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# TEXAS REGISTER

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

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# THE ATTORNEY GENERAL

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

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

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

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

## Requests for Opinions

### RQ-0300-KP

#### Requestor:

The Honorable Jim Murphy

Chair, Committee on Pensions, Investments, and Financial Services

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of a credit services organization to assist a consumer with obtaining an extension of consumer credit in a form other than a deferred presentment transaction or motor vehicle title loan (RQ-0300-KP)

#### Briefs requested by September 6, 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-201902617

Ryan L. Bangert

Deputy Attorney General for Legal Counsel

Office of the Attorney General

Filed: August 13, 2019



## Opinions

### Opinion No. KP-0264

The Honorable Sharen Wilson

Tarrant County Criminal District Attorney

401 West Belknap

Fort Worth, Texas 76196-0201

Re: Purchasing authority of a criminal district attorney's office as a specialized local entity under Local Government Code section 140.003 (RQ-0272-KP)

#### S U M M A R Y

A criminal district attorney is not subject to rules adopted by the county purchasing agent pursuant to subchapter B of chapter 262 of the Local Government Code; however, the entity is subject to rules implemented by the agent pursuant to the County Purchasing Act.

#### Opinion No. KP-0265

The Honorable Russell D. Thomason

Criminal District Attorney

91st Judicial District

100 West Main, Suite 204

Eastland, Texas 76448

Re: Whether the same individual may serve as city manager and as police chief in a home-rule municipality (RQ-0275-KP)

#### S U M M A R Y

Article XVI, section 40 of the Texas Constitution, which prohibits dual office holding in certain circumstances, does not prevent the City of Ranger chief of police from simultaneously serving as city manager.

The common-law doctrine of self-employment incompatibility prohibits one person from holding an office and an employment that the office supervises. Language in the Ranger city charter suggests that the city manager may supervise the chief of police. To the extent that is the case, an individual may not serve in the two separate positions of city manager and chief of police.

If the city commission exercised its authority to combine the roles of city manager and chief of police, the city commission could employ a single individual to perform both roles without raising concerns about self-employment incompatibility.

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-201902618

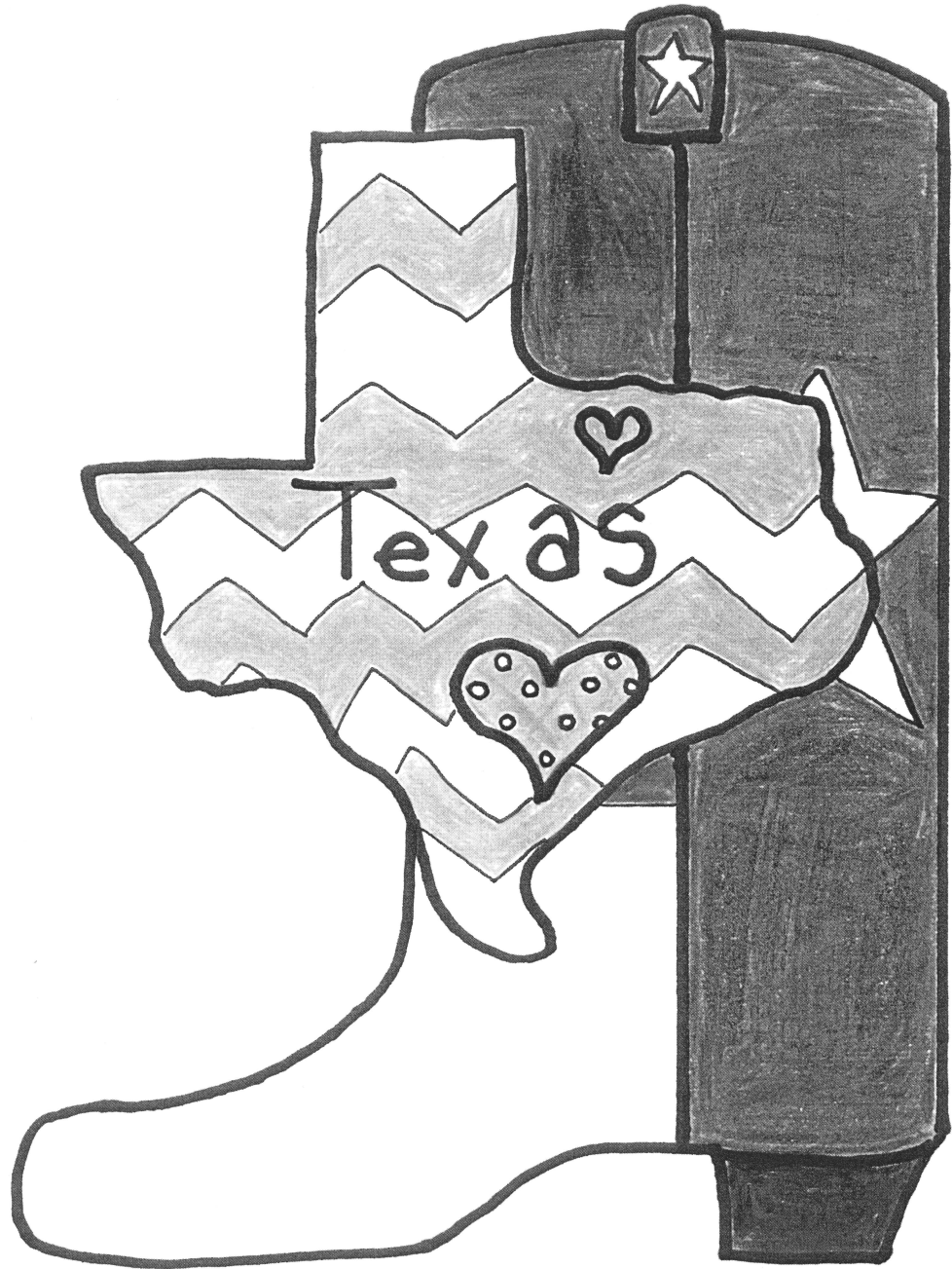
Ryan L. Bangert

Deputy Attorney General for Legal Counsel

Office of the Attorney General

Filed: August 13, 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 16. ECONOMIC REGULATION

### PART 1. RAILROAD COMMISSION OF TEXAS

#### CHAPTER 12. COAL MINING REGULATIONS SUBCHAPTER G. SURFACE COAL MINING AND RECLAMATION OPERATIONS, PERMITS, AND COAL EXPLORATION PROCEDURES SYSTEMS

#### DIVISION 2. GENERAL REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS

##### 16 TAC §12.108

The Railroad Commission of Texas (Commission) proposes to amend §12.108, relating to Permit Fees, to implement provisions of House Bill 1, 86th Texas Legislature (Regular Session, 2019), and, specifically, Article VI, Railroad Commission Rider 5, which requires the amounts appropriated from general revenue for state fiscal years 2020 and 2021 to cover the cost of permitting and inspecting coal mining operations. This requirement is contingent upon the Commission assessing fees sufficient to generate, during the 2020-2021 biennium, revenue to cover the general revenue appropriations.

The Commission proposes to amend the fees set forth in subsection (b) by amending the calendar years to 2019 and 2020. The Commission proposes to amend paragraph (1) to increase the annual fee for each acre of land within a permit area covered by a reclamation bond on December 31st of each year, as shown on the map required at §12.142(2)(C) of this chapter (relating to Operation Plan: Maps and Plans), from the current \$12.85 to \$14.50. The Commission proposes to amend paragraph (2) to increase the annual fee for each permit in effect on December 31st of each year to \$6,930 from the current amount of \$6,170. The Commission anticipates that annual fees in these new amounts will result in revenue of \$2,589,180 for the coal regulatory program in each year of the 2020-2021 biennium.

Alexander C. Schoch, Interim Director, Surface Mining and Reclamation Division, has determined that during each year of the first five years the proposed amendments would be in effect, the net effect on state government as a result of enforcing the proposed amendments would be zero. There are no fiscal impacts on local governments.

The Texas State Legislature appropriated funds based on fees collection as set forth in Rider 5, and also includes fees appropriated for a separate, existing regulatory program for uranium exploration permitting. This uranium program cost is estimated

at \$45,000 per annum, which is subtracted from the total annual appropriation to determine the coal regulatory program fee needs. The Commission's coal mining regulatory program is partially funded with a 50 percent cost reimbursement grant from the United States Department of the Interior, Office of Surface Mining Reclamation and Enforcement. After accounting for the uranium program costs, which are also fee-based but are not being revised in this rulemaking, Mr. Schoch has determined that the appropriated state share of the cost for implementing the coal regulatory program of \$2,570,263 in FY 2020 and \$2,572,709 in FY 2021 are the costs that must be funded through fees paid by the regulated coal mining industry.

Fees for the Commission's surface coal mining regulatory program come from two general categories: application fees and annual fees. The application fees are specified in §12.108(a) and the Commission does not propose to revise these fees in this rulemaking. Annual fee collection is based on the bonded acreage for each permit as of December 31 of each year. The Commission may adjust the annual fees in future rulemakings if additional funding is needed due to changes in federal funding, legislative appropriations, the number of permits, the amount of funds received from application fees, the bonded acreage, or other relevant factors.

The total amount of annual fees required to fund both the coal and uranium regulatory program was determined by subtracting the total amount of application fees estimated to be collected in each fiscal year for the two regulatory programs (coal and uranium) from the average annual state share cost for both FY 2020 and FY 2021 (\$2,676,486). Mr. Schoch estimates that the Commission will collect coal program application fees annually in the amount of \$60,000 and uranium exploration program fees in the amount of \$45,000 in both FY 2020 and FY 2021. The remainder in state share expense (\$2,571,486) is then allocated for collection from annual coal fees. In accordance with an agreement with industry established in 2005, the total remaining amount of annual fees required is allocated at seven percent for annual per-permit fees and 93 percent from bonded acreage fees. The proposed annual fee rates are then determined based on the anticipated permit status and bonded acres on December 31, 2019.

The 93 percent to be collected through the bonded acreage fee (\$2,391,486) was divided by 165,000 acres, the cumulative acres the Commission estimates will be under bond on December 31, 2019, to derive the \$14.50 per bonded acre fee proposed in subsection (b)(1). The remaining seven percent to be collected from annual permit fees (\$180,000) was divided by 26, the estimated number of permits on December 31, 2019, to derive the \$6,930 individual permit annual fee proposed in subsection (b)(2).

Mr. Schoch has determined that during each year of the first five years the proposed amendments would be in effect there will be

an increase in the economic cost to the mining industry of approximately \$292,010, an approximate 13.8% increase. This is based on: (1) a comparison of the revenue that would be generated under the current annual fee of \$12.85 per bonded acre to the revenue that would be generated under the proposed increase to \$14.50 per bonded acre; and (2) a comparison of the revenue generated under the current annual fee of \$6,170 per permit to the revenue that would be generated under the proposed increased amount of \$6,930 for each of the anticipated remaining 26 permits.

Mr. Schoch has determined that the public benefit resulting from the new fee structure for coal mining activities is the alignment of fees paid by the coal mining industry with the costs incurred by the Commission, as established in House Bill 1.

In accordance with Texas Government Code §2006.002, the Commission has determined that there will be no adverse economic effects on rural communities or small or micro-businesses resulting from the proposed amendments because there are no rural communities, small businesses or micro-businesses, as those terms are defined in Texas Government Code §2006.001, holding coal mining permits from the Commission. Therefore, the Commission has not prepared the economic impact statement or regulatory flexibility analysis required under §2006.002(c).

The proposed amendments also will not affect a local economy; therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code §2001.022.

During the first five years that the rules would be in effect, the proposed amendments would not: create or eliminate a government program; create or eliminate any employee positions; require an increase or decrease in future legislative appropriations; create a new regulation; expand, limit, or repeal an existing regulation; increase or decrease the number of individuals subject to the rule's applicability; or affect the state's economy. As described above, the proposed amendments would increase the amount of fees paid to the agency so that the fees paid by the coal mining industry align with the costs incurred by the Commission, as established in House Bill 1.

Lastly, the Commission has determined that the proposed rule does not meet the statutory definition of a major environmental rule as set forth in Texas Government Code §2001.0225; therefore, a regulatory analysis pursuant to that section is not required.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at [www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings](http://www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings); or by electronic mail to [rulescoordinator@rrc.texas.gov](mailto:rulescoordinator@rrc.texas.gov). The Commission will accept comments until 12:00 p.m. (noon) on Monday, September 23, 2019, which is 31 days after publication in the *Texas Register*. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website more than two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr.

Schoch at (512) 463-6901. The status of pending Commission rulemakings is available at [www.rrc.texas.gov/general-counsel/rules/proposed-rules](http://www.rrc.texas.gov/general-counsel/rules/proposed-rules).

The Commission proposes the amendment under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations and §134.055, which authorizes the Commission to collect annual fees.

Statutory authority: Texas Natural Resources Code, §134.013 and §134.055.

Cross-reference to statute: Texas Natural Resources Code, §134.013 and §134.055.

§12.108. *Permit Fees.*

(a) Application Fees. Each application for a surface coal mining and reclamation permit or renewal or revision of a permit shall be accompanied by a fee. The initial application fee and the application fee for renewal of a permit may be paid in equal annual installments during the term of the permit. The fee schedule is as follows:

- (1) application for a permit: \$5,000.
- (2) application for revision of a permit: \$500.
- (3) application for renewal of a permit: \$3,000.

(b) Annual Fees. In addition to application fees required by this section, each permittee shall pay to the Commission the following annual fees for calendar years 2019 [~~2017~~] and 2020 [~~2018~~] due and payable not later than March 15th of the year following the calendar year for which these fees are applicable:

(1) a fee of \$14.50 [~~\$12.85~~] for each acre of land within a permit area covered by a reclamation bond on December 31st of the year, as shown on the map required by §12.142(2)(C) of this chapter (relating to Operation Plan: Maps and Plans); and

(2) a fee of \$6,930 [~~\$6,170~~] for each permit in effect on December 31st of the year.

(c) Fees paid to the Commission under this section shall be deposited in the state treasury and credited to the general revenue fund.

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 August 6, 2019.

TRD-201902529

Haley Cochran

Rules Attorney, Office of General Counsel

Railroad Commission of Texas

Earliest possible date of adoption: September 22, 2019

For further information, please call: (512) 475-1295



## SUBCHAPTER R. TEXAS ABANDONED MINE LAND RECLAMATION PROGRAM

### 16 TAC §§12.801 - 12.809, 12.811, 12.812, 12.814 - 12.816, 12.818 - 12.823

The Railroad Commission of Texas proposes amendments to 16 TAC §§12.801 - 12.809, §12.811, §12.812, §12.814 - 12.816, and §§12.818 - 12.823, relating to Definitions; Texas Abandoned Mine Reclamation Fund; Eligible Coal Lands and

Water; Reclamation Objectives and Priorities; Utilities and Other Facilities; Limited Liability; Contractor Responsibility; Eligible Noncoal Lands and Water; Reclamation Priorities for Noncoal Program; Land Acquisition Authority - Noncoal; Lien Requirements; Entry and Consent to Reclaim; Appraisals; Liens; Entry for Emergency Reclamation; Land Eligible for Acquisition; Procedures for Acquisition; Acceptance of Gifts of Land; Management of Acquired Land; and Disposition of Reclaimed Lands. Generally, the amendments are proposed to align Commission rules with amendments to federal statutes and corresponding regulations adopted by the Office of Surface Mining Reclamation and Enforcement (OSMRE).

Non-substantive changes are proposed in the following sections: §§12.801, 12.802, 12.806, 12.807, 12.809, 12.811, 12.812, 12.814, 12.816, 12.818, 12.820, 12.821, and 12.822. The changes proposed in these sections are made to capitalize "Commission," correct rule citations and cross-references, define terms used throughout the subchapter, and clarify existing language.

Proposed amendments to §12.803 align the section with 30 Code of Federal Regulations (CFR) §874.12, which allows prior balance replacement funds to be used in cases where the forfeited bond is insufficient to pay the total cost of reclamation. The proposed amendments to §12.803 also include non-substantive corrections.

Proposed amendments to §12.804 update the section to incorporate changes made in 2006 to Section 403 of the Surface Mining Control and Reclamation Act ("SMCRA" or the "Federal Act") (30 U.S.C. §1233). Those changes, and the corresponding amendments to federal regulations found in 30 CFR §874.13, revised expenditure priorities and clarified how reclamation programs should address Priority 3 reclamation objectives. The proposed amendments also update the reference to OSMRE's "Final Guidelines for Reclamation Programs and Projects."

Proposed amendments to §12.805 align the section with 30 CFR §874.14, which was amended in 2009 to change the title of the section from "Utilities and Other Facilities" to "Water Supply Restoration." The changes to 30 CFR §874.14 also added a definition of "water supply restoration project," which has been incorporated in the proposed amendments to subsection (a) of §12.805. The proposed amendments to §12.805 also include non-substantive updates.

Proposed amendments to §12.808 incorporates changes made to 30 CFR §875.14 in 2009. If eligible coal problems are found or occur after certification, the proposed amendments require the Commission to submit to OSMRE a plan that describes the approach and funds that will be used to address those problems in a timely manner rather than addressing the problem with state share funds no later than the next grant cycle, which was the former requirement. The proposed amendments to §12.808 also include non-substantive updates and clarifications.

Proposed amendments to §12.815 reflect the language of 30 CFR §882.12, which requires the appraisal of the private land to be reclaimed to state not only the estimated fair market value of the land as adversely affected by past mining, but also the estimated fair market value of the property as reclaimed. The proposed amendments to §12.815 also include non-substantive updates and clarifications.

Proposed amendments to §12.819 align the requirements for acquisition of coal refuse disposal sites with the requirements found in 30 CFR §879.11 such that acquisition of coal refuse disposal

sites is permissible if approved in advance by OSMRE. The proposed amendments to §12.819 also include non-substantive updates and clarifications.

Proposed amendments to §12.823 incorporate a requirement from 30 CFR §879.15 that all moneys received from the disposal of reclaimed land shall be returned to OSMRE. The proposed amendments to §12.823 also include non-substantive updates.

Alex Schoch, Interim Director, Surface Mining and Reclamation Division, has determined that for each year of the first five years the amendments as proposed will be in effect, there will be no fiscal impact on the Commission as a result of enforcing or administering the amendments. There will be no fiscal effect on local government.

Mr. Schoch has determined that for the first five years the proposed amendments are in effect, the primary public benefit will be compliance with applicable federal law.

Mr. Schoch has determined that for each year of the first five years that the amendments will be in effect, there will be no economic costs for persons required to comply as a result of adoption of the proposed amendments.

The Commission has determined that the proposed amendments will not have an adverse economic effect on rural communities, small businesses or micro businesses. As noted above, there is no anticipated additional cost for any person required to comply with the proposed amendments. Therefore, the Commission has not prepared the economic impact statement or the regulatory flexibility analysis pursuant to Texas Government Code §2006.002.

The Commission has also determined that the proposed amendments will not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code §2001.022.

The Commission has determined that the amendments do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory analysis conducted pursuant to that section is not required.

During the first five years that the rules would be in effect, the proposed amendments would not: create or eliminate a government program; create or eliminate any employee positions; require an increase or decrease in future legislative appropriations; increase or decrease fees paid to the agency; create a new regulation; increase or decrease the number of individuals subject to the rule's applicability; expand, limit, or repeal an existing regulation; or affect the state's economy. The amendments are proposed to align Commission rules with governing federal statutes and regulations.

Comments on the proposed amendments may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at [www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings](http://www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings); or by electronic mail to [rulescoordinator@rrc.texas.gov](mailto:rulescoordinator@rrc.texas.gov). The Commission will accept comments until 12:00 noon on Monday, September 23, 2019. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website more than two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission cannot guarantee that comments submitted af-

ter the deadline will be considered. For further information, call the Abandoned Mine Lands department at (512) 305-8830. The status of Commission rulemakings in progress is available at [www.rrc.texas.gov/general-counsel/rules/proposed-rules](http://www.rrc.texas.gov/general-counsel/rules/proposed-rules).

Statutory authority: Texas Natural Resources Code, §134.013 and §134.141.

The Commission proposes the amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations, and Texas Natural Resources Code §134.141, which allows the Commission to take any action necessary to ensure Texas' participation to the fullest extent practicable in the abandoned mine reclamation fund established by the federal act. Section 134.141 also authorizes the Commission to adopt rules that (1) establish priorities that meet the terms of the federal act for the expenditure of money in the fund; (2) designate the land and water eligible for reclamation or abatement expenditures; (3) submit reclamation plans, annual projects, and applications to the appropriate authorities under that Act; and (4) administer money received for abandoned mine reclamation or related purposes.

Cross-reference to statute: Texas Natural Resources Code, Chapter 134.

#### §12.801. Definitions.

The following words and terms, when used in this subchapter (relating to the Texas Abandoned Mine Land Reclamation Program), shall have the following meanings unless the context clearly indicates otherwise:

(1) Abandoned Mine Reclamation Fund or Fund--A special fund established by the United States Treasury for the purpose of accumulating revenues designated for reclamation of abandoned mine lands and other activities authorized by Title IV of the Federal Act.

(2) Director--The Director of the Office of Surface Mining Reclamation and Enforcement, or the Director's representative.

(3) [(2)] Eligible lands and water--Land and water eligible for reclamation or drainage abatement expenditures which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes and left or abandoned in either an unreclaimed or inadequately reclaimed condition prior to August 3, 1977, and for which there is no continuing reclamation responsibility. Lands and water damaged by coal mining operations after August 3, 1977, and on or before November 5, 1990, may also be eligible for reclamation if they meet the requirements specified in §12.803 of this title (relating to Eligible Coal Lands and Water). Following certification of the completion of all known coal problems, eligible lands and water for noncoal reclamation purposes shall be those sites that meet the [eligibility] requirements specified in §§12.808, 12.809, [and] 12.810, and 12.811 of this title (relating to Eligible Noncoal Lands and Water; Reclamation Priorities for Noncoal Program; Exclusion of Certain Noncoal Reclamation Sites; and Land Acquisition Authority - Noncoal, respectively [Prior to Certification and to Eligible Lands and Water Subsequent to Certification]). For additional eligibility requirements for water projects, see §12.805 of this title (relating to Water Supply Restoration [Utilities and Other Facilities]), and for lands affected by remaining operations, see Section 404 of the Federal Act.

(4) [(3)] Emergency--A sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety or general welfare of people before the danger can be abated under normal program operation procedures.

(5) [(4)] Extreme danger--A condition that could reasonably be expected to cause substantial physical harm to persons, prop-

erty, or the environment and to which persons or improvements on real property are currently exposed.

(6) [(5)] Left or abandoned in either an unreclaimed or inadequately reclaimed condition--Lands and water:

(A) which were mined or which were affected by such mining, wastebanks, processing or other mining processes prior to August 3, 1977, or between August 3, 1977 and November 5, 1990, as authorized pursuant to Section 402(g)(4) of the Federal Act, and on which all mining has ceased;

(B) which continue in their present condition[;] to substantially degrade the quality of the environment, prevent or damage the beneficial use of the land or water resources, or endanger the health or safety of the public; and

(C) for which there is no continuing reclamation responsibility under state or federal laws, except as provided in Sections 402(g)(4) and 403(b)(2) of the Federal Act.

(7) [(6)] OSMRE [OSM]--The Office of Surface Mining Reclamation and Enforcement.

(8) [(7)] Permanent facility--Any structure that is built, installed, or established to serve a particular purpose, or any manipulation or modification of the surface that is designed to remain after the reclamation activity is completed, such as a relocated stream channel or diversion ditch.

(9) [(8)] Project--A delineated area containing one or more abandoned mine land problems. A project may be a group of related reclamation activities with a common objective within a political subdivision of the state or within a logical, geographically defined area, such as a watershed, conservation district, or county planning area.

(10) [(9)] Reclamation activity--The reclamation, abatement, control, or prevention of adverse effects of past mining.

(11) Secretary--The United States Secretary of the Interior.

(12) [(10)] State reclamation program--A program established by the state in accordance with this chapter for reclamation of lands and water adversely affected by past mining, including the reclamation plan and annual applications for grants.

(13) [(11)] Texas Abandoned Mine Reclamation Fund or State Fund--A separate account established by the state for the purpose of accounting for moneys granted by the Director under an approved state reclamation program and other moneys authorized by these regulations [Regulations] to be deposited in the Fund.

#### §12.802. Texas Abandoned Mine Reclamation Fund.

Revenue to the Fund shall include:

(1) amounts granted to the state by OSMRE [the Office of Surface Mining] for the purpose of conducting the Texas Abandoned Mine Reclamation Plan;

(2) moneys collected by the state from charges for uses of land acquired or reclaimed with moneys from the Fund;

(3) moneys recovered by the state through the satisfaction of liens filed against privately owned lands reclaimed with moneys from the Fund;

(4) moneys recovered by the state from the sale of lands acquired with moneys from the Fund; and

(5) such other moneys as the state decides should be deposited in the Fund for use in carrying out the Texas Abandoned Mine Reclamation Program.

§12.803. *Eligible Coal Lands and Water.*

(a) Coal mined lands and associated waters shall be eligible for reclamation activities if:

(1) they were mined for coal or affected by coal mining processes;

(2) they were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition;

(3) there is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the state or federal government, or the state as a result of bond forfeiture. Bond forfeiture shall render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional moneys ~~[may be sought]~~ from the Texas Abandoned Mine Land Fund or any prior balance replacement funds may be used.

(b) Notwithstanding subsection (a) of this section, coal lands and waters in the state damaged and abandoned after August 3, 1977, by coal mining processes shall also be eligible for funding if the Secretary finds in writing that:

(1) they were mined for coal or affected by coal mining processes; and

(2) the mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977, and either:

(A) the date on which the Secretary approved the state regulatory program pursuant to Section 503 of the Federal Act, and that any funds for reclamation or abatement that are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site; or

(B) November 5, 1990, and that the surety of the mining operator became insolvent during such period, and that, as of November 5, 1990, funds immediately available from proceedings relating to such insolvency or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site; and

(3) the site qualifies as a priority 1 or 2 site pursuant to Section 403(a)(1) and (2) of the Federal Act. Priority shall be given to those sites that are in the immediate vicinity of a residential area or that have an adverse economic impact upon a community.

(c) The ~~Commission [eommission]~~ may expend funds made available under paragraphs 402(g)(1) and (5) of the Federal Act for reclamation and abatement of any site eligible under subsection (b) of this section if the ~~Commission [eommission]~~, with the concurrence of the Secretary, makes the findings required in subsection (b) of this section and the ~~Commission [eommission]~~ determines that the reclamation priority of the site is the same or more urgent than the reclamation priority for the lands and water eligible pursuant to subsection (a) of this section that qualify as a priority 1 or 2 site under Section 403(a) of the Federal Act.

(d) With respect to lands eligible pursuant to subsection (b) or (c) of this section, moneys available from sources outside the Abandoned Mine Reclamation Fund or that are ultimately recovered from responsible parties shall either be used to offset the cost of the reclamation or transferred to the Abandoned Mine Reclamation Fund if not required for further reclamation activities at the permitted site.

(e) If reclamation of a site covered by an interim or permanent program permit is carried out under the Abandoned Mine Land Program, the permittee of the site shall reimburse the Abandoned Mine Reclamation [Land] Fund for the cost of reclamation that is in excess of any bond forfeited to ensure reclamation. Neither the Secretary nor the ~~Commission [eommission]~~ performing reclamation under subsection (b) or (c) of this section shall be held liable for any violations of any performance standards or reclamation requirements specified in Title V of the Federal Act nor shall a reclamation activity undertaken on such lands or waters be held to any standards set forth in Title V of the Federal Act or Subchapter K of the State Act.

(f) Surface coal mining operations on lands eligible for reclamation pursuant to Section 404 of the Federal Act shall not affect the eligibility of such lands for reclamation activities after the release of the bonds or deposits posted by any such operation as provided by §12.312 and §12.313 of this title (relating to Procedure for Seeking Release of Performance Bond, and ~~[tø]~~ Criteria and Schedule for Release of Performance Bond). If the bond or deposit for a surface coal mining operation on lands eligible for reclamation is forfeited, funds available under this title may be used if the amount of such bond or deposit is not sufficient to provide for adequate reclamation or abatement.

§12.804. *Reclamation Objectives and Priorities.*

(a) Reclamation projects should be accomplished in accordance with OSMRE's [OSM's] "Final Guidelines for Reclamation Programs and Projects" (66 Federal Register 31250, June 11, 2001 [45 Federal Register 14810-14819, March 6, 1980]).

(b) Reclamation project expenditures shall reflect the priorities of Section 403(a) of the Federal Act in the order stated: [projects shall reflect the priorities of Section 403(a) of the Federal Act.]

(1) Priority 1: The protection of public health, safety, and property from extreme danger of adverse effects of coal mining practices, including the restoration of land and water resources and the environment that:

(A) have been degraded by the adverse effects of coal mining practices; and

(B) are adjacent to a site that has been or will be addressed to protect the public health, safety, and property from extreme danger of adverse effects of coal mining practices.

(2) Priority 2: The protection of public health and safety from adverse effects of coal mining practices, including the restoration of land and water resources and the environment that:

(A) have been degraded by the adverse effects of coal mining practices; and

(B) are adjacent to a site that has been or will be addressed to protect the public health and safety from adverse effects of coal mining practices.

(3) Priority 3: The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity. Priority 3 land and water resources that are geographically contiguous with existing or remediated Priority 1 or 2 problems will be considered adjacent under paragraphs (1)(B) or (2)(B) of this subsection.

(c) Generally, projects lower than a Priority 2 should not be undertaken until all known higher priority coal projects either have been accomplished, are in the process of being reclaimed, or have been approved for funding by the Secretary, except in those instances where such lower priority projects may be undertaken in conjunction with a

Priority 1 or 2 site in accordance with OSMRE's OSM's "Final Guidelines for Reclamation Programs and Projects."

§12.805. *Water Supply Restoration [Utilities and Other Facilities].*

(a) Water supply restoration projects are those that protect, repair, replace, construct, or enhance facilities related to water supplies, including water distribution facilities and treatment plants that have been adversely affected by coal mining practices. If the adverse effect on water supplies referred to in this section occurred both prior to and after August 3, 1977, the project shall remain eligible, notwithstanding the criteria specified in §12.803 of this title (relating to Eligible Coal Lands and Water), if the Commission [eommission] finds in writing, as part of its eligibility opinion, that such adverse effects [affects] are due predominately to effects of mining processes undertaken and abandoned prior to August 3, 1977.

(b) Enhancement of facilities or utilities under this section shall include upgrading necessary to meet any local, state, or federal public health or safety requirement. Enhancement shall not include any service area expansion of a utility or facility not necessary to address a specific abandoned mine land problem.

§12.806. *Limited Liability.*

The Commission [eommission] shall not be liable under any provision of federal law for any costs or damages as a result of action taken or omitted in the course of carrying out an approved Commission [eommission] abandoned mine reclamation plan. This section shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the Commission [eommission]. For purposes of this section, reckless, willful, or wanton misconduct shall constitute gross negligence or intentional misconduct.

§12.807. *Contractor Responsibility.*

To receive abandoned mine land (AML) [AML] funds, every successful bidder for an AML contract must be eligible under §12.215 of this title (relating to Review of Permit Applications) at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations. Bidder eligibility must be confirmed by OSMRE's [OSM's] automated Applicant/Violator System for each contract to be awarded.

§12.808. *Eligible Noncoal Lands and Water.*

(a) Following certification by the Commission [eommission] of the completion of all known coal projects and the Director's concurrence in such certification, eligible noncoal lands, waters, and facilities shall be those:

(1) which were mined or processed for minerals or which were affected by such mining or processing, and abandoned or left in an inadequate reclamation status prior to August 3, 1977; and

(2) for which there is no continuing reclamation responsibility under state or other federal laws.

(b) If eligible coal problems are found or occur after certification, the Commission [eommission] shall submit to OSMRE a plan that describes the approach and funds that will be used to address those problems in a timely manner [address the coal problem utilizing state share funds no later than the next grant cycle, subject to the availability of funds distributed to the commission in that eye]. Any [The] coal projects [project] shall be subject to the coal provisions specified in Sections 401 through 410 of the Federal Act.

§12.809. *Reclamation Priorities for Noncoal Program.*

(a) This section applies to reclamation projects involving the restoration of lands and water adversely affected by past mineral mining; projects involving the protection, repair, replacement, construction, or enhancement of utilities (such as those relating to water supply,

roads, and other such facilities serving the public adversely affected by mineral mining and processing practices); and the construction of public facilities in communities impacted by coal or other mineral mining and processing practices.

(b) Following certification by the Commission [eommission] of the completion of all known coal projects, the projects and construction of public facilities identified in subsection (a) of this section shall reflect the following priorities in the order stated:

(1) the protection of public health, safety, general welfare, and property from the extreme danger of adverse effects of mineral mining and processing practices;

(2) the protection of public health, safety, and general welfare from the adverse effects of mineral mining and processing practices; and

(3) the restoration of land and water resources and the environment previously degraded by the adverse effects of mineral mining and processing practices.

(c) Enhancement of facilities or utilities shall include upgrading necessary to meet local, state, or federal public health or safety requirements. Enhancement shall not include any service area expansion of a utility or facility not necessary to address a specific abandoned mine land problem.

(d) Notwithstanding [the requirements specified in] subsection (a) of this section, if the governor determines that there is a need for activities or construction of specific public facilities related to the coal or minerals industry, and the governor or the Commission [eommission] at the governor's request submits a grant application as specified in [as required by] subsection (e) of this section and the Director concurs with the application submitted under [as set forth in] subsection (e) of this section, the Director may grant funds made available under Section [section] 402(g)(1) of the Federal Act, 30 U.S.C. 1232, to carry out such activities or construction.

(e) To qualify for funding pursuant to the authority in subsection (d) of this section, the governor, or the Commission [eommission] at the governor's request, must submit a grant application that specifically sets forth:

(1) the need or urgency for the activity or the construction of the public facility;

(2) the expected impact the project will have on the coal or minerals industry in the state;

(3) the availability of funding from other sources and, if other funding is provided, its percentage of the total costs involved;

(4) documentation from other local, state, and federal agencies with oversight for such utilities or facilities regarding what funding resources they have available and why this specific project is not being fully funded by those agencies;

(5) the impact on the state, the public, and the minerals industry if the activity or facility is not funded;

(6) the reason why this project should be selected before a priority project relating to the protection of the public health and safety or the environment from the damages caused by past mining activities; and

(7) an analysis and review of the procedures used by the Commission [eommission] to notify and involve the public in this funding request and a copy of all comments received and their resolution by the Commission [eommission].

§12.811. *Land Acquisition Authority - Noncoal.*

The requirements specified in §§12.813, 12.814, and 12.818 - 12.823 of this title (relating to Written Consent for Entry; Entry and Consent to Reclaim; Entry for Emergency Reclamation; Land Eligible for Acquisition; Procedures for Acquisition; Acceptance of Gifts of Land; Management of Acquired Land; and Disposition of Reclaimed Lands, respectively) shall apply to the Commission's [eommission's] noncoal program except that, for purposes of this section, the references to coal shall not apply. In lieu of the term coal, the word noncoal should be used.

*§12.812. Lien Requirements.*

The lien requirements in §§12.815 - 12.817 of this title (relating to Appraisals; Liens; and Satisfaction of Liens, respectively), shall apply to the Commission's [eommission's] noncoal reclamation program under §12.808 of this title (relating to Eligible Noncoal Lands and Water), except that for purposes of this section, references made to coal shall not apply. In lieu of the term coal, the word noncoal should be used.

