks, 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 stated policy and purpose of Texas Water Code (TWC), Chapter 26, Subchapter I, is to: (1) maintain and protect the quality of groundwater and surface water resources in the state from certain substances in underground and aboveground storage tanks that may pollute groundwater and surface water resources; and (2) require the use of all reasonable methods, including risk-based corrective action, to implement this policy. TWC, §26.345, authorizes the commission to

develop a regulatory program regarding underground and aboveground storage tanks, and to adopt rules necessary to carry out that purpose.

The TCEQ's regulatory program is established in Chapter 334 and includes: tank registration (authorized by TWC, §26.346); tank standards (authorized by TWC, §26.347); leak detection and record maintenance (authorized by TWC, §26.348); reporting of releases and corrective action (authorized by TWC, §26.349); tank closure requirements (authorized by TWC, §26.350); corrective action requirements (authorized by TWC, §26.351); and financial responsibility requirements (authorized by TWC, §26.352).

Additionally, Texas' program is an approved state program, meaning that the State of Texas is approved to administer and enforce an underground storage tank program in lieu of the federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 United States Code, §§6991 *et seq.* Texas' program is administered by the TCEQ. For states that do not have approved underground storage tank programs, the United States Environmental Protection Agency regulates such tanks directly.

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 334 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201902024

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 28, 2019





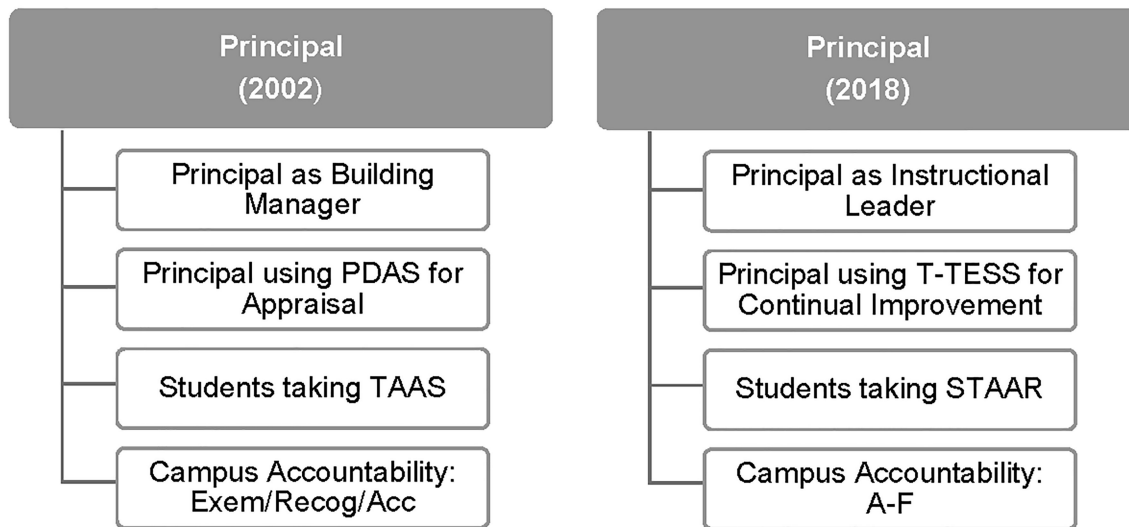
# TABLES & GRAPHICS

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: 19 TAC Chapter 241 - Preamble

## THE CHANGING ROLE OF THE PRINCIPAL FROM 2002-2018



**MANDATORY NOTICE TO THE PUBLIC  
ANY COMPLAINTS AGAINST  
A LICENSEE SHOULD BE MADE TO:**

**The Texas Board of Chiropractic Examiners**

333 Guadalupe Street

Suite 3-825

Austin, Texas 78701-3942

<http://www.tbce.texas.gov/>

512-305-6700

or 1-800-821-3205

ATTENTION: This placard shall be visible to the public and conspicuously displayed in any location where chiropractic services are provided.

**AVISO OBLIGATORIO AL PUBLICO**

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**UN QUIROPRACTICO DEBE HACERSE:**

**The Texas Board of Chiropractic Examiners**

333 Guadalupe Street

Suite 3-825

Austin, Texas 78701-3942

<http://www.tbce.texas.gov/>

512-305-6700

or 1-800-821-3205

ATENCION: Este signo será visible al public y se mostrará visiblemente en cualquier lugar donde se provean servicios quiropracticos.



# 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

Announcement of Adjustment Required by Texas Family Code §154.125

Effective September 1, 2019, the guidelines for the support of a child apply to situations in which the obligor's monthly net resources are not greater than \$9,200.00.

Texas Family Code §154.125 (in part):

APPLICATION OF GUIDELINES TO NET RESOURCES. (a) The guidelines for the support of a child in this section are specifically designed to apply to situations in which the obligor's monthly net resources are not greater than \$7,500 or the adjusted amount determined under Subsection (a-1), whichever is greater. (a-1) The dollar amount prescribed by Subsection (a) is adjusted every six years as necessary to reflect inflation. The Title IV-D agency shall compute the adjusted amount, to take effect beginning September 1 of the year of the adjustment, based on the percentage change in the consumer price index during the 72-month period preceding March 1 of the year of the adjustment, as rounded to the nearest \$50 increment. The Title IV-D agency shall publish the adjusted amount in the *Texas Register* before September 1 of the year in which the adjustment takes effect. For purposes of this subsection, "consumer price index" has the meaning assigned by Section 341.201, Finance Code.

Computation:

February 2019, the designated CPI was 733.407

February 2013, the designated CPI was 681.158

The CPI change was 52.249 (733.407-681.158)

The CPI increased by 7.67061% (52.249 ÷ 681.158= 0.0767061)

$\$8,550 \times 1.0767061 = \$9,205.84$

\$9,205.84 rounded to the nearest \$50 increment is \$9,200.00

TRD-201902012

Ryan L. Bangert

Deputy Attorney General for Legal Counsel

Office of the Attorney General

Filed: June 26, 2019

## 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 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/08/19 - 07/14/19 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/08/19 - 07/14/19 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009<sup>3</sup> for the period of 07/01/19 - 07/31/19 is 18% or Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 07/01/19 - 07/31/19 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

<sup>3</sup>For variable rate commercial transactions only.

TRD-201902087

Leslie Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: July 2, 2019

## 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 **August 12, 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 **August 12, 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: 290 East Bush, Incorporated; DOCKET NUMBER: 2018-1058-EAQ-E; IDENTIFIER: RN105981849; LOCATION:

Dripping Springs, Hays County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §213.23(i), and Edwards Aquifer Contributing Zone Plan (CZP) Number 11-10081701 Standard Condition Number 5, by failing to obtain approval of a modification to an approved Edwards Aquifer CZP prior to commencing construction of the modification; PENALTY: \$19,000; ENFORCEMENT COORDINATOR: Chase Davenport, (512) 239-2615; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(2) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2019-0112-AIR-E; IDENTIFIER: RN103919817; LOCATION: Baytown, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 1504A, PSDTX748M1, and N148, Special Conditions Number 1, Federal Operating Permit Number O2113, General Terms and Conditions and Special Terms and Conditions Number 16, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$14,250; ENFORCEMENT COORDINATOR: Soraya Bun, (713) 422-8912; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: City of Dilley; DOCKET NUMBER: 2019-0164-MLM-E; IDENTIFIER: RN106045099; LOCATION: Dilley, Frio County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) collection and disposal facility; RULES VIOLATED: 30 TAC §111.201 and Texas Health and Safety Code, §382.085(b), by failing to not cause, suffer, allow, or permit unauthorized outdoor burning within the state of Texas; and 30 TAC §330.15(a) and (c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of MSW; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: City of Granite Shoals; DOCKET NUMBER: 2019-0205-PWS-E; IDENTIFIER: RN101214815; LOCATION: Granite Shoals, Burnet County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.060 milligrams per liter (mg/L) for haloacetic acids, based on the locational running annual average; 30 TAC §290.115(f)(1) and §290.122(b)(2)(A) and (f) and THSC, §341.0315(c), by failing to comply with the MCL of 0.080 mg/L for total trihalomethanes (TTHM), based on the locational running annual average and failing to timely submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the executive director (ED) regarding the failure to comply with the MCL of 0.080 mg/L for TTHM for Disinfection Byproducts Stage 2 at Site 1 for the third quarter of 2018; and 30 TAC §290.117(i)(6) and (j), by failing to timely provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested and failing to timely mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification had been distributed in a manner consistent with TCEQ requirements for the January 1, 2014 - December 31, 2016, monitoring period; PENALTY: \$1,910; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$1,910; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(5) COMPANY: City of Hooks; DOCKET NUMBER: 2018-1607-MWD-E; IDENTIFIER: RN101916468; LOCATION: Hooks, Bowie County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010507001, Effluent Limitations and Monitoring Requirements