*§12.814. Entry and Consent to Reclaim.*

(a) The Commission [eommission], its agents, employees, or contractors may enter [upon] land to perform reclamation activities or conduct studies or exploratory work to determine the existence of the adverse effects of past coal mining if consent from the owner is obtained pursuant to §12.813 of this title (relating to Written Consent for Entry).

(b) The Commission [eommission] shall be entitled to enter any property to conduct studies or exploratory work to determine:

(1) the existence of adverse effects of past coal mining practices; and

(2) the feasibility of restoration, reclamation, abatement, control, or prevention of those adverse effects.

(c) The Commission [eommission] shall be entitled to enter property adversely affected by past coal mining practices or other property necessary to have access to that property to perform the activities necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects if the Commission [eommission]:

(1) makes a finding of fact that:

(A) land or water resources have been adversely affected by past coal mining practices;

(B) the adverse effects are at a stage at which action to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices should be taken to protect the public interest; and

(C) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices either are not known or readily available or will not permit this state or a political subdivision to enter the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices; and

(2) gives written notice of intent to enter at least 30 days prior to entering the property:

(A) to the owner, if known, by certified mail, return receipt requested. A copy of the findings required under paragraph (1) shall be included with the notice; or

(B) if the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted in one or more places on the property to be entered where the notice is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. The notice posted on the property and advertised in the newspaper shall include a statement of

where the findings required under paragraph (1) of this subsection may be inspected or obtained.

*§12.815. Appraisals.*

(a) A notarized appraisal of the fair market value of private land to be reclaimed shall be obtained from an independent professional appraiser ~~except [; with exceptions]~~ as noted in subsection (d) of this section. Such appraisal shall meet the quality of appraisal practices found in the [handbook on] Uniform Appraisal Standards for Federal Land Acquisitions [~~Interagency Land Acquisition Conference, 1973~~]. The appraisal shall be obtained before any reclamation activities are started, unless the work must start without delay to abate an emergency. The appraisal shall state the estimated fair market value of the land as adversely affected by past mining and the estimated fair market value of the property as reclaimed. Where an emergency exists the appraisal shall be completed at the earliest practical time and before related non-emergency work is commenced. [~~The appraisal shall state the fair market value of the land as adversely affected by past mining.~~]

(b) An appraisal of the fair market value of all land reclaimed shall be obtained after all reclamation activities have been completed. The appraisal shall comply [be obtained in accordance] with subsection (a) of this section and shall state the market value of the land reclaimed.

(c) The landowner shall receive a statement of the increase in market value, an itemized statement of reclamation expenses, and notices that a lien will or will not be filed against the property.

(d) Appraisals for privately owned land described in [which fall under] §12.816 of this title (relating to Liens) may be obtained from either an independent or staff professional appraiser.

*§12.816. Liens.*

(a) Not later than six months after the date any projects to reclaim privately owned land are completed, the Commission [eommission]:

(1) shall itemize the money spent; and

(2) may file a statement of the money spent with the clerk of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices if the money spent will result in a significant increase in property value. However, prior to the time of the actual filing of a lien, the landowner shall be notified of the amount of the proposed lien and shall be allowed a reasonable time to repay that amount instead of allowing the lien to be filed against the property involved.

(b) The statement shall be a lien on the land second only to a property tax lien. The amount of the lien shall not exceed the amount determined by either of two appraisals, as provided under §12.815 of this title (relating to Appraisals), to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices.

(c) A lien shall not be filed under this section against the property of a person who did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed under this chapter.

(d) Not later than the 60th day after the date the lien is filed, an affected landowner may petition the Commission [eommission] for a hearing on the amount of the lien. The hearing and any appeal shall be conducted pursuant to Chapter 2001, Government Code.

(e) The Commission [eommission] may waive the lien if:

(1) the cost of filing it, including indirect costs, exceeds the increase in fair market value as a result of reclamation activities; or

(2) the reclamation work performed on private land primarily benefits health, safety, and environmental values of the grantee's community or area in which the land is located, or if reclamation is necessitated by an unforeseen occurrence and the work performed to restore the land will not result in a significant increase in the market value of the land as it existed immediately before the occurrence.

§12.818. *Entry for Emergency Reclamation.*

(a) The Commission [~~eommission~~] may enter land where an emergency exists and other land necessary to have access to that land to:

(1) restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices; and

(2) perform activities necessary or expedient to protect the public health, safety, or general welfare.

(b) Entry under this section shall be considered an exercise of the police power and not an act of condemnation of property or trespass.

§12.819. *Land Eligible for Acquisition.*

(a) This state may acquire by purchase, donation, or condemnation land that is adversely affected by past coal mining practices if:

(1) it is in the public interest; and

(2) the Commission [~~eommission~~] determines and makes written findings that:

(A) acquiring the land is necessary for successful reclamation;

(B) the acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will:

(i) serve recreational and historical purposes;

(ii) serve conservation and reclamation purposes; or

(iii) provide open space benefits; and

(C) permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices [~~or acquisition of coal refuse disposal sites and the coal refuse on those sites will serve the purposes of this subchapter.~~] or public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

(b) OSMRE shall approve [~~OSM approves~~] the acquisition by purchase or condemnation in advance. The Commission [~~eommission~~] shall acquire only such interests in land under this subchapter as are necessary for the reclamation work planned or the postreclamation use of the land. Interests in improvements on the land, mineral rights, or associated water rights may be acquired if:

(1) such interests are necessary for the reclamation work planned or for the postreclamation use of the land; and

(2) adequate written assurances cannot be obtained from the owner of the severed interest that future use will not be in conflict with the reclamation to be accomplished.

(c) If approved in advance by OSMRE, this state may also acquire coal refuse disposal sites, including the coal refuse, with moneys from the Texas Abandoned Mine Reclamation Fund and with prior balance replacement funds and certified in lieu funds. Before the approval of the acquisition, the Commission shall make a written finding that the acquisition is necessary for successful reclamation and will serve the purposes of the reclamation program.

§12.820. *Procedures for Acquisition.*

(a) An appraisal of the fair market value of all land or interest in land to be acquired shall be obtained by the Commission [~~eommission~~]. The appraisal shall state the fair market value of the land as adversely affected by past mining.

(b) When practical, acquisition shall be by purchase from a willing seller. The amount paid for land or interests in land acquired shall reflect the fair market value of the land or interests in land as adversely affected by past mining.

(c) When necessary, land or interests in land may be acquired by condemnation. Condemnation procedures shall not be started until all reasonable efforts have been made to purchase the land or interests in lands from a willing seller.

(d) The Commission [~~eommission~~], when acquiring land under this title, shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 et seq., and 41 CFR Part 114-50.

§12.821. *Acceptance of Gifts of Land.*

(a) The Commission [~~eommission~~] under an approved reclamation plan may accept donations of title to land or interests in land if the land proposed for donation meets the requirements set out in §12.819 of this title (relating to Land Eligible for Acquisition).

(b) Offers to make a gift of land or interest in land to the Commission [~~eommission~~] shall be in writing and shall include:

(1) a statement of the interest which is being offered;

(2) a legal description of the land and a description of any improvements on it;

(3) a description of any limitations on the title or conditions as to the use or disposition of the land existing or to be imposed by the donor;

(4) a statement that:

(A) the donor is the record owner of the interest being offered;

(B) the interest offered is free and clear of all encumbrances except as clearly stated in the offer;

(C) there are no adverse claims against the interest offered;

(D) there are no unredeemed tax deeds outstanding against the interest offered; and

(E) there is no continuing responsibility by the operator under state or federal statutory law for reclamation; and

(5) an itemization of any unpaid taxes or assessments levied, assessed or due which could operate as a lien on the interest offered.

(c) If the offer is accepted, a deed of conveyance shall be executed, acknowledged, and recorded. The deed shall state that the conveyance is made "as a gift under the Texas Surface Coal Mining and Reclamation Act." Title to donated land shall be in the name of the State of Texas.

§12.822. *Management of Acquired Land.*

Land acquired under this subchapter [title] may be used for any lawful purpose that is consistent with the necessary reclamation activities. Procedures for collection of user charges or the waiver of such charges by the Commission [~~eommission~~] shall provide that all user fees collected shall be deposited in the Texas Abandoned Mine Reclamation Fund.



§12.823. Disposition of Reclaimed Lands.

(a) If land acquired under §12.819 of this title (relating to Land Eligible for Acquisition) is considered suitable for industrial, commercial, residential, or recreational development, this state may sell the land by public sale under a system of competitive bidding at not less than fair market value and under any rules adopted to ensure that the land is put to proper use consistent with local plans, if any, as determined by the Commission [eommission].

(b) The land may be sold only when authorized by the Secretary of the Interior if federal money was involved in the acquisition of the land to be sold.

(c) The Commission [eommission] may transfer administrative responsibility for land acquired under this subchapter (relating to Texas Abandoned Mine Land Reclamation Program) to any agency or political subdivision of the state with or without cost to that agency. The agreement, including amendments, under which a transfer is made shall specify:

(1) the purposes for which the land may be used consistent with the authorization under which the land was acquired; and

(2) that the administrative responsibility for the land shall revert to the Commission [eommission] if, at any time in the future, the land is not used for the purposes specified.

(d) The Commission [eommission], after appropriate public notice and on request, shall hold a public hearing in the county or counties in which land acquired under §12.819 of this title [~~relating to Land Eligible for Acquisition~~] is located. Prior to the disposition of any land acquired under this subchapter, the Commission [eommission] shall publish a notice of the proposed land disposition.

(e) The hearing shall be held at a time that gives residents and local governments maximum opportunity to participate in the decision about the use or disposition of the land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

(f) All moneys received from disposal of land under this title shall be returned to OSMRE pursuant to 30 CFR §879.15 [deposited in the Texas Abandoned Mine Reclamation Fund].

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

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Haley Cochran

Rules Attorney, Office of General Counsel

Railroad Commission of Texas

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For further information, please call: (512) 475-1295



## PART 9. TEXAS LOTTERY COMMISSION

### CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

#### SUBCHAPTER B. LICENSING OF SALES AGENTS

## 16 TAC §401.153

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §401.153 (Qualifications for License). The purpose of the proposed amendments is to implement the requirements of the newly enacted Senate Bill 37 from the Regular Session of the 86th Texas Legislature. Senate Bill 37 amended the State Lottery Act, Texas Government Code Chapter 466, by removing provisions that stated the Lottery Operations Director shall deny an application for a Texas Lottery ticket sales agent license, or the Commission shall suspend or revoke a license, if the Director or Commission, as applicable, finds that the applicant or sales agent has been finally determined to be in default on either a loan made under Chapter 52 of the Texas Education Code or a loan guaranteed under Chapter 57 of the Texas Education Code. Those same requirements that Senate Bill 37 removed are set forth in Commission Rule §401.153(b)(3)(B) - (C). The proposed amendments remove the provisions no longer required by the State Lottery Act. In addition, grammatical and organizational corrections were made to the text to increase clarity and to conform the rule to the State Lottery Act.

Kathy Pyka, Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. 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 cost to persons required to comply with the amendments, as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments 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).

Ryan Mindell, Lottery Operations Director, has determined that for each year of the first five years the proposed amendments will be in effect, the anticipated public benefit expected is aligning Commission policy to recently passed legislation as well as an increase in the number of applicants that will be eligible for a Texas Lottery ticket sales agent license.

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed amendments to 16 TAC §401.153 (Qualifications for License). For each year of the first five years the proposed amendments will be in effect, Kathy Pyka, Controller, has determined the following:

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

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

The Commission requests comments on the proposed amendments from any interested person. Comments may be submitted to Kyle Wolfe, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at [legal.input@lottery.state.tx.us](mailto:legal.input@lottery.state.tx.us). Comments must be received within 30 days after publication of this proposal in the *Texas Register* to be considered.

These amendments are proposed under Texas Government Code §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code Chapter 466.

§401.153. *Qualifications for License.*

(a) (No change.)

(b) The director may grant or deny an application for a license under this subchapter based on any one or more factors listed in subsection (a) of this section. In addition, the director shall deny an application for a license under this subchapter upon a finding that the applicant:

(1) has been convicted of a felony, criminal fraud, gambling or a gambling-related offense, or a misdemeanor involving moral turpitude, if less than 10 years has elapsed since the termination of the sentence, parole, mandatory supervision, or probation served for the offense;

(2) is or has been a professional gambler. A "professional gambler" is a person whose profession is, or whose major source of income derives from, playing games of chance for profit;

(3) has been finally determined to be:

~~[(A)] delinquent in the payment of a tax or other money collected by the comptroller, the Texas Workforce Commission, or the Texas Alcoholic Beverage Commission;~~

~~[(B)] in default on a loan made under Chapter 52, Education Code;~~

~~[(C)] in default on a loan guaranteed under Chapter 57, Education Code; or~~

~~[(D)] any reasons listed in Chapter 232, Family Code as cause for license suspension;~~

(4) is married to [has a spouse, child, brother, sister or parent residing as a member of the same household in the principal place of residence of] a person described in paragraph (1), (2), or (3) of this subsection;

(5) has violated the Act or a rule adopted by the commission in furtherance of the State Lottery Act;

(6) is not an individual, and an individual described in one or more of paragraphs (1) - (5) of this subsection:

(A) is an officer or director of the applicant;

(B) holds more than 10% of any class of issued and outstanding stock in the applicant;

(C) holds an equitable ownership interest greater than 10% in the applicant;

(D) is a creditor of the applicant to the extent of more than 10% of the applicant's outstanding debt at any time after the application is filed but before the director acts to grant or deny the license;

(E) is the owner or lessee of a business that the applicant conducts or through which the applicant will conduct a ticket sales agency;

(F) shares or will share in the profits, other than stock dividends, of the applicant or sales agent;

(G) participates in managing the affairs of the applicant;

or  
(H) is an employee of the applicant who is or will be involved in selling tickets or handling money from the sale of tickets;

(7) provided false or misleading information on the application form, or failed to provide information required as part of the application;

(8) failed to provide fingerprint identification for individuals for which such identification is requested in a form acceptable to the division following the division's request for such identification;

(9) has previously had a sales agent's license revoked, unless the director is satisfied the person will comply with the State Lottery Act and the rules under this chapter;[ or]

(10) failed to certify to the director the applicant's compliance with the federal Americans With Disabilities Act[-]; or

(11) is the subject of a license suspension or decision issued under Chapter 232, Family Code.

(c) - (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 August 9, 2019.

TRD-201902566

Bob Biard

General Counsel

Texas Lottery Commission

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For further information, please call: (512) 344-5392



## CHAPTER 402. CHARITABLE BINGO OPERATIONS DIVISION

### SUBCHAPTER D. LICENSING REQUIREMENTS

#### 16 TAC §§402.401, 402.413, 402.422

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §402.401 (Temporary License), §402.413 (Military Service Members, Military Veterans, and Military Spouses), and §402.422 (Amendment to a Regular License to Conduct Charitable Bingo). The purpose of the proposed amendments is to implement statutory changes required by newly-enacted House Bill 882 and Senate Bill 1200 from the Regular Session of the 86th Texas Legislature. The proposed amendments extend the maximum length of time for a bingo occasion from four to six hours and create a process for recognition of out-state-licenses held by military spouses residing in Texas.

Kathy Pyka, Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no fiscal impact for state or local governments as a result of the proposed amendments that is not attributable to the newly-enacted legislation. 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 cost to persons required to comply with the amendments, as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments 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).

Michael P. Farrell, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed amendments will be in effect, the anticipated public benefit will be to provide organizations with more time and flexibility in conducting bingo, to increase player convenience, to make it easier for military spouses to work in the bingo industry in Texas, and to align the Commission's rules with the newly-enacted statutory language.

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed rule. For each year of the first five years the proposed amendments will be in effect, Kathy Pyka, Controller, has determined the following:

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

The Commission requests comments on the proposed amendments from any interested person. Comments may be submitted to Tyler Vance, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at Legal.Input@lottery.state.tx.us. Comments must be received within thirty (30) days after publication of this proposal in the *Texas Register* in order to be considered. The Commission also will hold a public hearing to receive comments on this proposal at 10:00 a.m. on September 4, 2019, at 611 E. 6th Street, Austin, Texas 78701.

The amendments are proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction; and Sec-

tion 3 of HB 882 from the Regular Session of the 86th Texas Legislature, which requires the Commission to adopt rules for its implementation.

This proposal is intended to implement Texas Occupations Code, Chapter 2001. No other statutes, articles, or codes are affected by the proposed rules.

§402.401. *Temporary License.*

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

(1) Requirements. The Commission may not issue a temporary license if the applicant has failed to file a required report, failed to pay a bingo liability, has not distributed the proceeds calculated on the quarterly report for a charitable purpose, or has a regular license in administrative hold.

(2) Duration. A temporary license is valid for no more than six [~~four~~] consecutive hours during any day.

(3) - (5) (No change.)

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

§402.413. *Military Service Members, Military Veterans, and Military Spouses.*

(a) - (e) (No change.)

(f) A military spouse may engage in any activity for which a license or bingo worker registration is required without obtaining the applicable license or registration if the spouse is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for licensure in Texas. Before engaging in the activity, the military spouse must notify the Commission of their intent to conduct the activity in this state and must submit proof of their residency in this state along with a copy of their military identification card. Upon receipt, the Commission will verify that the military spouse is currently licensed in good standing in another state that has licensing requirements that are substantially equivalent to the requirements in Texas. If so, the Commission shall authorize the military spouse to engage in the activity. The authorization is effective only for the period during which the military service member to whom the military spouse is married is stationed at a military installation in this state, not to exceed three years. The authorization may not be renewed. The military spouse shall comply with all other laws and regulations applicable to the business or occupation in this state.

§402.422. *Amendment to a Regular License to Conduct Charitable Bingo.*

(a) (No change.)

(b) Playing days or playing times.

(1) An organization amending its playing day(s) or playing time(s) must specify on the form each playing occasion day and time that the organization intends to conduct bingo at the location.

(2) The playing day(s) or time(s) specified on the form may not:

(A) conflict with the playing day(s) or time(s) of any other application or license issued for that location;

(B) exceed the maximum number of bingo occasions per day allowed under Texas Occupations Code, §2001.419(c) and (d); or

(C) exceed three occasions during a calendar week or six [~~four~~] hours per occasion.

(c) - (f) (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 August 7, 2019.

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Bob Biard

General Counsel

Texas Lottery Commission

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For further information, please call: (512) 344-5392



## CHAPTER 403. GENERAL ADMINISTRATION

### 16 TAC §403.101

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §403.101 (Open Records). The purpose of the amendments is to implement Texas Government Code §552.275 (Requests That Require Large Amounts of Employee or Personnel Time) by establishing a reasonable limit of 36 hours per fiscal year as the maximum amount of time Commission personnel are required to spend producing public information for inspection or duplication by a requestor, or providing copies of public information to a requestor, without the Commission recovering costs attributable to that personnel time. The amendments also clarify how to submit public information requests to the Commission and make other clarifying changes to the rule.

Kathy Pyka, Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses or rural communities, micro businesses, or local or state employment. There could be an additional economic cost to persons required to comply with the amendments as proposed, but this amount cannot be quantified. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments 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).

Bob Biard, General Counsel, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit expected is increased transparency in Commission operations resulting from more prompt, efficient, and cost-effective responses to all members of the public requesting Commission information.

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

(1) The proposed rule amendments do not create or eliminate a government program.

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

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

(4) The proposed rule amendments do not require an increase or decrease in fees paid to the Commission.

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

(6) The proposal amends, but does not expand or limit, the existing Commission rule governing open records requests, as authorized by Texas Government Code §552.275.

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

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

The Commission requests comments on the proposed amendments from any interested person. Comments may be submitted to Deanne Rienstra, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at [legal.input@lottery.state.tx.us](mailto:legal.input@lottery.state.tx.us). Comments must be received within 30 days after publication of this proposal in the *Texas Register* in order to be considered.

These amendments are proposed under the authority of Texas Government Code §552.230, which authorizes a state agency to promulgate reasonable rules of procedure under which public information may be inspected and copied efficiently, safely, and without delay; Texas Government Code §2001.004(1), which requires state agencies to adopt rules of practice; and Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code, Chapter 552.

#### §403.101. *Open Records.*

(a) Charges for Copies of Public Records. The charges to any person requesting reproductions of any readily available record of the Texas Lottery Commission will be the charges established by rule by the Office of the Attorney General in accordance with the Texas Government Code Chapter 552, Subchapter F.

(1) Pursuant to Texas Government Code §552.275, the Commission has established a limit of 36 hours per fiscal year as the maximum amount of time agency personnel are required to spend producing public information for inspection or duplication by a requestor, or providing copies of public information to a requestor, without the agency recovering costs attributable to that personnel time.

(2) The agency will provide each requestor a written statement of the amount of personnel time spent complying with each request for public information from the requestor and the cumulative amount of time spent complying with requests for public information from the requestor during the fiscal year. Subject to the provisions of §552.275, when the 36-hour limit is met or exceeded, the agency will require a requestor to pay costs attributable to cost of materials, overhead, and personnel time necessary to comply with the request.

(b) The agency may furnish public records without charge or at a reduced charge if the agency determines that waiver or reduction of the fees is in the public interest.

(c) Open Records Requests. The following guidelines apply to requests for records under the Public Information Act, Texas Government Code, Chapter 552.

(1) Requests must be in writing and reasonably identify the records requested. All requests must be submitted to the agency's Public Information Coordinator by one of the methods indicated on the agency's website.

(2) Records access will be by appointment only.

(3) Records access is available only during the regular business hours of the agency.

(4) Generally, unless confidential information is involved, review may be by physical access or by duplication, at the requestor's option. Any person, however, whose request would be unduly disruptive to the ongoing business of the office may be denied physical access and will only be provided the option of receiving copies.

(5) When the safety of any public record is at issue, physical access may be denied, and the records will be provided by duplication as previously described.

(6) Confidential files will not be made available for inspection or for duplication except under certain circumstances, e.g., court order.

(7) All open records requests appointments will be referred to the agency's Public Information [~~Open Records~~] Coordinator before complying with a request.

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

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Bob Biard

General Counsel

Texas Lottery Commission

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For further information, please call: (512) 344-5392



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 61. SCHOOL DISTRICTS

##### SUBCHAPTER EE. COMMISSIONER'S RULES ON REPORTING CHILD ABUSE OR NEGLECT, INCLUDING TRAFFICKING OF A CHILD

###### 19 TAC §61.1051

The Texas Education Agency (TEA) proposes an amendment to §61.1051, concerning reporting child abuse and neglect. The proposed amendment would incorporate definitions; require additional reporting under certain circumstances; detail what must be included in the policy addressing sexual abuse, trafficking, and other maltreatment of children; and describe training requirements for new employees and employees not previously trained.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 61.1051 relates to the reporting of child abuse and neglect and

related training requirements for school districts and open-enrollment charter schools as required by TEC, §38.004 and §38.0041.

The proposed amendment would add new subsection (a) to incorporate definitions for *child abuse or neglect*, *other maltreatment*, and *trafficking of a child* to align with statute.

Language would be added in subsection (b)(1) to align with Texas Family Code requirements regarding mandatory reporting notification.

Language would be added in subsection (b)(2) to require school district and open-enrollment charter school policy to require a report to the Texas Department of Family and Protective Services if the alleged abuse or neglect involves a person responsible for the care, custody, or welfare of the child.

New subsections (b)(3), (7), and (8) would be added to describe the school district's or open-enrollment charter school's policy addressing sexual abuse, trafficking, and other maltreatment of children.

Subsection (c), which contains outdated training dates, would be removed.

Language would be added to subsection (d) to specify that training must be provided to all new school district and open-enrollment charter school employees and to existing school district and open-enrollment charter school employees not previously trained. This requirement would implement TEC, §38.0041. The new language in subsection (d) would also address what must be included in the training, require records of each staff member who participated in the training to be maintained locally, and describe the resources that may be used to provide the training.

In addition, the section and subchapter titles would be changed to reflect reporting child abuse or neglect, including trafficking of a child.

FISCAL IMPACT: Matt Montano, deputy commissioner for special populations, 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 proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand the existing regulation by adding a one-time training for existing staff members and expanding the definitions of child abuse and neglect to include the

trafficking of a child. The proposed rule would also require school districts and open enrollment charter schools to include the trafficking of a child in their child abuse and neglect policies. The policy must address: increasing awareness, including prevention techniques and knowledge of likely warning signs, actions a child who is a victim should take to obtain assistance and intervention, and available counseling options for students affected by sexual abuse, trafficking, or other maltreatment. The proposed rule would also increase the number of individuals subject to the rule's applicability. All existing district and open enrollment charter school staff will need to take a one-time training in order to meet the requirements of the rule.

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 in fees paid to the agency; would not create a new regulation; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Montano 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 addressing trafficking as a form of abuse and require public schools to adopt and implement policies, as well as provide training to existing employees, addressing sexual abuse, trafficking, and other forms of maltreatment of children, including the sexual abuse, trafficking, and other maltreatment of children with significant cognitive disabilities. 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 August 23, 2019, and ends September 23, 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 August 23, 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 amendment is proposed under Texas Education Code (TEC), §38.004, which requires Texas Education Agency (TEA) to develop a policy governing the reports of child abuse or neglect, including reports related to the trafficking of a child under Texas Penal Code, §20A.02(a)(5), (6), (7), or (8), as required by Texas Family Code, Chapter 261; TEC, §38.0041, as amended by HB 111, 86th Texas Legislature, 2019, which requires each school district and open-enrollment charter school to adopt and implement a policy addressing sexual abuse and other maltreatment of children, including the sexual

abuse, trafficking, and other maltreatment of children with significant cognitive disabilities; Texas Family Code, §261.001, which defines child abuse and neglect, which includes knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Texas Penal Code, §20A.02(a)(5)-(8); and Texas Penal Code, §20A.02(a)(5)-(8), which provides a person commits an offense if the person knowingly: traffics a child with the intent that the trafficked child engage in forced labor or services; receives a benefit from participating in such a venture; traffics a child and by any means causes the trafficked child to engage in, or become a victim of, conduct prohibited by §20A.02(a)(7)(A)-(K); or receives a benefit from participating in such a venture or engages in sexual conduct with a child trafficked in this manner.

**CROSS REFERENCE TO STATUTE.** Texas Education Code, §38.004 and §38.0041, as amended by House Bill (HB) 111, 86th Texas Legislature, 2019; Texas Family Code, §261.001; and Texas Penal Code, §20A.02(a)(5)-(8).

*§61.1051. Reporting Child Abuse or [and] Neglect, Including Trafficking of a Child.*

(a) The following words and terms, when used in this subchapter, have the following meanings.

(1) Child abuse or neglect--The definition of child abuse or neglect includes the trafficking of a child in accordance with Texas Education Code (TEC), §38.004.

(2) Other maltreatment--This term has the meaning assigned by Human Resources Code, §42.002.

(3) Trafficking of a child--This term has the meaning assigned by Texas Penal Code, §20A.02(a)(5), (6), (7), or (8).

(b) [(a)] The board of trustees of a school district or governing body of an open-enrollment charter school shall adopt and annually review policies for reporting child abuse and neglect. The policies shall follow the requirements outlined in Texas [the] Family Code, Chapter 261.

(1) The policies must require that every school employee, agent, or contractor having cause to believe a child's physical or mental health or welfare has been adversely affected by [who suspects child] abuse or neglect submit a written or oral report to at least one of the following authorities within 48 hours or less, as determined by the board of trustees, after learning of facts giving rise to the cause to believe [suspicion]:

- (A) a local or state law enforcement agency;
- (B) the Texas Department of Family and Protective Services, Child Protective Services Division;
- (C) a local office of Child Protective Services, where available; or
- (D) the state agency that operates, licenses, certifies, or registers the facility in which the alleged child abuse or neglect occurred.

(2) The policies must require a report to the Texas Department of Family and Protective Services if the alleged abuse or neglect involves a person responsible for the care, custody, or welfare of the child and must notify school personnel of the following:

- (A) penalties under Texas [the] Penal Code, §39.06; Texas[;] Family Code, §261.109[;] and Chapter 249 of this title

(relating to Disciplinary Proceedings, Sanctions, and Contested Cases) for failure to submit a required report of child abuse or neglect;

(B) applicable prohibitions against interference with an investigation of a report of child abuse or neglect, including the following:

(i) Texas Family Code, §261.302 and §261.303, prohibiting school officials from denying an investigator's request to interview a student at school; and

(ii) Texas Family Code, §261.302, prohibiting school officials from requiring the presence of a parent or school administrator during an interview by an investigator;

(C) immunity provisions applicable to a person who reports child abuse or neglect or otherwise assists an investigation in good faith;

(D) confidentiality provisions relating to reports of suspected child abuse or neglect;

(E) any disciplinary action that may result from non-compliance with the district's reporting policy; and

(F) the prohibition under TEC [the Texas Education Code (TEC)], §26.0091, against using or threatening to use the refusal to consent to administration of a psychotropic drug to a child or to any other psychiatric or psychological testing or treatment of a child as the sole basis for making a report of neglect, except as authorized by [the] TEC, §26.0091.

(3) Each school district and open-enrollment charter school shall adopt and implement a policy addressing sexual abuse, trafficking, and other maltreatment of children. The policy must be included in any informational handbook provided to students and parents and must address the following:

(A) methods for increasing staff, student, and parent awareness of issues regarding sexual abuse, trafficking, and other forms of maltreatment of children, including prevention techniques and knowledge of likely warning signs indicating that a child may be a victim;

(B) actions a child who is a victim of sexual abuse, trafficking, or other maltreatment should take to obtain assistance and intervention; and

(C) available counseling options for students affected by sexual abuse, trafficking, or other maltreatment.

(4) [(3)] The policies must be consistent with Texas [the] Family Code, Chapter 261, and 40 TAC Chapter 700 (relating to Child Protective Services) regarding investigations by the Texas Department of Family and Protective Services, including regulations governing investigation of abuse by school personnel and volunteers.

(5) [(4)] The policies may not require that school personnel report suspicions of child abuse or neglect to a school administrator prior to making a report to one of the agencies identified in paragraph (1) [subsection (a)(1)] of this subsection [section].

(6) [(5)] The policies must include the current toll-free telephone number of the Texas Department of Family and Protective Services.

(7) The policies must provide for cooperation with law enforcement child abuse investigations without the consent of the child's parent, if necessary, including investigations by the Texas Department of Family and Protective Services.

(8) The policies must include child abuse anti-victimization programs in elementary and secondary schools consisting of age-appropriate, research-based prevention designed to promote self-protection and prevent sexual abuse and trafficking.

(c) [(b)] The policies required by this section and adopted by the board of trustees shall be distributed to all school personnel at the beginning of each school year. The policies shall be addressed in staff development programs at regular intervals determined by the board of trustees.

[(e) For the 2014-2015 school year, school districts and open-enrollment charter schools shall provide training as required by the TEC, §38.0041, to all currently employed school district and open-enrollment charter school employees on or by the following dates:]

[(1) September 30, 2014, for all kindergarten-Grade 5 teachers, campus principals, and bus drivers;]

[(2) December 31, 2014, for all remaining teachers, campus principals, and bus drivers; and]

[(3) May 31, 2015, for all remaining school staff.]

(d) Training concerning prevention techniques for, and recognition of, sexual abuse, trafficking, and all other maltreatment of children, including the sexual abuse, trafficking, and other maltreatment of children with significant cognitive disabilities, must be provided [Each subsequent school year,] as a part of new employee orientation[; school districts and open-enrollment charter schools shall provide training as required by the TEC, §38.0041,] to all new school district and open-enrollment charter school employees and to existing school district and open-enrollment charter school employees not previously trained as required by TEC, §38.0041.

(1) The training must include:

(A) factors indicating a child is at risk for sexual abuse, trafficking, or other maltreatment;

(B) warning signs indicating a child may be a victim of sexual abuse, trafficking, or other maltreatment;

(C) internal procedures for seeking assistance for a child who is at risk for sexual abuse, trafficking, or other maltreatment, including referral to a school counselor, a social worker, or another mental health professional;

(D) techniques for reducing a child's risk for sexual abuse, trafficking, or other maltreatment; and

(E) information on community organizations that have relevant research-based programs that are able to provide training or other education for school district or open-enrollment charter school staff, students, and parents.

(2) Each school district and open-enrollment charter school must maintain records that include the name of each staff member who participated in training.

(3) To the extent that resources are not yet available from the Texas Education Agency or commissioner of education, school district and open-enrollment charter schools shall implement the policies and trainings with existing or publicly available resources. The school district or open-enrollment charter school may also work in conjunction with a community organization to provide the training at no cost to the district or charter school.

(e) Using a format and language that is clear, simple, and understandable to students, each public school and open-enrollment charter school shall post, in English and in Spanish:

- (1) the current toll-free Texas Department of Family and Protective Services Abuse Hotline telephone number;
- (2) instructions to call 911 for emergencies; and
- (3) directions for accessing the Texas Department of Family and Protective Services website ([www.txabusehotline.org](http://www.txabusehotline.org)) for more information on reporting abuse, neglect, and exploitation.

(f) School districts and open-enrollment charter schools shall post the information specified in subsection (e) of this section at each school campus in at least one high-traffic, highly and clearly visible public area that is readily accessible to and widely used by students. The information must be on a poster (11x17 inches or larger) in large print and placed at eye-level to the student for easy viewing. Additionally, the current toll-free Texas Department of Family and Protective Services Abuse Hotline telephone number should be in bold print.

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

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 Cristina De La Fuente-Valadez  
 Director, Rulemaking  
 Texas Education Agency  
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 For further information, please call: (512) 475-1497



## PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

### CHAPTER 227. PROVISIONS FOR EDUCATOR PREPARATION CANDIDATES

#### SUBCHAPTER A. ADMISSION TO EDUCATOR PREPARATION PROGRAMS

##### 19 TAC §§227.1, 227.5, 227.10

The State Board for Educator Certification (SBEC) proposes amendments to §§227.1, 227.5, and 227.10, concerning admission to educator preparation programs (EPPs). The proposed amendments would implement the statutory requirements of Senate Bill (SB) 1839 and House Bills (HBs) 2039 and 3349, 85th Texas Legislature, Regular Session, 2017. The proposed amendments would add clarification for select definitions, would add language for admission requirements for the Early Childhood-Grade 3 (EC-3) and Trade and Industrial Workforce Training: Grades 6-12 certificates, and would clarify the implementation date in Subchapter A. The proposed amendments would implement subject-matter-only assessments to be used for the Pre-Admission Content Test (PACT) in lieu of the current examination that tests an applicant's knowledge of both content and pedagogy prior to admission to an EPP. The proposed amendments would also implement changes based on stakeholder input and Texas Education Agency (TEA) staff recommendations.

**BACKGROUND INFORMATION AND JUSTIFICATION:** The SBEC rules in 19 Texas Administrative Code (TAC) Chapter 227 are organized as follows: Subchapter A, Admission to Educator Preparation Programs, and Subchapter B, Preliminary

Evaluation of Certification Eligibility. These subchapters provide for rules that establish requirements for admission to an EPP and preliminary evaluation of certification eligibility.

The following is a description of the proposed amendments to 19 TAC Chapter 227, Subchapter A.