Numbers 1, 2, and 3, by failing to comply with permitted effluent limitations; PENALTY: \$85,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$85,000; ENFORCEMENT COORDINATOR: Christopher Moreno, (254) 761-3038; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: City of Junction; DOCKET NUMBER: 2016-2129-MLM-E; IDENTIFIER: RN101383990; LOCATION: Junction, Kimble County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §288.20(a) and §288.30(5)(B) and TWC, §11.1272, by failing to adopt a Drought Contingency Plan which includes all elements for municipal use by a retail public water supplier; 30 TAC §290.42(d)(13)(C), by failing to maintain clear, current documentation of the color code used in a location easily accessed by all personnel; 30 TAC §290.42(e)(4)(A), by failing to provide a small bottle of fresh ammonia solution (or approved equal) for testing for chlorine leakage that is readily accessible outside the chlorinator room; 30 TAC §290.42(f)(2)(A), by failing to have a standby or reserve unit for each chemical feeder that is needed to comply with a treatment technique or maximum contaminant level requirement; 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.43(e), by failing to ensure that the facility's potable water storage tanks and pressure maintenance facilities are installed in a lockable building that is designed to prevent intruder access or enclosed by an intruder-resistant fence with lockable gates; 30 TAC §290.44(h)(1)(A), by failing to install backflow prevention assemblies or an air gap at all residences or establishments where an actual or potential contamination hazard exists, as identified in 30 TAC §290.47(f); 30 TAC §290.46(d)(2)(A) and §290.110(b)(2) and (4) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to maintain a minimum disinfectant residual of 0.2 milligrams per liter (mg/L) free chlorine in the water entering the distribution system and throughout the distribution system at all times; 30 TAC §290.46(e)(6)(B), by failing to use at least two operators where one of the required operators holds a Class B or higher surface water license and the other required operator holds a Class C or higher surface water license, each of who work at least 32 hours per month at the facility's production, treatment, or distribution facilities; 30 TAC §290.46(e)(6)(C), by failing to ensure that each surface water treatment plant has at least one Class C or higher surface water operator on duty at the plant when it is in operation or that the plant is provided with continuous turbidity and disinfectant residual monitors with automatic plant shutdown and alarms to summon operators so as to ensure that the water produced continues to meet the commission's drinking water standards during periods when the plant is not staffed; 30 TAC §290.46(f)(1) and (2) and (3)(A)(iii), (C)(ii), (D)(vii), (E)(ii), and (iv), by failing to maintain organized operating records, keep copies on file or electronically, and make them readily available for review to the executive director (ED) at the time of the investigation; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's ground and elevated storage tanks annually; 30 TAC §290.46(n)(1), by failing to maintain plans, specifications, maps, and other pertinent information to facilitate the operation and maintenance of the system's facilities and equipment; 30 TAC §290.46(q), by failing to institute special precautions in the event of low distribution pressures, water outages, microbiological samples found to contain *Escherichia coli* or fecal coliform organisms, failure to maintain adequate chlorine residuals, elevated finished water turbidity levels, or other conditions which indicate that the potability of the drinking water supply has been compromised; 30 TAC §290.46(s)(1), by failing to calibrate the facility's four flow measuring devices annually; 30 TAC §290.46(s)(2)(B)(i) and (ii), by failing to calibrate the facility's

benchtop turbidimeter with primary standards at least once every 90 days and check the calibration with secondary standards each time a series of samples is tested; 30 TAC §290.46(s)(2)(B)(iv), by failing to check the calibration of the four on-line turbidimeters at least once each week with a primary standard, a secondary standard, or the manufacturer's proprietary calibration confirmation device, or by comparing the results from the on-line unit with the results from a properly calibrated benchtop unit; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.46(s)(2)(C)(ii), by failing to verify the accuracy of the two continuous disinfectant residual analyzers at least once every seven days with a chlorine solution of known concentration or by comparing the results from the on-line analyzer with the result of an approved benchtop method; 30 TAC §290.111(d)(2)(A), by failing to measure the disinfectant residual, pH, temperature, and flow rate of the water in each disinfection zone at least once each day during a time when peak hourly raw water flow rates are occurring; 30 TAC §290.111(f)(2)(B), by failing to measure and record the turbidity level of the combined effluent at least every four hours that the system serves water to the public; 30 TAC §290.111(f)(2)(D)(iii), by failing to conduct direct integrity tests on the filter racks at least once every seven days from August 8, 2016 - August 31, 2016; 30 TAC §290.111(h), by failing to properly complete the Surface Water Monthly Operating Reports submitted to the ED for the month of August 2016; 30 TAC §290.112(e)(1) and (f)(2), by failing to submit a Total Organic Carbon Monthly Operating Report with the required total organic carbon and alkalinity sampling data to the ED each month by the tenth day of the month following the end of the reporting period for the third quarter of 2017; 30 TAC §290.115(f)(1) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level of 0.060 mg/L for haloacetic acids, based on the locational running annual average; 30 TAC §290.121(a), by failing to maintain an up-to-date chemical and microbiological monitoring plan at each water treatment plant and at a central location; and 30 TAC §290.121(c)(1), by failing to submit a copy of the monitoring plan to the ED upon development and revision; PENALTY: \$11,241; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(7) COMPANY: M & H CRATES, INCORPORATED; DOCKET NUMBER: 2019-0533-WQ-E; IDENTIFIER: RN101947919; LOCATION: Jacksonville, Cherokee County; TYPE OF FACILITY: pallet mill; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent the discharge of industrial waste into or adjacent to any water in the state; PENALTY: \$1,312; ENFORCEMENT COORDINATOR: Herbert Darling, (512) 239-2520; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: MarkWest Energy East Texas Gas Company, L.L.C.; DOCKET NUMBER: 2019-0469-AIR-E; IDENTIFIER: RN104401930; LOCATION: Beckville, Panola County; TYPE OF FACILITY: natural gas processing and compressor plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(B) and (C), Federal Operating Permit Number O2779/General Operating Permit Number 514, Site-wide Requirements (b)(2), and Texas Health and Safety Code, §382.085(b), by failing to submit a deviation report for at least each six-month period after permit issuance and failing to submit a deviation report no later than 30 days after the end of each reporting period; PENALTY: \$2,963; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: Orangefield Water Supply Corporation; DOCKET NUMBER: 2019-0570-MWD-E; IDENTIFIER: RN105137533; LOCATION: Orangefield, Orange County; TYPE OF FACILITY: waste-

water treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014772001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$4,125; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(10) COMPANY: Robert Martin; DOCKET NUMBER: 2019-0318-MLM-E; IDENTIFIER: RN109876987; LOCATION: Lumberton, Hardin County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §111.201 and Texas Health and Safety Code, §382.085(b), by failing to not cause, suffer, allow, or permit outdoor burning within the state of Texas; and 30 TAC §330.15(a) and (c), by failing to not cause, suffer, allow, or permit the disposal of unauthorized MSW; PENALTY: \$3,015; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(11) COMPANY: Schertz/Seguin Local Government Corporation; DOCKET NUMBER: 2019-0330-SLG-E; IDENTIFIER: RN105566541; LOCATION: Nixon, Gonzalez County; TYPE OF FACILITY: water treatment plant sludge land application site; RULE VIOLATED: 30 TAC §312.122(b), by failing to maintain authorization to land apply water treatment plant sludge in a land application unit; PENALTY: \$4,063; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$3,251; ENFORCEMENT COORDINATOR: Chase Davenport, (512) 239-2615; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(12) COMPANY: Shintech Incorporated; DOCKET NUMBER: 2019-0104-AIR-E; IDENTIFIER: RN100213198; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: polyvinyl chloride resins manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(2) and (3), 113.1555, 116.115(c), and 122.143(4), 40 Code of Federal Regulations (CFR) §63.11930(c)(2)(i), New Source Review (NSR) Permit Numbers 9347 and PSDTX285M5, Special Conditions (SC) Number 4.D, Federal Operating Permit (FOP) Number O1361, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Numbers 1.A and 11, and Texas Health and Safety Code (THSC), §382.085(b), by failing to conduct monthly bypass valve inspections for closed vent systems; and 30 TAC §§101.20(2) and (3), 113.1555, 116.115(c), and 122.143(4), 40 CFR §63.11985(b), NSR Permit Numbers 9347 and PSDTX285M5, SC Number 4.D, FOP Number O1361, GTC and STC Numbers 1.A and 11, and THSC, §382.085(b), by failing to submit the 40 CFR Part 63, Subpart HHHH-HHH compliance reports within 30 days after the end of the reporting period; PENALTY: \$105,741; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$42,296; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: JIMMY KEITH SOCIA; DOCKET NUMBER: 2019-0829-OSI-E; IDENTIFIER: RN103535761; LOCATION: Lufkin, Angelina County; TYPE OF FACILITY: installer; RULE VIOLATED: 30 TAC §285.61(4), by failing to ensure that an authorization to construct has been issued prior to beginning construction of an On-site Sewage Facility; PENALTY: \$175; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(14) COMPANY: Spirit TS Fredericksburg TX, LLC; DOCKET NUMBER: 2019-0730-PWS-E; IDENTIFIER: RN105135560; LOCATION: Fredericksburg, Gillespie County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 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; PENALTY: \$138; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(15) COMPANY: TEDA TPCO America Corporation f/k/a TPCO America Corporation; DOCKET NUMBER: 2018-1516-AIR-E; IDENTIFIER: RN106224447; LOCATION: Gregory, San Patricio County; TYPE OF FACILITY: pipe manufacturing plant; RULES VIOLATED: 30 TAC §122.143(4), Federal Operating Permit (FOP) Number O3660, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 3.A.(iv)(1), and Texas Health and Safety Code (THSC), §382.085(b), by failing to conduct quarterly visible emissions observations from stationary vents; 30 TAC §122.143(4), FOP Number O3660, GTC and STC Number 3.B.(iii)(1), and THSC, §382.085(b), by failing to conduct quarterly visible emissions observations from a building, enclosed facility, or other structure; 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O3660, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; 30 TAC §122.143(4) and §122.145(2)(C), FOP Number O3660, GTC, and THSC, §382.085(b), by failing to submit a deviation report no later than 30 days after the end of the reporting period; 30 TAC §122.143(4) and §122.146(1) and (2), FOP Number O3660, GTC, and THSC, §382.085(b), by failing to certify compliance with the terms and conditions of the permit for at least each 12-month period following initial permit issuance and failing to submit a permit compliance certification no later than 30 days after the end of the certification period; 30 TAC §122.143(4) and (15) and §122.165(a)(7) and (8), FOP Number O3660, GTC, and THSC, §382.085(b), by failing to include a signed certification of accuracy and completeness; and 30 TAC §122.143(4) and §122.165(f), FOP Number O3660, GTC, and THSC, §382.085(b), by failing to notify the executive director of any change in the responsible official no later than at the next submittal requiring certification; PENALTY: \$37,368; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

TRD-201902078  
Charmaine Backens  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: July 2, 2019

◆ ◆ ◆  
**Notice of Commission Action and Response to Public Comments on General Permit TXG920000**

After consideration of all public comments and the responses to such comments, the Texas Commission on Environmental Quality (TCEQ) reissued Texas Pollutant Discharge Elimination System / State General Permit Number TXG920000 during its public meeting on June 26, 2019. This general permit authorizes the discharge of manure, sludge, and wastewater into or adjacent to water in the state by Concentrated Animal Feeding Operations only during chronic or catastrophic rainfall events, or catastrophic conditions that cause an overflow. The TCEQ also issued the Commission's Response to Public Comment. The issued permit and the Commission's Response to Public Comment is available

on the TCEQ website at: <https://www.tceq.texas.gov/permitting/wastewater/general/index.html>.