##### §227.1. *General Provisions.*

The proposed amendment in §227.1(b) would change the word "should" to "shall" to clarify the responsibility of the program to inform all applicants that they must undergo a criminal history background check prior to employment as an educator and prior to clinical teaching. This change would ensure that all applicants are aware of these requirements before moving into a role with students. This change would also ensure that applicants are aware of their eligibility to serve in a role with students early in their teacher preparation process.

Technical edits would be made to define acronyms.

##### §227.5. *Definitions.*

The proposed amendment to §227.5(5) would delete the phrase, "also known as a certification field," from the definition of *certification category* and would add language to reference Title 19, Chapter 233, which is where the certificate categories (English Language Arts and Reading; Social Studies, Special Education, and Health) can be found.

The proposed amendment in §227.5(6) would add the phrase, "may contain one or more certification categories," and delete the phrase, "also known as a certification field," to clarify that a class of certificates may contain one or more categories within a certification area. This change would better distinguish between a class and a category since a category is a subgroup of a class.

The proposed amendment in §227.5(8) and §227.5(9) would update the definition for *content certification examination* and would create a new definition for *content pedagogy examinations* to distinguish that a standardized test or assessment required by statute or the SBEC that governs an individual's certification as an educator is different than the required standardized test or assessment required for EPP admission purposes.

These definitions would clarify that EPPs will use content certification examinations for admitting candidates into EPPs and content pedagogy examinations will be used for certificate issuance. These definitions would support the overall policy shift from using an examination that tests both pedagogy and subject matter knowledge for the PACT to using a subject-matter-only examination. This shift would allow the PACT to better mirror the coursework requirement for which it is a substitute and would make the PACT a more effective admission requirement because candidates should not be expected to understand pedagogy before they have begun their studies at an EPP. It is reasonable to assess only subject-matter knowledge for EPP admission purposes because it is the role of the EPP to teach the candidate pedagogy through coursework and training.

The section would be renumbered accordingly for formatting purposes.

##### §227.10. *Admission Criteria.*

The proposed amendment in §227.10(a)(3)(B)(ii) and §227.10(a)(4)(C) would set admission criteria for applicants to pass an appropriate content certification examination. To meet admission eligibility requirements in an EPP, statute requires a candidate to have a 2.5 GPA and either 12 or 15 hours of



subject-specific content area coursework in the area they are seeking certification, or to pass a content certification exam, known as the PACT option, to demonstrate content knowledge prior to preparation in that area. Currently, the exams used to satisfy the second option for admission purposes are the exams candidates take after receiving training in their EPP. The exams do not only cover content knowledge but also assess pedagogy (the "how to teach"), which is not appropriate since the candidates have not had the training or preparation in that area. The proposed rule text would replace these exams with subject-matter only exams to better reflect the statutory requirement of subject-specific coursework in the content area for certification and would remove the current requirement of testing a candidate's knowledge of pedagogy for PACT purposes. The designated content-only examinations would be set out in new Figure: 19 TAC Chapter 227 - Preamble, which lists the appropriate subject-matter content certification examination for each certificate area, with an implementation date of January 1, 2020.

At the April 26, 2019 SBEC meeting, the Board requested additional information on the impact of the PACT implementation date. The following describes the impact of the implementation date on candidates, EPPs, data collection, and program accountability.

#### *Impact of the Implementation on Candidates*

The proposed PACT change would impact candidates in alternative certification or post-baccalaureate programs by not requiring them to take a content pedagogy exam prior to admission beginning January 1, 2020. Every time a candidate takes one of these tests for admission purposes, it counts against the five-time limit and a test fee is assessed for each retake. A candidate would only take an additional exam if the EPP requires it or if a candidate did not meet minimum requirements for GPA or semester credit hours in the subject-specific content area for the certification sought. This change would only adjust the timing and support for candidates and would not change the requirement that a candidate passes the content pedagogy assessment before becoming the teacher of record.

The proposed amendment would not impact candidates already admitted to EPPs. TEA staff also believes that there will be a positive impact on both candidates and districts as potential teachers will now be given support on their content pedagogy examinations. This should not impact district staffing because it does not add an additional requirement before a candidate can enter the classroom as the teacher of record.

#### *Impact of the Implementation Date on EPPs*

For preparation purposes, TEA staff believes that the proposed PACT would not require EPPs to provide additional curriculum. As prescribed in SBEC rule, the curricula that EPPs are expected to provide for each specific certification category include: the relevant Texas Essential Knowledge and Skills (TEKS), including the English Language Proficiency Standards (ELPS) and the skills and competencies in the Texas teacher standards in 19 TAC Chapter 149, Commissioner's Rules Concerning Educator Standards, that include the standards of Instructional Planning and Delivery and Content Knowledge and Expertise.

EPPs submit aligned curriculum when requesting to offer a certification category. All EPPs that are approved to offer certification categories have already created and submitted their curricula for staff approval.

Staff does anticipate that some EPPs may need to increase the amount of time between EPP admission and recommending candidates for intern certifications to allow for content pedagogy alignment with coursework and training.

#### *Impact of the Implementation Date on Data Collection*

TEA staff does not believe there would be an impact on the internal processes for data collection with this change. TEA staff already collects and calculates pass rates for certification examinations.

#### *Impact of the Implementation Date on Program Accountability*

The only impact to EPPs would be for SBEC accountability purposes. As required in statute and under SBEC rule, EPPs are currently held accountable for the candidates' pass rates on certification examinations. The examinations are categorized as either PPR (pedagogy and professional responsibilities) or non-PPR (content/content-pedagogy exams). EPPs are only held accountable for examinations after a candidate has been admitted as opposed to if they choose to require their candidates to take the PACT. The table below indicates where there might be a change to program accountability by type of program and assessment.

#### Figure: 19 TAC Chapter 227 - Preamble

Traditional programs currently do not have the option of requiring the PACT for admission purposes and therefore, would not be impacted by the rule change. The proposed PACT change would only impact post-baccalaureate and alternative certification programs (ACP) that currently utilize the PACT route. In those cases, the programs will be held accountable for the content pedagogy test that they previously required for admission purposes. Programs currently utilizing PACT provide candidates support for the PPR test and also for the content pedagogy test when candidates change fields.

The proposed amendments would implement policy changes regarding the PACT, which is currently an examination testing both content and pedagogy that a candidate takes prior to admission into either an ACP or post-baccalaureate certification program. Negative consequences of the current PACT route pathway include:

A candidate testing through the PACT route would not have obtained the required training to successfully complete questions that contain content pedagogy (the method and practice of teaching). For example, during the 2017-2018 reporting year, candidates in traditional routes passed the English Language Arts, EC-6 test at an 84% pass rate; candidates in alternative routes passed at an 86% pass rate; and candidates through the PACT route passed at a 67% pass rate. Candidate support provided by EPPs increases the likelihood of success on certification assessments. An increase in the number of candidates that are successful on certification assessments can lead to an increase in the number of qualified teachers.

Every test attempt through the PACT route counts toward a candidate's five-time test attempt limit since it is also the exam that a candidate takes at the end of his or her educator preparation to determine whether he or she is eligible for certification by the SBEC.

Traditional preparation programs do not currently have the option to use PACT, which means they are accountable for candidate scores on *both* the content pedagogy test and the PPR test, whereas some alternative and post-baccalaureate prepa-

ration programs are accountable **only** for the PPR test since the content pedagogy test was taken before candidates were admitted into the program.

To address these concerns, this proposed amendment to §227.10 would provide all programs, including traditional preparation programs, with the opportunity to use the PACT, now that it is a subject-matter-only examination, because traditional programs are also accepting students who are being prepared in their chosen content subject outside of the EPP. The requirements in TEC, §21.0441, provide the basis for the PACT examination as a substitute for a candidate completing hours of college coursework in the subject in which the candidate is seeking initial certification. Converting the PACT into a subject-matter-only examination would better mirror the statutorily required coursework for which it is intended as a substitute and would better reflect the skills a candidate should possess prior to entry into an EPP.

Only initial certifications that are subject-matter specific would have the option for PACT. For example, special education is a specialized pedagogical skill set that applies to all subject areas, so it does not lend itself to having a subject-matter only test. Additionally, due to the broad but basic content knowledge required in elementary education, the proposed amendment would use a basic skills assessment as the PACT assessment for those seeking elementary certifications. For the purposes of language assessments that draw a low number of test takers (e.g., Portuguese, Hindu, etc.), SBEC proposes retaining the use of the current content pedagogy assessments as there was not a cost-effective alternative available.

Proposed new Figure: 19 TAC Chapter 227 - Preamble would provide the list of PACT assessments for their related certification area. The list would include assessments aligned to the TEKS in the related certification areas. The content certification (subject-matter only) examination would be open to all interested candidates, therefore, §227.10(a)(4)(D) would no longer be needed because the scores would carry over from one program to another. If a candidate wants to change content, they would take a different content exam for purposes of admission into the new EPP. The current testing vendor would provide the proposed assessments, which align with the TEKS. Standard setting committees were conducted in Spring of 2019 to determine the acceptable passing standard for admission purposes.

Proposed new §227.10(e) would create new admission requirements for the Trade and Industrial Workforce Training: Grades 6-12 certification to implement the statutory requirements prescribed in HB 3349, 85th Texas Legislature, Regular Session, 2017. This language would ensure a pathway is available for industry members to transition into an EPP.

Proposed new §227.10(g) would add requirements for currently certified educators to enroll in an Early Childhood: Prekindergarten-Grade 3 preparation program to implement the statutory requirements prescribed in SB 1839 and HB 2039, 85th Texas Legislature, Regular Session, 2017. This amendment would ensure that candidates currently certified to teach a grade level between early childhood and Grade 3 are required to enroll in an EPP if they would like to pursue the Early Childhood: Prekindergarten-Grade 3 certification. In addition, proposed new §227.10(g) would reference the specific course of instruction in §228.35(i)(2) to clarify that the Early Childhood-Grade 3 certification is offered for initial certification.

FISCAL NOTE. Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposal is in effect, there is an additional fiscal impact on state government required to comply with the proposal. The TEA estimates a cost of \$128,909 for each of the next five fiscal years (FYs) from FYs 2020-2024 for the development and ongoing administrative costs needed to maintain assessments. However, the TEA will receive an \$11 remittance for each PACT taken for an estimated total of \$128,909 for FYs 2020-2024 to offset the costs. Based on the 2017-2018 testing data, the TEA estimated 11,719 test attempts under the PACT route. In most cases, because an EPP has a choice in their admission requirements, estimated costs to state government, local government, and other entities in this analysis do not include EPPs. There is no additional fiscal impact on local government and other entities.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code (TGC), §2001.002.

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 TGC, §2006.002, is required. The TEA staff does not anticipate an adverse effect for EPPs as a result of this proposal, including EPPs that qualify as small businesses or microbusinesses. The TEA staff expects that these proposed rule changes may allow more candidates to qualify for admission into EPPs as a result of the new admission test requiring only subject-matter knowledge. If EPPs have been relying on the PACT for admission purposes, the increased revenue brought by more candidates may be offset to some extent by increased instructional costs. Even for these EPPs, the increase in instructional costs is not expected to be so significant as to negate the increase in revenue from the additional qualified candidates. The educator standards on which the EPPs' curriculum is based have not changed with these proposed amendments. Moreover, EPPs can implement their own admission screening requirements for those candidates who meet admission requirements for grade point average and the required hours of coursework.

COST INCREASE TO REGULATED PERSONS: The proposal does impose a cost on regulated persons (teacher candidates), another state agency, a special district, or a local government, and, therefore, is subject to TGC, §2001.0045. However, the proposal is exempt from TGC, §2001.0045, as provided under that statute, because the proposal is necessary to reduce the burden or responsibilities imposed on regulated persons. In addition, the proposal is necessary to ensure that certified Texas educators are competent to educate Texas students and, therefore, necessary to protect the safety and welfare of the residents of this state.

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

GOVERNMENT GROWTH IMPACT: The TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would require an increase in fees paid to the agency for each PACT taken (\$11 per assessment), but those fees would be offset by the increased costs to the agency of developing and administering the new PACT. A new regulation in proposed §227.1(b) would require an EPP to

inform all applicants that they must undergo a criminal history background check prior to employment as an educator and prior to clinical teaching. A new regulation in proposed new §227.10(a)(3)(B)(ii) and §227.10(a)(4)(C) would set admission criteria for applicants to pass an appropriate content certification examination, which would replace the certification examinations currently used for the PACT that tests a candidate's knowledge of both content and pedagogy. A new regulation in proposed new §227.10(e) would create new admission requirements for Trade and Industrial Workforce Training: Grade 6-12 certification program, and §227.10(g) would add requirements for currently certified educators to enroll in an Early Childhood: Prekindergarten-Grade 3 preparation program for candidates who want to pursue the Early Childhood: Prekindergarten-Grade 3 certification.

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 a decrease in fees paid to the agency; would not expand, limit, or repeal 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:** Mr. Franklin 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 broadening the pool of potential educators in Texas by allowing EPPs to admit educator candidates who are competent in the subject they wish to teach but are not already well-versed in pedagogy. It would also offer continued and clear guidance on processes and procedures for testing and certificate issuance.

The TEA staff has determined that there is a cost to individuals required to comply with the proposal. For admission to an EPP, candidates who have neither a 2.5 undergraduate grade point average nor the required number of hours of college coursework in the specific content area in which the candidate is seeking certification would have to take a new, additional content certification examination prior to admission. Previously, these candidates could simply take the examination required for final certification as an educator prior to admission. Under the proposed rules, these candidates take three examinations in the course of the educator preparation process: (1) a content certification examination before admission to an EPP and after completion of the EPP for certification as an educator, (2) the content pedagogy examination, and (3) the PPR EC-12 examination. The total estimated cost to persons to take the new PACT examination in addition to tests they currently have to take would be \$1,242,214 for each of the next five FYs from FY 2020-2024. The cost is based on 11,719 possible examinees estimated to take the tests (using 2017-2018 data) at the price of \$106 per test. The \$106 total testing fee will be required from each candidate applying to take the content certification examination. The fee is needed to cover the administrative and maintenance cost.

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

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** The TEA staff 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 August 23, 2019 and ends September 23, 2019. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/SBEC\\_Rules\\_\(TAC\)/Proposed\\_State\\_Board\\_for\\_Educator\\_Certification\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/). The SBEC will take registered oral and written comments on the proposal at the October 4, 2019 meeting in accordance with the SBEC board operating policies and procedures. All requests for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on August 23, 2019.

**STATUTORY AUTHORITY.** The amendments are proposed under the Texas Education Code (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, §21.041(b)(1), (4), and (6), which require 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; specify the requirements for the issuance and renewal of an educator certificate; and provide for special or restricted certification of educators, including certification of instructors of American Sign Language; TEC, §21.044(a), which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; TEC, §21.044(g)(2) and (3), which require each educator preparation program (EPP) to provide certain information related to the effect of supply and demand forces on the educator workforce of the state and the performance over time of the EPP; TEC, §21.0441, which requires the SBEC to adopt rules setting certain admission requirements for EPPs, including allowing content certification examinations to substitute for required college classroom credit hours in the subject in which the candidate is seeking initial certification; TEC, §21.0489(c), as added by Senate Bill (SB) 1839 and House Bill (HB) 2039, 85th Texas Legislature, Regular Session, 2017, which requires the SBEC to adopt requirements that would establish an Early Childhood: Prekindergarten-Grade 3 certificate; TEC, §21.049(a), which authorizes the SBEC to propose rules providing for educator certification programs as an alternative to traditional EPPs; TEC, §21.050(a), which requires a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree to possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under the TEC, Chapter 28, Subchapter A; TEC, §22.083, which requires a school district, open-enrollment charter school, or shared services arrangement to obtain criminal history record information that relates to a person who is not subject to a national criminal history record information review under this subchapter and who is an employee of the district or school; or a shared services arrangement, if the employee's duties are performed on school property or at another location where students are regularly present;

TEC, §22.0835, which requires a school district, open-enrollment charter school, or shared services arrangement to obtain from the department and may obtain from any other law enforcement or criminal justice agency or a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), all criminal history record information that relates to a person participating in an internship consisting of student teaching to receive a teaching certificate; or a volunteer or person who has indicated, in writing, an intention to serve as a volunteer with the district, school, or shared services arrangement; Texas Occupations Code (TOC), §53.151, as added by HB 1508, 85th Texas Legislature, Regular Session, 2017, which sets the definitions of "licensing authority" and "occupational license" to have the meanings assigned to those terms by the TOC, Section 58.001; TOC, §53.152, as added by HB 1508, 85th Texas Legislature, Regular Session, 2017, which requires EPPs to provide applicants and enrollees certain notice regarding potential ineligibility for a certificate based on convicted offenses; the SBEC rules regarding the certificate eligibility of an individual with a criminal history; and the right of the individual to request a criminal history evaluation letter; and TOC, §53.153, as added by HB 1508, 85th Texas Legislature, Regular Session, 2017, which requires an EPP to refund tuition, application fees, and examination fees paid by an individual if the EPP failed to provide the required notice under the TOC, §53.152, to an individual who was denied a certificate because the individual was convicted of an offense.

**CROSS REFERENCE TO STATUTE.** The proposed amendments implement the Texas Education Code (TEC), §§21.031; 21.041(b)(1), (4), and (6); 21.044(a), (g)(2), and (g)(3); 21.0441; 21.0489(c), as added by Senate Bill 1839 and House Bill (HB) 2039, 85th Texas Legislature, Regular Session, 2017; 21.049(a); 21.050(a); 22.083; and 22.0835; and Texas Occupations Code (TOC), §§53.151-53.153, as added by HB 1508, 85th Texas Legislature, Regular Session, 2017.

*§227.1. General Provisions.*

(a) It is the responsibility of the education profession as a whole to attract applicants and to retain educators who demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state.

(b) Educator preparation programs (EPPs) shall ~~should~~ inform all applicants that:

(1) pursuant to the Texas Education Code (TEC), §22.083, candidates must undergo a criminal history background check prior to employment as an educator; and

(2) pursuant to the TEC, §22.0835, candidates must undergo a criminal history background check prior to clinical teaching.

(c) EPPs ~~[Educator preparation programs]~~ shall inform all applicants, in writing, of the following:

(1) the admission requirements as specified in this chapter;

(2) the requirements for program completion as specified in Chapter 228 of this title (relating to Requirements for Educator Preparation Programs ~~[Requirements]~~); and

(3) in accordance with TEC, §21.044(e)(3):

(A) the effect of supply and demand forces on the educator workforce in this state; and

(B) the performance over time of the EPP for the past five years.

(d) EPPs shall notify, in writing by mail, personal delivery, facsimile, email, or an electronic notification, each applicant to and enrollee in the EPP of the following regardless of whether the applicant or enrollee has been convicted of an offense:

(1) the potential ineligibility of an individual who has been convicted of an offense for issuance of a certificate on completion of the EPP;

(2) the current State Board for Educator Certification (SBEC) rules prescribed in §249.16 of this title (relating to Eligibility of Persons with Criminal History for a Certificate under Texas Occupations Code, Chapter 53, and Texas Education Code, Chapter 21); and

(3) the right to request a criminal history evaluation letter as provided in Chapter 227, Subchapter B, of this title (relating to Preliminary Evaluation of Certification Eligibility).

(e) If the SBEC determines that an EPP has failed to provide the notice required by subsection (d) of this section to an individual entitled to receive the notice and that the individual's application for a certificate for which the EPP prepares the individual was denied because the individual has been convicted of an offense prior to the EPP providing notice, the SBEC shall order the EPP to:

(1) refund the amount of any tuition paid by the individual to the EPP; and

(2) pay to the individual an amount equal to the total of the following, as applicable:

(A) the amount of any application fees paid by the individual to the SBEC; and

(B) the amount of any examination fees paid by the individual to the SBEC and/or to a provider of examinations required for certification. An EPP is not liable for examination fees if the examination was not required to be passed to meet the admission requirements of the EPP and/or the EPP did not provide test approval for the examination.

(f) If the governor of Texas declares a state of disaster consistent with the Texas Government Code, §418.014, Texas Education Agency ~~[(TEA)]~~ staff may extend deadlines in this chapter for up to 90 days as necessary to accommodate persons in the affected disaster areas.

*§227.5. Definitions.*

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

(1) Accredited institution of higher education--An institution of higher education that, at the time it conferred the degree, was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board.

(2) Alternative certification program--An approved educator preparation program, delivered by entities described in §228.20(a) of this title (relating to Governance of Educator Preparation Programs), specifically designed as an alternative to a traditional undergraduate certification program, for individuals already holding at least a bachelor's degree from an accredited institution of higher education.

(3) Applicant--An individual seeking admission to an educator preparation program for any class of certificate.

(4) Candidate--An individual who has been formally or contingently admitted to an educator preparation program; also referred to as an enrollee or participant.

(5) Certification category--A certificate type within a certification class, as described in Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates) [~~; also known as certification field~~].

(6) Certification class --A certificate, as described in §230.33 of this title (relating to Classes of Certificates [Certification]), that has defined characteristics; may contain one or more certification categories [~~also known as certification field~~].

(7) Clinical teaching--An assignment, as described in §228.35 of this title (relating to Preparation Program Coursework and/or Training).

(8) Content certification examination--A standardized test or assessment required by statute or State Board for Educator Certification rule that governs an individual's admission to an educator preparation program [~~or certification as an educator~~].

(9) Content pedagogy examinations--A standardized test or assessment required by statute or State Board for Educator Certification rule that governs an individual's certification as an educator.

(10) [9] Contingency admission--Conditional admission to an educator preparation program when an applicant meets all admission requirements specified in §227.10 of this title (relating to Admission Criteria) except graduation and degree conferred from an accredited institution of higher education.

(11) [40] Educator preparation program--An entity that must be approved by the State Board for Educator Certification to recommend candidates in one or more classes of certificates.

(12) [44] Formal admission--Admission to an educator preparation program when an applicant meets all admission requirements specified in §227.10 of this title (relating to Admission Criteria).

(13) [42] Incoming class--Individuals contingently or formally admitted between September 1 and August 31 of each year by an educator preparation program.

(14) [43] Post-baccalaureate program--An educator preparation program, delivered by an accredited institution of higher education and approved by the State Board for Educator Certification to recommend candidates for certification, that is designed for individuals who already hold at least a bachelor's degree from an accredited institution of higher education and are seeking an additional degree.

(15) [44] Semester credit hour--One semester credit hour is equal to 15 clock-hours at an accredited institution of higher education.

(16) [45] Undergraduate degree--A bachelor's degree earned from and conferred by an accredited institution of higher education.

§227.10. *Admission Criteria.*

(a) The educator preparation program (EPP) delivering educator preparation shall require the following minimum criteria of all applicants seeking initial certification in any class of certificate, unless specified otherwise, prior to admission to the program.

(1) For an undergraduate university program, an applicant shall be enrolled in an accredited institution of higher education (IHE).

(2) For an alternative certification program or post-baccalaureate program, an applicant shall have, at a minimum, a bachelor's degree earned from and conferred by an accredited IHE.

(3) For an undergraduate university program, alternative certification program, or post-baccalaureate program, to be eligible for admission into an EPP, an applicant shall have a grade point average (GPA) of at least 2.5 before admission.

(A) The GPA shall be calculated from an official transcript as follows:

(i) 2.5 on all coursework previously attempted by the person at an accredited IHE:

(I) at which the applicant is currently enrolled (undergraduate university program formal admission, alternative certification program contingency admission, or post-baccalaureate program contingency admission); or

(II) from which the most recent bachelor's degree or higher from an accredited IHE was conferred (alternative certification program formal admission or post-baccalaureate program formal admission); or

(ii) 2.5 in the last 60 semester credit hours on all coursework previously attempted by the person at an accredited IHE:

(I) at which the applicant is currently enrolled (undergraduate university program formal admission, alternative certification program contingency admission, or post-baccalaureate program contingency admission). If an applicant has less than 60 semester credit hours on the official transcript from the accredited IHE at which the applicant is currently enrolled, the EPP shall use grades from all coursework previously attempted by a person at the most recent accredited institution(s) of higher education, starting with the most recent coursework from the official transcript(s), to calculate a GPA for the last 60 semester credit hours; or

(II) from which the most recent bachelor's degree or higher from an accredited IHE was conferred. If an applicant has hours beyond the most recent degree, an EPP may use grades from the most recent 60 hours of coursework from an accredited IHE (alternative certification program formal admission or post-baccalaureate program formal admission).

(B) In accordance with the Texas Education Code, (TEC), §21.0441(b), an [An] exception to the minimum GPA requirement may be granted by the program director only in extraordinary circumstances and may not be used by a program to admit more than 10% of any incoming class of candidates. An applicant is eligible for this exception if:

(i) documentation and certification from the program director that an applicant's work, business, or career experience demonstrates achievement equivalent to the academic achievement represented by the GPA requirement; and

(ii) in accordance with the TEC [Texas Education Code], §21.0441(a)(2)(B) [§21.0441(b)], an applicant must pass an appropriate content certification examination as specified in paragraph (4)(C) [and (D)] of this subsection for each subject in which the applicant seeks certification prior to admission. In accordance with the TEC, §21.0441(b), applicants [Applicants] who do not meet the minimum GPA requirement and have previously been admitted into an EPP may request permission to register for an appropriate content certification examination if the applicant is not seeking admission to the same EPP that previously granted test approval for a certification examination in the same certification class.

(C) An applicant who is seeking a career and technical education (CTE) certificate that does not require a degree from an accredited IHE is exempt from the minimum GPA requirement.

(D) An applicant who does not meet the minimum GPA requirement and is seeking certification in a class other than classroom teacher must perform at or above a score equivalent to a 2.5 GPA on the Verbal Reasoning, Quantitative Reasoning, and Analytic Writing sections of the GRE® (Graduate Record Examinations) revised General

Test. The State Board for Educator Certification will use equivalency scores established by the Educational Testing Service, and the Texas Education Agency (TEA) will publish those equivalency scores annually on the TEA website.

(4) For an applicant who will be seeking an initial certificate in the classroom teacher class of certificate, the applicant shall have successfully completed, prior to admission, at least:

(A) a minimum of 12 semester credit hours in the subject-specific content area for the certification sought, unless certification sought is for mathematics or science at or above Grade 7; or

(B) 15 semester credit hours in the subject-specific content area for the certification sought if the certification sought is for mathematics or science at or above Grade 7; or

(C) a passing score on the appropriate [a comparable] content certification examination as specified in the figure provided in this subparagraph [administered by a vendor on the TEA-approved vendor list published by the commissioner of education on the TEA website] for the calendar year during which the applicant seeks admission. [; or] The applicant will not be required to successfully complete a passing score on the appropriate content certification examination until January 1, 2020.

Figure: 19 TAC §227.10(a)(4)(C)

~~(D) for an applicant who has not previously been admitted into an EPP, a passing score on a content certification examination administered by a TEA-approved vendor. An applicant who has previously been admitted into an EPP may request permission to register for a content certification examination if an applicant is not seeking admission to the same EPP that previously granted test approval for a certification examination in the same certification class.]~~

(5) For an applicant who will be seeking an initial certificate in a class other than classroom teacher, the applicant shall meet the minimum requirements for admission described in Chapter 239 of this title (relating to Student Services Certificates); Chapter 241 of this title (relating to Principal Certificate); and Chapter 242 of this title (relating to Superintendent Certificate). If an applicant has not met the minimum certification, degree, and/or experience requirement(s) for issuance of a standard certificate prior to admission, the EPP shall inform the applicant in writing of any deficiency prior to admission.

(6) An applicant must demonstrate basic skills in reading, written communication, and mathematics by meeting the requirements of the Texas Success Initiative under the rules established by the Texas Higher Education Coordinating Board (THECB) in Part 1, Chapter 4, Subchapter C, of this title (relating to Texas Success Initiative), including one of the requirements established by §4.54 of this title (relating to Exemptions, Exceptions, and Waivers).

(7) An applicant must demonstrate the English language proficiency skills as specified in §230.11 of this title (relating to General Requirements).

(A) An applicant for CTE certification that does not require a bachelor's degree from an accredited IHE may satisfy the English language proficiency requirement with an associate's degree or high school diploma or the equivalent that was earned at an accredited IHE or an accredited high school in the United States.

(B) An applicant to a university undergraduate program that leads to a bachelor's degree may satisfy the English language proficiency requirement by meeting the English language proficiency requirement of the accredited IHE at which the applicant is enrolled.

(8) An applicant must submit an application and participate in either an interview or other screening instrument to determine if the

EPP applicant's knowledge, experience, skills, and aptitude are appropriate for the certification sought.

(9) An applicant must fulfill any other academic criteria for admission that are published and applied consistently to all EPP applicants.

(b) An EPP may adopt requirements in addition to and not in conflict with those required in this section.

(c) An EPP may not admit an applicant who:

(1) has been reported as completing all EPP requirements by another EPP in the same certification category or class, unless the applicant only needs certification examination approval; or

(2) has been employed for three years in a public school under a permit or probationary certificate as specified in Chapter 230, Subchapter D, of this title (relating to Types and Classes of Certificates Issued), unless the applicant is seeking clinical teaching that may lead to the issuance of an initial standard certificate.

(d) An EPP may admit an applicant for CTE certification who has met the experience and preparation requirements specified in Chapter 230 of this title (relating to Professional Educator Preparation and Certification) and Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates).

(e) An EPP may admit an applicant for the Trade and Industrial Workforce Training: Grades 6-12 certification who has met the following requirements:

(1) has been issued a high school diploma or a postsecondary credential, certificate, or degree;

(2) has seven years of full-time wage-earning experience within the preceding 10 years in an approved occupation for which instruction is offered;

(3) holds with respect to that occupation a current license, certificate, or registration, as applicable, issued by a nationally recognized accrediting agency based on a recognized test or measurement; and

(4) within the period described by paragraph (2) of this subsection, has not been the subject of a complaint filed with a licensing entity or other agency that regulates the occupation of the person, other than a complaint that was determined baseless or unfounded by that entity or agency.

(f) [e] An EPP may admit an applicant who has met the minimum academic criteria through credentials from outside the United States that are determined to be equivalent to those required by this section using the procedures and standards specified in Chapter 245 of this title (relating to Certification of Educators from Other Countries). An EPP at an entity that is accredited by an accrediting organization recognized by the THECB may use its own foreign credential evaluation service to meet the requirement described in §245.10(a)(2) of this title (relating to Application Procedures), if the entity is in good standing with its accrediting organization.

(g) An applicant is eligible to enroll in an EPP for the purpose of completing the course of instruction, defined in §228.35(i)(2) of this title (relating to Preparation Program Coursework and/or Training), that is required for the issuance of an Early Childhood: Prekindergarten-Grade 3 certificate if the individual holds a valid standard, provisional, or one-year certificate specified in §230.31 of this title (relating to Types of Certificates) in one of the following certificate categories:

(1) Bilingual Generalist: Early Childhood-Grade 4;

(2) Bilingual Generalist: Early Childhood-Grade 6;

- (3) Core Subjects: Early Childhood-Grade 6;
- (4) Early Childhood Education;
- (5) Elementary--General;
- (6) Elementary--General (Grades 1-6);
- (7) Elementary--General (Grades 1-8);
- (8) Elementary Early Childhood Education (Prekindergarten-Grade 6);
- (9) Elementary Self-Contained (Grades 1-8);
- (10) English as a Second Language Generalist: Early Childhood-Grade 4;
- (11) English as a Second Language Generalist: Early Childhood-Grade 6;
- (12) Generalist: Early Childhood-Grade 4;
- (13) Generalist: Early Childhood-Grade 6;
- (14) Kindergarten;
- (15) Prekindergarten-Grade 5--General;
- (16) Prekindergarten-Grade 6--General; or
- (17) Teacher of Young Children--General.

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

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 Cristina De La Fuente-Valadez  
 Director, Rulemaking  
 State Board for Educator Certification  
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## CHAPTER 229. ACCOUNTABILITY SYSTEM FOR EDUCATOR PREPARATION PROGRAMS

### 19 TAC §§229.1 - 229.5, 229.8, 229.9

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in this preamble, 19 TAC §229.1, and §229.3 are not included in the print version of the Texas Register. The figures are available in the on-line version of the August 23, 2019, issue of the Texas Register.)*

The State Board for Educator Certification (SBEC) proposes amendments to §§229.1, 229.2, 229.3, 229.4, 229.5, 229.8, and 229.9, concerning the accountability system for educator preparation programs (EPPs). The proposed amendments would provide for commendations for high-performing EPPs, would adopt the accountability manual into rule, would clarify the determination of EPP accreditation status, would allow for the SBEC to require EPP action plans, would clarify the accreditation status of a certification class or category, and would allow for a contested case hearing of a certification class or category. Technical changes would also remove outdated

provisions, clarify processes, and update language to align with other chapters.

**BACKGROUND INFORMATION AND JUSTIFICATION:** EPPs are entrusted to prepare educators for success in the classroom. The Texas Education Code (TEC), §21.0443, requires EPPs to adequately prepare candidates for certification. Similarly, TEC, §21.031, requires the SBEC to ensure candidates for certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state. The TEC, §21.045, also requires the SBEC to establish standards to govern the continuing accountability of all EPPs. The SBEC executes those provisions of the TEC and fulfills its mission statement with the rules in 19 Texas Administrative Code (TAC) Chapter 229, which establish the process for issuing annual accreditation ratings for all EPPs to ensure the highest level of educator preparation.

At the October 2018 SBEC meeting, Texas Education Agency (TEA) staff informed the Board that staff would be working to explore opportunities for adjustments to the comprehensive accountability system to increase consistency and transparency. At the December 2018 SBEC meeting, TEA staff presented several topics and received direction from the Board to inform potential rule changes to Chapter 229. At the April 2019 SBEC meeting, TEA staff presented draft rule text on proposed amendments to 19 TAC Chapter 229.

The proposed amendments to 19 TAC Chapter 229 are described as follows. In addition to the detailed descriptions, the proposed amendments would also remove outdated provisions related to the 2016-2017 and 2017-2018 academic years; would include technical edits to remove the redundancy of "gender, race, or ethnicity" by streamlining the definition of *demographic group*; would provide technical clean-up edits for clarification; and would provide re-lettering/numbering to conform with the *Texas Register* style and formatting requirements.

#### *§229.1. General Provisions and Purpose of Accountability System for Educator Preparation Programs.*

Proposed new Figure: 19 TAC §229.1(c) would adopt the 2018-2019 Accountability System for Educator Preparation (ASEP) manual into rule to prescribe the relevant criteria, formulas, calculations, and performance standards relevant to §229.1(d) and §229.4(a).

Current §229.1(c) would be relettered to §229.1(d). The proposed amendment to relettered §229.1(d) would strike the word "areas" and provide four categories in which an EPP may receive commendations for success from the SBEC. The proposed amendment would allow the SBEC to recognize EPPs that go above and beyond in preparing candidates for educator preparation.

At the December 2018 SBEC meeting, the Board directed staff to provide the following categories to identify high-performing EPPs to receive commendations for success:

1. The proposed amendment to §229.1(d)(1) would establish the category of **Rigorous and Robust Preparation**. The proposed amendment would allow the SBEC to recognize EPPs that perform above and beyond on the ASEP annual performance standards.
2. The proposed amendment to §229.1(d)(2) would establish the category of **Preparing the Educators Texas Needs**. The proposed amendment would allow the SBEC to recognize EPPs

that actively recruit educators in shortage areas, of color, and for rural schools.

3. The proposed amendment to §229.1(d)(3) would establish the category of **Preparing Educators for Long-Term Success**. The proposed amendment would allow the SBEC to recognize EPPs that demonstrate educators' retention in the profession and teacher growth into other professional roles.

4. The proposed amendment to §229.1(d)(4) would establish the category of **Innovative Educator Preparation**. The proposed amendment would allow the SBEC to recognize EPPs that go above and beyond seeking new pathways in preparing candidates for educator preparation.

#### §229.2. Definitions.

The proposed amendment to §229.2(5) would provide a technical edit to replace the word "less" with "fewer" to provide clarification of it being a countable number. The proposed amendment would also clarify that the experience referenced in the definition of *beginning teacher* is as a classroom teacher. The proposed amendment to §229.2(6) would provide a technical edit to replace the phrase "an enrollee or" with the word "a" to align with current definitions of candidates participating in an EPP. "Enrollee" is not used for reporting purposes.

The proposed amendment to §229.2(7) would delete the phrase, "also referred to as certification field," from the definition of *certification category* and would add language to reference 19 TAC Chapter 233, which is where the certification categories (i.e., English Language Arts and Reading; Social Studies, Special Education, and Health) can be found in rule.

The proposed amendment to §229.2(8) would add the phrase "may contain one or more certification categories as described in Chapter 233 of this title" and would delete the phrase "also referred to as certification field" to clarify that a class of certificate may contain one or more categories within a certification area. This amendment would better distinguish between a class and a category since a category is a subgroup of a class, as well as align with other SBEC rules where this definition exists.

The proposed amendment to §229.2(10) would provide a technical edit to strike the phrase "also referred to as finisher" to align with current definitions of candidates who have completed an EPP. The term "finisher" is not used for reporting purposes.

The proposed amendment to §229.2(11) would update the cross reference to §229.4(c) to properly cite small group exceptions.

The proposed amendment to §229.2(13) would clarify that the demographic groups as to race and ethnicity are African American, Hispanic, White, and Other and would strike the reference to the aggregate reporting categories established by the Higher Education Act. The proposed amendment would reflect current practice of disaggregated categories used for accountability and reporting purposes. The proposed amendment would also strike the requirement that the EPP assign each candidate to a demographic group, as that information is already reported when each candidate is formally admitted into a program.

The proposed amendment to §229.2(14) would provide a grammatical technical edit to strike the phrase "that must be" to clarify that to be considered an EPP, the entity must be approved by the SBEC.

The proposed amendment to §229.2(15) would provide a grammatical technical edit to strike the word "elements" to clarify that

data to be reported by EPPs do not have to be defined as "elements" to be relevant data for reporting purposes.

The proposed amendment to §229.2(18) would provide a grammatical technical edit to replace the word "the" with the phrase "an individual in his or her" to clarify that a first-year teacher is an individual in the first year of employment.

The proposed amendment to §229.2(25) would provide a grammatical technical edit to replace the word "the" with the phrase "an individual in his or her" to clarify that a new teacher is an individual in the first year of employment as a classroom teacher under a standard certificate.

#### §229.3. Required Submissions of Information, Surveys, and Other Data.

The proposed amendment to §229.3(a) would provide a grammatical technical edit to replace acronym "TEC" with the phrase "Texas Education Code (TEC)" to provide clarity and consistency.

The proposed amendment to §229.3(f)(1) would amend the Figure: 19 TAC §229.3(f)(1) to provide clarification of current practice and calculations of EPP-reported data to TEA and combine Sections A, B, and C into one continuous section with the accountability system data consecutively numbered. The following provides more detail on the proposed amendments to the figure.

The proposed amendment in the current Section A of the figure would strike "Frequency, and duration, and quality of field supervisor guidance" and replace it with "Record of all candidate observations, including candidates in a certification class other than classroom teacher" to accurately reflect the data required to support TEC, §21.045, regarding field supervision. Currently, EPPs document and track field supervision for all candidates but only report individual observation records to TEA for classroom teacher candidates. During the recent cycle of continuing approval of EPPs, a number of programs lacked documentation of field observations required when preparing candidates in certification classes other than classroom teacher (Superintendent, Principal, Librarian, Counselor, Educational Diagnostician, Reading Specialist, and Master Teacher). The SBEC requires, in 19 TAC Chapter 228, that all candidates receive ongoing support by their EPP through field supervision. The proposed amendment would allow data collection to monitor this issue. The proposed amendment would also clarify that individual records of each field observation that occurred in the academic year would be required, not the average of the candidates. TEA will conduct necessary calculations based on the submission of records.

The proposed amendment in the current Section B of the figure would clarify that EPPs would report the record of candidates related to data submission and not the numbers of candidates. TEA will compute the numbers based on the submission of records.

The proposed amendment in current Section C of the figure would clarify that EPPs would report actual numbers and scores, not the averages of those actual numbers. TEA will compute the averages based on the submission of records.

The proposed amendment to §229.3(f)(1) would include further edits to the Figure: 19 TAC §229.3(f)(1) to remove all references not directly related to data submissions required of EPPs. Subsection (f)(1) prescribes that EPPs must provide data as specified in the figure. The proposed amendment would provide clarity by only providing the data that is applicable for EPPs to submit to TEA.



#### §229.4. Determination of Accreditation Status.

The proposed amendment in §229.4(a) would replace "with respect to gender, race, and ethnicity (according to the aggregate reporting categories for ethnicity established by the Higher Education Act)" with the phrase "by demographic group" to provide consistency and alignment with the definition in §229.2(13) regarding the definition of *demographic group*. The proposed amendment would also specify that the formula and calculations used to determine the performance standards for the accountability performance indicators would be provided in the new Figure: 19 TAC §229.1(c). This proposed amendment would adopt the 2018-2019 ASEP manual into rule to provide transparency to the field and policymakers in how the performance standards were calculated. The proposed amendment would also clarify that data will be used only if the indicators were included in the accountability system for that academic year. As more indicators become effective, this would provide transparency on when the indicators will be used for accountability purposes.

The proposed amendment to §229.4(a)(1) would strike outdated provisions related to the 2017-2018 academic year.

The proposed new §229.4(a)(1)(B) would clarify that, beginning in the 2020-2021 academic year, the pass rate for certification examinations would be based on all examinations approved by the EPP and not those taken before admission to the EPP nor those specific examinations taken for pilot purposes. Current rule provides that the pass rate be based solely on examinations required to obtain initial certification, rather than all examinations approved by the EPP. This allows candidates to change certification area after admission, and therefore, there is no distinct pathway from which a candidate is admitted, prepared, trained, and recommended for testing and certification. The current structure provides for an accountability gap in that, at any time during preparation, candidates can switch as many times as desired, and EPPs are only responsible for the area of internship and certification. In some instances, candidates keep taking tests until they pass one, which becomes the only test for which programs are accountable.

At the December 2018 SBEC meeting, the Board directed staff to propose rule text to align the ASEP indicator relating to examination pass rates with the preparation model in 19 TAC Chapter 227, Provisions for Educator Preparation Candidates, and with Chapter 228, Requirements for Educator Preparation Programs. The proposed amendment would close the current gap to ensure an aligned content pathway of admission, preparation, and assessment for individuals seeking educator certification and would create more transparency and consistency in the accountability system.

The proposed amendment to §229.4(a)(1)(C) would provide for a transition period in the calculation of the pedagogy and professional responsibilities (PPR) examination pass rate for the 2018-2019 and 2019-2020 academic years (AYs) to be as prescribed in §229.4(a)(1)(A), and for the 2020-2021 AY to be as prescribed in proposed new §229.4(a)(1)(B). The proposed amendment would also strike outdated provisions related to the 2017-2018 academic year and retain the SBEC-adopted performance standard of 85% for the PPR pass rate.

The proposed amendment in §229.4(a)(1)(D) would provide for a transition period in the calculation of the non-PPR examination pass rate for the 2018-2019 and 2019-2020 AYs to be as prescribed in §229.4(a)(1)(A) and for the 2020-2021 AY to be as prescribed in proposed new §229.4(a)(1)(B). The proposed

amendment would also strike outdated provisions related to the 2017-2018 academic year and establish the performance standard for the non-PPR pass rate at 75% beginning with the 2018-2019 AY without annual increase; thus the proposed striking of §229.4(a)(1)(D)(i)-(iv). This sustained performance standard would allow for consistency and stability over time.

The proposed amendments in §229.4(a)(2) and §229.4(a)(4)(A) and (B) would strike outdated provisions related to the 2017-2018 academic year. In addition, the proposed amendment in §229.4(a)(2) would establish the 2018-2019 academic year as a reporting year only for the results of the appraisals of first-year teachers and will not be used to determine accreditation status to align with the provisions in §229.4(a)(5) regarding the teacher survey.

The proposed amendment in §229.4(a)(5) would establish the performance standard for the new teacher satisfaction survey at 70%. The proposed amendment would also establish the 2018-2019 academic year as a report-only year and not be used to determine accreditation status. Therefore, EPPs will not be held accountable for the new teacher satisfaction survey indicator for the 2018-2019 academic year. The new teacher satisfaction survey was piloted during the 2017-2018 academic year. The proposed performance standard of 70% would align with the principal survey performance standard of 70% adopted by the SBEC in December 2018. The proposed amendment would also strike outdated provisions related to the 2017-2018 academic year.

Proposed new §229.4(b) would clarify that EPPs be assigned an accreditation status based on the indicators in §229.4(a) and in compliance with SBEC rules and the TEC. This would provide transparency to the field and policymakers in how the accreditation statuses are assigned.

Current §229.4(b)-(f) would be renumbered to §229.4(b)(1)-(5) and would be amended to provide clarity that the assignment statuses in §229.4(b)(1)-(5) are aligned with proposed new §229.4(b), regarding accreditation status assignment, to accurately reflect the proper assignment of those statuses.

Current §229.4(d)(1)(A)-(C) would be renumbered to §229.4(b)(3)(A)(i)-(iii) for technical formatting purposes.

The proposed amendment to renumbered §229.4(b)(3)(A)(ii) would strike "any" and "any of the" regarding indicators in §229.4(a) to clarify that an EPP shall be assigned a status of Accredited-Warned when failing to meet the standard for any two demographic groups on an indicator in any one year. This clarification would not change how the accreditation statuses have been issued under this provision but would clarify that the demographic groups must be in the same indicator to count for accountability purposes. The proposed amendment to renumbered §229.4(b)(3)(A)(ii) and (iii) would also strike "gender, race, or ethnicity" to provide consistency and alignment with the definition of *demographic group* in §229.2(13).

Section 229.4(d)(2) would be renumbered to §229.4(b)(3)(B) for formatting purposes and would allow the SBEC to assign a status of Accredited-Warned to an EPP for violation of an SBEC order for continual approval. This would encourage EPPs to comply with SBEC orders and allow the SBEC to lower an EPP's status from Accredited to Accredited-Warned if a violation occurs. The proposed amendment would also provide a grammatical technical edit to replace the phrase "Texas Education Code (TEC)" with the acronym "TEC" to provide clarity and consistency.

Section 229.4(e)(1)(A)-(C) would be renumbered to §229.4(b)(4)(A)(i)-(iii) for technical formatting purposes.

The proposed amendment in §229.4(b)(4)(A)(ii) would strike "any" and "any of the" regarding indicators in §229.4(a) to clarify that an EPP shall be assigned a status of Accredited-Probation in any three demographic groups on an indicator in any one year. This clarification would not change how the accreditation statuses have been issued under this provision but would clarify that the demographic groups must be in the same indicator to count for accountability purposes. The proposed amendment in §229.4(b)(4)(A)(ii) and (iii) would also strike "gender, race, or ethnicity" to provide consistency and alignment with the definition of *demographic group* in §229.2(13).

Section 229.4(e)(2) would be renumbered to §229.4(b)(4)(B) for formatting purposes and would allow the SBEC to assign a status of Accredited-Probation to an EPP for violation of an SBEC order for continual approval. This would encourage EPPs to comply with SBEC orders and allow the SBEC to lower an EPP's status from Accredited or Accredited-Warned to Accredited-Probation if a violation occurs.

Section 229.4(f)(1)-(5) would be renumbered to §229.4(b)(5)(A)-(F) for technical formatting purposes.

New §229.4(b)(5)(C) would allow the SBEC to assign a status of Not Accredited-Revoked if an EPP fails to pay the SBEC-required ASEP technology fee by the deadline set by TEA as prescribed in §229.9(7). This would encourage EPPs to not default on the payment and would provide equity to all EPPs in support of timely payment of the ASEP technology fee.

Section 229.4(g)(1)-(5) would be relettered to §229.4(c) for technical formatting purposes.

The proposed amendment in relettered §229.4(c)(1)-(5) would strike the phrase "gender, race, or ethnicity" and would replace it with the phrase "demographic group" to provide consistency and alignment with the definition of *demographic group* in §229.2(13).

The proposed amendment in relettered §229.4(c)(3) and (4) would clarify the aggregation procedure for small groups. For groups with 10 or fewer individuals, the group performance would be combined with the next most recent prior year's group performance for which there was at least one individual to ensure that at least 11 individuals or three years of data would be calculated for accountability purposes. For example, if a program has a small group for the 2016-2017 AY of three individuals, does not have any individuals in the 2017-2018 AY, but has one individual in the 2018-2019 AY, then has three individuals in the 2019-2020 AY, the program would be held accountable for the seven individuals for the 2019-2020 AY.

Figure: 19 TAC Chapter 229 - Preamble

The proposed amendment in relettered §229.4(c)(5) would provide that EPPs that do not have any candidate data for all indicators in an academic year will maintain the accreditation status assigned by the SBEC in the previous year. This would provide for an accreditation status in the event a program does not have candidate data.

#### §229.5. Accreditation Sanctions and Procedures.

The proposed amendment in new §229.5(b)(4) would provide the SBEC the opportunity to require an EPP to develop an action plan to address program deficiencies. Previously all EPPs that failed any performance standard were required to develop

an action plan that TEA was required to approve. At the December 2018 SBEC meeting, the Board removed this provision and directed TEA staff to maintain the flexibility of the requirement. The proposed amendment would allow the SBEC the discretion of requiring an EPP to develop an action plan to address program deficiencies and prescribe the steps the program will take to improve the performance of its candidates.

The proposed amendment in §229.5(c) would strike "all" to clarify that every candidate does not have to pass the performance standard to meet the standard for that indicator. The proposed amendment would clarify that the provisions regarding the sanctioning of an EPP's certification class or category are for candidates pursuing certification in a particular category or class not simply admitted in the program. The proposed amendment would also clarify that this provision only applies to the non-PPR examination indicator because that is the only accountability indicator reported by certification class and category.

The proposed amendment in §229.5(e) would strike the phrase "gender, race, and ethnic" and replace it with the term "demographic group" to provide consistency and alignment with the definition of *demographic group* in §229.2(13). The proposed amendment would also strike the provision relating to all indicators in §229.4 to clarify that this provision only applies to the non-PPR examination indicator because that is the only accountability indicator reported by certification class and category. The proposed amendment would update the cross reference to §229.4(g) with §229.4(c) to properly cite small group exceptions.

#### §229.8. Contested Cases for Accreditation Revocation.

The proposed amendment to §229.8(a) would clarify that the provisions in this section related to contested cases do apply to withdrawing approval to offer a specific certification class or category to comply with the statutory requirement in TEC, §21.0451(b), that provides that any action authorized or required to be taken against an EPP may also be taken with regard to a certification class or category authorized to be offered by an EPP. The proposed change would provide that prior to revocation of approval to offer a specific class or category, an EPP would be provided an opportunity for a contested case hearing.

#### §229.9. Fees for Educator Preparation Program Approval and Accountability.

The proposed amendment to §229.9(7) would remove outdated provisions in §229.9(7)(A)-(C) related to 2017 and the 2017-2018 academic year and would clarify the required SBEC-adopted ASEP technology fee of \$35 per admitted candidate.

FISCAL NOTE. Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposal is in effect, there is no additional fiscal impact on state or local governments and there are no additional costs to entities 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 (TGC), §2001.002.

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 TGC, §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 TGC, §2001.0045.

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

**GOVERNMENT GROWTH IMPACT:** The TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, the proposed changes in Figure: 19 TAC §229.3(f)(1) would expand the regulation that requires EPPs to report the frequency, duration, and quality of candidate observations and increase the number of individuals subject to its applicability. Currently, EPPs document and track field supervision for all candidates but only report individual observation records to TEA for classroom teachers. The SBEC requires, in 19 TAC Chapter 228, Requirements for Educator Preparation Programs, that all candidates receive ongoing support by their EPP through field supervision, so the proposed change will expand the reporting requirement to include all candidates.

The proposed amendment to §229.1(c) would limit the regulation that allows commendations from the SBEC to EPPs by setting criteria, calculations, and performance standards necessary for a program to achieve commendation. The proposed amendment in relettered §229.4(a)(1)(D) would limit the regulation that determines the non-PPR examination pass rate by establishing the pass rate at 75% beginning with the 2018-2019 academic year without the annual increase that is currently set in rule, decreasing the number of individuals subject to its applicability.

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 repeal an existing regulation; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not increase 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:** Mr. Franklin 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 an accountability system that informs the public of the quality of educator preparation provided by each SBEC-approved EPP. There is no anticipated cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have a new data and reporting impact proposed in §229.3(f)(1). New reporting requirements in 19 TAC §229.3(f)(1) include observation data for certification classes other than classroom teacher class (Superintendent, Principal, Librarian, Counselor, Educational Diagnostician, Reading Specialist, and Master Teacher). Currently, EPPs report the observation frequency and duration for classroom teachers only. The programs already have to document and track the observations for these classes. The reporting would be the same, uploaded into the Educator Certification Online System (ECOS) system. Section 228.35(h) requires EPPs to document and track the required observation data. TEC, §21.045, allows the SBEC to require EPPs to submit data to ensure access and equity.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** The TEA staff 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 August 23, 2019 and ends September 23, 2019. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/SBEC\\_Rules\\_\(TAC\)/Proposed\\_State\\_Board\\_for\\_Educator\\_Certification\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/). The SBEC will take registered oral and written comments on the proposal at the October 4, 2019 meeting in accordance with the SBEC board operating policies and procedures. All requests for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on August 23, 2019.

**STATUTORY AUTHORITY.** The amendments are proposed under the Texas Education Code (TEC), §21.041(a), which allows the State Board for Educator Certification (SBEC) to adopt rules as necessary for its own procedures; 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(d), which states that the SBEC may adopt a fee for the approval and renewal of approval of an educator preparation program (EPP), for the addition of a certificate or field of certification, and to provide for the administrative cost of appropriately ensuring the accountability of EPPs; TEC, §21.043(b) and (c), as amended by Senate Bill (SB) 1839, 85th Texas Legislature, Regular Session, 2017, which requires the SBEC to provide EPPs with data, as determined in coordination with stakeholders, based on information reported through the Public Education Information Management System (PEIMS) that enables an EPP to assess the impact of the program and revise the program as needed to improve; TEC, §21.0441(c) and (d), which require the SBEC to adopt rules setting certain admission requirements for EPPs; TEC, §21.0443, which states that the SBEC shall propose rules to establish standards to govern the approval or renewal of approval of EPPs and certification fields authorized to be offered by an EPP. To be eligible for approval or renewal of approval, an EPP must adequately prepare candidates for educator certification and meet the standards and requirements of the SBEC. The SBEC shall require that each EPP be reviewed for renewal of approval at least every five years. The SBEC shall adopt an evaluation process to be used in reviewing an EPP for renewal of approval; TEC, §21.045, as amended by SB 1839, 85th Texas Legislature, Regular Session, 2017, which states that the board shall propose rules establishing standards to govern the approval and continuing accountability of all EPPs; TEC, §21.0451, which states that the SBEC shall propose rules for the sanction of EPPs that do not meet accountability standards and shall annually review the accreditation status of each EPP. The costs of technical assistance required under TEC, §21.0451(a)(2)(A), or the costs associated with the appointment of a monitor under TEC, §21.0451(a)(2)(C), shall be paid by the sponsor of the EPP; and TEC, §21.0452, which states that to assist persons interested in obtaining teaching certification in selecting an EPP and to assist school districts in making staffing decisions, the SBEC shall make certain spec-

ified information regarding educator programs in this state available to the public through the SBEC's Internet website.

**CROSS REFERENCE TO STATUTE.** The proposed amendments implement the Texas Education Code (TEC), §§21.041(a), (b)(1), and (d); 21.043(b) and (c), as amended by Senate Bill (SB) 1839, 85th Texas Legislature, Regular Session, 2017; 21.0441(c) and (d); 21.0443; 21.045, as amended by SB 1839, 85th Texas Legislature, Regular Session, 2017; 21.0451; and 21.0452.

*§229.1. General Provisions and Purpose of Accountability System for Educator Preparation Programs.*

(a) The State Board for Educator Certification (SBEC) is responsible for establishing standards to govern the continuing accountability of all educator preparation programs (EPPs). The rules adopted by the SBEC in this chapter govern the accreditation of each EPP that prepares individuals for educator certification. No candidate shall be recommended for any Texas educator certification class or category except by an EPP that has been approved by the SBEC pursuant to Chapter 228 of this title (relating to Requirements for Educator Preparation Programs) and is accredited as required by this chapter.

(b) The purpose of the accountability system for educator preparation is to assure that each EPP is held accountable for the readiness for certification of candidates completing the programs.

(c) The relevant criteria, formulas, calculations, and performance standards relevant to subsection (d) of this section and §229.4(a) of this title (relating to Determination of Accreditation Status) are prescribed in the figure provided in this subsection.  
Figure: 19 TAC §229.1(c)

(d) [(e)] An accredited EPP may receive commendations for success in the following four categories [areas] identified by the SBEC and prescribed in the figure in subsection (c) of this section: [-]

- (1) Rigorous and Robust Preparation;
- (2) Preparing the Educators Texas Needs;
- (3) Preparing Educators for Long-Term Success; and
- (4) Innovative Educator Preparation.

*§229.2. Definitions.*

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

(1) **Academic year**--If not referring to the academic year of a particular public, private, or charter school or institution of higher education, September 1 through August 31.

(2) **Accredited institution of higher education**--An institution of higher education that, at the time it conferred the degree, was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board.

(3) **ACT®**--The college entrance examination from ACT®.

(4) **Administrator**--For purposes of the surveys and information required by this chapter, an educator whose certification would entitle him or her to be assigned as a principal or assistant principal in Texas, whether or not he or she is currently working in such an assignment.

(5) **Beginning teacher**--For purposes of the Texas Education Code, §21.045(a)(3), and its implementation in this chapter, a classroom teacher with fewer [less] than three years of experience as a classroom teacher .

(6) **Candidate**--An individual who has been formally or contingently admitted into an educator preparation program; also referred to as a [an enrollee of] participant.

(7) **Certification category**--A certificate type within a certification class [;] , as described in Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates) [also referred to as certification field] .

(8) **Certification class**--A certificate, as described in §230.33 of this title (relating to Classes of Certificates [Certification]), that has defined characteristics; may contain one or more certification categories, as described in Chapter 233 of this title [also referred to as certification field] .

(9) **Clinical teaching**--An assignment, as described in §228.35 of this title (relating to Preparation Program Coursework and/or Training).

(10) **Completer**--A person who has met all the requirements of an approved educator preparation program. In applying this definition, the fact that a person has or has not been recommended for a standard certificate or passed a certification examination shall not be used as criteria for determining who is a completer [; also referred to as finisher] .

(11) **Consecutively measured years**--Consecutive years for which a group's performance is measured, excluding years in which the small group exception applies, in accordance with §229.4(c) [§229.4(e)] of this title (relating to Determination of Accreditation Status).

(12) **Cooperating teacher**--An individual, as described in §228.2 of this title (relating to Definitions), who guides, assists, and supports a candidate during a candidate's clinical teaching assignment.

(13) **Demographic group**--Male and female, as to gender; and [the aggregate reporting categories established by the Higher Education Act,] African American, Hispanic, White, and Other, as to race and ethnicity. [Each educator preparation program will assign a candidate to one gender demographic group and at least one Higher Education Act-established race or ethnicity group.]

(14) **Educator preparation program**--An entity [that must be] approved by the State Board for Educator Certification to recommend candidates in one or more educator certification classes or categories.

(15) **Educator preparation program data**--Data [elements] reported to meet requirements under the Texas Education Code, §21.045(b) and §21.0452.

(16) **Examination**--An examination or other test required by statute or any other State Board for Educator Certification rule codified in the Texas Administrative Code, Title 19, Part 7, that governs an individual's admission to an educator preparation program, certification as an educator, continuation as an educator, or advancement as an educator.

(17) **Field supervisor**--An individual, as described in §228.2 of this title (relating to Definitions), who is hired by an educator preparation program to observe candidates, monitor their performance, and provide constructive feedback to improve their effectiveness as educators.

(18) **First-year teacher**--For purposes of the Texas Education Code, §21.045(a) (2), and its implementation in this chapter, an individual in his or her [the] first year of employment as a classroom teacher.

(19) **GPA**--Grade point average.

(20) GRE®--Graduate Record Examinations®.

(21) Higher Education Act--Federal legislation consisting of the Higher Education Act of 1965 (20 United States Code, §1070 et seq.) and its subsequent amendments, which requires reports of educator preparation program performance data.

(22) Incoming class--Individuals contingently or formally admitted between September 1 and August 31 of each year by an educator preparation program.

(23) Internship--An assignment, as described in §228.35 of this title (relating to Preparation Program Coursework and/or Training).

(24) Mentor--An individual, as described in §228.2 of this title (relating to Definitions), who guides, assists, and supports a candidate during a candidate's internship assignment.

(25) New teacher--For purposes of the Texas Education Code, §21.045(a)(5), and its implementation in this chapter, an individual in his or her [the] first year of employment as a classroom teacher under a standard certificate.

(26) Practicum--An assignment, as described in §228.35 of this title (relating to Preparation Program Coursework and/or Training).

(27) SAT®--The college entrance examination from the College Board.

(28) Site supervisor--An individual, as described in §228.2 of this title (relating to Definitions), who guides, assists, and supports a candidate during a candidate's practicum assignment.

(29) Texas Education Agency staff--Staff of the Texas Education Agency assigned by the commissioner of education to perform the State Board for Educator Certification's administrative functions and services.

#### §229.3. Required Submissions of Information, Surveys, and Other Data.

(a) Educator preparation programs (EPPs), EPP candidates, first-year teachers, new teachers, beginning teachers, field supervisors, administrators, mentors, site supervisors, and cooperating teachers shall provide to the Texas Education Agency (TEA) staff all data and information required by this chapter, as set forth in subsections (e) and (f) of this section.

(b) Any individual holding a Texas-issued educator certificate who fails to provide information required by this chapter and the Texas Education Code (TEC) [TEC], §21.045 and §21.0452, as set forth in subsection (e) of this section, may be subject to sanction of his or her certificate, including the placement of restrictions, inscribed or non-inscribed reprimand, suspension, or revocation.

(c) Any Texas public school that fails to provide information required by this chapter and the TEC, §21.045 and §21.0452, as set forth in subsection (e) of this section, may be referred to the commissioner of education with a recommendation that sanctions upon its accreditation status be imposed for failure to comply with this section and the TEC, §21.0452.

(d) Any open-enrollment charter school that fails to provide information required by this chapter and the TEC, §21.045 and §21.0452, as set forth in subsection (e) of this section, may be referred to the commissioner of education with a recommendation that sanctions be imposed for failure to comply with this section and the TEC, §21.0452.

(e) All required EPP data for an academic year shall be submitted to the TEA staff annually by September 15 following the end of that academic year. All surveys and information required to be sub-

mitted pursuant to this chapter by principals shall be submitted by June 15 of any academic year in which an administrator has had experience with a first-year teacher who was a participant in an EPP. All surveys and information required to be submitted pursuant to this chapter by new teachers shall be submitted by June 15 of the first full academic year after the teacher completed the requirements of an EPP. All surveys and information required to be submitted pursuant to this chapter by EPP candidates shall be submitted by August 31 of the academic year in which the candidate completed the requirements of an EPP.

(f) The following apply to data submissions required by this chapter.

(1) EPPs shall provide data for all candidates as specified in the figure provided in this paragraph.

Figure: 19 TAC §229.3(f)(1)  
[Figure: 19 TAC §229.3(f)(1)]

(2) Candidates in an EPP shall complete a survey, in a form approved by the State Board for Educator Certification (SBEC), evaluating the preparation he or she received in the EPP. Completion and submission to the TEA of the survey is a requirement for completion of an EPP.

(3) Administrators in Texas public schools and open-enrollment charter schools shall complete individual teacher performance surveys, in a form to be approved by the SBEC, for each beginning teacher.

(4) Administrators in Texas public schools and open-enrollment charter schools shall complete surveys, in a form to be approved by the SBEC, evaluating the effectiveness of preparation for classroom success based on experience with first-year teachers who were participants in an EPP.

(5) New teachers in a Texas public school, including an open-enrollment charter school, shall complete surveys, in a form to be approved by the SBEC, evaluating the effectiveness of preparation for classroom success.

#### §229.4. Determination of Accreditation Status.

(a) Accountability performance indicators. The State Board for Educator Certification (SBEC) shall determine the accreditation status of an educator preparation program (EPP) at least annually, based on the following accountability performance indicators, disaggregated by demographic group [with respect to gender, race, and ethnicity (according to the aggregate reporting categories for ethnicity established by the Higher Education Act)], and other requirements of this chapter and determined with the formulas and calculations included in the figure provided in §229.1(c) of this title (relating to General Provisions and Purpose of Accountability System for Educator Preparation Programs). Data will be used only if the following indicators were included in the accountability system for that academic year:

(1) the EPP candidates' performance on examinations of pedagogy and professional responsibilities (PPR) and non-PPR standard certification examinations [beginning with the 2017-2018 academic year]. The EPP candidates' performance on PPR and non-PPR examinations shall provide separate accountability performance indicators for EPPs.

(A) For both PPR and non-PPR examinations, the performance standard shall be calculated based on the percentage of individuals admitted after December 26, 2016, who passed an examination within the first two attempts. For purposes of determining the pass rate, an individual shall not be excluded because the individual has not been recommended for a standard certificate. The pass rate is based solely on the examinations approved by the EPP and required to obtain initial certification in the class or category for which the individual serves his

or her internship, clinical teaching, or practicum. Examinations not required for certification in that class or category, whether taken before or after admission to an EPP, are not included in the rate. The formula for calculation of pass rate is the number of individuals who have passed an examination on their first or second attempt, including any attempts after the candidate completed the EPP, divided by the number of individuals who passed an examination on their first attempt plus those who passed or failed on their second attempt.

(B) For the 2020-2021 academic year and following, the performance standard shall be the percent of individuals admitted after December 26, 2016, who passed an examination within the first two attempts, including those attempted after the individual has completed the EPP or when the EPP has not recommended the individual for a standard certificate. The pass rate is based solely on the examinations approved by the EPP. Examinations taken before admission to the EPP or specific examinations taken for pilot purposes are not included in the pass rate.

(C) [(B)] For examinations of PPR, the pass rate will be calculated as described in subparagraph (A) of this paragraph for the 2018-2019 and 2019-2020 academic years and subparagraph (B) of this paragraph beginning with the 2020-2021 academic year. [and the] The performance standard shall be a pass rate of 85%. [;]

[(i) a pass rate of 85% for the 2017-2018 academic year; and]

[(ii) a pass rate of 90% for the 2018-2019 academic year and beyond.]

(D) [(C)] For non-PPR examinations, the pass rate will be calculated as described in subparagraph (A) of this paragraph for the 2018-2019 and 2019-2020 academic years and subparagraph (B) of this paragraph beginning with the 2020-2021 academic year. [and the] The performance standard shall be a pass rate of 75%. [;]

[(i) a pass rate of 75% for the 2017-2018 academic year;]

[(ii) a pass rate of 80% for the 2018-2019 academic year;]

[(iii) a pass rate of 85% for the 2019-2020 academic year; and]

[(iv) a pass rate of 90% for the 2020-2021 academic year and beyond;]

(2) the results of appraisals of first-year teachers by administrators, based on a survey in a form to be approved by the SBEC. The performance standard shall be the percentage of first-year teachers from each EPP who are appraised as "sufficiently prepared" or "well prepared." The performance standard [beginning with the 2017-2018 academic year] shall be 70% . The 2018-2019 academic year will be a reporting year only and will not be used to determine accreditation status ;

(3) to the extent practicable, as valid data become available and performance standards are developed, the improvement in student achievement of students taught by beginning teachers;

(4) the results of data collections establishing EPP compliance with SBEC requirements specified in §228.35(g) of this title (relating to Preparation Program Coursework and/or Training), regarding the frequency, duration, and quality of field supervision to candidates completing clinical teaching or an internship. The frequency and duration of field supervision shall provide one accountability performance indicator, and the quality of field supervision shall provide a separate accountability performance indicator.

(A) The performance standard as to the frequency, duration, and required documentation of field supervision shall be that the EPP meets the requirements of documentation of §228.35(g) of this title for 95% of the EPP's candidates [; beginning with the 2017-2018 academic year] .

(B) The performance standard for quality shall be the percentage of candidates who rate the field supervision as "frequently" or "always or almost always" providing the components of structural guidance and ongoing support. The performance standard shall be 90% [for the 2017-2018 academic year and beyond] ; and

(5) the results from a teacher satisfaction survey, in a form approved by the SBEC, of new teachers administered at the end of the first year of teaching under a standard certificate. The performance standard shall be the percentage of teachers who respond that they were sufficiently prepared or well prepared by their EPP. The performance standard shall be 70%. The 2018-2019 academic year will be a reporting year only and will not be used to determine accreditation status [set after a pilot study is completed during the 2017-2018 academic year] .

(b) Accreditation status assignment. All approved EPPs shall be assigned an accreditation status based on the accountability performance standards described in subsection (a) of this section and in compliance with SBEC rules and/or TEC, Chapter 21.

(1) [(b)] Accredited status. An EPP shall be assigned an Accredited status if the EPP has met the accountability performance standards described in subsection (a) of this section and has been approved by the SBEC to prepare, train, and recommend candidates for certification.

(2) [(c)] Accredited-Not Rated status. An EPP shall be assigned Accredited-Not Rated status upon initial approval to offer educator preparation, until the EPP can be assigned a status based on the performance standards described in subsection (a) of this section. An EPP is fully accredited and may recommend candidates for certification while it is in Accredited-Not Rated status.

(3) [(d)] Accredited-Warned status.

(A) [(4)] An EPP shall be assigned Accredited-Warned status if the EPP:

(i) [(A)] fails to meet the performance standards set by the SBEC for the overall performance of all its candidates on any of the indicators set forth in subsection (a) of this section in any one year;

(ii) [(B)] fails to meet the performance standards in [any] two [gender, race, or ethnicity] demographic groups on an [any of the] indicator [indicators] set forth in subsection (a) of this section in any one year; or

(iii) [(C)] fails to meet the performance standards for a [gender, race, or ethnicity] demographic group on any of the indicators set forth in subsection (a) of this section for two consecutively measured years, regardless of whether the deficiency is in the same demographic group or standard.

(B) [(2)] An EPP may be assigned Accredited-Warned status if the SBEC determines that the EPP has violated SBEC rules, orders, and/or TEC [Texas Education Code (TEC)] , Chapter 21.

(4) [(e)] Accredited-Probation status.