TRD-201902058  
Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: June 28, 2019

◆ ◆ ◆  
**Notice of Correction to Agreed Order Number 23**

In the June 8, 2018, issue of the *Texas Register* (43 TexReg 3821), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 23, for RAN-DOLPH WATER SUPPLY CORPORATION. The error is as submitted by the commission.

The reference to the penalty should be corrected to read: "\$613."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-201902079  
Charmaine Backens  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: July 2, 2019

◆ ◆ ◆  
**Notice of District Application**

Notice issued June 28, 2019

TCEQ Internal Control No. D-10232018-038; Cibolo Creek Municipal Authority of Bexar, Comal, and Guadalupe counties (the "Authority") filed an application with the Texas Commission on Environmental Quality (TCEQ) for authority to revise the impact fee service area within the North Side Basin, South Side Basin service area and include some additional acreage into the North and South Side Basin impact fee service area. The Authority's service area boundaries are shown on the map that follows this notice and is marked as Exhibit "A." The Authority files this application under the authority of Chapter 395 of the Local Government Code, 30 Texas Administrative Code Chapter 293, and the procedural rules of the TCEQ. The purpose of impact fees is to generate revenue to recover the costs of capital improvements or facility expansions made necessary by and attributable to serving new development in the Authority's service areas. At the direction of the Authority, a registered engineer has prepared a capital improvements plan for the system that identifies the capital improvements or facility expansions and their costs for which the impact fees will be assessed. The amendment of impact fee service area application and supporting information are available for inspection and copying during regular business hours in the Districts Section of the Water Supply Division, Third Floor of Building F (in the TCEQ Park 35 Office Complex located between Yager and Braker lanes on North IH-35), 12100 Park 35 Circle, Austin, Texas 78753. A copy of the amendment of impact fee service area application and supporting information, as well as the capital improvements plan, is available for inspection and copying at the Authority's office during regular business hours.

**INFORMATION SECTION**

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

TRD-201902107

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 3, 2019



#### Notice of Final Action on the Alternative Method of Control for National Emission Standard for Benzene Emissions from Benzene Transfer Operations

The Texas Commission on Environmental Quality (TCEQ) has made a final determination regarding an Alternative Method of Control (AMOC) for National Emission Standard for Benzene Emissions from Benzene Transfer Operations under the requirements of 40 Code of Federal Regulations (CFR) §61.12(d)(1).

**Summary:** On April 12, 2019, **Deer Park Refining Limited Partnership, Shell Oil Company (Shell) Deer Park Refinery**, requested an AMOC under the federal Clean Air Act. Shell requested approval to substitute an enclosed marine vapor recovery system routed to a fuel recovery system at the refinery in lieu of the requirements in 40 CFR §61.302(b) to use a vapor capture system routed to an incinerator, steam generating unit, process heater, carbon adsorber, or flare for marine loading of benzene. The specified control systems allowed under the rule are required to achieve 98% control of volatile organic compounds (VOCs), and the proposed fuel recovery system complies with 40 CFR §63.562(b)(3) and achieves 98% or better control of VOCs. The preliminary determination and opportunity for comment or hearing was published in the *Texas Register* on May 24, 2019, (44 TexReg 2636) and the comment period closed June 25, 2019. With this notice, the TCEQ is taking final action to approve the AMOC request and the resulting alternative operating conditions necessary to achieve a reduction in emissions of VOCs at least as equivalent to the reduction in emissions required by 40 CFR §61.302(b).

For further information, please contact Anne Inman, P.E., Operating Support Section, Air Permits Division, TCEQ (512) 239-1276.

TRD-201902080

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 2, 2019



Notice of Hearing Capital Ready Mix LLC: SOAH Docket No. 582-19-5684; TCEQ Docket No. 2019-0530-AIR; Proposed Permit No. 149092

#### APPLICATION.

Capital Ready Mix LLC, 514 Forest Oaks Drive, Houston, Texas 77017-4937, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of Proposed Air Quality Permit Number 149092, which would authorize construction of a Concrete Batch Plant located at 13133 South Wayside Drive, Houston, Harris County, Texas 77048. This application was submitted to the TCEQ on October 24, 2017. The proposed facility will emit the following contaminants: particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less.

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 are available for viewing and copying at the TCEQ central office, the TCEQ Houston regional office, and at the Johnson Neighborhood Library, 3517 Reed Road, Houston, Harris County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Houston Regional Office, 5425 Polk Street Suite 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: [www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.618888&lng=-95.317222&zoom=13&type=r](http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.618888&lng=-95.317222&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 preliminary hearing at:

**10:00 a.m. - August 19, 2019**

**William P. Clements Building**

**300 West 15th Street, 4th Floor**

**Austin, Texas 78701**

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary phase of the proceeding, which will be held at a later date, will be 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 May 29, 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/agency/decisions/cc/comments.html](http://www.tceq.texas.gov/agency/decisions/cc/comments.html), 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 [www.tceq.texas.gov](http://www.tceq.texas.gov)

In accordance with 1 TAC §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](http://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 [www.tceq.texas.gov](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 Capital Ready Mix LLC at the address stated above or by calling Mr. Venkata Godasi, Graduate Engineer at (713) 974-2272.

Issued: July 2, 2019

TRD-201902108

Bridget C. Bohac  
Chief Clerk

Texas Commission on Environmental Quality

Filed: July 3, 2019



#### Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

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 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 **August 12, 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 A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 12, 2019**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: AHRS ENTERPRISES, INC.; DOCKET NUMBER: 2018-0844-PST-E; TCEQ ID NUMBER: RN102714995; LOCATION: 2706 West Gentry Parkway, Tyler, Smith County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs; TWC, §26.3475(d) and 30 TAC §334.49(a)(7) and §334.54(b)(3), by failing to provide corrosion protection for the temporarily out-of-service UST system; TWC, §26.3475(a) and (c)(1), and 30 TAC §334.50(a)(7) and §334.54(c), by failing to provide release detection for the temporarily out-of-service USTs; 30 TAC §334.54(d)(2), by failing to ensure that any residue from stored regulated substances which remained in the temporarily out-of-service UST system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity; and 30 TAC §334.7(d)(1)(A) and (B) and (3), by failing to update, amend, or change the UST registration for any change in owner or operator information and change in operational status of the UST system within 30 days from the date of occurrence of the change or addition; PENALTY: \$7,442; STAFF ATTORNEY: Kevin Bartz, Litigation Division, MC 175, (512) 239-6225; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: ASA REALESTATE, LP; DOCKET NUMBER: 2017-1069-EAQ-E; TCEQ ID NUMBER: RN102756681; LOCATION: 16675 Huebner Road, San Antonio, Bexar County, Texas, along the northwest side of Huebner Road, approximately 710 feet north of the intersection of West Bitters Road and Huebner Road; TYPE OF FACILITY: commercial facility; RULES VIOLATED: 30 TAC §213.5(b)(4)(D)(ii)(I) and Water Pollution Abatement Plan (WPAP) Number 13-97032701D, Standard Conditions Number 15, by failing to implement best management practices (BMPs) and measures to control the discharge of pollution from regulated activities after the completion of construction; 30 TAC §213.4(g)(3) and WPAP Number 13-97032701D, Standard Conditions Number 2, by failing to submit proof of recordation of notice in the county deed records to

the San Antonio Regional Office within 60 days of receiving written WPAP modification approval; 30 TAC §213.5(f)(1) and WPAP Number 13-97032701, Standard Conditions Number 3, WPAP Number 13-97032701B, Standard Conditions Number 5, and WPAP Number 13-97032701D, Standard Conditions Number 5, by failing to provide written notification of intent to commence construction to the San Antonio Regional Office no later than 48 hours prior to commencement of a regulated activity; and 30 TAC §213.4(k) and §213.5(b)(4)(D)(ii)(II) and WPAP Number 13-97032701D, Standard Conditions Number 14, and Special Conditions Numbers VII and VIII, by failing to submit a certified letter from a Texas licensed professional engineer stating that the permanent BMPs or measures were constructed as designed; PENALTY: \$6,663; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: City of Trinity; DOCKET NUMBER: 2018-1086-PWS-E; TCEQ ID NUMBER: RN101218105; LOCATION: intersection of Railroad Street and East Madison Street, Trinity, Trinity County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.44(h)(4), by failing to test and certify to be operating within specifications all backflow prevention assemblies which are installed to provide protection against health hazards at least annually; and 30 TAC §290.46(j), by failing to complete a Customer Service Inspection certificate prior to providing continuous water service to new construction or any existing service when the water purveyor has reason to believe cross-connections or other potential contamination hazard exists, as identified by 30 TAC §290.47(f); PENALTY: \$1,515; STAFF ATTORNEY: Jaime Garcia, Litigation Division, MC 175, (512) 239-5807; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: Dario Jaime Gonzalez; DOCKET NUMBER: 2018-0075-MSW-E; TCEQ ID NUMBER: RN110024569; LOCATION: 94 Buen Gusto Street, Alamo, Hidalgo County; TYPE OF FACILITY: scrap tire storage site and scrap tire facility; RULES VIOLATED: Texas Health and Safety Code, §361.112(a) and 30 TAC §328.60(a) and §328.63(b), by failing to obtain a scrap tire storage site registration prior to processing scrap tires and storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed or lockable containers; PENALTY: \$15,000; STAFF ATTORNEY: Ian Groetsch, Litigation Division, MC 175, (512) 239-2225; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(5) COMPANY: DLUBAK GLASS COMPANY; DOCKET NUMBER: 2016-1479-IHW-E; TCEQ ID NUMBER: RN105518500; LOCATION: 400 Mushroom Road, Waxahachie, Ellis County; TYPE OF FACILITY: glass recycling, processing, and sorting facility; RULE VIOLATED: 30 TAC §335.2(a), by causing, suffering, allowing, or permitting the unauthorized storage, processing, or disposal of cathode ray tube hazardous industrial solid waste and/or municipal hazardous waste; PENALTY: \$175,000; Supplemental Environment Project offset amount of \$87,500 applied to Wastewater Treatment Assistance; STAFF ATTORNEY: Audrey Liter, Litigation Division, MC 175, (512) 239-0684; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Mukhtar Farooqui dba Cypress Chevron; DOCKET NUMBER: 2018-0634-PST-E; TCEQ ID NUMBER: RN101651214; LOCATION: 14110 Telge Road, Cypress, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor

the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §115.246(a)(1) and (4), by failing to assure that all Stage II recordkeeping requirements are met; and THSC, §382.085(b) and 30 TAC §115.242(d)(9), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system; PENALTY: \$7,187; STAFF ATTORNEY: Jaime Garcia, Litigation Division, MC 175, (512) 239-5807; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: SPENCER & SPENCER LLC; DOCKET NUMBER: 2018-0078-PST-E; TCEQ ID NUMBER: RN106852346; LOCATION: 7700 Farm-to-Market Road 2210 East near Perrin, Jack County; TYPE OF FACILITY: underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.7(d)(1)(B) and (3), by failing to provide an amended registration for any change or additional information regarding the UST within 30 days from the date of the occurrence of the change or addition; 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; TWC, §26.3475 and 30 TAC §334.50(b)(1)(A) and §334.54(c)(1), by failing to monitor all tanks in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.602(a), by failing to identify and designate for the UST facility at least one named individual for each class of operator - Class A and B; and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: \$10,075; STAFF ATTORNEY: Logan Harrell, Litigation Division, MC 175, (512) 239-1439; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

TRD-201902082

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 2, 2019



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Gallop Petroleum LLC: SOAH Docket No. 582-19-5771; TCEQ Docket No. 2018-0325-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

**10:00 a.m. - July 25, 2019**

**William P. Clements Building**

**300 West 15th Street, 4th Floor**

**Austin, Texas 78701**

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed February 15, 2019, concerning assessing administrative penalties against and requiring certain actions of GALLOP PETROLEUM LLC, for violations in La Salle County, Texas, of: Tex. Water Code §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (b)(2).

The hearing will allow GALLOP PETROLEUM LLC, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford GALLOP PETROLEUM LLC, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of GALLOP PETROLEUM LLC to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** GALLOP PETROLEUM LLC, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and chs. 7 and 26 and 30 Texas Administrative Code chs. 70 and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 TAC §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Kathryn Schroeder, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

**Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at <http://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.**

**In accordance with 1 TAC §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](http://www.soah.texas.gov), or in printed format upon request to SOAH."**

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: June 26, 2019

TRD-201902109

Bridget C. Bohac  
Chief Clerk

Texas Commission on Environmental Quality

Filed: July 3, 2019



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Juan Lopez Castillo and Landco Investments Inc.: SOAH Docket No. 582-19-5899; TCEQ Docket No. 2017-1387-MSW-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

**10:00 a.m. - August 1, 2019**

**William P. Clements Building**

**300 West 15th Street, 4th Floor**

**Austin, Texas 78701**

The purpose of the hearing will be to consider the Executive Director's Second Amended Report and Petition mailed April 10, 2019, concerning assessing administrative penalties against and requiring certain actions of Juan Lopez Castillo and LANDCO INVESTMENTS INC., for violations in Atascosa County, Texas, of: Tex. Water Code §26.121 and 30 TAC §330.15(a) and (c).

The hearing will allow Juan Lopez Castillo and LANDCO INVESTMENTS INC., the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Juan Lopez Castillo and LANDCO INVESTMENTS INC., the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Juan Lopez Castillo and LANDCO INVESTMENTS INC. to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Second Amended Report and Petition, attached hereto and incorporated herein for all purposes.** Juan Lopez Castillo and LANDCO INVESTMENTS INC., the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and ch. 7 and 26, Tex. Health and Safety Code ch. 361, and 30 Texas Administrative Code chs. 70 and 330; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Ian Groetsch, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

**Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at [www.tceq.texas.gov/goto/efilings](http://www.tceq.texas.gov/goto/efilings) or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087,**



Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 TAC §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](http://www.soah.texas.gov), or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: July 2, 2019

TRD-201902110

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 3, 2019

## Texas Ethics Commission

### List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Sue Edwards at (512) 463-5800.

#### Deadline: Personal Financial Statement due April 30, 2019

Anthony G. Buzbee, 1722 River Oaks Blvd., Houston, Texas 77019

Ramiro A. Cavazos, 200 E. Grayson St., Ste. 203, San Antonio, Texas 78215

Joe Ann Clack, 15303 Willview Rd., Missouri City, Texas 77489

Kyle F. Dickson, 4925 Pine St., Bellaire, Texas 77401

Ben R. Friedman, 11311 Harry Hines Blvd., Ste. 505, Dallas, Texas 75229

Denise Smith Holmes, 17307 First Bend Court, Cypress, Texas 77433

Ayeez A. Lalji, 1437 Highway 6 S., Ste. 300, Sugar Land, Texas 77478

Roberto D. Martinez, 2809 Santa Lydia, Mission, Texas 78572

Ann Scalon McGinity, 2906 Weatherford Court, Pearland, Texas 77584

Jose Menendez, 7715 Windmill Hill, San Antonio, Texas 78229

Manuel M. Quinones, Jr., P.O. Box 681568, San Antonio, Texas 78268-1568

Gavino Ramos, 2800 US Highway 281 N., San Antonio, Texas 78212

Arnoldo Saenz, 422 Agnes St., Premont, Texas 78375

Sonia K. Sanderson, 11017 Gilbert St., Beaumont, Texas 77705

George D. Scott III, P.O. Box 652, Richmond, Texas 77406

Claudine K. Vass, 10406 Shanley Trace Ln., Richmond, Texas 77407

William Wilson, P.O. Box 5218, Austin, Texas 78763-5218

Shaukat A. Zakaria, 2600 Cordes Dr., Ste. E, Sugar Land, Texas 77479

TRD-201902014

Ian M. Steusloff

Interim Executive Director

Texas Ethics Commission

Filed: June 27, 2019

## Texas Facilities Commission

### Request for Proposals #303-0-20660

The Texas Facilities Commission (TFC), on behalf of the Department of Family and Protective Services (DFPS), announces the issuance of Request for Proposals (RFP) #303-0-20660. TFC seeks a five (5) or ten (10) year lease of approximately 11,444 square feet of office space in Weatherford, Texas.

The deadline for questions is July 29, 2019, and the deadline for proposals is August 8, 2019, at 3:00 p.m. The award date is September 19, 2019. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at <http://www.txsmartbuy.com/sp/303-0-20660>.

TRD-201902033

Naomi Gonzalez

Acting General Counsel

Texas Facilities Commission

Filed: June 28, 2019

### Request for Proposals #303-0-20661

The Texas Facilities Commission (TFC), on behalf of the Department of Family and Protective Services (DFPS) and the Health and Human Services Commission (HHSC), announces the issuance of Request for Proposals (RFP) #303-0-20661. TFC seeks a five (5) or ten (10) year lease of approximately 11,156 square feet of office space in Angleton, Texas.

The deadline for questions is July 29, 2019, and the deadline for proposals is August 12, 2019, at 3:00 p.m. The award date is October 17, 2019. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at <http://www.txsmartbuy.com/sp/303-0-20661>.

TRD-201902041

Naomi Gonzalez

Acting General Counsel

Texas Facilities Commission

Filed: June 28, 2019

## General Land Office

## Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of June 3, 2019, to June 26, 2019. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office website. The notice was published on the website on Friday, July 5, 2019. The public comment period for this project will close at 5:00 p.m. on Sunday, August 4, 2019.

### FEDERAL AGENCY ACTIONS:

**Applicant:** Kinder Morgan

**Location:** The project site is located in Old River at Baytown, Chambers County, Texas.

**Latitude & Longitude (NAD 83):** 29.833719, -94.802016

**Project Description:** The applicant proposes to armor a 20-inch diameter natural gas pipeline with a system of articulating concrete revetment mattresses in order to provide cover over and protect the pipeline. Approximately 48 feet of the pipeline has been exposed within the Old River channel. Divers will install the Submar mat system atop the pipeline as depicted on the attached design drawings. Sand/cement bags may be placed in areas where the concrete coating on the pipeline has been compromised. The divers will jet the perimeter edges of the mat system into anchor trenches adjacent to the exposed pipeline in the bed of channel.

**Type of Application:** U.S. Army Corps of Engineers (USACE) permit application # SWG-2018-00547. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

**CMP Project No:** 19-1258-F1

**Applicant:** LyondellBasell Acetyls, LLC

**Location:** The project site is located in the USI Barge Channel in San Jacinto Bay, at 1515 Miller Cut-Off Road, in La Porte, Harris County, Texas.

**Latitude & Longitude (NAD 83):** 29.707875, -95.054869

**Project Description:** The applicant is requesting a permit transfer, 10-year extension of time for maintenance dredging, and the addition of Adloy, Texas Deepwater Partners, East and West Jones Placement Areas to SWG-2000-02401 (formerly 14206(02)). The existing permit 14206(02) was issued to Millennium Petrochemicals, Inc. in 2001. The applicant is requesting that the existing permit be transferred from Millennium Petrochemicals, Inc. to LyondellBasell Acetyls, LLC. The purpose of the proposed project is to extend maintenance dredging for 10 years, add dredge material placement areas, and transfer the permit.

**Type of Application:** U.S. Army Corps of Engineers (USACE) permit application # SWG-2000-02041. This application will be reviewed pursuant to Section 404 of the Clean Water Act.

**CMP Project No:** 19-1258-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from Ms. Allison Buchtien, P.O. Box 12873, Austin, Texas 78711-2873, or via email at [federal.consistency@glo.texas.gov](mailto:federal.consistency@glo.texas.gov). Comments should be sent to Ms. Buchtien at the above address or by email.

TRD-201902091

Mark Havens

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: July 2, 2019

## Texas Health and Human Services Commission

### Notice of Public Hearing on Proposed Medicaid Payment Rates for Inpatient Hospital Services

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on July 29, 2019, from 8:30 a.m. - 10:00 a.m., to receive comment on proposed Medicaid payment rates for Inpatient Hospital Services. The proposed rate actions are based on direction provided by the 2020-2021 General Appropriations Act (Article II, 86th Legislature, Regular Session, 2019, Riders 11 and 28).

The public hearing will be held in the HHSC Public Hearing Room at the Winters Building, located at 701 West 51st Street, Austin, Texas. Entry is through security at the main entrance of the building, which faces 51st Street. Disabled parking only is available at the Winters Building. All other visitors should park at the garage at the Brown-Heatly Building, 4900 North Lamar Boulevard. HHSC will broadcast the public hearing; the broadcast can be accessed at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>. The broadcast will be archived and can be accessed on demand at the same website. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The payment rates for the Inpatient Hospital Services are proposed to be effective September 1, 2019.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code §355.8052, which addresses the reimbursement methodology for Inpatient Hospital Reimbursement.

**Briefing Package.** A briefing package describing the proposed payments rates will be available at <https://rad.hhs.texas.gov/rate-packets> on or after July 12, 2019. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [RAD\\_Operations@hhsc.state.tx.us](mailto:RAD_Operations@hhsc.state.tx.us). The briefing package will also be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [RAD\\_Operations@hhsc.state.tx.us](mailto:RAD_Operations@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-201902105

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: July 3, 2019



### Notice of Public Hearing on Proposed Medicaid Payment Rates for Private Duty Nursing

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on July 29, 2019, at 10:30 a.m. - 12:00 p.m., to receive comment on proposed Medicaid payment rates for Private Duty Nursing. The proposed rate actions are based on direction provided by the 2020-2021 General Appropriations Act, 86th Legislature, Regular Session, Article II, Rider 46, at pages II-63 (Health and Human Services Section, Health and Human Services Commission).

The public hearing will be held in the HHSC Public Hearing Room at the Winters Building, located at 701 West 51st Street, Austin, Texas. Disabled parking only is available at the Winters Building. All other visitors should park at the garage at the Brown-Heatly Building, 4900 North Lamar Boulevard. Entry is through security at the main entrance of the building, which faces 51st Street. HHSC will broadcast the public hearing; the broadcast can be accessed at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>. The broadcast will be archived and can be accessed on demand at the same website. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The payment rates for Private Duty Nursing are proposed to be effective September 1, 2019.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

- §355.8021, which addresses the reimbursement methodology for home health services;
- §355.8023, which addresses the reimbursement methodology for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS); and
- §355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services.

**Briefing Package.** A briefing package describing the proposed payments rates will be available at <https://rad.hhs.texas.gov/rate-packets> on or after July 12, 2019. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). The briefing package will also be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). In addition, written

comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-201902103

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: July 3, 2019



### Notice of Public Hearing on Proposed Medicaid Payment Rates for the Personal Care Services

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on July 29, 2019, from 10:30 a.m. - 12:00 p.m., to receive comment on proposed Medicaid payment rates for the Personal Care Services. The proposed rate actions are based on direction provided by the 2020-2021 General Appropriations Act (Article II, 86th Legislature, Regular Session, 2019, Rider 45).

The public hearing will be held in the HHSC Public Hearing Room at the Winters Building, located at 701 West 51st Street, Austin, Texas. Entry is through security at the main entrance of the building, which faces 51st Street. HHSC will broadcast the public hearing; the broadcast can be accessed at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>. The broadcast will be archived and can be accessed on demand at the same website. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The payment rates for the Personal Care Services are proposed to be effective September 1, 2019.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

- §355.8021, which addresses the reimbursement methodology for home health services;
- §355.8023, which addresses the reimbursement methodology for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS);
- §355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and
- §355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services.

**Briefing Package.** A briefing package describing the proposed payments rates will be available at <https://rad.hhs.texas.gov/rate-packets> on or after July 12, 2019. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). The briefing package will also be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030,

Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-201902104

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: July 3, 2019



## Notice of Public Hearing on Proposed Medicaid Payment Rates Physical, Occupational, and Speech Therapies

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on July 29, 2019, from 10:30 a.m. - 12:00 p.m., to receive comment on proposed Medicaid payment rates for the Physical, Occupational, and Speech Therapies. The proposed rate actions are based on direction provided by the 2020-2021 General Appropriations Act (Article II, 86th Legislature, Regular Session, 2019, Rider 47).

The public hearing will be held in the HHSC Public Hearing Room at the Winters Building, located at 701 West 51st Street, Austin, Texas. Entry is through security at the main entrance of the building, which faces 51st Street. Disabled parking only is available at the Winters Building. All other visitors should park at the garage at the Brown-Heatly Building, 4900 North Lamar Boulevard. HHSC will broadcast the public hearing; the broadcast can be accessed at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>. The broadcast will be archived and can be accessed on demand at the same website. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The payment rates for the Physical, Occupational, and Speech Therapies are proposed to be effective September 1, 2019.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners;

§355.8097, which addresses the reimbursement methodology for physical, occupational, and speech therapy services; and

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services.

**Briefing Package.** A briefing package describing the proposed payments rates will be available at <https://rad.hhs.texas.gov/rate-packets> on or after July 12, 2019. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Boulevard, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-201902102

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: July 3, 2019



## Public Notice: Revised Texas State Plan for Medical Assistance Amendment

In the June 7, 2019, issue of the *Texas Register*, (44 TexReg 2889), the Texas Health and Human Services Commission (HHSC) published notice of its intent to submit transmittal number 19-0019 to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act.

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 not to use the revised methodology for the nurse inflator calculations at this time.

The proposed amendment is estimated to have no fiscal impact.

The effective date has changed from June 1, 2019, to July 1, 2019.

For questions concerning this revised notice, interested parties may contact Courtney Pool, State Plan Program Coordinator, 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-201902011

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: June 26, 2019



## Department of State Health Services

### Order Permanently Placing Beta-hydroxythiofentanyl in Schedule I

The Administrator of the Drug Enforcement Administration issued a final rule permanently placing *beta*-hydroxythiofentanyl including its isomers, esters, ethers, salts, and salts of isomers, esters and ethers in

schedule I of the Controlled Substances Act, effective May 8, 2019. This final order was published in the *Federal Register*, Volume 84, Number 89, pages 20023-20027.

This scheduling action was taken pursuant to the following:

1. *beta*-hydroxythiofentanyl has a high potential for abuse;
2. *beta*-hydroxythiofentanyl has no currently accepted medical use in treatment in the United States; and,
3. There is a lack of accepted safety for use of *beta*-hydroxythiofentanyl under medical supervision.

Pursuant to Section 481.034(g), as amended by the 75th legislature, of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, at least thirty-one days have expired since notice of the above referenced actions were published in the *Federal Register*. In the capacity as Commissioner of the Texas Department of State Health Services, John Hellerstedt, M.D., does hereby order that the substance *beta*-hydroxythiofentanyl be permanently placed into schedule I.

#### Schedule I opiates

The following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Acetyl alpha methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);
- (2) AH-7921 (3,4-dichloro-N-[(dimethylamino)cyclohexymethyl]benzamide));
- (3) Acetyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide);
- (4) Acryl fentanyl [N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide] (Other names: acryloylfentanyl);
- (5) AH-7921 (3,4-dichloro-N-[(dimethylamino)cyclohexymethyl]benzamide));
- (6) Allylprodine;
- (7) Alphacetylmethadol (except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);
- (8) Alpha-methylfentanyl or any other derivative of fentanyl;
- (9) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenyl-propanamide);
- (10) Benzethidine;
- (11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenyl-propanamide);
- (12) Beta-hydroxy-3-methylfentanyl (N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide);
- \*(13) *beta*-hydroxythiofentanyl (N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-N-phenylpropionamide, also known as N-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidinyl]-N-phenylpropanamide);
- (14) Betaprodine;
- (15) Butyryl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylbutanamide);
- (16) Clonitazene;
- (17) Diampromide;
- (18) Diethylthiambutene;

- (19) Difenoxin;
- (20) Dimenoxadol;
- (21) Dimethylthiambutene;
- (22) Dioxaphetyl butyrate;
- (23) Dipipanone;
- (24) Ethylmethylthiambutene;
- (25) Etonitazene;
- (26) Etoxidine;
- (27) 4-Fluoroisobutyryl fentanyl [N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide] (Other names: *para*-fluoroisobutyryl fentanyl);
- (28) Furanyl fentanyl [N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide];
- (29) Furethidine;
- (30) Hydroxypethidine;
- (31) Ketobemidone;
- (31) Levophenacymorphan;
- (32) Meprodine;
- (33) Methadol;
- (34) 3-methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide), its optical and geometric isomers;
- (35) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
- (36) Moramide;
- (37) Morpheridine;
- (38) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- (39) MT-45 (1-cyclohexyl-4-(1,2-diphenylethyl)piperazine);
- (40) Noracymethadol;
- (41) Norlevorphanol;
- (42) Normethadone;
- (43) Norpipanone;
- (44) Ocfentanil [N-(2-fluorophenyl)-2-methoxy-N-(1-phenethylpiperidin-4-yl)acetamide];
- (45) *Para*-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]-propanamide);
- (46) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);
- (47) Phenadoxone;
- (48) Phenampromide;
- (49) Phencyclidine;
- (50) Phenomorphan;
- (51) Phenoperidine;
- (52) Piritramide;
- (53) Proheptazine;
- (54) Properidine;
- (55) Propiram;

(56) Tetrahydrofuranyl fentanyl [*N*-(1-phenethylpiperidin-4-yl)-*N*-phenyltetrahydrofuran-2-carboxamide];

(57) Thiofentanyl *N*-phenyl-*N*-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);

(58) Tilidine;

(59) Trimeperidine; and,

(60) U-47700 (3,4-dichloro-*N*-[2-(dimethylamino)cyclohexyl]-*N*-methylbenzamide).