(A) [(4)] An EPP shall be assigned Accredited-Probation status if the EPP:

(i) [(A)] fails to meet the performance standards set by the SBEC for the overall performance of all its candidates on any of

the indicators set forth in subsection (a) of this section for two consecutively measured years;

(ii) ~~[(B)]~~ fails to meet the performance standards in ~~[any]~~ three ~~[gender, race, or ethnicity]~~ demographic groups on ~~an~~ ~~[any of the]~~ indicator ~~[indicators]~~ set forth in subsection (a) of this section in any one year; or

(iii) ~~[(C)]~~ fails to meet the performance standards for a ~~[gender, race, or ethnicity]~~ demographic group on any of the indicators set forth in subsection (a) of this section for three consecutively measured years, regardless of whether the deficiency is in the same demographic group or standard.

(B) ~~[(2)]~~ An EPP may be assigned Accredited-Probation status if the SBEC determines that the EPP has violated SBEC rules, orders, and/or TEC, Chapter 21.

(5) ~~[(#)]~~ Not Accredited-Revoked status.

(A) ~~[(1)]~~ An EPP shall be assigned Not Accredited-Revoked status and its approval to recommend candidates for educator certification revoked if it is assigned Accredited-Probation status for three consecutively measured years.

(B) ~~[(2)]~~ An EPP may be assigned Not Accredited-Revoked status if the EPP has been on Accredited-Probation status for one year, and the SBEC determines that revoking the EPP's approval is reasonably necessary to achieve the purposes of the TEC, §21.045 and §21.0451.

(C) An EPP may be assigned Not Accredited-Revoked status if the EPP fails to pay the required Accountability System for Educator Preparation Programs (ASEP) technology fee by the deadline set by TEA as prescribed in §229.9(7) of this title (relating to Fees for Educator Preparation Program Approval and Accountability).

(D) ~~[(3)]~~ An assignment of Not Accredited-Revoked status and revocation of EPP approval to recommend candidates for educator certification is subject to the requirements of notice, record review, and appeal as described in this chapter.

(E) ~~[(4)]~~ A revocation of an EPP approval shall be effective for a period of two years, after which a program may reapply for approval as a new EPP pursuant to Chapter 228 of this title (relating to Requirements for Educator Preparation Programs).

(F) ~~[(5)]~~ Upon revocation of EPP approval, the EPP may not admit new candidates for educator certification ~~[-]~~ but may complete the training of candidates already admitted by the EPP and recommend them for certification. If necessary, TEA staff and other EPPs shall cooperate to assist the previously admitted candidates of the revoked EPP to complete their training.

(c) ~~[(g)]~~ Small group exception.

(1) For purposes of accreditation status determination, the performance of an EPP candidate group, aggregated or disaggregated by demographic group ~~[gender, race, or ethnicity]~~, shall be measured against performance standards described in this chapter in any one year in which the number of individuals in the group exceeds 10. The small group exception does not apply to compliance with the frequency and duration of field supervisor observations.

(2) For an EPP candidate group, aggregated or disaggregated by demographic group ~~[gender, race, or ethnicity]~~, where the group contains 10 or fewer individuals, the group's performance shall not be counted for purposes of accreditation status determination for that academic year based on only that year's group performance.

(3) If the current year's EPP candidate group, aggregated or disaggregated by demographic group ~~[gender, race, or ethnicity]~~, contained between one and 10 individuals, that group performance shall be combined with the next most recent prior year's group performance for which there was at least one individual, and if the two-year cumulated group contains more than 10 individuals, then the two-year cumulated group performance must be measured against the standards in the current year.

(4) If the two-year cumulated EPP candidate group, aggregated or disaggregated by demographic group ~~[gender, race, or ethnicity]~~, contains between one and 10 individuals, then the two-year cumulated group performance shall be combined with the next most recent group performance for which there was at least one individual ~~[from the year preceding the prior year]~~. The three-year cumulated group performance must be measured against the standards in the current year, regardless of how small the cumulated number of group members may be.

(5) In any reporting year in which the EPP candidate group, aggregated or disaggregated by demographic group ~~[gender, race, or ethnicity]~~, does not meet the necessary number of individuals needed to measure against performance standards for that year, for all indicators, the accreditation status will continue from the prior year. ~~[-]~~ Any ~~[any]~~ sanction assigned as a result of an accredited-warned or accredited-probation status in a prior year will continue if that candidate group has not met performance standards since being assigned accredited-warned or accredited-probation status. The SBEC may modify the sanction as the SBEC deems necessary based on subsequent performance, even though that performance is not measured against performance standards for a rating.

§229.5. *Accreditation Sanctions and Procedures.*

(a) The State Board for Educator Certification (SBEC) may assign an educator preparation program (EPP) Accredited-Warned or Accredited-Probation status if the SBEC determines that the EPP has violated SBEC rules and/or Texas Education Code, Chapter 21.

(b) If an EPP has been assigned Accredited-Warned or Accredited-Probation status, or if the SBEC determines that additional action is a necessary condition for the continuing approval of an EPP to recommend candidates for educator certification, the SBEC may take any one or more of the following actions, which shall be reviewed by the SBEC at least annually:

(1) require the EPP to obtain technical assistance approved by the Texas Education Agency (TEA) or SBEC;

(2) require the EPP to obtain professional services approved by the TEA or SBEC; ~~[and/or]~~

(3) appoint a monitor to participate in the activities of the EPP and report the activities to the TEA or SBEC; ~~and/or~~ ~~[-]~~

(4) require the EPP to develop an action plan addressing the deficiencies and describing the steps the program will take to improve the performance of its candidates. TEA staff may prescribe the information that must be included in the action plan. The action plan must be sent to TEA staff no later than 45 calendar days following notification to the EPP that SBEC has ordered the action plan.

(c) Notwithstanding the accreditation status of an EPP, if the performance of ~~[all]~~ candidates pursuing certification in ~~[admitted to]~~ an individual certification class or category offered by an EPP fails ~~[fail]~~ to meet the performance standard on the non-PPR examinations as described in §229.4(a)(1)(D) ~~[any of the standards in §229.4(a)]~~ of this title (relating to Determination of Accreditation Status) for three consecutive years, the approval to offer that certification class or category shall be revoked. Any candidates already admitted for preparation

in that class or category may continue in the EPP and be recommended for certification after program completion, but no new candidates shall be admitted for preparation in that class or category unless and until the SBEC reinstates approval for the EPP to offer that certification class or category.

(d) For purposes of determining compliance with subsection (c) of this section, candidate performance in individual certification classes or categories in only the 2016-2017 academic year and subsequent academic years will be considered.

(e) Performance indicators by demographic group [~~gender, race, and ethnic groups~~] shall not be counted for purposes of subsection (c) of this section [~~pertaining~~ relating] to performance standards for individual certification classes or categories. If the aggregated number of individuals counted for a certification class or category is 10 [~~ten~~] or fewer, [~~and~~] the performance on the standard [~~certification class or category fails to meet any of the standards in §229.4(a) of this title, the certification class or category shall not count that year, but~~] shall be cumulated and counted in the same manner as provided in §229.4(c) [~~§229.4 (g)~~] of this title.

(f) An EPP shall be notified in writing regarding any action proposed to be taken pursuant to this section, or proposed assignment of an accreditation status of Accredited-Warning, Accredited-Probation, or Not Accredited-Revoked. The notice shall state the basis on which the proposed action is to be taken or the proposed assignment of the accreditation status is to be made.

(g) All costs associated with providing or requiring technical assistance, professional services, or the appointment of a monitor pursuant to this section shall be paid by the EPP to which the services are provided or required, or its sponsor.

#### §229.8. *Contested Cases for Accreditation Revocation.*

(a) This section applies only to a final recommendation issued under §229.5 of this title (relating to Accreditation Sanctions and Procedures) or §229.6 of this title (relating to Continuing Approval) that proposes revocation of approval and closure of an educator preparation program (EPP), or withdraws approval to offer a specific certification class or category, and does not apply to a final recommendation proposing the assignment of Accredited-Warning or Accredited-Probation status or ordering any other sanction, including, without limitation, [~~withdrawing approval to offer a specific certification class or category,~~] public reprimand, imposing conditions upon continuing approval, requiring technical assistance, requiring professional services, or appointing a monitor.

(b) If an EPP declines to sign a final recommendation, or if the EPP fails to respond timely to a notice of a proposed recommendation, Texas Education Agency (TEA) staff may proceed with the filing of a contested case with the State Office of Administrative Hearings (SOAH) in accordance with the contested case procedures set out in §§249.19-249.40 of this title, and Texas Government Code, Chapter 2001.

(c) Upon the finality of a decision from the State Board for Educator Certification (SBEC) under the Administrative Procedure Act ordering the EPP closed under this subsection in keeping with §249.39 of this title (relating to Final Decisions and Orders), the approval of an EPP to provide educator preparation is:

- (1) automatically revoked, void, and of no further force or effect on the effective date of the SBEC final order; and
- (2) automatically modified to remove authorization for an individual certification class or category on the effective date of the SBEC final order.

(d) This section satisfies the hearing requirements of the Texas Education Code, §21.0451(a)(2)(D) and (a)(3).

#### §229.9. *Fees for Educator Preparation Program Approval and Accountability.*

An educator preparation program requesting approval and continuation of accreditation status shall pay the applicable fee from the following list.

(1) New educator preparation program application and approval (nonrefundable)--\$9,000.

(2) Five-year continuing approval review visit pursuant to §228.10(b) of this title (relating to Approval Process)--\$4,500.

(3) Discretionary continuing approval review visit pursuant to §228.10(b) of this title--\$4,500.

(4) Addition of new certification category or addition of clinical teaching--\$500.

(5) Addition of each new class of certificate--\$1,000.

(6) Applications for out-of-state and out-of-country school sites for field-based experiences, clinical teaching, internships, and practicums--\$500.

(7) Accountability System for Educator Preparation Programs technology fee--\$35 per admitted candidate. [~~]~~

~~[(A) on or after March 15, 2017, and before September 1, 2017--\$55 per admitted candidate; and]~~

~~[(B) for the 2017-2018 academic year--\$55 per admitted candidate; and]~~

~~[(C) for the 2018-2019 academic year and beyond--\$35 per admitted candidate.]~~

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

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Director, Rulemaking

State Board for Educator Certification

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



## CHAPTER 234. MILITARY SERVICE MEMBERS, MILITARY SPOUSES, AND MILITARY VETERANS

### 19 TAC §§234.5 - 234.7

The State Board for Educator Certification (SBEC) proposes amendments to §234.5, §234.7, and new §234.6, concerning the master teacher certificate. The proposed revisions would implement Senate Bill (SB) 1200, 86th Texas Legislature, Regular Session, 2019. The proposed revisions would allow military spouses licensed in other states and in good standing to teach in Texas with the credential issued by another state. Additional revisions would streamline the credentials review and certificate issuance process for all members of the military community (military service members, military spouses, and military veterans).



BACKGROUND INFORMATION AND JUSTIFICATION: 19 Texas Administrative Code (TAC) Chapter 234 consolidates all military-related provisions into one chapter and streamlines future military-related rulemaking opportunities. The Texas Legislature has added statutory provisions regarding teaching credentials for the military community (military service members, military spouses, and military veterans) the last three legislative sessions as follows.

The 84th Texas Legislature, 2015, waived the certification fees paid by military service members, military spouses, and military veterans; established alternative methods for military groups to meet requirements for licensure; granted the commissioner authority to review applicant credentials and waive requirements for licensure; and incorporated the use of verified military service to satisfy apprenticeship requirements for licensure.

The 85th Texas Legislature, 2017, provided military spouses with a three-year temporary certificate to teach in Texas.

SB 1200, 86th Texas Legislature, Regular Session, 2019, allows military spouses to teach in Texas a maximum of three years with a license in good standing in another state. SB 1200 requires adoption of rules by the SBEC by December 1, 2019. In addition to the requirements in SB 1200, which provides for increased flexibility for military spouses to teach in Texas, the SBEC would change certification processes to reduce the amount of time it takes to complete a review of credentials and issue a Texas certificate for military service members, military spouses, and military veterans licensed to teach in other states. Following is a description of the proposed revisions.

#### *§234.5. Certification of Military Service Members, Military Spouses, and Military Veterans*

The proposed amendment to current §234.5(e) would move that provision to proposed new §234.7(d), regarding renewal requirements for military service members, military spouses, and military veterans. Proposed new §234.5(e) would establish the process for military spouses to notify TEA of their intent to teach in Texas with a license issued by another state department of education for a maximum of three years. The credentials review process already in place requires individuals certified in other states to complete the online application and request the credentials review, the Texas temporary certificate, and/or the Texas standard certificate. Individuals applying for the credentials review, a required first step for all individuals certified outside of Texas, must also submit copies of all standard certificates issued by departments of education to teach in other states and official transcripts that show degree(s) conferred and date(s). Continued use of this established process would support the timely and successful implementation of this legislation.

The proposed amendment to §234.5(h) would reference the commissioner's rules concerning examination requirements in 19 TAC §152.1001 as an option for clarity and ease of reference that could be utilized by members of the military community who qualify for an exemption from required Texas tests.

#### *§234.6. Review of Credentials and Issuance of Licensure to Military Service Members, Military Spouses, and Military Veterans*

Proposed new §234.6 would implement provisions specific to military spouses in SB 1200, 86th Texas Legislature, Regular Session, 2019, and would meet the legislative mandate for SBEC to adopt rules by December 1, 2019. The proposed new rule would allow military spouses licensed in other states and in good standing to teach in Texas with credentials issued by

another state department of education. SB 1200 specifies that prior to employment, military spouses must notify the licensing agency of their intent to teach in Texas with credentials from another state and must wait for confirmation from the licensing agency that their credentials have been cleared for employment in Texas. The proposed new rule would provide for military spouses to have three options to teach in the state of Texas after successful credentials review by TEA: utilization of their current licensure from another state; issuance of the Texas temporary three-year certificate already prescribed in §234.5(d); or issuance of a Texas standard certificate following successful completion of a criminal background check.

Proposed new §234.6 would establish provisions for alternative licensing of all members of the military community referenced in the Texas Occupations Code (TOC), §55.004, Alternative Licensing for Military Service Members, Military Veterans, and Military Spouses. TOC, §55.004, provides for the issuance of a license to an applicant who is a military service member, military veteran, and military spouse. The proposed new rule would allow for the issuance of the Texas standard certificate upon completion of a successful review of credentials and the required criminal background check. Current provisions in the TOC, §55.004, allows for the SBEC to grant this opportunity to military service members and military veterans, in addition to military spouses.

#### *§234.7. Renewal and Continuing Education Requirements for Military Service Members, Military Spouses, and Military Veterans*

The proposed amendment to current §234.5(e) would move that provision to proposed new §234.7(d), regarding renewal requirements for military service members, military spouses, and military veterans, to align all rule text specific to renewal and continuing education requirements in the same section.

FISCAL IMPACT: Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposal is in effect, there is no additional fiscal impact on state or local governments and there are no additional costs to entities required to comply with the proposal. Since September 1, 2015, military service members, military spouses, and military members have been exempt from applicable certification and licensing fees paid to the state.

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 proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation that allows

military service members, military spouses, and military veterans to obtain and renew a Texas educator certificate following a credentials review and would limit the existing regulation that requires military service members, military spouses, and military veterans to meet the examination requirements for certificate issuance by exempting those individuals who are already certified to teach in another state.

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 expand or repeal 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:** Mr. Franklin 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 continued support to members of the military community, with special provisions to allow military spouses of active duty members a maximum of three years to utilize a credential issued in another state and in good standing to maintain employment in Texas. There is no anticipated 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 August 23, 2019 and ends September 23, 2019. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/SBEC\\_Rules\\_\(TAC\)/Proposed\\_State\\_Board\\_for\\_Educator\\_Certification\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/). The SBEC will take registered oral and written comments on the proposal at the October 4, 2019 meeting in accordance with the SBEC board operating policies and procedures. All requests for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on August 23, 2019.

**STATUTORY AUTHORITY.** The amendments and new section are proposed under Texas Education Code (TEC), §21.041(b)(2), which requires the State Board for Educator Certification (SBEC) to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; 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; TEC, §21.044(a), which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; TEC, §21.052 (b-1), which requires the SBEC to establish procedures to accurately identify military spouses and expedite processing of certification applications that they submit; TEC,

§21.052 (c), which specifies the SBEC can specify the term of a temporary certificate issued under this subsection; TEC, §21.052 (d-1), which requires the SBEC to issue a three-year temporary certificate to eligible military spouses of active duty service members; Texas Occupations Code (TOC), §55.001, which defines key terms and identifies the individuals relevant to the processing and support of members of the military community; TOC, §55.002, which provides clarification and guidelines for implementing fee exemptions for members of the military community; TOC, §55.003, which states military service members are eligible to receive a two-year extension of time to complete requirements for license renewal; TOC, §55.004, which requires state agencies to adopt rules for issuance of licensure to members of the military community and provides alternatives to become eligible for licensure; TOC, §55.0041, as added by Senate Bill 1200, 86th Texas Legislature, Regular Session, 2019, which requires state agencies to adopt rules to allow military spouses licensed in other states and in good standing to practice in their occupation of expertise with the license issued in another state; TOC, §55.005, which requires state agencies to establish a process to expedite applications for licensure submitted by members of the military community; TOC, §55.006, which requires state agencies to determine renewal requirements for expedited licenses issued to members of the military community; TOC, §55.007, which provides state agencies authority to credit verified military service, training, or education toward licensing requirements; TOC, §55.008, which authorizes state agencies to credit verified relevant military service, training, or education relevant to the occupation toward the apprenticeship requirements for licensure; and TOC, §55.009, which confirms state agencies that issue licensure shall waive license application and examination fees paid to the state for applicable members of the military community.

**CROSS REFERENCE TO STATUTE.** The amendments and new section implement Texas Education Code, §§21.041(b)(2) and (4); 21.044(a); 21.052(b-1), (c), and (d-1); and Texas Occupations Code, §§55.001, 55.002, 55.003, 55.004, 55.0041, as added by Senate Bill 1200, 86th Texas Legislature, Regular Session, 2019; 55.005, 55.006, 55.007, 55.008, and 55.009.

*§234.5. Certification of Military Service Members, Military Spouses, and Military Veterans.*

(a) The application for certification of a military service member, military veteran, or military spouse, including an application based upon certification by a jurisdiction other than Texas that has certification requirements substantially similar to the Texas certification requirements, shall be processed as soon as practicable.

(b) As soon as practicable after the issuance of a one-year certificate, Texas Education Agency (TEA) staff shall notify, in writing or by email, a military spouse of the requirements for obtaining a standard Texas certificate.

(c) A military spouse who has been issued a one-year certificate prior to September 1, 2017, under the provisions of this chapter, is eligible for two additional years from the date of issuance, not to exceed a total of three years maximum, to align with provisions for a military spouse referenced in subsection (d) of this section.

(d) Effective September 1, 2017, a military spouse shall be issued a three-year temporary certificate upon completion of the review of credentials.

(e) Effective December 1, 2019, prior to beginning employment, a military spouse must declare his or her intent to teach in Texas with a license issued by another state department of education, by sub-

mitting an application and required documents for a review of credentials to the TEA and completing the criminal background check. TEA staff must provide approval for the military spouse to teach in Texas a maximum of three years with credentials issued by another state. [The standard Texas certificate of a military service member, military spouse, or military veteran may be renewed if that certificate has expired within five years preceding the Texas application date.]

(f) A military service member or a military veteran shall be entitled to credit verified military service, training, or education toward the training, education, work experience, or related requirements (other than certification examinations) for educator certification. TEA staff and educator preparation programs (EPPs) shall use information from the U.S. Department of Veterans Affairs or other reliable sources to assist in crediting applicable military service, training, or education to certification requirements.

(g) A military service member pursuing certification in career and technical education must meet requirements for the certificate, but for career and technical education certificate areas requiring experience and licensure, the military service member shall be entitled to substitute military experience in the trade for the required license or professional credential for the specific trade.

(h) A military service member, military spouse, and military veteran shall complete educator examination requirements for certificate issuance as outlined in Texas Education Code, Chapter 21, Subchapter B, and rules in the Texas Administrative Code, Title 19, Part 7, or qualify for an exemption from required Texas examinations through provisions in §152.1001 of this title (relating to Exceptions to Examination Requirements for Individuals Certified Outside the State).

(i) Military service members and military veterans are exempt from certification application fees that are paid to the state that lead to initial certification. These members of the military community are exempt from paying the portion of the examination registration fee that is paid to the TEA.

(j) Military service members and military veterans are exempt from certification application fees that are paid to the state that lead to initial certification resulting from a review of credentials, one-year certificate, or out-of-state standard certificate. These members of the military community are exempt from paying the portion of the examination registration fee that is paid to the TEA.

(k) Military spouses are exempt from certification application fees that are paid to the state that lead to initial certification resulting from a review of credentials, three-year temporary certificate, or out-of-state standard certificate. These members of the military community are exempt from paying the portion of the examination registration fee that is paid to the TEA.

§234.6. Review of Credentials and Issuance of Licensure to Military Service Members, Military Spouses, and Military Veterans.

(a) To complete a review of credentials leading to issuance of licensure in Texas, military service members, military veterans, or military spouses must submit an application for review of credentials, copies of standard certificates issued in the other state(s), and official transcripts showing degree(s) conferred and date(s).

(b) Upon completion of the review, the Texas Education Agency (TEA) will notify each military service member, military veteran, or military spouse, as specified in paragraphs (1)-(3) of this subsection, to provide results of the licensure review and information on next steps in the licensure process as follows.

(1) Military service members will receive written results of the credentials review and be issued the Texas standard certificate that aligns with certificate areas issued in other states.

(2) Military spouses will receive written results of the credentials review and have the following three options to teach in Texas with:

(A) the license issued by another state department of education, confirmed by TEA to be in good standing;

(B) the Texas temporary three-year certificate already available under provisions in §234.5(d) of this title (relating to Certification of Military Service Members, Military Spouses, and Military Veterans); and

(C) the Texas standard certificate eligible for issuance immediately following a successful review of credentials by TEA and completion of a criminal background check.

(3) Military veterans will receive written results of the credentials review and be issued the Texas standard certificate that aligns with certificate areas issued in other states.

§234.7. Renewal and Continuing Education Requirements for Military Service Members, Military Spouses, and Military Veterans.

(a) Military service members, military spouses, and military veterans who hold a standard certificate(s) are responsible for certificate renewal and continuing professional education requirements pursuant to Chapter 232 of this title (relating to General Certification Provisions), except where specified in this chapter.

(b) A military service member shall be exempted from any fee or penalty for failing to timely renew his or her Texas educator certificate if the delay occurred because the educator was serving as a military service member.

(c) A military service member is entitled to two years of additional time to complete all continuing education requirements and any other requirements relating to the renewal of his or her Texas educator certificate.

(d) The standard Texas certificate of a military service member, military spouse, or military veteran may be renewed if that certificate has expired within five years preceding the Texas application date.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

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

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CHAPTER 239. STUDENT SERVICES  
CERTIFICATES  
SUBCHAPTER E. MASTER TEACHER  
CERTIFICATE

**19 TAC §§239.100 - 239.104**

The State Board for Educator Certification (SBEC) proposes the repeal of §§239.100-239.104, concerning the master teacher certificate. The proposed repeal of 19 TAC Chapter 239, Subchapter E, would implement the requirements of House Bill 3 (HB 3), 86th Texas Legislature, Regular Session, 2019. HB 3 re-

quires that effective September 1, 2019, the SBEC can no longer issue or renew master teacher certificates. HB 3 also specifies that master teacher certificates will be designated as "legacy" certificates and recognized for assignment purposes until they expire.

**BACKGROUND INFORMATION AND JUSTIFICATION:** SBEC rules in 19 TAC Chapter 239, Student Services Certificates, Subchapter E, Master Teacher Certificate, establish the minimum requirements for admission, preparation, standards, certificate issuance, and renewal of master teacher certificates in reading, mathematics, technology, and science.

HB 3 repealed Texas Education Code (TEC), §§21.0481-21.0484, the statutory authority for the master teacher certificates.

Texas Education Agency (TEA) staff have proactively reached out to those potentially affected by the repeal of those certificates: (1) educator preparation programs that offer preparation for the master teacher certification to notify them and provide guidance to the programs on what they need to do to close-out these certificate classes and to assist candidates who are currently in the pipeline for the master teacher certificates; and (2) current certificate holders to notify them and provide guidance that the current master teacher certificates will be designated as "legacy" and will allow holders to be eligible for placement into appropriate teaching assignments.

**FISCAL IMPACT:** Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposal is in effect, there is no additional fiscal impact on state or local governments and there are no additional costs to entities 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 proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would eliminate a government program, would decrease the number of individuals subject its applicability, and would repeal an existing regulation by repealing the master teacher certification.

The proposed rulemaking would not create 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 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:** Mr. Franklin 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 timely implementation of legislative mandates in HB 3 and clarity for educators and applicants regarding which certificates are available. There are no anticipated costs 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 August 23, 2019 and ends September 23, 2019. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/SBEC\\_Rules\\_\(TAC\)/Proposed\\_State\\_Board\\_for\\_Educator\\_Certification\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/). The SBEC will take registered oral and written comments on the proposal at the October 4, 2019 meeting in accordance with the SBEC board operating policies and procedures. All requests for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on August 23, 2019.

**STATUTORY AUTHORITY.** The repeals are proposed under Texas Education Code (TEC), §21.064, as amended by House Bill 3, 86th Texas Legislature, Regular Session, 2019, which required the State Board for Educator Certification (SBEC) to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire; and Article 4, Repealer, Section 4.001(a)(2)-(5), which repeals TEC, §21.0481, Master Reading Teacher Certification; TEC, §21.0482, Master Mathematics Teacher Certification; TEC, §21.0483, Master Technology Teacher Certification; and TEC, §21.0484, Master Science Teacher Certification.

**CROSS REFERENCE TO STATUTE.** The repeals implement Texas Education Code, §21.064, as amended by House Bill 3, 86th Texas Legislature, Regular Session, 2019; and Article 4, Repealer, Section 4.001(a)(2)-(5).

§239.100. *General Provisions for Master Teacher Certificates.*

§239.101. *Master Reading Teacher Certification.*

§239.102. *Master Mathematics Teacher Certification.*

§239.103. *Master Technology Teacher Certification.*

§239.104. *Master Science Teacher Certification.*

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 August 12, 2019.



## TITLE 22. EXAMINING BOARDS

### PART 11. TEXAS BOARD OF NURSING

#### CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

##### 22 TAC §217.12

**Introduction.** The Texas Board of Nursing (Board) proposes amendments to §217.12, concerning Unprofessional Conduct. The amendments are proposed under the authority of the Texas Occupations Code §56.003 and Senate Bill (SB) 37, enacted by the 86th Texas Legislature, effective June 7, 2019.

SB 37 prohibits agencies from taking disciplinary action, including denial and licensure suspension, against an individual's license based upon the individual's default or breach of a student loan repayment contract. The proposed amendments are necessary to conform to this statutory change. Specifically, the proposal eliminates the failure of an individual to repay a student loan from the enumerated list of acts that constitute unprofessional conduct, for which an individual may be disciplined.

**Section by Section Overview.** A licensee may be disciplined for acts of unprofessional conduct, which are enumerated in §217.12. The proposal eliminates an individual's failure to repay a guaranteed student loan from this list.

**Fiscal Note.** Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments are in effect, there will be no anticipated change in the revenue to state government as a result of the enforcement or administration of the proposal.

**Public Benefit/Cost Note.** Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of a rule that complies with the statutory mandates of the Occupations Code Chapter 56. There are no anticipated costs of compliance associated with the proposal.

**Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses and Rural Communities.** The Government Code §2006.002(c) and (f) require, that if a proposed rule may have an economic impact on small businesses or micro businesses or rural communities, state agencies must prepare, as part of the rulemaking process, an economic impact statement that assesses the potential impact of the proposed rule on these businesses and communities and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Section 2006.002(c-1) requires that the regulatory analysis "consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses." Therefore, an agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small and

micro businesses, would not be protective of the health, safety, and environmental and economic welfare of the state.

The Government Code §2006.001(1) defines a micro business as a legal entity, including a corporation, partnership, or sole proprietorship that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has not more than 20 employees. The Government Code §2006.001(2) defines a small business as a legal entity, including a corporation, partnership, or sole proprietorship, that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has fewer than 100 employees or less than \$6 million in annual gross receipts. Each of the elements in §2006.001(1) and §2006.001(2) must be met in order for an entity to qualify as a micro business or small business. The Government Code §2006.001(1-a) defines a rural community as a municipality with a population of less than 25,000.

The proposal does not impose any costs on any entity regulated by the Board. As such, the Board is not required to prepare an economic impact statement and regulatory flexibility analysis.

**Government Growth Impact Statement.** The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Texas Administrative Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) the proposal does not affect existing employee positions by creating or eliminating any positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board; (iv) the proposal does not affect fees paid to the Board; (v) the proposal does not create a new regulation; (vi) the proposal amends an existing regulation applicable to licensees consistent with a change in statute resulting from the 86th Legislative Session; (vii) the proposal does not extend to new entities not previously subject to the rule; and (viii) the proposal will not affect the state's economy.

**Takings Impact Assessment.** The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

**Request for Public Comment.** Comments on this proposal should be submitted to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to [dusty.johnston@bon.texas.gov](mailto:dusty.johnston@bon.texas.gov), or faxed to (512) 305-8101. Comments must be received no later than thirty (30) days from the date of publication of this proposal. If a hearing is held, written and oral comments presented at the hearing will be considered.

**Statutory Authority.** The amendments are proposed under the Occupations Code §301.151 and §56.003.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 56.003 provides that, a licensing authority may not take disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract, including by denying the person's application for a license or license renewal; suspending the person's license; or taking other disciplinary action against the person.

Cross Reference To Statute. This proposal affects the Texas Occupations Code §301.151 and §56.003 and SB 37, enacted by the 86th Texas Legislature.

§217.12. *Unprofessional Conduct.*

The following unprofessional conduct rules are intended to protect clients and the public from incompetent, unethical, or illegal conduct of licensees. The purpose of these rules is to identify behaviors in the practice of nursing that are likely to deceive, defraud, or injure clients or the public. Actual injury to a client need not be established. These behaviors include but are not limited to:

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

(7) Failure to ~~repay a guaranteed student loan, as provided in the Texas Education Code §57.491, or~~ pay child support payments as required by the Texas Family Code §232.001, et seq.

(8) - (12) (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.

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Jena Abel

Deputy General Counsel

Texas Board of Nursing

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For further information, please call: (512) 305-6822



## CHAPTER 222. ADVANCED PRACTICE REGISTERED NURSES WITH PRESCRIPTIVE AUTHORITY

### 22 TAC §222.5

Introduction. The Texas Board of Nursing (Board) proposes amendments to §222.5, concerning Prescriptive Authority Agreement. The amendments are proposed under the authority of the Texas Occupations Code §157.0512(e) and (f) and House Bill (HB) 278, enacted by the 86th Texas Legislature, effective September 1, 2019.

HB 278 simplifies the existing statutory requirements related to prescriptive authority agreements by eliminating the necessity of face-to-face meetings between a delegating physician and an advanced practice registered nurse (APRN) and requiring monthly meetings between the parties. The proposed amendments are necessary to conform to these statutory changes.

A prescriptive authority agreement is still required to specify the general process for communication and sharing of information between the parties related to the care and treatment of patients. Further, the periodic meetings between the parties must still include the sharing of information related to patient treatment and

care, needed changes in patient care plans, issues relating to referrals, and discussion of patient care improvement. However, HB 278 allows the parties to determine the manner in which the meetings will take place and only mandates monthly meetings. Parties are still permitted, of course, to meet face-to-face and more frequently than once a month if they choose to do so.

Section by Section Overview. Proposed amended §222.5(c)(9) requires a prescriptive authority agreement to describe a prescriptive authority quality assurance and improvement plan and to specify methods for documenting the implementation of the plan. The agreement must include periodic meetings between a physician and an APRN and must occur at least once a month, in a manner determined by the physician and the APRN. The proposed amendments also eliminate references to the former manner of calculating the required frequency of meetings between a delegating physician and APRN.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments are in effect, there will be no anticipated change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of a rule that complies with the statutory mandates of the Occupations Code Chapter 157 and provides additional flexibility to health care practitioners providing care through prescriptive authority agreements.

There are no anticipated costs of compliance associated with the proposal. On the contrary, the proposed amendments may result in cost savings to APRNS providing care through prescriptive authority agreements. Instead of requiring APRNs and physicians to meet face-to-face, the proposal allows APRNS to determine, in consultation with their delegating physicians, the manner in which their monthly meetings must occur. This allows the parties to choose the most economic and convenient means available to them. Further, the proposal only requires monthly meetings between the parties. For many practitioners, this may reduce the frequency of required meetings, saving them time and travel costs associated with face-to-face meetings. Because the proposal is not anticipated to result in new costs of compliance, the Board is not required to comply with the requirements of Texas Gov't Code. §2001.0045(b).

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses and Rural Communities. The Government Code §2006.002(c) and (f) require, that if a proposed rule may have an economic impact on small businesses or micro businesses or rural communities, state agencies must prepare, as part of the rulemaking process, an economic impact statement that assesses the potential impact of the proposed rule on these businesses and communities and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Section 2006.002(c-1) requires that the regulatory analysis "consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses." Therefore, an agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small and micro businesses, would not be protective of the health, safety, and environmental and economic welfare of the state.

The Government Code §2006.001(1) defines a micro business as a legal entity, including a corporation, partnership, or sole proprietorship that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has not more than 20 employees. The Government Code §2006.001(2) defines a small business as a legal entity, including a corporation, partnership, or sole proprietorship, that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has fewer than 100 employees or less than \$6 million in annual gross receipts. Each of the elements in §2006.001(1) and §2006.001(2) must be met in order for an entity to qualify as a micro business or small business. The Government Code §2006.001(1-a) defines a rural community as a municipality with a population of less than 25,000.

The proposal does not impose any costs on any entity regulated by the Board. As such, the Board is not required to prepare an economic impact statement and regulatory flexibility analysis.

**Government Growth Impact Statement.** The Board is required, pursuant to Texas Gov't Code §2001.0221 and 34 Texas Administrative Code §11.1, to prepare a government growth impact statement. The proposal only affects those APRNs who have chosen to enter into a prescriptive authority agreement with a delegating physician. These APRNs are currently subject to standards applicable to those prescriptive authority agreements. The proposal eliminates some of the more burdensome requirements related to face-to-face meetings and provides greater flexibility to APRNs to determine the appropriate manner of meeting with their delegating physician.

As a result, the Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) the proposal does not affect existing employee positions by creating or eliminating any positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board; (iv) the proposal does not affect fees paid to the Board; (v) the proposal does not create a new regulation; (vi) the proposal amends an existing regulation applicable to APRNs participating in prescriptive authority agreements; (vii) the proposal does not extend to new entities not previously subject to the rule; and (viii) the proposal will not affect the state's economy.

**Takings Impact Assessment.** The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

**Request for Public Comment.** Comments on this proposal should be submitted to both Kristin Benton, Director of Nursing, and James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to kristin.benton@bon.texas.gov and dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. Comments must be received no later than thirty (30) days from the date of publication of this proposal. If a hearing is held, written and oral comments presented at the hearing will be considered.