Changes are marked by an asterisk(\*)

TRD-201902106

Barbara L. Klein

General Counsel

Department of State Health Services

Filed: July 3, 2019

◆ ◆ ◆  
**Texas Department of Insurance**

**Company Licensing**

Application for incorporation in the state of Texas for Solstice Healthplans of Texas, Inc., a domestic Health Maintenance Organization (HMO). The home office is in Austin, Texas.

Application for Consumers Life Insurance Company, a foreign life, accident and/or health company, to change its name to MedMutual Life Insurance Company. The home office is in Cleveland, Ohio.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Christian Hertzberg, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-201902099

James Person

Interim General Counsel

Texas Department of Insurance

Filed: July 3, 2019

◆ ◆ ◆  
**Texas Lottery Commission**

**Scratch Ticket Game Number 2124 "Winning 7s"**

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2124 is "WINNING 7s". The play style is "other".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2124 shall be \$1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2124.

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:

1, 2, 3, 4, 5, 6, 8, 9, 7 SYMBOL, \$1.00, \$2.00, \$3.00, \$4.00, \$5.00, \$6.00, \$10.00, \$20.00, \$50.00 and \$500.

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. 2124 - 1.2D

| PLAY SYMBOL | CAPTION |
|-------------|---------|
| 1           | ONE     |
| 2           | TWO     |
| 3           | THR     |
| 4           | FOR     |
| 5           | FIV     |
| 6           | SIX     |
| 8           | EGT     |
| 9           | NIN     |
| 7 SYMBOL    | WIN     |
| \$1.00      | ONE\$   |
| \$2.00      | TWO\$   |
| \$3.00      | THR\$   |
| \$4.00      | FOR\$   |
| \$5.00      | FIV\$   |
| \$6.00      | SIX\$   |
| \$10.00     | TEN\$   |
| \$20.00     | TWY\$   |
| \$50.00     | FFTY\$  |
| \$500       | FVHN    |

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 (2124), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 2124-0000001-001.

H. Pack - A Pack of the "WINNING 7s" Scratch Ticket Game contains 150 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the op page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

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 "WINNING 7s" Scratch Ticket Game No. 2124.

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 "WINNING 7s" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twelve (12) Play Symbols. The player will scratch the entire play area. If the player reveals a "7" Play Symbol, the player wins the prize for that symbol. 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 twelve (12) 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 twelve (12) 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 twelve (12) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the twelve (12) 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. A Ticket can win up to six (6) times in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. The "7" (WIN) Play Symbol may appear multiple times on intended winning tickets, unless restricted by other parameters, play action or prize structure.

E. Non-winning Prize Symbols will never appear more than one (1) time.

F. Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

G. No Prize Symbol in a non-winning spot will correspond with the Play Symbol (i.e., 2 and \$2).

## 2.3 Procedure for Claiming Prizes.

A. To claim a "WINNING 7s" Scratch Ticket Game prize of \$1.00, \$2.00, \$3.00, \$4.00, \$5.00, \$6.00, \$10.00, \$20.00, \$50.00 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 \$50.00 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. As an alternative method of claiming a "WINNING 7s" 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.

C. 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.

D. 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 "WINNING 7s" 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 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.

2.7 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 840,000 Scratch Tickets in Scratch Ticket Game No. 2124. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2124 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in ** |
|--------------|--------------------------------|------------------------------|
| \$1          | 140,000                        | 6.00                         |
| \$2          | 36,400                         | 23.08                        |
| \$3          | 33,600                         | 25.00                        |
| \$4          | 8,400                          | 100.00                       |
| \$5          | 5,600                          | 150.00                       |
| \$6          | 5,600                          | 150.00                       |
| \$10         | 5,600                          | 150.00                       |
| \$20         | 1,120                          | 750.00                       |
| \$50         | 126                            | 6,666.67                     |
| \$500        | 21                             | 40,000.00                    |

\*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 3.55. 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. 2124 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. 2124, 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-201902083  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: July 2, 2019



Scratch Ticket Game Number 2177 "Bonus Break the Bank"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2177 is "BONUS BREAK THE BANK". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2177 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2177.

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, 26, 27, 28, 29, 30, STACK OF CASH SYMBOL, MONEY BAG SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100, \$500, \$5,000 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. 2177 - 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     |
| 26                   | TWSX    |
| 27                   | TWSV    |
| 28                   | TWET    |
| 29                   | TWNI    |
| 30                   | TRTY    |
| STACK OF CASH SYMBOL | WIN\$50 |
| MONEY BAG SYMBOL     | WIN\$50 |
| \$5.00               | FIV\$   |
| \$10.00              | TEN\$   |
| \$15.00              | FFN\$   |
| \$20.00              | TWY\$   |
| \$25.00              | TWV\$   |

|           |                   |
|-----------|-------------------|
| \$50.00   | FFTY\$            |
| \$100     | ONHN              |
| \$500     | FVHN              |
| \$5,000   | FVTH              |
| \$100,000 | 100 <sup>TH</sup> |

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 (2177), 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: 2177-0000001-001.

H. Pack - A Pack of the "BONUS BREAK THE BANK" 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 "BONUS BREAK THE BANK" Scratch Ticket Game No. 2177.

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 "BONUS BREAK THE BANK" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose thirty-six (36) Play Symbols. GAME 1: If a player matches any of the YOUR NUMBERS Play Symbols to either of the LOCK NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "STACK OF CASH" Play Symbol, the player wins \$50 instantly! GAME 2: If a player matches any of the YOUR NUMBERS Play Symbols to either of the LOCK NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "MONEY BAG" Play Symbol, the player wins \$50 instantly! 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 thirty-six (36) 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 thirty-six (36) 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 thirty-six (36) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the thirty-six (36) 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. A Ticket can win up to sixteen (16) times in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

E. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and \$20).

F. The LOCK NUMBERS Play Symbols from GAME 1 will never match the YOUR NUMBERS Play Symbols from GAME 2 on the same Ticket, and the LOCK NUMBERS Play Symbols from GAME 2 will never match the YOUR NUMBERS Play Symbols from GAME 1 on the same Ticket.

G. GAME 1: The LOCK NUMBERS Play Symbols from GAME 1 and GAME 2 will all be different.

H. GAME 1: Each Ticket will have two (2) different LOCK NUMBERS Play Symbols.

I. GAME 1: Non-winning YOUR NUMBERS Play Symbols will all be different.

J. GAME 1: Non-winning Prize Symbols will never appear more than three (3) times.

K. GAME 1: The "STACK OF CASH" (WIN\$50) Play Symbol will never appear in the LOCK NUMBERS Play Symbol spots.

L. GAME 1: The "STACK OF CASH" (WIN\$50) Play Symbol will only appear on winning Tickets as dictated by the prize structure.

M. GAME 1: When the "STACK OF CASH" (WIN\$50) Play Symbol appears, only the \$50 Prize Symbol will appear beneath it.

N. GAME 2: Each Ticket will have two (2) different LOCK NUMBERS Play Symbols.

O. GAME 2: Non-winning YOUR NUMBERS Play Symbols will all be different.

P. GAME 2: Non-winning Prize Symbols will never appear more than three (3) times.

Q. GAME 2: The "MONEY BAG" (WIN\$50) Play Symbol will never appear in the LOCK NUMBERS Play Symbol spots.

R. GAME 2: The "MONEY BAG" (WIN\$50) Play Symbol will only appear on winning Tickets as dictated by the prize structure.

S. GAME 2: When the "MONEY BAG" (WIN\$50) Play Symbol appears, only the \$50 Prize Symbol will appear beneath it.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS BREAK THE BANK" Scratch Ticket Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$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 \$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 "BONUS BREAK THE BANK" Scratch Ticket Game prize of \$5,000 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 "BONUS BREAK THE BANK" 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 "BONUS BREAK THE BANK" 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 "BONUS BREAK THE BANK" 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 18,000,000 Scratch Tickets in Scratch Ticket Game No. 2177. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2177 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in ** |
|--------------|--------------------------------|------------------------------|
| \$5          | 1,560,000                      | 11.54                        |
| \$10         | 1,200,000                      | 15.00                        |
| \$15         | 720,000                        | 25.00                        |
| \$20         | 360,000                        | 50.00                        |
| \$50         | 300,000                        | 60.00                        |
| \$100        | 57,750                         | 311.69                       |
| \$500        | 2,250                          | 8,000.00                     |
| \$5,000      | 100                            | 180,000.00                   |
| \$100,000    | 10                             | 1,800,000.00                 |

\*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 4.29. 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. 2177 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. 2177, 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-201902084  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: July 2, 2019



Scratch Ticket Game Number 2180 "Bonus 7"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2180 is "BONUS 7". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2180 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2180.

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: GOLD BAR SYMBOL, BELL SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, STAR SYMBOL, POT OF GOLD SYMBOL, HORSE-SHOE SYMBOL, CHERRY SYMBOL, TOP HAT SYMBOL, COINS SYMBOL, CACTUS SYMBOL, RING SYMBOL, GRAPES SYMBOL, PEPPER SYMBOL, STRAWBERRY SYMBOL, BANANA SYMBOL, 01, 02, 03, 04, 05, 06, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 7X SYMBOL, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$500, \$700, \$5,000 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. 2180 - 1.2D

| <b>PLAY SYMBOL</b> | <b>CAPTION</b> |
|--------------------|----------------|
| GOLD BAR SYMBOL    | BAR            |
| BELL SYMBOL        | BELL           |
| CROWN SYMBOL       | CRN            |
| DIAMOND SYMBOL     | DMD            |
| STAR SYMBOL        | STAR           |
| POT OF GOLD SYMBOL | PTGD           |
| HORSESHOE SYMBOL   | SHOE           |
| CHERRY SYMBOL      | CHRY           |
| TOP HAT SYMBOL     | HAT            |
| COINS SYMBOL       | COINS          |
| CACTUS SYMBOL      | CACTUS         |
| RING SYMBOL        | RING           |
| GRAPES SYMBOL      | GRPE           |
| PEPPER SYMBOL      | PEPPER         |
| STRAWBERRY SYMBOL  | STBRY          |
| BANANA SYMBOL      | BANANA         |
| 01                 | ONE            |
| 02                 | TWO            |
| 03                 | THR            |
| 04                 | FOR            |
| 05                 | FIV            |
| 06                 | SIX            |
| 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               |
| 26        | TWSX              |
| 27        | TWSV              |
| 28        | TWET              |
| 29        | TWNI              |
| 30        | TRTY              |
| 31        | TRON              |
| 32        | TRTO              |
| 33        | TRTH              |
| 34        | TRFR              |
| 35        | TRFV              |
| 36        | TRSX              |
| 37        | TRSV              |
| 38        | TRET              |
| 39        | TRNI              |
| 40        | FRTY              |
| 7X SYMBOL | WINX7             |
| \$5.00    | FIV\$             |
| \$10.00   | TEN\$             |
| \$20.00   | TWY\$             |
| \$50.00   | FFTY\$            |
| \$100     | ONHN              |
| \$500     | FVHN              |
| \$700     | SVHN              |
| \$5,000   | FVTH              |
| \$100,000 | 100 <sup>TH</sup> |

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 (2180), 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: 2180-0000001-001.

H. Pack - A Pack of the "BONUS 7" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

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 "BONUS 7" Scratch Ticket Game No. 2180.

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 "BONUS 7" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-nine (49) Play Symbols. If the player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a 7X Play Symbol, the player wins 7 TIMES the prize for that symbol. \$20 BONUS SPOT: If the player reveals 2 matching symbols, the player wins \$20. \$50 BONUS SPOT: If the player reveals 2 matching symbols, the player wins \$50. 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 forty-nine (49) 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 forty-nine (49) 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 forty-nine (49) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the forty-nine (49) 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: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

C. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 05 and \$5).

D. KEY NUMBER MATCH: No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

E. KEY NUMBER MATCH: No matching WINNING NUMBERS Play Symbols on a Ticket.

F. KEY NUMBER MATCH: A non-winning Prize Symbol will never match a winning Prize Symbol.

G. KEY NUMBER MATCH: A Ticket may have up to three (3) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

H. KEY NUMBER MATCH: The "7X" (WINX7) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS 7" Scratch Ticket Game prize of \$5.00, \$10.00, \$20.00, \$35.00, \$50.00, \$70.00, \$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 \$35.00, \$50.00, \$70.00, \$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 "BONUS 7" Scratch Ticket Game prize of \$700, \$5,000 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 "BONUS 7" 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 "BONUS 7" 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 "BONUS 7" 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 10,080,000 Scratch Tickets in Scratch Ticket Game No. 2180. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2180 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in ** |
|--------------|--------------------------------|------------------------------|
| \$5          | 1,041,600                      | 9.68                         |
| \$10         | 772,800                        | 13.04                        |
| \$20         | 134,400                        | 75.00                        |
| \$35         | 134,400                        | 75.00                        |
| \$50         | 163,968                        | 61.48                        |
| \$70         | 13,440                         | 750.00                       |
| \$100        | 31,500                         | 320.00                       |
| \$500        | 1,680                          | 6,000.00                     |
| \$700        | 420                            | 24,000.00                    |
| \$5,000      | 10                             | 1,008,000.00                 |
| \$100,000    | 5                              | 2,016,000.00                 |

\*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 4.39. 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. 2180 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. 2180, 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-201902085  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: July 2, 2019



Scratch Ticket Game Number 2191 "Level Up!"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2191 is "LEVEL UP!". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2191 shall be \$2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2191.

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, 26, 27, 28, 29, MONEY BAG SYMBOL, \$2.00, \$4.00, \$5.00, \$6.00, \$10.00, \$20.00, \$40.00, \$100, \$500 and \$30,000.

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. 2191 - 1.2D

| <b>PLAY SYMBOL</b>      | <b>CAPTION</b> |
|-------------------------|----------------|
| 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            |
| 26                      | TWSX           |
| 27                      | TWSV           |
| 28                      | TWET           |
| 29                      | TWNI           |
| <b>MONEY BAG SYMBOL</b> | <b>DBL</b>     |
| \$2.00                  | TWO\$          |
| \$4.00                  | FOR\$          |
| \$5.00                  | FIV\$          |
| \$6.00                  | SIX\$          |
| \$10.00                 | TEN\$          |

|          |                  |
|----------|------------------|
| \$20.00  | TWY\$            |
| \$40.00  | FRTY\$           |
| \$100    | ONHN             |
| \$500    | FVHN             |
| \$30,000 | 30 <sup>TH</sup> |

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 (2191), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2191-0000001-001.

H. Pack - A Pack of the "LEVEL UP!" Scratch Ticket Game contains 125 Tickets. One Ticket will be folded over to expose a front and back of one ticket on each pack. Please note the packs will be in an A, B, C, and D configuration.

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 "LEVEL UP!" Scratch Ticket Game No. 2191.

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 "LEVEL UP!" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twenty-one (21) Play Symbols. Each time the player's YOUR LUCKY NUMBER Play Symbol is revealed within a GAME, the player wins the PRIZE for that GAME. If the player reveals a "MONEY BAG" Play Symbol, the player wins DOUBLE the PRIZE for the GAME. 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 twenty-one (21) 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 twenty-one (21) 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 twenty-one (21) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the twenty-one (21) 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. A Ticket can win up to fifteen (15) times in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. Non-winning Prize Symbols will never appear more than one (1) time.

E. Non-winning Play Symbols will all be different.

F. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

G. The "MONEY BAG" (DBL) Play Symbol will never appear in the YOUR LUCKY NUMBER Play Symbol spot.

H. The "MONEY BAG" (DBL) Play Symbol will only appear as dictated by the prize structure.

I. The "MONEY BAG" (DBL) Play Symbol will only appear on winning Tickets, winning double as dictated by the prize structure.

J. The "MONEY BAG" (DBL) Play Symbol will appear up to once per Ticket as per the prize structure and will be the only winning play spot within that single GAME if it appears.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "LEVEL UP!" Scratch Ticket Game prize of \$2.00, \$4.00, \$5.00, \$6.00, \$10.00, \$20.00, \$40.00, \$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 \$40.00, \$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 "LEVEL UP!" Scratch Ticket Game prize of \$30,000, 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 "LEVEL UP!" 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 "LEVEL UP!" 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 "LEVEL UP!" 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. 2191. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2191 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in ** |
|--------------|--------------------------------|------------------------------|
| \$2          | 691,200                        | 10.42                        |
| \$4          | 489,600                        | 14.71                        |
| \$5          | 172,800                        | 41.67                        |
| \$6          | 115,200                        | 62.50                        |
| \$10         | 115,200                        | 62.50                        |
| \$20         | 86,400                         | 83.33                        |
| \$40         | 28,800                         | 250.00                       |
| \$100        | 1,500                          | 4,800.00                     |
| \$500        | 210                            | 34,285.71                    |
| \$30,000     | 6                              | 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 4.23. 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. 2191 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. 2191, 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-201902086  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: July 2, 2019

◆ ◆ ◆

**Prairielands Groundwater Conservation District**  
 Public Notice (Ellis, Hill, Johnson, and Somervell Counties) -  
 Historic Use Permit Deadline September 1, 2019  
**PROTECT YOUR RIGHTS AS A WATER WELL OWNER**



**APPLY FOR A HISTORIC USE PERMIT BY SEPTEMBER 1, 2019, DEADLINE**

**If you currently own or operate a groundwater well in Ellis, Hill, Johnson, or Somervell County, you may be required to obtain a Historic Use Permit to protect your water rights. Please read the following notice to determine if you may be eligible for a Historic Use Permit.**

The Prairielands Groundwater Conservation District ("District") was created by the 81st Texas Legislature in 2009 and has been delegated the responsibility of conserving, preserving, protecting, and recharging the groundwater in Ellis, Hill, Johnson, and Somervell counties under the authority of Chapter 36 of the Texas Water Code. State law requires the District to implement a permitting system for water wells.

The District is now accepting applications for Historic Use Permits from well owners and operators in Ellis, Hill, Johnson, and Somervell counties. The only way to ensure that the District may protect your rights and your investment in your well against future well owners and operators is to obtain a Historic Use Permit. **If you are required to obtain a permit, you must file an application for a Historic Use Permit with the District by September 1, 2019, or you will forever lose your right to be protected as a historic user.** Also, it is a violation of the District's Rules to operate a well without a permit if it is required to have one. **Wells used solely for domestic residential (household) or livestock watering purposes are exempt from the requirement to obtain a permit, and do not need to file a permit application.** Other types of small capacity wells may also be exempt from the District's requirement to apply for a Historic Use Permit. If your water well is not used exclusively for domestic or livestock use, we encourage you to promptly contact the District to ensure that you qualify for such a permit exemption in order to not risk missing the September 1, 2019, deadline and to avoid violating the District's Rules.

Historic users receive a greater degree of protection than non-historic users on the amount of groundwater that can be produced in the future. **Don't miss your chance to protect your interest in the future to operate your water well if it is not exempt from the Historic Use Permit requirement.** While you may choose to amend your Historic Use Permit application for a specified period of time as set forth in the District's Rules, it is critical to file an application with the District by the September 1, 2019, deadline.

For more information on how you can protect your rights as a well owner or operator or to obtain a copy of the District's Rules or a Historic Use Permit application form, please visit our website or contact:

Kathy Turner Jones, General Manager Prairielands Groundwater Conservation District

205 South Caddo Street, Cleburne, Texas, 76031

Phone: (817) 556-2299

Fax: (817) 556-2305

[www.prairielandsgcd.org](http://www.prairielandsgcd.org)

Email: [kjones@prairielandsgcd.org](mailto:kjones@prairielandsgcd.org)

TRD-201902022

Kathy Turner Jones

General Manager

Prairielands Groundwater Conservation District

Filed: June 27, 2019



**South Texas Development Council**

Request for Proposal

The Area Agency on Aging of the South Texas Development Council is currently seeking qualified entities to provide personal assistance, homemaker, residential repair, in-home respite, and health maintenance services.