**Statutory Authority.** The amendments are proposed under the Occupations Code §301.151 and §157.0512(e) and (f).

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its

duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 157.0512(e) provides that a prescriptive authority agreement must, at a minimum: be in writing and signed and dated by the parties to the agreement; state the name, address, and all professional license numbers of the parties to the agreement; state the nature of the practice, practice locations, or practice settings; identify the types or categories of drugs or devices that may be prescribed or the types or categories of drugs or devices that may not be prescribed; provide a general plan for addressing consultation and referral; provide a plan for addressing patient emergencies; state the general process for communication and the sharing of information between the physician and the APRN to whom the physician has delegated prescriptive authority related to the care and treatment of patients; if alternate physician supervision is to be utilized, designate one or more alternate physicians who may provide appropriate supervision on a temporary basis in accordance with the requirements established by the prescriptive authority agreement and the requirements of this subchapter; and participate in the prescriptive authority quality assurance and improvement plan meetings required under this section; and describe a prescriptive authority quality assurance and improvement plan and specify methods for documenting the implementation of the plan that include chart review, with the number of charts to be reviewed determined by the physician and APRN; and periodic meetings between the APRN and the physician.

Section 157.0512(f) provides that the periodic meetings described by Subsection (e)(9)(B) must include the sharing of information relating to patient treatment and care, needed changes in patient care plans, and issues relating to referrals; and discussion of patient care improvement; be documented; and take place at least once a month in a manner determined by the physician and the APRN.

**Cross Reference To Statute.** This proposal affects the Texas Occupations Code §301.151 and §157.0512(e) and (f), and HB 278, enacted by the 86th Texas Legislature.

*§222.5. Prescriptive Authority Agreement.*

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

(c) A prescriptive authority agreement must, at a minimum:

(1) - (8) (No change.)

(9) describe a prescriptive authority quality assurance and improvement plan and specify methods for documenting the implementation of the plan that includes the following:

(A) (No change.)

(B) periodic [~~face to face~~] meetings between the APRN and the physician [~~at a location agreed upon by both providers~~].

(d) The periodic [~~face to face~~] meetings described by subsection (c)(9)(B) of this section must:

(1) include:

(A) (No change.)

(B) discussion of patient care improvement; [~~and~~]

(2) be documented; and [~~and occur~~];

~~[(A) except as provided by subparagraph (B) of this paragraph;]~~

~~[(i) at least monthly until the third anniversary of the date the agreement is executed; and]~~

~~[(ii) at least quarterly after the third anniversary of the date the agreement is executed, with monthly meetings held between the quarterly meetings by means of a remote electronic communications system, including video conferencing technology or the internet; or]~~

~~[(B) if during the seven years preceding the date the agreement is executed, the APRN for at least five years was in a practice that included the exercise of prescriptive authority with required physician supervision;]~~

~~[(i) at least monthly until the first anniversary of the date the agreement is executed; and]~~

~~[(ii) at least quarterly after the first anniversary of the date the agreement is executed, with monthly meetings held between the quarterly meetings by means of a remote electronic communications system, including video conferencing technology or the internet.]~~

~~(3) take place at least once a month in a manner determined by the physician and the APRN.~~

(e) - (l) (No change.)

~~[(m) The calculation under Chapter 157, Occupations Code, of the amount of time an APRN has practiced under the delegated prescriptive authority of a physician under a prescriptive authority agreement shall include the amount of time the APRN practiced under the delegated prescriptive authority of that physician before November 1, 2013.]~~

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

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Jena Abel

Deputy General Counsel

Texas Board of Nursing

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For further information, please call: (512) 305-6822



## TITLE 43. TRANSPORTATION

### PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

#### CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

##### SUBCHAPTER C. LICENSES, GENERALLY

###### 43 TAC §215.83

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to 43 TAC §215.83, regarding recognition of out-of-state licenses of military spouses. These amendments are necessary to implement Senate Bill (SB) 1200, 86th Legislature, Regular Session (2019), which creates new

Occupations Code §55.0041, Recognition of Out-Of-State License of Military Spouse. Section 55.0041 authorizes military spouses to engage in a business or occupation in Texas for which a license is required without applying for a required Texas license, if the applicable Texas licensing agency determines the military spouse is currently licensed in good standing by a jurisdiction with licensing requirements substantially equivalent to the relevant licensing requirements in Texas.

#### EXPLANATION OF PROPOSED AMENDMENTS.

Senate Bill 1200 requires agencies to adopt rules establishing processes to identify jurisdictions with substantially equivalent licensing requirements and to verify that a military spouse is licensed and in good standing in such jurisdiction. Senate Bill 1200 additionally authorizes an agency, at its discretion, to adopt rules to provide for the issuance of a license to a military spouse who is confirmed to be in good standing in a jurisdiction with substantially equivalent licensing requirements.

Proposed amendments to §215.83 add subsection (j) to provide that military spouses are required to comply with Occupations Code, §55.0041 and this rule to obtain authority to engage in the business or occupation in Texas for which a license from the department is otherwise required. Proposed new §215.83(j)(1) clarifies that the military spouse must submit documentation to the department to request authorization to engage in a business or occupation in Texas under Occupations Code, §55.0041. This documentation is necessary for the department to know which jurisdiction to contact for verification of the status of the military spouse's license, and to ensure the military spouse meets the qualification requirements of Occupations Code, §55.0041. Proposed new §215.83(j)(2) provides that, upon the receipt of a military spouse's notice of intent to engage in business in a business or occupation for which the department requires a license, the department will determine whether the military spouse is currently licensed in good standing in another jurisdiction with substantially equivalent licensing requirements to Texas. Proposed new §215.83(j)(2) subparagraphs (A) and (B), describe the process by which the department will verify that a military spouse is licensed and in good standing in a jurisdiction determined to have substantially equivalent licensing requirements. Proposed new §215.83(j)(3) implements the discretionary rulemaking authority in SB 1200, specifically new Occupations Code, §55.0041(f), which authorizes a state agency to adopt rules providing for the issuance of a license to a military spouse for whom the agency has confirmed licensure in good standing in a jurisdiction with substantially equivalent licensing requirements. The department's issuance of a license will help clarify that a military spouse authorized to practice a business or occupation in Texas, based on the department's confirmation under this section, is entitled to a license and will be subject to the same requirements for maintaining a license as a licensee who was granted a license under the standard licensure application process.

Other proposed amendments to §215.83 renumber subsections as appropriate.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Linda M. Flores, Chief Financial Officer, has determined that for each year of the first five years the amendments will be in effect, there will be no fiscal impact to the state or local governments as a result of the enforcement or administration of the proposal. Daniel Avitia, Director of the Motor Vehicle Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.



**PUBLIC BENEFIT AND COST NOTE.** Mr. Avitia has also determined that, for each year of the first five years the amended section is in effect, the public benefits anticipated as a result of the proposed amendments include helping military spouses relocating to Texas quickly make the transition to doing business in Texas under their licenses as well as bringing additional qualified individuals into Texas to work in the motor vehicle industry. Mr. Avitia anticipates that there will be no costs to comply with this rule.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by the Government Code, §2006.002, the department has determined that the proposed amendments will not have an adverse economic effect on small businesses, micro-businesses, and rural communities. The proposed new amendments do not require small businesses, micro-businesses, or rural communities to comply with any new regulations. Therefore, in accordance with the Government Code, §2006.002, the department is not required to prepare a regulatory flexibility analysis.

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

**GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that during the first five years the proposed amendments are in effect, no government program will be created or eliminated. Implementation of the proposed amendments will not require the creation of new employee positions or elimination of existing employee positions. Implementation will not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed amendments will not create or expand an existing regulation, but will limit an existing regulation to implement SB 1200. Additionally, the proposed amendments do not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

**REQUEST FOR PUBLIC COMMENT.** If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on September 23, 2019. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to [rules@txdmv.gov](mailto:rules@txdmv.gov) or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

**STATUTORY AUTHORITY.** The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.153(8), which provides the board authority to adopt rules; and more specifically, Occupations Code, §55.0041(e), which provides specific authority for this rule.

**CROSS REFERENCE TO STATUTE.** Occupations Code, §55.0041 and Chapter 2301.

§215.83. *License Applications, Amendments, or Renewals.*

(a) An application for a new license, license amendment, or license renewal filed with the department must be:

(1) on a form approved by the department;

(2) completed by the applicant, license holder, or authorized representative who is an employee, a licensed attorney, or a certified public accountant;

(3) accompanied by the required fee, paid by check, credit card, or by electronic funds transfer, drawn from an account held by the applicant or license holder, or drawn from a trust account of the applicant's attorney or certified public accountant; and

(4) accompanied by proof of a surety bond, if required.

(b) An authorized representative of the applicant or license holder who files an application with the department may be required to provide written proof of authority to act on behalf of the applicant or license holder.

(c) The department will not provide information regarding the status of an application, application deficiencies, or new license numbers to a person other than a person listed in subsection (a)(2) of this section, unless that person files a written request under Government Code, Chapter 552.

(d) Prior to the expiration of a license, a license holder or authorized representative must file with the department a sufficient license renewal application. Failure to receive notice of license expiration from the department does not relieve the license holder from the responsibility to timely file a sufficient license renewal application. A license renewal application is timely filed if:

(1) the department receives a sufficient license renewal application on or before the date the license expires; or

(2) a legible postmark on the envelope transmitting the sufficient license renewal application clearly indicates that the license holder or authorized representative mailed the license renewal application on or before the date the license expires.

(e) An application for a new license or license amendment filed with the department must be sufficient. An application is sufficient if the application:

(1) includes all information and documentation required by the department; and

(2) is filed in accordance with subsection (a) of this section.

(f) A license renewal application received by the department is sufficient if:

(1) the renewal application form is completed by the license holder or authorized representative of the license holder who is an employee, an unpaid agent, a licensed attorney, or certified public accountant;

(2) accompanied by the required license renewal application fee payment; and

(3) accompanied by proof of a surety bond, if required.

(g) If an applicant, license holder, or authorized representative does not provide the information or documentation required by the department, the department will issue a written notice of deficiency. The information or documentation requested in the written notice of deficiency must be received by the department within 20 calendar days of the date of the notice of deficiency, unless the department issues a written extension of time. If an applicant, license holder, or authorized representative fails to respond or fully comply with all deficiencies listed in the written notice of deficiency within the time prescribed by this

subsection, the application will be deemed withdrawn and will be administratively closed.

(h) The department will evaluate a sufficient application for a new license, license amendment, or license renewal in accordance with applicable rules and statutes to determine whether to approve or deny the application. If the department determines that there are grounds for denial of the application, the department may pursue denial of the application in accordance with Subchapter J of this chapter (relating to Administrative Sanctions).

(i) The department will process an application for a new license, license amendment, or license renewal filed by a military service member, military spouse, or military veteran in accordance with Occupations Code, Chapter 55. A license holder who fails to timely file a sufficient application for a license renewal because that license holder was on active duty is exempt from any increased fee or penalty imposed by the department for failing to renew the license in a timely manner.

(j) A military spouse may engage in a business or occupation for which a department issued license is required if the military spouse meets the requirements of Occupations Code, §55.0041 and this section.

(1) To meet the requirements of Occupations Code, §55.0041, a military spouse must submit to the department:

(A) notice of the military spouse's intent to engage in a business or occupation in Texas for which a department issued license is required;

(B) proof of the military spouse's residency in Texas and a copy of the military spouse's military identification card, as required by Occupations Code, §55.0041(b)(2); and

(C) documentation demonstrating that the military spouse is licensed and in good standing in another jurisdiction for the relevant business or occupation.

(2) Upon receipt of the notice and documentation required by paragraphs (1)(B) and (C) of this subsection, the department shall:

(A) confirm with the other licensing jurisdiction that the military spouse is currently licensed and in good standing for the relevant business or occupation; and

(B) conduct a comparison of the other jurisdiction's license requirements, statutes, and rules with the department's licensing requirements to determine if the requirements are substantially equivalent.

(3) If the department confirms that a military spouse is currently licensed in good standing in another jurisdiction with substantially equivalent licensing requirements, the department may issue a license to the military spouse for the relevant business or occupation. The license is subject to requirements in Chapter 215 of this title and Occupations Code, Chapter 2301 in the same manner as a license issued under the standard application process, unless exempted under Occupations Code, Chapter 55.

(k) [(j)] A license holder who timely files a sufficient license renewal application in accordance with subsection (d) of this section may continue to operate under the expired license until the license renewal application is determined.

(l) [(k)] A license holder who fails to timely file a sufficient license renewal application in accordance with subsection (d) of this section is not authorized to continue licensed activities after the date the license expires. A license holder may dispute a decision that a license renewal application was not timely or sufficient by submitting

evidence to the department demonstrating that the license renewal application was timely and sufficient. Such evidence must be received by the department within 10 calendar days of the date the department issues notice that a timely or sufficient license renewal application was not received by the department.

(m) [(h)] The department shall accept a late license renewal application up to 90 days after the date the license expires. In accordance with subsection (l) [(k)] of this section, the license holder is not authorized to continue licensed activities after the date the license expires until the department approves the late license renewal application. If the department grants a license renewal under this section, the licensing period begins on the date the department issues the renewed license. The license holder may resume licensed activities upon receipt of the department's written verification or upon receipt of the renewed license.

(n) [(m)] If the department has not received a late license renewal application within 90 days after the date the license expires, the department will close the license. A person must apply for and receive a new license before that person is authorized to resume activities requiring a license.

(o) [(n)] A metal dealer's license plate issued in accordance with Transportation Code, Chapter 503, Subchapter C expires on the date the associated license expires or when a license renewal application is determined, whichever is later.

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 August 12, 2019.

TRD-201902580

Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: September 22, 2019

For further information, please call: (512) 465-5665



## SUBCHAPTER D. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS

### 43 TAC §215.102

#### INTRODUCTION.

The Texas Department of Motor Vehicles (department) proposes the repeal of §215.102, Representatives; amendments to 43 TAC §215.133, General Distinguishing Number; and new §215.161, Licensing Education Course Requirements. The proposed amendments, new section, and repeal are necessary to implement statutory changes made by the 86th Legislature, Regular Session (2019) in House Bill (HB) 3842, HB 1667; and Senate Bill (SB) 604, 86th Legislature, Regular Session.

#### EXPLANATION OF PROPOSED AMENDMENTS, NEW SECTION, AND REPEAL.

Proposed repeal of §215.102, Representatives, implements SB 604, which eliminates the "representative" license.

Proposed amended §215.133(a) implements Transportation Code, §503.027(a), as amended by HB 3842. House Bill 3842 removed the exception under Transportation Code, §503.027(a), that provided a dealer is not required to hold a

general distinguishing number (GDN) for a location from which the dealer consigns five or fewer vehicles in a calendar year. The phrase "unless the consignment location is a wholesale motor vehicle auction" was added to conform to Transportation Code, §503.027(a).

Proposed new §215.133(j) implements HB 1667. House Bill 1667 added Occupations Code, §2302.009, and amended §2302.101, to provide that a person holding an independent motor vehicle GDN is exempt from the requirement that the person also hold a salvage dealer license to act as a salvage vehicle dealer or rebuilder, store or display a motor vehicle as an agent or escrow agent of an insurance company.

Proposed new §215.133(k) implements SB 604 that added new Transportation Code §503.0296 to require an applicant for an original or renewal general distinguishing number complete web-based education and training developed or approved by the department. Proposed new §215.133(k) requires that a person must complete licensing training developed or approved by the department to be eligible for an independent motor vehicle GDN. Persons who have completed the required training will not have to retake the training for subsequent renewals. Persons who have held an independent motor vehicle distinguishing number for at least ten years as of September 1, 2019, are exempt from the licensing training requirement.

Proposed new §215.161, Licensing Education Course Requirements, implements SB 604 by adding licensing education course requirements applicable to course providers.

#### FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.

Linda M. Flores, Chief Financial Officer, has determined that for each year of the first five years the amendments, new section, and repeal will be in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Daniel Avitia, Director of the Motor Vehicle Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

#### PUBLIC BENEFIT AND COST NOTE.

Mr. Avitia has also determined that, for each year of the first five years the amendments, new section, and repeal are in effect, the public will benefit because of enforcing or administering the proposals.

**Anticipated Public Benefits.** The public, including license applicants and license holders, will benefit by the simplification of licensing provided in these proposals and the addition of licensing education provided to independent motor vehicle license applicants and license holders.

**Anticipated Costs To Comply With The Proposal.** While some independent motor vehicle license holders and applicants may be required to pay a maximum of \$150 to complete a licensing education class, Mr. Avitia has determined that this cost will be offset by the reduced risk of these license holders incurring financial penalties due to noncompliance with laws and regulations, benefitting both the license holders and the public. The department reviewed other states requiring licensing courses for motor vehicle dealers and determined the \$150 is consistent with the fees charged by other states.

#### ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.

As required by Government Code, §2006.002, the department has determined that there may be an adverse economic effect or disproportionate economic impact on small or micro businesses because of the enforcement or administration of these proposals. The cost analysis in the Public Benefit and Cost Note section also applies to these small and micro businesses.

The department has determined that the proposed amendments, new section, and repeal will not have an adverse economic effect or a disproportionate economic impact on rural communities.

The department considered the following alternatives to minimize any adverse impact on small and micro businesses while accomplishing the proposal's objectives: not proposing amendments; and proposing a different requirement for small and micro businesses.

The purpose of new §215.133(k) and §215.161, Licensing Education Course Requirements, is to implement SB 604, 86th Legislature, Regular Session, which requires the department to develop or approve web-based training for an independent motor vehicle dealer applicant. The department believes that proposing different standards than those included in this proposal would not provide a better option for small or micro businesses and would not conform to the requirements under SB 604. Offering education services prior to licensing helps ensure these licensees are knowledgeable in the laws and regulations meant to protect the public from deceptive business practices and other issues related to the motor vehicle industry. If the department did not propose this rule, independent motor vehicle dealers would not have the training necessary to ensure that they are knowledgeable in the rules and regulations affecting their profession. For these reasons, the department has rejected these options. However, the department is proposing a reasonable maximum fee, and requiring trade association course providers to charge the same fee to non-members as members to minimize any potential adverse impact.

#### TAKINGS IMPACT ASSESSMENT.

The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

#### GOVERNMENT GROWTH IMPACT STATEMENT.

The department has determined that during the first five years the proposed amendments, new section, and repeal are in effect, no government program would be created or eliminated.

Implementation of the proposed amendments, new section, and repeal would not require the creation of new employee positions or elimination of existing employee positions. The licensing education training will be provided by a trade association or an institution of higher learning and the costs to develop and manage the web-based training will be the responsibility of the course provider. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department as fees for licensing training will be paid to the course providers. The proposed amendments, new section, and repeal will create new regulations; however, these proposals are necessary to implement HB 3842, HB 1667, and SB 604.

Additionally, the proposed amendments, new section, and repeal do not affect the number of individuals subject to the rules applicability and will not affect this state's economy.

#### REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on September 23, 2019. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to [rules@txdmv.gov](mailto:rules@txdmv.gov) or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

#### STATUTORY AUTHORITY.

The repeal is proposed under Transportation Code, §503.002, which authorizes the board of the Texas Department of Motor Vehicles to adopt rules for the administration of Transportation Code, Chapter 503; under Transportation Code, §1002.001, which requires and authorizes the department to administer and enforce the provisions of the Occupations Code, Chapter 2301; under Transportation Code, §1002.001, which authorizes the board to adopt rules necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other Texas laws; under Occupations Code, §§2301.151 - 2301.153 and 2301.155, which provide the board's jurisdiction, require the board to ensure that the regulation of motor vehicles in Texas is conducted as required by board rules, empower, authorize, and require the board to adopt rules under Occupations Code, Chapter 2301, necessary or convenient to administer Chapter 2301, and govern practice and procedure before the board; and under Occupations Code §2301.351, which prohibits a dealer from violating a board rule.

CROSS REFERENCE TO STATUTE. Transportation Code, Chapter 1002.

#### §215.102. *Representatives.*

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 August 12, 2019.

TRD-201902592

Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: September 22, 2019

For further information, please call: (512) 465-5665



## SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS

### 43 TAC §215.133, §215.161

#### STATUTORY AUTHORITY.

The amendments and new section are proposed under Transportation Code, §503.002, which authorizes the board of the Texas Department of Motor Vehicles to adopt rules for the administration of Transportation Code, Chapter 503; under Transportation Code, §1002.001, which requires and authorizes the department to administer and enforce the provisions of Occupations Code, Chapter 2301; under Transportation Code, §1002.001,

which authorizes the board to adopt rules necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other Texas laws; under Occupations Code, §§2301.151 - 2301.153 and 2301.155, which provide the board's jurisdiction, require the board to ensure that the regulation of motor vehicles in Texas is conducted as required by board rules, empower, authorize, and require the board to adopt rules under Occupations Code, Chapter 2301, necessary or convenient to administer Chapter 2301, and govern practice and procedure before the board; and under Occupations Code §2301.351, which prohibits a dealer from violating a board rule.

10. CROSS REFERENCE TO STATUTE. Transportation Code, Chapter 1002.

#### §215.133. *General Distinguishing Number.*

(a) No person may engage in business as a dealer unless that person has a currently valid general distinguishing number assigned by the department for each location from which the person engages in business. A [If a dealer consigns more than five vehicles in a calendar year for sale from a location other than the location for which the dealer holds a general distinguishing number, the] dealer must also hold a general distinguishing number for a [the] consignment location, unless the consignment location is a wholesale motor vehicle auction.

(b) The provisions of subsection (a) of this section do not apply to:

(1) a person who sells or offers for sale fewer than five vehicles of the same type as herein described in a calendar year and such vehicles are owned by him and registered and titled in his name;

(2) a person who sells or offers to sell a vehicle acquired for personal or business use if the person does not sell or offer to sell to a retail buyer and the transaction is not held for the purpose of avoiding the provisions of Transportation Code, §503.001 et seq., and this subchapter;

(3) an agency of the United States, this state, or local government;

(4) a financial institution or other secured party selling a vehicle in which it holds a security interest, in the manner provided by law for the forced sale of that vehicle;

(5) a receiver, trustee, administrator, executor, guardian, or other person appointed by or acting pursuant to the order of a court;

(6) an insurance company selling a vehicle acquired from the owner as the result of paying an insurance claim;

(7) a person selling an antique passenger car or truck that is at least 25 years old or a collector selling a special interest motor vehicle as defined in Transportation Code, §683.077, if the special interest vehicle is at least 12 years old;

(8) a licensed auctioneer who, as a bid caller, sells or offers to sell property to the highest bidder at a bona fide auction if neither legal nor equitable title passes to the auctioneer and if the auction is not held for the purpose of avoiding another provision of Transportation Code, §503.001 et seq., and this subchapter; and provided that if an auction is conducted of vehicles owned, legally or equitably, by a person who holds a general distinguishing number, the auction may be conducted only at a location for which a general distinguishing number has been issued to that person or at a location approved by the department as provided in §215.135 of this subchapter (relating to More than One Location); and

(9) a person who is a domiciliary of another state and who holds a valid dealer license and bond, if applicable, issued by an agency

of that state, when the person buys a vehicle from, sells a vehicle to, or exchanges vehicles with a person who:

(A) holds a current valid general distinguishing number issued by the department, if the transaction is not intended to avoid the terms of Transportation Code, §503.001 et seq.; or

(B) is a domiciliary of another state if the person holds a valid dealer license and bond, if applicable, issued by that state, and if the transaction is not intended to avoid the terms of Transportation Code, §503.001 et seq.

(c) Application for a general distinguishing number shall be on a form prescribed by the department properly completed by the applicant showing all information requested thereon and shall be submitted to the department accompanied by the following:

(1) proof of a \$25,000 surety bond as provided in §215.137 of this title (relating to Surety Bond);

(2) the fee for the general distinguishing number as prescribed by law for each type of license requested;

(3) the fee as prescribed by law for each metal dealer plate requested as prescribed by law;

(4) a copy of each assumed name certificate on file with the Office of the Secretary of State or county clerk; and

(5) a photocopy of at least one of the following documents for the owner, president, or managing partner of the dealership:

(A) current driver's license;

(B) current Department of Public Safety identification;

(C) current concealed handgun license or license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

(D) current passport; or

(E) current United States armed forces identification.

(d) A person who applies for a general distinguishing number and will operate as a dealer under a name other than the name of that person shall use the name under which that person is authorized to do business, as filed with the Office of the Secretary of State or county clerk, and the assumed name of such legal entity shall be recorded on the application using the letters "DBA."

(e) If the general distinguishing number is issued to a corporation, the dealer's name and assumed name used by the dealer, as on file with the Office of the Secretary of State, shall be recorded on the application.

(f) A wholesale dealer license holder may buy, sell, or exchange vehicles with licensed dealers. A wholesale dealer license holder may not sell or exchange vehicles at retail.

(g) An independent mobility motor vehicle dealer shall retain and produce for inspection all records relating to the license requirements under Occupations Code, §2301.002(17-a) and all information and records required under Transportation Code, §503.0295.

(h) An application for a general distinguishing number may be denied if an applicant for such license has committed any act that could result in license cancellation or revocation under Transportation Code, §503.001 et seq.; Occupations Code, §2301.001 et seq.; or any rule or regulation of the department.

(i) Upon request by the department, the applicant shall submit documents demonstrating that the applicant owns the real property on

which the business is situated or has a written lease for the property that has a term of not less than the term of the license.

(j) A person holding an independent motor vehicle general distinguishing number license does not have to hold a salvage dealer license to:

(1) act as a salvage vehicle dealer or rebuilder, or

(2) store or display a motor vehicle as an agent or escrow agent of an insurance company.

(k) To be eligible for an independent motor vehicle general distinguishing number license, a person must complete licensing training specified by the department, except as provided herein:

(1) once a person has completed the required training, the person will not have to retake the training for subsequent license renewals, but may be required to provide proof of training completion as part of the license renewal process; and

(2) a person holding an independent motor vehicle general distinguishing number license for at least 10 years as of September 1, 2019, is exempt from the licensing training requirement.

#### §215.161. Licensing Education Course Requirements.

(a) A motor vehicle dealer licensing education course provider must be a Texas institution of higher education, as defined by Education Code, §61.003, or a motor vehicle trade association domiciled in this state.

(b) The licensing education course must be approved by the department and must include information on the laws and rules applicable to motor vehicle dealers and the consequences of violating those laws and rules.

(c) The licensing education course must consist of at least six hours of online instruction.

(d) The cost for the licensing education course must not exceed \$150 per person. A trade association course provider may not charge a different rate to a nonmember.

(e) The course provider must issue a certificate of completion to each person who successfully completes the licensing education 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.

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Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

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For further information, please call: (512) 465-5665



## CHAPTER 217. VEHICLE TITLES AND REGISTRATION

### SUBCHAPTER C. REGISTRATION AND TITLE SYSTEMS

#### 43 TAC §217.75

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes new section 43 TAC §217.75 concerning required training for a person performing registration or titling services through the department's registration and title system (RTS). This new section is necessary to implement Transportation Code, §520.023 as added by Senate Bill 604, 86th Legislature (2019), which requires the department to implement a training program regarding the department's automated registration and titling system and the identification of fraudulent activity. Senate Bill 604 requires the department to adopt rules to implement the training program required under Transportation Code, §520.023 by December 1, 2019.

#### EXPLANATION OF PROPOSED NEW SECTION.

Proposed new §217.75(a) establishes the requirement that a department employee, department contractor, county tax assessor-collector employee, or full service deputy as defined by §217.162(6) must complete training regarding transactions performed in RTS and identification of fraudulent activity related to motor vehicle registration and titling. The definition of full service deputy includes an individual who is employed, hired, or otherwise engaged by the full service deputy to serve as the deputy's agent in performing motor vehicle titling, registration, or registration renewal services. Proposed new §217.75(b) specifies that the department will make the training available for county tax assessor-collector employees or full service deputies through the department's online training system. Proposed new §217.75(c) clarifies how a county tax assessor-collector employee or full service deputy may satisfy the training regarding RTS. Specifically, a county tax assessor-collector employee or full service deputy must pass each training course associated with the permissions the person is assigned in RTS. To accomplish this, the county employee or official with an administrative role in RTS, whether that person is the county tax assessor-collector or county tax assessor-collector system administrator, must create accounts for and assign RTS permissions to each employee or full service deputy who will be given access to RTS based on that person's job duties. The department will assign training content for specific permissions in RTS. A person must take the required training using the person's assigned training identifier for the department's online training system. The department will enable a permission once the required training for the assigned permission has been completed. This process will ensure verification of training before a person is able to access RTS. The system administrator does not need to complete the required training to create accounts and assign permissions; however, if the system administrator wants access to RTS, the system administrator must complete the training required by this section.

A person who is processing transactions on or before the effective date of the rule will have until August 31, 2020, to complete the required training. This will allow existing staff approximately eight months to complete training depending on the effective date of the rule. Similarly, a person who is processing transactions when new training is made available after August 31, 2020, will have 90 days to complete new required training. The proposed subsection also provides a limited exception to the 90-day time-limit to complete new training. For any new training made available after August 31, 2020, a county employee may have an extended period of time to take the new training if the county tax assessor-collector at the place of employment determines that: 1. The employee is on leave the date the new training is made available, is on leave for at least 90 contiguous days thereafter and misses the window to take the new train-

ing prior to their access being turned off, and is on leave due to circumstances beyond the employee's control. The county tax assessor-collector must make the determination that all of the factors in §217.75(c)(6) are met prior to giving access to the employee when they return from leave for the additional contiguous 14 days. These deadlines should provide sufficient time for existing staff to complete training without unduly interfering with that person's workload. A person who is assigned permissions after the effective date of the rule or after new training is created must complete all required training before the permissions are enabled. This requirement is reasonable because a new employee will likely have no experience with RTS and will have more time available to dedicate to training. Finally, proposed new §217.75(d) provides that the department will disable a permission if a person fails to complete the training required for that permission.

In conjunction with this rule, the department is also reconfiguring its internal systems to conform to the new requirements under the proposed rule. Therefore, the effective date of the rule may be extended to correspond with completion of the programming necessary to fully implement the rule.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Linda M. Flores, Chief Financial Officer, has determined that for each year of the first five years the new section will be in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal, other than any imposed by the statute. The required training currently exists and is provided to counties through the department's online training system. The required training is provided free of cost to the counties. While the department may incur nominal additional costs verifying training and enabling permissions, the department anticipates it will be able to absorb these costs. Any change in revenue or expenditures is the result of the amended statute and not the rule. Jeremiah Kuntz, Director of the Vehicle Titles and Registration Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Kuntz has also determined that, for each year of the first five years the new section is in effect, the public benefits anticipated include ensuring all people who perform registration and titling transactions in RTS will be trained consistently on how to use the system and identify fraud, in turn leading to greater efficiency and accuracy for consumers; an increased ability to detect and prevent fraudulent transactions; and greater assurance that RTS is used appropriately as well as that records are accurate.

Anticipated Costs To Comply With The Proposal. Mr. Kuntz anticipates that there will be minimal costs to comply with this rule. Training currently exists and is provided to counties through the department's online training system at no cost to counties. The department currently updates existing training and creates new training as needed, so costs associated with this will be absorbed by the department. The department will continue to provide access to the training through the department's online training system at no cost to the counties. The time required to complete training varies by training module; however, it is self-paced and can be taken in a manner conducive to county operations. Counties are currently allocated one training account per RTS workstation assigned to the county. There are 254 counties with varying number of personnel and workstations per office. The cost associated with taking training will vary by county based on the number of employees that have not currently taken available

training. The department does not anticipate requests for additional training accounts as a result of this rule. Counties are in the best position to determine costs associated with taking training.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** The department has determined there will be no impact on small businesses, micro-business, or rural communities as a result of implementing this rule. Therefore, the department is not required to prepare a regulatory flexibility analysis as specified in Government Code, §2006.002.

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

**GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that during the first five years the proposed new section is in effect, no government program would be created or eliminated. Implementation of the proposed new section would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed new section will create a new regulation in §217.75 to implement Senate Bill 604. The proposed new section does not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

#### REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on September 23, 2019. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to [rules@txdmv.gov](mailto:rules@txdmv.gov) or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

**STATUTORY AUTHORITY.** The new section is proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and more specifically, Transportation Code, §520.021, which authorizes the department to adopt rules and policies for the maintenance and use of the department's automated registration and titling system; and Transportation Code, §520.023, which requires the department to implement a training program providing information on the department's automated registration and titling system and identification of fraudulent activity related to vehicle registration and titling.

**CROSS REFERENCE TO STATUTE.** Transportation Code, §520.021 and §520.023.

§217.75. Required Training on the Registration and Title System and Identification of Fraud.

(a) Required training. A person performing registration or titling services through RTS, including a department employee, department contractor, county tax assessor-collector employee, or full service deputy as defined by §217.162(6) of this title (relating to Definitions),

must complete a training program as prescribed by this section. Required training will include, at a minimum:

- (1) training regarding transactions performed in RTS; and
- (2) identification of fraudulent activity related to vehicle registration and titling.

(b) Online training. The department will make required training for county tax assessor-collector employees and full service deputies available through the department's online training system.

(c) Registration and Title System training for county tax assessor-collector staff and full service deputies. To satisfy the training requirements under subsection (a)(1) of this section, a county tax assessor-collector employee or full service deputy must pass each training course associated with the permissions that person is assigned in RTS.

(1) A county tax assessor-collector or county tax assessor-collector's system administrator must create accounts for and assign permissions in RTS to each employee or full service deputy who will be given access to RTS based on that person's job duties as determined by the county tax assessor-collector or the county tax assessor-collector's system administrator.

(2) The department will assign training content for specific permissions in RTS.

(3) A person must take required training using the person's individually assigned training identifier for the department's online training system.

(4) The department will enable a permission on completion of required training.

(5) A person with permissions in RTS on or before the effective date of this section must complete required training under this section by August 31, 2020. A person who has not been assigned permissions in RTS on or before the effective date of this section must complete all required training before permissions are enabled by the department.

(6) If new training is made available for a new or existing permission after August 31, 2020, a person with permissions enabled before the new training is made available must complete the required training within 90 days of the department's notification that the training is available. A county employee who is on leave on the date of the department's notification that the new training is available, for at least 90 days thereafter, and due to circumstances beyond that person's control, as determined by the county tax assessor-collector may have an additional 14 days upon returning to work to complete the new training.

(d) Failure to complete required training. The department will disable a permission if a person fails to complete required training for the permission within the timeframes required by this section.

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

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Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

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For further information, please call: (512) 465-5665



## CHAPTER 221. SALVAGE VEHICLE DEALERS

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to §221.1, Purpose and Scope; §221.2, Definitions; §221.11, License and Endorsement Required; §221.13, License Term and Fees; §221.20, License Renewal; and §221.41, Location Requirements. The department also proposes new §221.54, Criteria for Site Visits; and repeal of §221.12, Salvage Vehicle Agent. The amendments, new section, and repeal implement Senate Bill (SB) 604 and House Bill (HB) 1667, 86th Legislature, Regular Session (2019).

### EXPLANATION OF PROPOSED AMENDMENTS, NEW SECTION, AND REPEAL.

Senate Bill 604 amended Occupations Code, §2302.103, to remove the endorsements that an applicant may apply for under a salvage dealer license. Senate Bill 604 also amended Occupations Code, §2302.351(b), to remove references to a salvage vehicle agent operating under a dealer's license. Additionally, Section 2.16 of SB 604 provides that on the effective date of the Act, a salvage vehicle agent license issued under former Occupations Code, §2302.107 expires.

Proposed amendments to Chapter 221 make conforming changes to SB 604 by removing references to salvage pool operators, salvage pool rebuilders, salvage vehicle agents and salvage vehicle dealer endorsements.