These services are provided to individuals 60 years of age and older, their family members, and other caregivers under the Older Americans Act of 1965 as amended with funding administered by Health and Human Service Commission in the Counties of Jim Hogg, Starr, Webb and Zapata.

Parties interested in providing services within our service area must contact the Area Agency on Aging and request an application during the closed enrollment period June 30, 2019, through July 31, 2019, for consideration.

To request an application package contact:

Nancy Rodriguez

AAA Interim Director

South Texas Development Council

1002 Dickey Ln.

P.O. Box 2187

Laredo, Texas 78044-2187

(956) 722-3995

(800) 292-5426

TRD-201902019

Nancy Rodriguez

AAA Interim Director

South Texas Development Council

Filed: June 27, 2019



**Texas Department of Transportation**

Aviation Division - Request for Qualifications (RFQ) for Professional Services

The City of Bryan, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a qualified firm for professional services. This solicitation is subject to 49 U.S.C. §47107(a)(17) and will be administered in the same manner as a solicitation conducted under Chapter 2254, Subchapter A, of the Texas Government Code. TxDOT Aviation Division will solicit and receive qualification statements for professional services as described below:

Airport Sponsor: City of Bryan Coulter Field, TxDOT CSJ No. 1917BRYAN.

The TxDOT Project Manager is Elaine Alvarado.

Scope: Prepare an airport layout plan update and narrative.

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 is set at 0%.

To assist in your qualification statement preparation, the criteria and most recent Airport Layout Plan are available online at <http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm> by selecting "Coulter Field."

**AVN-551 Preparation Instructions:**

Interested firms shall utilize the latest version of Form AVN-551, titled "Qualifications for Aviation Planning Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, (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-551 template. The AVN-551 consists of eight pages of data plus one optional illustration page. A prime provider may only submit one AVN-551. If a prime provider submits more than one AVN-551, or submits a cover letter with the AVN-551, 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-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

The completed Form AVN-551 must be received in the TxDOT Aviation eGrants system no later than August 7, 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>.

Instructions on how to respond to a solicitation in eGrants are 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 one representative from the city and Aviation Division staff. The final selection by the committee will generally be made following the completion of review of AVN-551s. The committee will review all AVN-551s and rate and rank each. The evaluation criteria for airport planning projects can be found at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html> under Information for Consultants. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. 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 (800) 68-PILOT (74568). For procedural questions, please contact Bobby Hidrogo, Grant Manager. For technical questions please contact Elaine Alvarado, 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](mailto:avn-egrantshelp@txdot.gov).

TRD-201902016

Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: June 27, 2019



Aviation Division - Request for Qualifications (RFQ) for Professional Services

Grayson County, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a qualified firm for professional services. This solicitation is subject to 49 U.S.C. §47107(a)(17) and will be administered in the same manner as a solicitation conducted under Chapter 2254, Subchapter A, of the Texas Government Code. TxDOT Aviation Division will solicit and receive qualification statements for professional services as described below:

Airport Sponsor: Grayson County, North Texas Regional Airport/Perrin Field,

TxDOT CSJ No. 19MPGRAYS.

The TxDOT Project Manager is Kaity Cromwell.

Scope:

(1) Prepare an Airport Development Plan update which includes, but is not limited to, information regarding existing and future conditions, proposed facility development to meet existing and future demand, constraints to development, anticipated capital needs, financial considerations, management structure and options, as well as an updated Airport Layout Plan. The Airport Development Plan should be tailored to the individual needs of the airport.

(2) Prepare a stand-alone pavement management plan for the airport in accordance with the FAA's advisory circular 150/5380-7B, Airport Pavement Management.

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 is set at 0%.

To assist in your qualification statement preparation, the criteria and most recent Airport Layout Plan are available online at <http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm> by selecting "North Texas Regional Airport/Perrin Field."

**AVN-551 Preparation Instructions:**

Interested firms shall utilize the latest version of Form AVN-551, titled "Qualifications for Aviation Planning Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, (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-551 template. The AVN-551 consists of eight pages of data plus one optional illustration

page. A prime provider may only submit one AVN-551. If a prime provider submits more than one AVN-551, or submits a cover letter with the AVN-551, 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-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

The completed Form AVN-551 must be received in the TxDOT Aviation eGrants system no later than August 7, 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>.

Instructions on how to respond to a solicitation in eGrants are 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-551s. The committee will review all AVN-551s and rate and rank each. The evaluation criteria for airport planning projects can be found at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html> under Information for Consultants. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. 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 (800) 68-PILOT (74568). For procedural questions, please contact Bobby Hidrogo, Grant Manager. For technical questions please contact Kaity Cromwell, 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](mailto:avn-egrantshelp@txdot.gov).

TRD-201902093  
Becky Blewett  
Deputy General Counsel  
Texas Department of Transportation  
Filed: July 3, 2019



Notice of Public Hearing on Proposed Truck Restrictions on all or portions of U.S. 75 in Collin County; I-45 in Navarro County; I-35E in Ellis, Dallas and Denton Counties; I-635, SH 183 and US 67 in Dallas County, and I-30 in Rockwall County

The Texas Department of Transportation (TxDOT) will conduct a public hearing to receive comments on proposed lane use restrictions on all or portions of U.S. Highway (US) 75 in Collin County; Interstate 45 (I-45) in Navarro County; I-35E in Ellis, Dallas and Denton counties; I-635, State Highway (SH) 183 and US 67 in Dallas County; and I-30

in Rockwall County. The hearing will be held at 6 p.m. on Tuesday, July 23, 2019, at the following location:

**Irving City Hall**  
**825 W. Irving Blvd.**  
**Irving, Texas 75060**

In accordance with Transportation Code, §545.0651 and 43 TAC §§25.601 - 25.604, the Department is proposing to initiate a lane use restriction applicable to trucks, as defined in Transportation Code, §541.201, with three or more axles, and to truck tractors, also as defined in Transportation Code, §541.201, regardless of whether the truck tractor is drawing another vehicle or trailer. The proposed restriction would prohibit those vehicles from using the left or inside lane in both directions on the following sections of highways:

- U.S. 75 from SH 121 south to Collin/Grayson County line
- I-45 from Navarro/Ellis County line to Navarro/Freestone County line
- I-35E from US 77N to Ellis/Hill County line
- I-35E from Spur 366 to Corinth Pkwy.
- SH 183 from I-35E to Dallas/Tarrant County line
- US 67 from I-35E to FM 1382
- I-635 from US 75 to Dallas/Tarrant County line
- I-30 from SH 205 to Rockwall/Hunt County line

The proposed restrictions would apply 24 hours a day, 7 days a week, and would only allow the operation of those vehicles in the prohibited traffic lane for the purposes of passing another vehicle or entering or exiting the highway.

In accordance with 43 TAC §25.604, the department will evaluate the impact of the proposed restriction's compliance with the requirements of Transportation Code, §545.0651 and 43 TAC §§25.601 - 25.604, and will hold a public hearing to receive comments on the proposed restriction.

All interested citizens are invited to attend the hearing and to provide input. Those wanting to make official oral comments may register starting at 5:00 p.m. Oral and written comments may be presented at the public hearing and written comments may be submitted by regular postal mail during the 30-day public comment period. Written comments may be submitted to Mr. Tony Hartzel, Texas Department of Transportation, 4777 E. U.S. Highway 80, Mesquite, Texas, 75150. The deadline for postmark of written comments is 5:00 p.m. on Monday, August 12, 2019.

Persons with disabilities who plan to attend the public hearing and who may need translation services or auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print, or Braille, are requested to contact Mr. Tony Hartzel at (214) 320-4481 at least two business days prior to the hearing so that appropriate arrangements can be made. For more information concerning the public hearing, please contact Tony Hartzel at (214) 320-4481.

TRD-201902081  
Becky Blewett  
Deputy General Counsel  
Texas Department of Transportation  
Filed: July 2, 2019



Public Hearing Notice - Unified Transportation Program

The Texas Department of Transportation (department) will hold a public hearing on Tuesday, August 6, 2019, at 10:00 a.m. at 118 East Riverside Drive, First Floor ENV Conference Room, in Austin, Texas. The purpose of the hearing is to receive public comments on the development of the 2020 Unified Transportation Program (UTP), including the highway project selection process related to the UTP.

Transportation Code, §201.991 provides that the department shall develop a UTP covering a period of 10 years to guide the development and authorize construction of transportation projects. Transportation Code, §201.602 requires the Texas Transportation Commission (commission) to annually conduct a hearing on its highway project selection process and the relative importance of the various criteria on which the Commission bases its project selection decisions. The commission has adopted rules located in Title 43, Texas Administrative Code, Chapter 16, governing the planning and development of transportation projects, which include guidance regarding public involvement related to the project selection process and the development of the UTP.

Information regarding the proposed 2020 UTP and highway project selection process will be available at each of the department's district offices or at the department's Transportation Planning and Programming Division office located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, or (512) 486-5038, and on the department's website at: <https://www.txdot.gov/inside-txdot/get-involved/unified-transportation-program.html>.

Persons wishing to speak at the hearing may register in advance by notifying the Transportation Planning and Programming Division, at (512) 486-5038 no later than Monday, August 5, 2019, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally

or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony.

The public hearing will be conducted in English. Persons who have special communication or accommodation needs and who plan to attend the hearing are encouraged to contact the Transportation Planning and Programming Division at (512) 486-5038. Requests should be made at least three working days prior to the public meeting. Every reasonable effort will be made to accommodate these needs.

Interested parties who are unable to attend the hearing may submit comments regarding the proposed 2020 UTP to Peter Smith, Director of the Transportation Planning and Programming Division, P.O. Box 149217, Austin, Texas 78714-9217. Interested parties may also submit comments regarding the proposed 2020 UTP by phone at (800) 687-8108. In order to be considered, all comments must be received at the Transportation Planning and Programming office by 4:00 p.m. on Monday, August 12, 2019.

TRD-201902021  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: June 27, 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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