Proposed amendments to §221.1 eliminate references to salvage vehicle dealer license endorsements and the salvage vehicle agent license.

Proposed amendments to §221.2 eliminate references to salvage vehicle dealer license endorsements, correct the spelling of "nonrepairable," and eliminate references to salvage vehicle agent.

Proposed amendments to §221.11 implement HB 1667. House Bill 1667 added Occupations Code, §2302.009 and amended §2302.101 to provide that a person holding an independent motor vehicle general distinguishing number (GDN) is exempt from the requirement that the person also hold a salvage dealer license to act as a salvage vehicle dealer or rebuilder, and store or display a motor vehicle as an agent or escrow agent of an insurance company. Conforming changes are proposed to the title to remove the reference to "endorsements" and to the rule text to eliminate references to "salvage vehicle dealer license endorsements." Proposed amendments to §221.11 also describe those activities that require a salvage vehicle dealer license to implement HB 1667 and correct the spelling of "nonrepairable."

Proposed amendments to §221.13 increase the term for a salvage vehicle dealer license from twelve months to two years, make conforming changes to the fee of \$190, and eliminate references to salvage vehicle dealer license endorsements.

Proposed amendments to §221.20 eliminate references to endorsements and salvage vehicle agent licenses, change the renewal period to two years, and make conforming changes to the renewal late fees. The requirement that an expiration notice for salvage vehicle agent licenses be sent to the authorizing salvage vehicle dealer's mailing address was deleted and replaced with email because the applicants agree to receive electronic communications when applying through the department licensing system under Business and Commerce Code, Chapter 322.

Proposed amendments to §221.20(e) change the renewal fee from the current \$85 for a one-year license term to \$170 for the proposed new two-year license term to ensure that the implementation of the proposed amendments is cost neutral. Under Occupations Code, §2302.153, a person must pay a renewal fee to the department on or before the expiration of the license.

Proposed amendments to §221.20(f) change the late renewal fee from \$42.50 for the current one-year license term to \$85 for the proposed two-year license term for renewal applications that are 1-90 days late to ensure that the implementation of the proposed amendments is cost neutral. Under Occupations Code, §2302.153, a person whose license has been expired 90 days or fewer may renew the license by paying the department a renewal fee that is equal to 1-1/2 times the normal required renewal fee.

Proposed amendments to §221.20(g) change the late renewal fee from \$85 for the current one-year license term to \$170 for the proposed two-year license term for renewal applications that are 91-364 days late to ensure that the implementation of the proposed amendments is cost neutral. Under Occupations Code, §2302.153, a person whose license has been expired for more than 90 days but less than a year may renew the license by paying the department a renewal fee that is equal to two times the normally required renewal fee.

Proposed amendments to §221.41 eliminate references to salvage vehicle dealer license endorsements and correct a reference to a salvage vehicle dealer.

Proposed new §221.54 implements a Sunset Advisory Commission recommendation to identify risk-based criteria for determining when the department will consider visiting the business location of a licensed salvage dealer. This new rule identifies three criteria for determining when a site visit may be scheduled: if a salvage vehicle dealer fails to respond to a records request, fails to operate from the licensed location, or has an enforcement history that reveals failed compliance inspections or multiple complaints received with administrative sanctions imposed.

Proposed repeal of §221.12, Salvage Vehicle Agent, implements SB 604 by eliminating reference to salvage vehicle agent.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Linda M. Flores, Chief Financial Officer, has determined that for each year of the first five years the amendments, new section, and repeal will be in effect, there will be no significant fiscal impact to state or local governments because of the enforcement or administration of the proposal.

Daniel Avitia, Director of the Motor Vehicle Division, has determined that there will be no measurable effect on local employment or the local economy because of the proposal.

### PUBLIC BENEFIT AND COST NOTE.

Mr. Avitia has also determined that, for each year of the first five years the amendments, new section, and repeal are in effect, administering the proposal will have the public benefit of ensuring that the department's rules comply with Occupations Code, Chapter 2302, as amended by SB 604. The public, including license applicants and license holders, will benefit by the simplification of licensing rules.

Anticipated Costs to Comply With The Proposal. Mr. Avitia anticipates that there will be no costs to comply with these rules because they do not impose requirements beyond those in the statute.



## ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.

As required by Government Code, §2006.002, the department has determined that the proposed amendments, new section, and repeal will not have an adverse economic effect on small businesses, micro-business, and rural communities because the amendments, new section, and repeal simplify the statutory provisions controlling the department's review of a license. Therefore, in accordance with Government Code, §2006.002, the department is not required to prepare a regulatory flexibility analysis.

## TAKINGS IMPACT ASSESSMENT.

The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code, §2007.043.

## GOVERNMENT GROWTH IMPACT STATEMENT.

The department has determined that during the first five years the proposed amendments, new section, and repeal are in effect, no government program would be created or eliminated.

Implementation of the proposed amendments, new section, and repeal would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed amendments, new section, and repeal will create new regulations, and alter existing regulations. However, the proposed amendments, new section, and repeal will implement SB 604 and HB 1667.

Additionally, the proposed amendments, new section, and repeal do not affect the number of individuals subject to the rules' applicability and will not affect this state's economy.

## REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on September 23, 2019. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to [rules@txdmv.gov](mailto:rules@txdmv.gov) or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

## SUBCHAPTER A. GENERAL PROVISIONS

### 43 TAC §221.1, §221.2

#### STATUTORY AUTHORITY.

The amendments are proposed under Transportation Code, §503.002, which authorizes the board of the Texas Department of Motor Vehicles (board) to adopt rules for the administration of Transportation Code; Transportation Code, §1002.001, which authorizes the board to adopt rules necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other Texas laws; and Occupations Code, §2302.051, which authorizes the board to adopt rules necessary to administer Chapter 2302.

#### CROSS REFERENCE TO STATUTE.

Transportation Code, Chapter 1002.

#### §221.1. Purpose and Scope.

Transportation Code, §1001.002, provides that the department shall administer and enforce Occupations Code, Chapter 2302. Chapter 2302 provides that a person may not act as a salvage vehicle dealer, [salvage vehicle agent, or rebuilder, including storing or displaying vehicles as an agent or eserow agent of an insurance company,] unless the department issues that person a license. [Chapter 2302 further describes types of salvage business activities that require an endorsement or endorsements on the salvage vehicle dealer license for that person to engage in those activities.] This chapter describes the procedures by which a person obtains a salvage vehicle dealer license [and the endorsement(s) necessary to engage in the business activities by the salvage vehicle dealer; the procedures to obtain a salvage vehicle agent license;] and the rules governing how a [these] license holder [holders] must operate, and the procedures by which the department will administer and enforce Occupations Code, Chapter 2302 and this chapter.

#### §221.2. Definitions.

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

- (1) Board--The Board of the Texas Department of Motor Vehicles.
- (2) Casual sale--A sale as defined by Transportation Code, §501.091.
- (3) Component part--As defined by Occupations Code, §2302.251.
- (4) Corporation--A business entity, including a corporation, or limited liability company, but not a sole proprietorship or general partnership, which has filed a certificate of formation or registration with the Texas Secretary of State.
- (5) Department--The Texas Department of Motor Vehicles.
- (6) Final order authority--The person with authority under Occupations Code, Chapter 2302, or board rules to issue a final order.
- (7) License holder--A person that holds a salvage vehicle dealer license issued by the department [endorsed in one or more of the classifications listed in Occupations Code, §2302.103].
- (8) Major component part--As defined by Transportation Code, §501.091.
- (9) Metal recycler--As defined by Transportation Code, §501.091.
- (10) Minor component part--As defined by Occupations Code, §2302.251.
- ~~(11) New automobile dealer endorsement--An endorsement on the salvage vehicle dealer license issued by the department that allows the license holder to buy and sell salvage motor vehicles and non-repairable motor vehicles that have not been the subject of a retail sale.~~
- (11) ~~[(12)] Nonrepairable~~ [Non-repairable] motor vehicle--As defined by Transportation Code, §501.091.
- (12) ~~[(13)] Nonrepairable~~ [Non-repairable] record of title--As defined by Transportation Code, §501.091.
- (13) ~~[(14)] Nonrepairable~~ [Non-repairable] vehicle title--As defined by Transportation Code, §501.091.
- (14) ~~[(15)]~~ Out-of-state buyer--As defined by Transportation Code, §501.091.
- (15) ~~[(16)]~~ Out-of-state ownership document--As defined by Transportation Code, §501.091.

(16) [(17)] Person--A natural person, partnership, corporation, trust, association, estate, or any other legal entity.

(17) [(18)] Public highway--As defined by Transportation Code, §502.001.

(18) [(19)] Retail sale--As defined by Occupations Code, §2301.002.

(19) [(20)] Salvage motor vehicle--As defined by Transportation Code, §501.091.

[(21)] Salvage pool operator endorsement--An endorsement on the salvage dealer license that allows a person to engage in the business of selling non-repairable motor vehicles or salvage motor vehicles at auction, including wholesale auction, or otherwise.}]

(20) [(22)] Salvage record of title--As defined by Transportation Code, §501.091.

[(23)] Salvage vehicle agent--As defined by Occupations Code, §2302.001.}]

[(24)] Salvage vehicle broker endorsement--An endorsement on the salvage vehicle dealer license issued by the department to a license holder, other than a salvage vehicle dealer holding a used automobile dealer endorsement, new automobile dealer endorsement, salvage vehicle rebuilder endorsement, or a salvage pool operator endorsement, that allows the license holder to:}]

[(A)] offer to sell or buy, or negotiate to sell or buy, salvage motor vehicles or non-repairable motor vehicles owned by a license holder and to be purchased or sold by another license holder; or}]

[(B)] act as the agent or representative of a license holder in performing an act described by subparagraph (A) of this paragraph.}]

(21) [(25)] Salvage vehicle dealer--As defined by Transportation Code, §501.091.

[(26)] Salvage vehicle rebuilder--Defined as "rebuilder," in Transportation Code, §501.091.}]

[(27)] Salvage vehicle rebuilder endorsement--An endorsement on the salvage dealer license issued by the department that allows the license holder to acquire and repair, rebuild, or reconstruct for operation on a public highway more than five salvage motor vehicles in a calendar year.}]

(22) [(28)] Salvage vehicle title--As defined by Transportation Code, §501.091.

[(29)] Used automobile dealer endorsement--An endorsement on the salvage vehicle dealer license issued by the department that allows the license holder to buy or sell salvage motor vehicles and non-repairable motor vehicles that have been the subject of a retail sale.}]

(23) [(30)] Used part--As defined by Transportation Code, §501.091.

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

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Tracey Beaver  
General Counsel  
Texas Department of Motor Vehicles  
Earliest possible date of adoption: September 22, 2019  
For further information, please call: (512) 465-5665

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**SUBCHAPTER B. LICENSING**

**43 TAC §§221.11, 221.13, 221.20**

**STATUTORY AUTHORITY.**

The amendments are proposed under Transportation Code, §503.002, which authorizes the board of the Texas Department of Motor Vehicles (board) to adopt rules for the administration of Transportation Code; Transportation Code, §1002.001, which authorizes the board to adopt rules necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other Texas laws; and Occupations Code, §2302.051, which authorizes the board to adopt rules necessary to administer Chapter 2302.

**CROSS REFERENCE TO STATUTE.**

Transportation Code, Chapter 1002.

§221.11. *License [and Endorsement] Required.*

(a) A person must hold a salvage vehicle dealer license, or an independent motor vehicle dealer's general distinguishing number issued under Transportation Code, Chapter 503 to:

(1) act as a salvage vehicle dealer or rebuilder; or

(2) store or display a motor vehicle as an agent or escrow agent of an insurance company.

[(a)] The department shall issue a salvage vehicle dealer license with one or more endorsements to that license according to the type of activities intended to be engaged in by the applicant.}]

[(b)] A salvage vehicle dealer license may not be issued by the department without at least one of the following endorsements to that salvage vehicle dealer license:}]

[(1)] new automobile dealer endorsement;}]

[(2)] used automobile dealer endorsement;}]

[(3)] salvage pool operator endorsement;}]

[(4)] salvage vehicle broker endorsement; or}]

[(5)] salvage vehicle rebuilder endorsement.}]

[(e)] A license holder may not aid or abet another person in acting as a salvage vehicle dealer unless that other person is a license holder of endorsement(s) issued by the department allowing the business activity or activities.}]

(b) [(d)] A person may not engage in the business of buying, selling or exchanging motor vehicles that can be titled to operate on public highways, including selling a salvage motor vehicle that has been rebuilt, repaired or reconstructed, unless the person [also] holds a general distinguishing number issued by the department under Transportation Code, Chapter 503.

[(e)] A person holding a salvage vehicle dealer license with a used automobile dealer endorsement may rebuild, repair or reconstruct no more than five (5) salvage motor vehicles during a calendar year. The person may sell those rebuilt vehicles, provided the salvage ve-

hicle dealer also holds a general distinguishing number issued by the department under Transportation Code, Chapter 503.]

(c) [(#)] The provisions of this subchapter do not apply to:

(1) a person who purchases no more than five (5) nonrepairable [non-repairable] or salvage motor vehicles at casual sale in a calendar year from:

(A) a salvage vehicle dealer;

[(B)] [a salvage pool operator;] or

(B) [(C)] an insurance company;

(2) a metal recycler, unless a motor vehicle is sold, transferred, released, or delivered to the metal recycler for the purpose of reuse or resale as a motor vehicle, or as a source of used parts, and is used for that purpose;

(3) a person who casually repairs, rebuilds, or reconstructs no more than five (5) salvage motor vehicles in the same calendar year;

(4) a person who is a non-United States resident who purchases nonrepairable [non-repairable] or salvage motor vehicles for export only;

(5) an agency of the United States, an agency of this state, or a local government;

(6) a financial institution or other secured party that holds a security interest in a motor vehicle and is selling that motor vehicle in the manner provided by law for the forced sale of a motor vehicle;

(7) a receiver, trustee, administrator, executor, guardian, or other person appointed by or acting pursuant to the order of a court;

(8) a person selling an antique passenger car or truck that is at least 25 years old or a collector selling a special interest motor vehicle as defined in Transportation Code, §683.077, if the special interest vehicle is at least 12 years old; and

(9) a licensed auctioneer who, as a bid caller, sells or offers to sell property to the highest bidder at a bona fide auction under the following conditions:

(A) neither legal nor equitable title passes to the auctioneer;

(B) the auction is not held for the purpose of avoiding a provision of Occupations Code, Chapter 2302, or this subchapter; and

(C) the auction is conducted of motor vehicles owned, legally or equitably, by a person who holds a salvage vehicle dealer's license and the auction is conducted at their licensed location or at a location approved by the department.

#### §221.13. License Term and Fees.

(a) The term of a salvage vehicle dealer license[; together with all endorsements on that license] issued by the department under Occupations Code, Chapter 2302, and this chapter, is two years. [12 months.] The fee for a salvage vehicle dealer license is \$190. [\$95. The fee for each endorsement is \$95 for the license term.] The entire amount of the fee is due at the time of application for the license[; including endorsement fees; or at the time the license is renewed.]

[(b)] The fee for a salvage vehicle agent license is \$95 for the license term of the salvage vehicle dealer authorizing the salvage vehicle agent.]

[(e)] The department may prorate the fee for an endorsement added to an existing salvage vehicle dealer license so that the endorsement expires on the same date as the salvage vehicle dealer license.]

(b) [(d)] The department may prorate the fee for a salvage vehicle dealer license to allow the salvage vehicle dealer license to expire on the same day as another license issued by the department under Occupations Code, Chapter 2301; Chapter 2302; or Transportation Code, Chapter 503.

#### §221.20. License Renewal.

(a) A salvage vehicle dealer license expires [together with its endorsements and any salvage vehicle agent licenses expire] on the second anniversary of the date of issuance of the salvage vehicle dealer license.

(b) The salvage vehicle dealer license[; together with any endorsements and any salvage vehicle agent licenses;] may be renewed for an additional period of two years [12 months] upon timely submission of a renewal application on a form approved by the department with all required information, [and] attachments, [if applicable,] and [the required] fees. A renewal application is considered "timely" submitted if the renewal application with all required information, [and] attachments, [if applicable,] and required fees [fee] are received by the department on or before the expiration date of the existing license.

(c) The department will send a written notice of [an] expiration [notice] to a salvage vehicle dealer's email [mailing] address at least 30 days before expiration of a license. [The expiration notice for salvage vehicle agent licenses will be sent to the authorizing salvage vehicle dealer's mailing address.]

(d) Failure by the department to send written notice under this section does not relieve a license holder from timely renewing a license.

(e) The renewal fee for salvage vehicle dealer [or salvage vehicle agent license] is \$170 [\$85].

(f) A license holder may renew an expired license by submitting a renewal application and paying a late renewal fee of \$85 [\$42.50 for each endorsement] in addition to the renewal fee, if 90 or fewer days have elapsed since the license expired.

(g) A license holder may renew an expired license by submitting a renewal application and paying a late renewal fee of \$170 [\$85 for each endorsement;] in addition to the renewal fee, if more than 90 days but less than one year has elapsed since the license expired.

(h) If a license has been expired for a period of one year or longer and the department is not in receipt of a renewal application with all required information and attachments [and the renewal fees for each endorsement], the license holder must apply for a new license in the same manner as an applicant for an initial license.

(i) If the department is not in receipt of a renewal application with all required information and attachments and the applicable renewal fee prior to the cancellation date of the license, a salvage vehicle dealer [and any salvage vehicle agents] may not engage in the activities that require the license until the license has been renewed by the department.

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

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Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: September 22, 2019

For further information, please call: (512) 465-5665

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**43 TAC §221.12**

**STATUTORY AUTHORITY.**

The repeal is proposed under Transportation Code, §503.002, which authorizes the board of the Texas Department of Motor Vehicles (board) to adopt rules for the administration of Transportation Code; Transportation Code, §1002.001, which authorizes the board to adopt rules necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other Texas laws; and Occupations Code, §2302.051, which authorizes the board to adopt rules necessary to administer Chapter 2302.

**CROSS REFERENCE TO STATUTE.**

Transportation Code, Chapter 1002.

§221.12. *Salvage Vehicle Agent.*

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

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TRD-201902588

Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

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For further information, please call: (512) 465-5665

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**SUBCHAPTER C. LICENSED OPERATIONS**

**43 TAC §221.41, §221.54**

**STATUTORY AUTHORITY.**

The amendments and new section are proposed under Transportation Code, §503.002, which authorizes the board of the Texas Department of Motor Vehicles (board) to adopt rules for the administration of Transportation Code; Transportation Code, §1002.001, which authorizes the board to adopt rules necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other Texas laws; and Occupations Code, §2302.051, which authorizes the board to adopt rules necessary to administer Chapter 2302.

**CROSS REFERENCE TO STATUTE.**

Transportation Code, Chapter 1002.

§221.41. *Location Requirements.*

A salvage vehicle dealer [holding the new automobile dealer endorsement, used automobile dealer endorsement, salvage vehicle rebuilder endorsement or salvage pool operator endorsement] must meet the following requirements at each licensed business location and must maintain the following requirements during the entire term of the license.

(1) If the licensed business location is not owned by the license holder, the license holder must maintain a lease that extends through the period for which the license will be issued. The lease agreement must be on an executed lease contract containing at a minimum:

- (A) the names of the lessor and lessee;
- (B) the period of time for which the lease is valid; and

(C) the street address or legal description of the property, provided that if only a legal description of the property is provided, the license holder must attach a statement that the property description in the lease agreement is the street address identified on the application.

(2) Any business location requirement in this subchapter are in addition to any requirements by city ordinance, county rule, or state law.

§221.54. *Criteria for Site Visits.*

In determining whether to conduct a site visit at an active salvage dealer's location, the department will consider whether the dealer has:

- (1) failed to respond to a records request;
- (2) failed to operate from the license location; or
- (3) an enforcement history that reveals failed compliance inspections or multiple complaints with administrative sanctions being taken by the department.

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

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Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: September 22, 2019

For further information, please call: (512) 465-5665

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**SUBCHAPTER B. LICENSING**

**43 TAC §221.17**

The Texas Department of Motor Vehicles (department) proposes amendments to 43 TAC §221.17, regarding recognition of out-of-state licenses of military spouses. These amendments are necessary to implement Senate Bill (SB) 1200, 86th Legislature, Regular Session (2019), which creates new Occupations Code, §55.0041, Recognition of Out-Of-State License of Military Spouse. Section 55.0041 authorizes military spouses to engage in a business or occupation in Texas for which a license is required, without applying for a required Texas license, if the applicable Texas licensing agency determines the military spouse is currently licensed in good standing by a jurisdiction with licensing requirements substantially equivalent to the relevant licensing requirements in Texas.

**EXPLANATION OF PROPOSED AMENDMENTS.**

Senate Bill 1200 requires agencies to adopt rules establishing processes to identify jurisdictions with substantially equivalent licensing requirements and to verify that a military spouse is licensed and in good standing in such jurisdiction. Senate Bill 1200 additionally authorizes an agency, at its discretion, to adopt rules to provide for the issuance of a license to a military spouse who is confirmed to be in good standing in a jurisdiction with substantially equivalent licensing requirements.

Proposed amendments to §221.17 renumber subsections where appropriate. Proposed amendments to §221.17 add subsection (b) to provide that military spouses are required to comply with Occupations Code, §55.0041 and this section to obtain authority to engage in the business or occupation in Texas for which

a license from the department is otherwise required. Proposed new §221.17(b)(1) clarifies that the military spouse must submit documentation to the department to request authorization to engage in a business or occupation in Texas under Occupations Code, §55.0041. This documentation is necessary for the department to know which jurisdiction to contact for verification of the status of the military spouse's license, and to ensure the military spouse meets the qualification requirements of Occupations Code, §55.0041. Proposed new §221.17(b)(2) provides that upon the receipt of a military spouse's notice of intent to engage in a business or occupation for which department requires a license, the department will determine whether the military spouse is currently licensed in good standing in another jurisdiction with substantially equivalent licensing requirements to Texas. Proposed new §221.17(b)(2), subparagraphs (A) and (B), describe the process by which the department will verify that a military spouse is licensed and in good standing in a jurisdiction determined to have substantially equivalent licensing requirements.

Proposed new §221.17(b)(3) implements the discretionary rulemaking authority in SB 1200, specifically new Occupations Code, §55.0041(f), which authorizes a state agency to adopt rules providing for the issuance of a license to a military spouse for whom the agency has confirmed licensure in good standing in a jurisdiction with substantially equivalent licensing requirements. The department's issuance of a license will help clarify that a military spouse authorized to practice a business or occupation in Texas, based on the department's confirmation under this section, is entitled to a license and will be subject to the same requirements for maintaining a license as a licensee who was granted a license under the standard licensure application process.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Linda M. Flores, Chief Financial Officer, has determined that for each year of the first five years the amendments will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Daniel Avitia, Director of the Motor Vehicle Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

**PUBLIC BENEFIT AND COST NOTE.** Mr. Avitia has also determined that, for each year of the first five years the amended section is in effect, public benefits are anticipated. The public benefits anticipated as a result of the proposed amendments include helping military spouses relocating to Texas quickly make the transition to doing business in Texas under their licenses as well as bringing additional qualified individuals into Texas to work in the motor vehicle industry. Mr. Avitia anticipates that there will be no costs to comply with this rule.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by the Government Code, §2006.002, the department has determined that the proposed amendments will not have an adverse economic effect on small businesses, micro-business, and rural. The proposed new amendments do not require small business, micro businesses, or rural communities to comply with any new regulations. Therefore, in accordance with the Government Code, §2006.002, the department is not required to prepare a regulatory flexibility analysis.

**TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit

an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that during the first five years the proposed amendments are in effect, no government program will be created or eliminated. Implementation of the proposed amendments will not require the creation of new employee positions or elimination of existing employee positions. Implementation will not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed amendments will not create a new or existing regulation, but will limit an existing regulation to implement SB 1200. Additionally, the proposed amendments do not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

**REQUEST FOR PUBLIC COMMENT.** If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on September 23, 2019. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to [rules@txdmv.gov](mailto:rules@txdmv.gov) or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

**STATUTORY AUTHORITY.** The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2302.051, which provides the board authority to adopt rules as necessary to administer Chapter 2302, Salvage Vehicle Dealers; and more specifically, Occupations Code, §55.0041(e), which provides the department authority to adopt for this rule.

**CROSS REFERENCE TO STATUTE.** Occupations Code, §55.0041 and Chapter 2302.

*§221.17. License Processing for Military Service Members, Spouses, and Veterans.*

(a) The department will process a license, amendment, or renewal application submitted for licensing of a military service member, military spouse, or military veteran in accordance with Occupations Code, Chapter 55.

(b) A military spouse may engage in a business or occupation for which a department issued license is required if the military spouse meets the requirements of Occupations Code, §55.0041 and this section.

(1) To meet the requirements of Occupations Code, §55.0041, a military spouse must submit to the department:

(A) notice of the military spouse's intent to engage in a business or occupation in Texas for which a department issued license is required;

(B) proof of the military spouse's residency in Texas and a copy of the military spouse's military identification card, as required by Occupations Code, §55.0041(b)(2); and

(C) documentation demonstrating that the military spouse is licensed and in good standing in another jurisdiction for the relevant business or occupation.

(2) Upon receipt of the notice and documentation required by paragraphs (1)(B) and (1)(C) of this subsection the department shall:

(A) confirm with the other licensing jurisdiction that the military spouse is currently licensed and in good standing for the relevant business or occupation; and

(B) conduct a comparison of the other jurisdiction's license requirements, statutes, and rules with the department's licensing requirements to determine if the requirements are substantially equivalent.

(3) If the department confirms that a military spouse is currently licensed in good standing in another jurisdiction with substantially equivalent licensing requirements, the department may issue a license to the military spouse for the relevant business or occupation. The license is subject to requirements of this chapter and Occupations Code, Chapter 2302 in the same manner as a license issued under

the standard application process, unless exempted under Occupations Code, Chapter 55.

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

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Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

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For further information, please call: (512) 465-5665



# 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 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 20. COTTON PEST CONTROL

The Texas Department of Agriculture (the Department) adopts 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, published in the July 12, 2019, issue of the *Texas Register* (44 TexReg 3490), without changes. The rules will not be republished.

The adopted 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.

The adopted amendments to §20.30 modify the previous 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.

The Department received one comment in support of the proposal from Lindy Patton, President and CEO of the Texas Boll Weevil Eradication Foundation.

#### SUBCHAPTER B. QUARANTINE REQUIREMENTS

##### 4 TAC §20.16, §20.17

The amendments are adopted 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 adoption.

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

Filed with the Office of the Secretary of State on August 12, 2019.  
TRD-201902578

Jessica Escobar  
Assistant General Counsel  
Texas Department of Agriculture  
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Proposal publication date: July 12, 2019  
For further information, please call: (512) 463-9360

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

##### 4 TAC §20.30

The amendments are adopted 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.

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

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Jessica Escobar  
Assistant General Counsel  
Texas Department of Agriculture  
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## TITLE 16. ECONOMIC REGULATION

### PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

#### CHAPTER 57. FOR-PROFIT LEGAL SERVICE CONTRACT COMPANIES

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

The Texas Commission of Licensing and Regulation (Commission) adopts the repeal of existing rules at 16 Texas Administrative Code (TAC), Chapter 57, §§57.1, 57.10, 57.21 - 57.23, 57.25, 57.70 - 57.72, 57.80, and 57.90, regarding For-Profit Legal Service Contract Companies Program, without changes to the proposed text as published in the June 7, 2019, issue of the *Texas Register* (44 TexReg 2829). The repealed rules will not be republished.

#### EXPLANATION OF AND JUSTIFICATION FOR THE REPEAL

The adoption repeals the existing For-Profit Legal Service Contract Companies rules under 16 TAC Chapter 57, regarding the registration and regulation of for-profit legal service contract companies, administrators, and sales representatives by the Texas Department of Licensing and Regulation (Department). The rules under 16 TAC Chapter 57 implement Texas Occupations Code, Chapter 953, Regulation of For-Profit Legal Service Contract Companies.

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

The adoption repeals the existing rules at 16 TAC Chapter 57, and the effective date of the repeal corresponds with the effective date of the statutory changes. As of September 1, 2019, the Department will no longer register or regulate for-profit legal service contract companies, administrators, and sales representatives.

#### SECTION-BY-SECTION SUMMARY

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

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

This adoption repeals §57.21, Registration Requirements--Company. This section sets out the registration requirements, the registration term, and the requirements regarding financial security and other financial information for legal service contract companies.

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

This adoption repeals §57.23, Registration Requirements--Administrator. This section sets out the registration requirements

and the registration term for legal service contract administrators.

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

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

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

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

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

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

#### PUBLIC COMMENTS

The Department drafted and distributed the proposed repeal of the existing rules to persons internal and external to the agency. The proposed repeal was published in the June 7, 2019, issue of the *Texas Register* (44 TexReg 2829). The deadline for public comments was July 8, 2019. The Department received three comments from interested parties on the proposed repeal during the 30-day public comment period. The public comments are summarized below.

**Comment--**One commenter expressed support and thanks for repealing the rules. The commenter stated that licensing legal service contract representatives was a waste of time and money and that the decision to repeal would save Texans time and money.

**Department Response--**The Department appreciates the comment in support of the proposed repeal of the existing rules. The proposed repeal implements the changes made to Occupations Code, Chapter 953 by S.B. 2065 and H.B. 2113, 85th Legislature, Regular Session, 2017. The Department did not make any changes to the proposed repeal in response to this public comment.

**Comment--**Another commenter had a question about the meaning of the proposal and whether for-profit legal service contract companies would no longer be allowed to sell for-profit legal service contracts in Texas.

**Department Response--**The proposed repeal implements the changes made to Occupations Code, Chapter 953 by S.B. 2065 and H.B. 2113, 85th Legislature, Regular Session, 2017.



Chapter 953 still exists and for-profit legal service contracts can still be written and sold in Texas. The two bills eliminated the requirements for for-profit legal service contract companies, administrators, and sales representatives to register with the Department and eliminated the regulation of Chapter 953 by the Department effective September 1, 2019. The bills, however, preserved other requirements under Chapter 953 regarding for-profit legal service contracts and for-profit legal service contract companies, administrators, and sales representatives. A violation of the remaining chapter is a deceptive trade practice actionable under the Deceptive Trade Practices-Consumer Protection Act. The Department did not make any changes to the proposed repeal in response to this public comment.

Comment--A third comment was submitted by a for-profit legal service contract company, which expressed support for repealing the existing rules under 16 TAC Chapter 57. The comment stated that the repeal of the rules is needed for implementation of the statutory changes made by S.B. 2065 and H.B. 2113. The comment expressed appreciation for the Department.

*Department Response*--The Department appreciates the comment in support of the proposed repeal of the existing rules. The proposed repeal implements the changes made to Occupations Code, Chapter 953 by S.B. 2065 and H.B. 2113, 85th Legislature, Regular Session, 2017. The Department did not make any changes to the proposed repeal in response to this public comment.

#### RECOMMENDATIONS AND COMMISSION ACTION

The Department staff recommended that the Commission adopt the proposed repeal of the existing rules as published in the *Texas Register* without changes. At its meeting on July 15, 2019, the Commission adopted the proposed repeal without changes as recommended by the staff.

#### STATUTORY AUTHORITY

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

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 953, and Texas Business and Commerce Code, Chapter 17, Subchapter E. No other statutes, articles, or codes are affected by the adoption.

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

Filed with the Office of the Secretary of State on August 12, 2019.

TRD-201902595

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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Proposal publication date: June 7, 2019

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## TITLE 19. EDUCATION

## PART 2. TEXAS EDUCATION AGENCY

### CHAPTER 97. PLANNING AND ACCOUNTABILITY

#### SUBCHAPTER EE. ACCREDITATION

#### STATUS, STANDARDS, AND SANCTIONS

#### DIVISION 2. CONTRACTING TO PARTNER TO OPERATE A DISTRICT CAMPUS

##### 19 TAC §97.1075, §97.1079

The Texas Education Agency (TEA) adopts amendments to §97.1075 and §97.1079, concerning contracting to partner to operate a district campus. The amendments are adopted without changes to the proposed text as published in the May 31, 2019 issue of the *Texas Register* (44 TexReg 2654) and will not be republished. The adopted amendment to §97.1075 clarifies which entities are subject to the requirements of Texas Education Code (TEC), §11.174(c). The adopted amendment to §97.1079 corrects a statutory reference and removes alternate authority for the commissioner to approve entity eligibility requests.

REASONED JUSTIFICATION: The 85th Texas Legislature, Regular Session, 2017, implemented Senate Bill 1882, which authorizes school districts to enter into partnerships for certain entities to operate school district campuses.

TEC, §11.174(c), specifies that before a district enters into a contract with an open-enrollment charter school as provided in TEC, §11.174(a)(1), it must first consult with campus personnel regarding the provisions to be included in the contract. The statute also specifies that all rights and protections by current employment contracts or agreements may not be affected by the contract with an open-enrollment charter school.

The adopted amendment to §97.1075(d)(10) clarifies that these provisions apply only to open-enrollment charter schools, which are described in TEC, §11.174(a)(1), and do not apply to entities that are described in TEC, §11.174(a)(2), and subject to 19 TAC §97.1079.

TEC, §11.174(a)(2), specifies that the commissioner must approve entities that are described in TEC, §11.174(a)(2), and TEC, §11.174(m), grants the commissioner rulemaking authority, including standards required for an entity to receive approval under TEC, §11.174(a)(2). Section 97.1079 sets forth the requirements for such entities to be approved. Section 97.1079(e) allows the commissioner to approve an entity that did not otherwise meet the requirements set forth in §97.1079 if the commissioner determined that the approval of the entity eligibility request would improve student outcomes. After examining the initial round of eligibility determination requests, the commissioner has determined that the requirements adopted to evaluate the eligibility of such entities are sufficient and that the authority in §97.1079(e) to approve entities that would not otherwise meet the eligibility requirements is not necessary. Therefore, the adopted amendment to §97.1079(e) removes this language.

In addition, a statutory reference in §97.1079(d)(8)(C) was corrected.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began May 31, 2019,

and ended July 1, 2019. Following is a summary of the public comments received and the responses.

**Comment:** The Texas State Teachers Association (TSTA) commented that the amendment to 19 TAC §97.1075(d)(10) is contrary to the plain meaning of TEC, §11.174(c). TSTA argues that the provisions in TEC, §11.174(c), apply to all contracts to partner to operate a district campus, and that the proposed rule limits the application of TEC, §11.174(c), to open-enrollment charter schools. TSTA argues that the rules should explicitly apply the provisions of TEC, §11.174(c), to both open-enrollment charter schools and other non-profit organizations. TSTA also argues that the rule is counterintuitive and negates the intent and plain meaning of the statute. TSTA also argues that it is essential for TEC, §11.174(c), to apply to all organizations that are partnering with a school district in order to effectively meet the needs of the students on that campus.

**Response:** The agency disagrees. TEC, §11.174(a)(1), authorizes a district to enter into partnerships with open-enrollment charter schools, which are authorized under TEC, Chapter 12, Subchapter D, Open-Enrollment Charter School. TEC, §11.174(a)(2), authorizes a district to enter into operating partnerships with certain entities that are granted a charter by the school district under TEC, Chapter 12, Subchapter C, Campus or Campus Program Charter. TEC, §11.174(c), only refers to contracts between the school district and the open-enrollment charter school. Therefore, the rule is consistent with the plain meaning of the statute. Where the statute is unambiguous, TSTA's arguments that the statute should apply to all organizations are also not applicable because the language in the statute is unambiguous and does not support TSTA's interpretation.

**Comment:** The Texas American Federation of Teachers (Texas AFT) commented that the amendment does not reflect legislative intent and is not in the best interest of public school students. Texas AFT argues that the bill author intended for TEC, §11.174(c), to apply to all contracts authorized by TEC, §11.174, and filed Senate Bill (SB) 1343 during the 86th Texas Legislative Session to clarify this point. Texas AFT also argues that a Fourth Court of Appeals memorandum opinion ruling that TEC, §11.174(c), does not apply to entities described by TEC, §11.174(a)(2), has been appealed to the Supreme Court. Texas AFT asks that the rule not be implemented until the Supreme Court rules on the case or the Texas Legislature takes action.

**Response:** The agency disagrees. When a statute is not ambiguous, the agency may not choose to ignore the plain language of the statute. The Fourth Court of Appeals ruled in April 2019 that TEC, §11.174(c), only applies to entities described in TEC, §11.174(a)(1), and does not apply to entities described in TEC, §11.174(a)(2). See *Martinez v. San Antonio All. of Teachers & Support Pers.*, 2019 Tex. App. LEXIS 2859, 2019 WL 1548431. While this case has been appealed to the Supreme Court, the Supreme Court has not overruled the Fourth Court of Appeals. Additionally, while legislation was introduced to amend TEC, §11.174(c), to include partnerships described in TEC, §11.174(a)(2), SB 1343 was not passed out of committee and the 86th Texas Legislative Session has concluded.

**STATUTORY AUTHORITY.** The amendments are adopted under Texas Education Code (TEC), §11.174(a), which authorizes a school district to enter into a partnership to operate a school district campus under certain conditions; TEC, §11.174(c), which requires that before a district enters into a contract with an open-enrollment charter school as provided in TEC, §11.174(a)(1), it must first consult with campus personnel regarding the provi-

sions to be included in the contract, and that all rights and protections by current employment contracts or agreement may not be affected by the contract with an open-enrollment charter school; TEC, §11.174(e), which requires the commissioner to continue to evaluate campus performance and assign overall and domain ratings for a campus operated under a partnership; TEC, §11.174(f), which prohibits the imposition of certain interventions and sanctions based on accountability performance for the first two school years for which a school district partnership operates on the campus; TEC, §11.174(g), which extends the intervention exemption to a subsequent or renewed partnership only upon approval from the commissioner; and TEC, §11.174(m), which authorizes the commissioner to adopt rules to implement TEC, §11.174.

**CROSS REFERENCE TO STATUTE.** The amendments implement Texas Education Code, §11.174(a), (c), (e)-(g), and (m).

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 August 6, 2019.

TRD-201902530

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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Proposal publication date: May 31, 2019

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



## CHAPTER 100. CHARTERS

### SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING OPEN-ENROLLMENT CHARTER SCHOOLS

#### DIVISION 6. CHARTER SCHOOL OPERATIONS

#### 19 TAC §100.1211, §100.1212

The Texas Education Agency (TEA) adopts an amendment to §100.1211 and new §100.1212, concerning charter school operations. The amendment to §100.1211 is adopted with changes to the proposed text as published in the April 26, 2019 issue of the *Texas Register* (44 TexReg 2149) and will be republished. New §100.1212 is adopted without changes to the proposed text as published in the April 26, 2019 issue of the *Texas Register* (44 TexReg 2149) and will not be republished. The adopted amendment to §100.1211 addresses a charter holder's admission and enrollment policy, maintenance of student records, and submission of the charter school's campus calendar to the TEA. Adopted new §100.1212 implements state and federal law by including minimum qualifications and certification requirements for charter school personnel as well as criminal history requirements.

**REASONED JUSTIFICATION:** The adopted revisions to 19 TAC Chapter 100, Subchapter AA, Division 6, include an amendment to §100.1211, Students, and new §100.1212, Personnel.

In §100.1211, subsection (a) was amended to clarify the application of TEC, §12.111(a)(3). The statute mandates that a char-

ter granted under TEC, Chapter 12, Subchapter D, include the academic, operational, and financial performance expectations by which a school operating under the charter will be evaluated. The amendment specifies that the student performance expectations must reflect the overall student performance at the school. In addition, the subsection was amended to correct a statutory citation.

New subsection (c) was added in the proposal, requiring schools to have a non-discriminatory admission and enrollment policy.

Subsection (e) was revised to add charter schools as entities required to report timely and accurate data.

New subsection (f) was added to clarify charter school responsibilities with regard to records maintenance and requests for records. In response to public comment, the subsection was revised at adoption to pertain to a charter school's overall participation in the system, rather than just response to requests.

New subsection (g) was added, requiring charter schools to submit their school year calendars to the TEA before the first day of August each year. Charter schools are currently required to submit school year beginning and ending dates to TEA at the end of the school year. Such calendar information is necessary at the beginning of each school year for purposes such as verification of charter contract compliance and amendment.

Current subsection (f) was deleted. Presently it supports TEC, §12.129, which provides that a person employed by an open-enrollment charter school as a principal or a teacher must hold a baccalaureate degree. House Bill (HB) 1469, 85th Texas Legislature, Regular Session, 2017, created an exception in TEC, §12.129: in an open-enrollment charter school that serves youth referred to or placed in a residential trade center by a local or state agency, a person may be employed as a teacher for a non-core vocational course without holding a baccalaureate degree, as long as certain criteria are met. Language regarding the minimum qualifications, as well as the exception, was added in new §100.1212.

New §100.1212 was added to specify provisions related to charter school personnel.

New subsections (a) and (b) set forth the existing baccalaureate degree requirement for principals and teachers and include the exception and criteria in TEC, §12.129, as added by HB 1469.

New subsections (c) and (d) specify that charter school personnel must comply with requirements found throughout federal and state law as they relate to certification requirements for special education teachers, bilingual teachers, teachers of English as a second language, and paraprofessionals.

New subsection (e) describes requirements for a charter school to obtain criminal history information about its personnel. This requirement is found throughout federal and state law.

**SUMMARY OF COMMENTS AND AGENCY RESPONSES:** The public comment period on the proposal began April 26, 2019, and ended May 28, 2019. Following is a summary of public comments received and corresponding agency responses.

**Comment:** An individual commented on the proposed revisions to 19 TAC Chapter 100, saying that charter schools should be required to follow all state laws that are required of public schools.

**Response:** The comment is outside the scope of the proposed rulemaking, and the agency provides the following clarification. Statutes found throughout the Texas Education Code, particu-

larly in Chapter 12, mandate that charter schools be established and operated according to laws different from those followed by traditional independent school districts. Texas Administrative Code rules follow from those legislative requirements.

**Comment:** An individual referenced proposed revisions to 19 TAC Chapter 100, describing complaints against a particular Texas charter school.

**Response:** The comment is outside the scope of the proposed rulemaking.

**Comment:** Regarding 19 TAC §100.1211(c), the Texas Charter Schools Association (TCSA) commented that the commissioner is creating a redundant rule.

**Response:** The agency disagrees. The rule language prohibiting discrimination provides clarity to the statutory language, TEC, §12.111(b), and provides consistency with 19 TAC §100.1207(d)(1).

**Comment:** Regarding 19 TAC §100.1211(e), TCSA recommended that data reporting requirements pertain to charter holders only, and not charter schools.

**Response:** The agency disagrees. As defined in 19 TAC §100.1001, "charter holders" and "charter schools" are distinct types of entities. The purpose of amending 19 TAC §100.1211(e) is to clarify that both entities have a responsibility to report their respective data to the commissioner of education in a timely and accurate manner.

**Comment:** Regarding 19 TAC §100.1211(f), TCSA commented that the phrase "maintained physically within the state of Texas" is ambiguous regarding access to records and the type of records to be maintained and suggested alternate language that would address records kept electronically outside the state.

**Response:** The agency disagrees. The commenter's point, relating to circumstances under which records may be maintained electronically out of state, is already addressed in §100.1203(a)(3).

**Comment:** Regarding 19 TAC §100.1211(f), TCSA commented that the phrase, "Requests for records through the Texas Records Exchange (TREx) shall be processed according to TREx protocols" is ambiguous regarding specific charter school responsibilities.

**Response:** The agency partially agrees, and offers the following clarification. All charter schools must participate in TREx, which is mandated by TEC, §7.010; therefore, language in 19 TAC §100.1211(f) was revised to refer to participation in the TREx data system. The TREx Data Standards document issued and updated by TEA every year describes the protocols that charter schools must follow.

**Comment:** Regarding 19 TAC §100.1212, Swing Education suggested the rule specify whether and to what extent its teacher requirements apply to substitute teachers.

**Response:** The agency partially disagrees and offers the following clarification. Although the law pertaining to charter school teacher qualification is straightforward, with one exception--a non-core vocational course teacher in a residential trade center is not required to hold a baccalaureate degree--a person employed as a principal or a teacher must hold a baccalaureate degree. This requirement is applicable for all teachers designated the teacher of record.

STATUTORY AUTHORITY. The amendment and new section are adopted under Texas Education Code (TEC), §12.103, which establishes the general applicability of state and federal laws and rules governing public schools to open-enrollment charter schools; TEC, §12.104, which describes specific provisions in state law applicable to open-enrollment charter schools, including provisions related to criminal history records under TEC, Chapter 22, Subchapter C; TEC, §12.111, which describes the required content of a charter granted under TEC, Chapter 12, Subchapter D; TEC, §12.129, which describes minimum qualifications for principals and teachers in an open-enrollment charter school; TEC, §12.1059, which provides that charter school personnel must be approved by the TEA following a review of the person's national criminal history record information as provided by TEC, §22.0832; TEC, §22.083, which describes responsibilities of school districts, open-enrollment charter schools, and shared services arrangements with regard to any employee's criminal history record information; TEC, §22.0832, which provides that criminal history checks shall be administered to charter school personnel in the same manner the State Board for Educator Certification reviews certified educators; and TEC, §22.0833, which describes responsibilities of school districts, open-enrollment charter schools, and shared services arrangements with regard to national criminal history record information review of noncertified employees.

CROSS REFERENCE TO STATUTE. The amendment and new section implement Texas Education Code, §§12.103, 12.104, 12.111, 12.129, 12.1059, 22.083, 22.0832, and 22.0833.

§100.1211. *Students.*

(a) Student performance. Notwithstanding any provision in an open-enrollment charter, acceptable student performance under Texas Education Code, §12.111(a)(3), shall at a minimum require overall student performance meeting the standards for an "academically acceptable" rating as defined by §100.1001(26) of this title (relating to Definitions).

(b) Reporting child abuse or neglect. A charter holder shall adopt and disseminate to all charter school staff and volunteers a policy governing child abuse reports required by Texas Family Code, Chapter 261. The policy shall require that employees, volunteers, or agents of the charter holder and the charter school report child abuse or neglect directly to an appropriate entity listed in Texas Family Code, Chapter 261.

(c) Admission and enrollment. A charter holder for an open-enrollment charter school shall have an admission and enrollment policy as outlined in §100.1207 of this title (relating to Student Admission), including prohibiting discrimination on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend under state law.

(d) Notice of expulsion or withdrawal. A charter school shall notify the school district in which the student resides within three business days of any action expelling or withdrawing a student from the charter school.

(e) Data reporting. A charter holder and its charter school shall report timely and accurate information required by the commissioner of education to the Texas Education Agency (TEA), except as expressly waived by the commissioner.

(f) Student records. Student records shall be secure and maintained physically within the state of Texas at all times. Charter school personnel shall respond to requests for records in a timely and appropriate manner. Charter schools shall participate in the Texas Records Exchange (TREx) system and shall follow TREx data standards.

(g) Scholastic year. A charter holder shall adopt a school year for the charter school, with fixed beginning and ending dates. The charter school shall submit a copy of the charter school's campus calendars to the TEA division responsible for charter school administration prior to the first day of August of each year.

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 August 8, 2019.

TRD-201902553

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 28, 2019

Proposal publication date: April 26, 2019

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

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## CHAPTER 114. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR LANGUAGES OTHER THAN ENGLISH

### SUBCHAPTER C. HIGH SCHOOL

#### 19 TAC §114.53

The State Board of Education (SBOE) adopts an amendment to §114.53, concerning advanced language for career applications. The amendment is adopted without changes to the proposed text as published in the May 3, 2019 issue of the *Texas Register* (44 TexReg 2232) and will not be republished. The adopted amendment eliminates language that is outdated and no longer necessary.

REASONED JUSTIFICATION. House Bill 1431, 84th Texas Legislature, 2015, added Texas Education Code (TEC), §28.002(t), to require that the SBOE, in consultation with the commissioner of higher education and business and industry leaders, develop an advanced language course that a school district may use to provide students with instruction in industry-related terminology that prepares students to communicate in a language other than English in a specific professional, business, or industry environment. In August 2016, a committee of secondary and post-secondary educators and business and industry representatives were selected to develop recommended Texas Essential Knowledge and Skills (TEKS) for the advanced career-oriented languages other than English (LOTE) course.

At the April 2017 meeting, the SBOE approved for second reading and final adoption §114.53, Advanced Language for Career Applications (One Credit). The new course was implemented in the 2017-2018 school year.

The general requirements for Advanced Language for Career Applications originally specified that the course could not be used to satisfy a LOTE requirement for an endorsement. However, at the April 2017 SBOE meeting, the board approved for second reading and final adoption language in 19 TAC §74.13, Endorsements, that allows Advanced Language for Career Applications to count toward the four levels in the same language of LOTE required to earn a LOTE arts and humanities endorsement.

The adopted amendment to §114.53 eliminates the specification in the TEKS that the course may not be used to satisfy a LOTE requirement for an endorsement as it is not aligned with the rule related to endorsements.

The SBOE approved the amendment for first reading and filing authorization at its April 5, 2019 meeting and for second reading and final adoption at its June 14, 2019 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2020-2021 school year. The earlier effective date will ensure clarity of expectations related to the Advanced Language for Career Applications course at the start of the 2019-2020 school year. The effective date is August 26, 2019.

**SUMMARY OF COMMENTS AND RESPONSES.** The public comment period on the proposal began May 3, 2019, and ended June 7, 2019. The SBOE also provided an opportunity for registered oral and written comments at its June 2019 meeting in accordance with the SBOE board operating policies and procedures. No public comments were received on the proposal.

**STATUTORY AUTHORITY.** The amendment is adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(t), which requires the SBOE, in consultation with the commissioner of higher education and business and industry leaders, to develop an advanced language course that a school district may use to provide students with instruction in industry-related terminology that prepares students to communicate in a language other than English in a specific professional, business, or industry environment; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §§7.102(c)(4); 28.002(a), (c), and (t); and 28.025(a).

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 August 6, 2019.

TRD-201902527

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 26, 2019

Proposal publication date: May 3, 2019

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



## TITLE 22. EXAMINING BOARDS

## PART 28. EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS

### CHAPTER 651. FEES

#### 22 TAC §§651.1 - 651.3

The Executive Council of Physical Therapy and Occupational Therapy Examiners adopts amended Chapter 651, concerning Fees, pursuant to the amendment of the Executive Council of Physical Therapy and Occupational Therapy Examiners Act, Title 3, Subtitle H, Chapter 452 of the Occupations Code, pertaining to the repeal of physical therapy and occupational therapy facility registration and annual renewal in SB 317, 85th Legislative Session. The proposed text as published in the June 14, 2019, issue of the *Texas Register* (44 TexReg 2913) is adopted without changes, and will not be republished.

The amendments in Chapter 651 are adopted to discontinue the fees associated with the application, renewal, and associated fees for physical and occupational therapy facilities.

No comments were received regarding the proposal.

The amendments are proposed under the Executive Council of Physical Therapy and Occupational Therapy Examiners Act, Title 3, Subtitle H, Chapter 452, Occupations Code, which provides the Executive Council of Physical Therapy and Occupational Therapy Examiners the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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 August 9, 2019.

TRD-201902565

Ralph A. Harper

Executive Director

Executive Council of Physical Therapy and Occupational Therapy Examiners

Effective date: September 1, 2019

Proposal publication date: June 14, 2019

For further information, please call: (512) 305-6900



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 34. STATE FIRE MARSHAL

The Commissioner of Insurance adopts amendments to 28 TAC Subchapter E, Fire Extinguisher Rules, §§34.510, 34.511, 34.514, and 34.515; Subchapter F, Fire Alarm Rules, §§34.610, 34.613, 34.614, and 34.616; Subchapter G, Fire Sprinkler Rules, §§34.710, 34.713, and 34.714; and Subchapter H, Storage and Sale of Fireworks, §§34.808, 34.811, 34.814, and 34.817. The amendments were published in the March 8, 2019, issue of the *Texas Register* (44 TexReg 1245). The department adopts 28 TAC Subchapter E, Fire Extinguisher

Rules, §§34.510, 34.511, 34.514, and 34.515; Subchapter F, Fire Alarm Rules, §§34.610, 34.613, and 34.614; Subchapter G, Fire Sprinkler Rules, §§34.710, 34.713, and 34.714; and Subchapter H, Storage and Sale of Fireworks, §§34.808, 34.811, 34.814, and 34.817 without changes to the proposed text. These rules will not be republished. Section 34.616 is adopted with nonsubstantive changes to the proposed text and will be republished. Amendments to §34.622 were also proposed in the March 8, 2019, issue of the *Texas Register*. In response to public comment, the department is not adopting the proposed amendments to §34.622.

**REASONED JUSTIFICATION.** The amendments to Subchapter E, F, G, and H are necessary to implement Insurance Code Chapter 6001 and 6003, and Occupations Code Chapter 2154; clarify the intent of the regulations and efficiently administer the respective statutes; protect, safeguard, and preserve lives and property; and provide for the safety of the public and regulated persons and their customers.

Insurance Code Chapter 6001 authorizes the state fire marshal to safeguard lives and property by regulating the leasing, selling, installing, and servicing of portable fire extinguishers and the planning, certifying, installing, and servicing of fixed fire extinguisher systems. Insurance Code Chapter 6003 charges the state fire marshal with the protection and preservation of life and property in controlling the registration of an individual or an organization engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems. Occupations Code Chapter 2154 charges the state fire marshal with the protection, safety, and preservation of life and property, including regulating the issuance of licenses and permits to persons engaged in manufacturing, selling, storing, possessing, or transporting fireworks in this state; the conduct of public fireworks displays; and the safe storage of Fireworks 1.3G (primarily large fireworks) and Fireworks 1.4G (small fireworks).

#### SUBCHAPTER E. FIRE EXTINGUISHER RULES

Insurance Code Chapter 6001 charges the state fire marshal with safeguarding lives and property by regulating the leasing, selling, installing, and servicing of portable fire extinguishers and the planning, certifying, installing, and servicing of fixed fire extinguisher systems. The amendments to Subchapter E are necessary to implement the statute and to safeguard lives and property.

##### *Section 34.510. Certificates of Registration.*

The department adopts a clarification to §34.510(d) to require that the business location indicated on the certificate of registration is an actual physical address. In the course of fulfilling their duties, State Fire Marshal's Office investigators may need to go to the actual location of a registered firm. A mailing address or P.O. box on a certificate of registration does not support this. Including a physical location on a registered firm's certificate of registration allows the State Fire Marshal's Office investigators to locate and inspect the business site and efficiently safeguard lives and by ensuring the registered firm is complying with applicable statutes and rules. This change is not expected to impact regulated persons. Regulated persons must already provide their specific business location, but the amendment is expected to eliminate any ambiguity in the rule. Regulated persons will provide a physical address on renewal of their certificate of registration or if requested by agency staff, but they are not otherwise expected to file documents with the State Fire Marshal's Office as a result of the amendment.

##### *Section 34.511. Fire Extinguisher Licenses.*

The department removes license Type R. Only three licenses of this type were ever issued. The last Type R license issued in Texas expired on April 7, 2017, and it was not renewed. The State Fire Marshal's Office has not received any applications for a Type R license since that time. The type R license was created by rule in 2006 and intended to address a perceived need for regulation related to a specific type of range-top fire suppression device. Over time, the product evolved to a mail-order and direct-sales item installed by the end user, as opposed to a device sold and installed by a third party. The need for licensing related to sales and installation of the devices no longer exists. There will be no impact to anyone by eliminating the Type R license as there are no current licensees, and elimination of the obsolete and outdated Type R license will provide for more efficient administration of Insurance Code Chapter 6001.

##### *Section 34.514. Applications.*

The department amends the requirement that corporations applying for certificates of registration provide proof that their franchise tax is in "active status" rather than the outdated "Certificate of Good Standing." This amendment reflects a change in the state comptroller's office procedures and terminology and is not expected to substantively impact regulated persons.

The department adds a requirement that new applications for apprentice permits must be accompanied by a criminal history report from the Texas Department of Public Safety. This requirement is expected to add costs to affected applicants, but it is necessary to protect the public.

##### *Section 34.515. Fees.*

The department amends the fee procedure requirements in §34.515(a) to allow for alternative online payment of fees as those options become available. This change will allow for more efficient administration of the statute and rules.

#### SUBCHAPTER F. FIRE ALARM RULES

Insurance Code Chapter 6003 charges the state fire marshal with protecting and preserving life and property in controlling the registration of an individual or an organization engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems. The amendments to Subchapter F are necessary to implement the statute and to safeguard lives and property.

##### *Section 34.610. Certificate of Registration.*

The department adopts a clarification to §34.610(a) to require an actual physical address of registered firms on their certificate of registration. The State Fire Marshal's Office investigators may, in the course of fulfilling their duties, have cause to go to the actual location of a registered firm. A mailing address or P.O. Box on a certificate of registration does not support this. Including a physical location on a registered firm's certificate of registration ensures that the State Fire Marshal's Office can locate and inspect a business site and more efficiently protect and preserve life and property by ensuring the registered firm is complying with applicable statutes and rules. This change is not expected to impact regulated persons. Regulated persons would provide a physical address on renewal of their certificate of registration or if requested by agency staff, but they are not otherwise expected to file documents with the State Fire Marshal's Office as a result of the amendment.

##### *Section 34.613. Applications.*

The department amends the requirement that corporations applying for certificates of registration provide proof that their franchise tax is "in active status" rather than the outdated "Certificate of Good Standing." This amendment reflects a change in the state comptroller's procedures and terminology and is not expected to substantively impact regulated persons.

*Section 34.614. Fees.*

The department amends the fee procedure requirements in §34.614(a) to allow for alternative online payment methods as those alternatives become available. This change will allow for more efficient administration of the statute and rules.

*Section 34.616. Sales, Installation, and Service.*

The department amends the provisions related to fire detection and fire alarm devices or systems other than residential single station in §34.616(b)(3) to delete the mention of the installation of fire sprinkler or fire extinguishers systems "other than inspection and testing of detection or supervisory devices." The provision is not intended to allow for a blanket exception to the fire extinguisher and fire sprinkler licensing statutes. Should operation of fire extinguisher or fire sprinkler systems be necessary, and a properly licensed person is unavailable, a property owner may operate the fixtures that they own. This change will allow for more efficient administration of the statute and rules. In addition, the text as proposed is changed to correct a citation the Insurance Code in §34.616(c)(2)(B). The cite was to Insurance Code §6002.25. However, that section does not exist, and the text is revised to reference Insurance Code §6002.251.

#### SUBCHAPTER G. FIRE SPRINKLER RULES

Insurance Code Chapter 6003 charges the state fire marshal with protecting and preserving life and property in controlling the registration of an individual or an organization engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems. The amendments to Subchapter G are necessary to implement the statute and preserve life and property.

*Section 34.710. Certificates of Registration.*

The department amends §34.710(a) to require the actual physical address of the business location to be indicated on the certificate of registration. In the course of fulfilling their duties, the State Fire Marshal's Office investigators may have cause to go to the actual location of a registered firm. A mailing address or P.O. Box does not support this. Including a physical location on a firm's certificate of registration ensures that the State Fire Marshal's Office can locate and inspect the business site and efficiently protect and preserve life and property by ensuring the registered firm is complying with applicable statutes and rules. This change is not expected to impact regulated persons. Regulated persons will provide a physical address on renewal of their certificate of registration or if requested by agency staff, but they are not otherwise expected to file documents with the State Fire Marshal's Office as a result of the amendment.

*Section 34.713. Applications.*

The department amends the requirement that corporations applying for certificates of registration provide proof that their franchise tax is "in active status" rather than the outdated "Certificate of Good Standing." This amendment reflects a change in the state comptroller's procedures and terminology and is not expected to substantively impact regulated persons. In addition, citations related to evidence of public liability insurance in

§34.713(a)(3) are corrected to refer to the proper statutory requirement in Insurance Code Chapter 6003.

*Section 34.714. Fees.*

The department amends the fee procedure requirements in §34.714(a) to allow for alternative online payment methods as those options become available. This change will allow for more efficient administration of the statute and rules.

#### SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS

Occupations Code Chapter 2154 charges the state fire marshal with the protection, safety, and preservation of life and property, including rules regulating: (1) the issuance of licenses and permits to persons engaged in manufacturing, selling, storing, possessing, or transporting fireworks in this state; (2) the conduct of public fireworks displays; and (3) the safe storage of Fireworks 1.3G and Fireworks 1.4G. The amendments to Subchapter H are necessary to implement the statute and for the protection, safety, and preservation of life and property.

*Section 34.808. Definitions.*

The department adopts a new definition: "authorized retail location." The newly defined term clarifies that the location indicated in a permit for a retail location must be consistent with statute and rules and must be in a location where such sales are allowed by local ordinance. In the past, permits have been sought for locations where a local municipality does not allow fireworks sales. The State Fire Marshal's Office encourages its licensees to cooperate with local authorities. This amendment clarifies that a retail permit from the state fire marshal does not mean local regulations do not apply. This clarification is consistent with statute and longstanding State Fire Marshal Office policy and is not expected to result in additional costs to regulated persons. Other definitions are renumbered, as appropriate.

*Section 34.811. Requirements, Pyrotechnic Operator License, Pyrotechnic Special Effects Operator License, and Flame Effects Operator License.*

The department adopts an amendment to add a requirement that new applicants for Pyrotechnic Operator License, Pyrotechnic Special Effects Operator License, and the Flame Effects Operator License submit with the application a criminal history report from the Texas Department of Public Safety. This requirement is expected to result in additional costs to affected applicants, but it is necessary to protect the public.

*Section 34.814. Fees.*

The department amends the fee procedure requirements in §34.814(a) to allow for alternative online payment methods as those alternatives become available. This change will allow for more efficient administration of the statute and rules.

*Section 34.817. Retail Sales General Requirements.*

The department amends §34.817(q) as follows: "Shipping information, invoices, and bills of lading related to the inventory at each retail stand must be available for inspection on request." The amendment will help the State Fire Marshal's Office investigators better administer Occupations Code Chapter 2154 and the adopted rules. Access to shipping information will enable investigators to determine if fireworks have been purchased from a licensed distributor. Generally, these invoices are specific to each retail stand and provide highly useful information that can make inspections more efficient. The invoices make it possible for an investigator to determine compliance with other statu-

tory requirements. The department expects regulated persons will incur minimal costs from this amendment, as they will be required to keep the documents. Regulated persons are not expected to generate new reports or documents, they will only need to retain for later inspection those invoices that they already receive.

#### *Changes in response to Comments*

In response to comment, the department declines to adopt the changes proposed to §34.622.

#### SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: The department received one written comment. The commenter, the Texas Fire Alarm Association, was generally in support of the proposal with changes.

*Comment on §34.622.* One commenter does not support the amendment to §34.622 Inspection/Test Labels, Chapter 34, Subchapter F, Fire Alarm Rules. The commenter stated that the amended language would add ambiguity and make compliance difficult for fire alarm company contractors and technicians. The commenter requests that the department not adopt the proposed amendment.

Agency Response to Comment on §34.622. The department agrees to make the suggested change. The department will not adopt amendments to the section.

### SUBCHAPTER E. FIRE EXTINGUISHER RULES

#### **28 TAC §§34.510, 34.511, 34.514, 34.515**

STATUTORY AUTHORITY. The Commissioner adopts amendments to 28 TAC §§34.510, 34.511, 34.514, and 34.515 under Government Code §417.005 and Insurance Code §§6001.051, 6001.052, and 36.001.

Government Code §417.005 states that the Commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of other duties for the Commissioner.

Insurance Code §6001.051(a) specifies that the department administers Insurance Code Chapter 6001. Insurance Code §6001.051(b) specifies that the Commissioner may issue rules the Commissioner considers necessary to administer Chapter 6001 through the state fire marshal.

Insurance Code §6001.052(b) specifies that the Commissioner must adopt and administer rules determined essentially necessary for the protection and preservation of life and property regarding: (i) registration of firms engaged in the business of installing or servicing portable fire extinguishers or planning, certifying, installing, or servicing fixed fire extinguisher systems or hydrostatic testing of fire extinguisher cylinders; (ii) the examination and licensing of individuals to install or service portable fire extinguishers and plan, certify, install, or service fixed fire extinguisher systems; and (iii) requirements for installing or servicing portable fire extinguishers and planning, certifying, installing, or servicing fixed fire extinguisher systems. Insurance Code §6001.052(c) specifies that the Commissioner by rule must prescribe requirements for applications and qualifications for licenses, permits, and certificates issued under this chapter.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the

powers and duties of the department under the Insurance Code and other laws of this state.

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

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### SUBCHAPTER F. FIRE ALARM RULES

#### **28 TAC §§34.610, 34.613, 34.614, 34.616**

STATUTORY AUTHORITY. The Commissioner adopts amendments to 28 TAC §§34.610, 34.613, 34.614, and 34.616 under Government Code §417.005 and Insurance Code §§6002.051, 6002.052, and 36.001.

Government Code §417.005 states that the Commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of other duties for the Commissioner.

Insurance Code §6002.051(a) specifies that the department will administer Chapter 6002. Insurance Code §6002.051(b) specifies that the Commissioner may adopt rules as necessary to administer Chapter 6002, including rules the Commissioner considers necessary to administer Chapter 6002 through the state fire marshal.

Insurance Code §6002.052(b) specifies that rules adopted under §6002.051 may create specialized licenses or registration certificates for an organization or individual engaged in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining fire alarm or fire detection devices or systems, and that the rules must establish appropriate training and qualification standards for each kind of license and certificate.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

§34.616. *Sales, Installation, and Service.*

(a) Residential alarm (single station).

(1) Registered firms may employ persons exempt from the licensing provisions of Insurance Code §6002.155(10) to sell, install, and service residential, single station alarms. Exempted persons must be under the supervision of a residential fire alarm superintendent (single station), residential fire alarm superintendent, or fire alarm planning superintendent.

(2) Each registered firm that employs persons exempt from licensing provisions of Insurance Code §6002.155(10) is required to maintain documentation to include lesson plans and annual test results demonstrating competency of those employees regarding the provisions of Insurance Code Chapter 6002, adopted standards, and this subchapter applicable to single station devices.



(b) Fire detection and fire alarm devices or systems other than residential single station.

(1) The installation of all fire detection and fire alarm devices or systems, including monitoring equipment subject to Insurance Code Chapter 6002 must be performed by or under the direct on-site supervision of a licensed fire alarm technician, residential fire alarm technician, residential fire alarm superintendent, or a fire alarm planning superintendent for the work permitted by the license. The licensee responsible for the planning of all fire detection and fire alarm devices or systems, including monitoring equipment subject to Insurance Code Chapter 6002, must be licensed under the ACR number of the primary registered firm. The certifying licensee must be licensed under the ACR number of the primary registered firm and must be present for the final acceptance test prior to certification.

(2) The maintenance or servicing of all fire detection and fire alarm devices or systems must be performed by or under the direct on-site supervision of a licensed fire alarm technician, residential fire alarm technician, residential fire alarm superintendent or a fire alarm planning superintendent, for the work permitted by the license. The licensee attaching a label must be licensed under the ACR number of the primary registered firm.

(3) If the installation or servicing of a fire alarm system also includes installation or servicing of any part of a fire protection sprinkler system or a fire extinguisher system, the licensing requirements of Insurance Code Chapters 6001 and 6003 must be satisfied, as appropriate.

(4) The planning, installation, and servicing of fire detection or fire alarm devices or systems, including monitoring equipment, must be performed according to standards adopted in §34.607 of this title (relating to Adopted Standards) except when the planning and installation complies with a more recent edition of the standard that has been adopted by the political subdivision in which the system is installed.

(5) Fire alarm system equipment replaced in the same location with the same or similar electrical and functional characteristics and listed to be compatible with the existing equipment, as determined by a fire alarm planning superintendent, may be considered repair. The equipment replaced must comply with the currently adopted standards but the entire system is not automatically required to be modified to meet the applicable adopted code. The local AHJ must be consulted to determine whether to update the entire system to comply with the current code and if plans or a permit is required prior to making the repair.

(6) On request of the owner of the fire alarm system, a registered firm must provide all passwords, including those for the site-specific software, but the registered firm may refrain from providing that information until the system owner signs a liability waiver provided by the registered firm.

(c) Monitoring requirements.

(1) A registered firm may not monitor a fire alarm system located in the State of Texas for an unregistered firm.

(2) A registered firm may not connect a fire alarm system to a monitoring service unless:

(A) the monitoring service is registered under Insurance Code Chapter 6002 or is exempt from the licensing requirements of that chapter; and

(B) the monitoring equipment being used is in compliance with Insurance Code §6002.251.

(3) A registered firm must employ at least one technician licensee at each central station location. Each dispatcher at the central station is not required to be a fire alarm technician licensee.

(4) A registered firm subcontracting monitoring services to another registered firm must advise the monitoring services subscriber of the identity and location of the registered firm actually providing the services unless the registered firm's contract with the subscriber contains a clause giving the registered firm the right, at the registered firm's sole discretion, to subcontract any or all of the work or service.

(5) A registered monitoring firm, reporting an alarm or supervisory signal to a municipal or county emergency services center must provide, at a minimum, the type of alarm, address of alarm, name of subscriber, dispatcher's identification, and call-back phone number. If requested, the firm must also provide the name, registration number, and call-back phone number of the firm contracted with the subscriber to provide monitoring service if other than the monitoring station.

(6) If the monitoring service provided under this subchapter is discontinued before the end of the contract with the subscriber, the monitoring firm, central station, or service provider must notify the owner or owner's representative of the monitored property and the local AHJ a minimum of seven days before terminating the monitoring service. If the monitored property is a one- or two- family dwelling, notification of the local AHJ is not required.

(d) Record keeping. The firm must keep complete records of all service, maintenance, and testing on the system for a minimum of two years. The records must be available for examination by the state fire marshal or the state fire marshal's representative.

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

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## SUBCHAPTER G. FIRE SPRINKLER RULES

### 28 TAC §§34.710, 34.713, 34.714

STATUTORY AUTHORITY. The Commissioner adopts the amendments to §§34.710, 34.713, and 34.714 under Government Code §417.005 and Insurance Code §§6003.051, 6003.052, 6003.054, and 36.001.

Government Code §417.005 states that the Commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of other duties for the Commissioner.

Insurance Code §6003.051(a) specifies that the department administers Chapter 6003. Insurance Code §6003.051(b) specifies that the Commissioner may issue rules necessary to administer Chapter 6003 through the state fire marshal.

Insurance Code §6003.052(a) specifies that in adopting necessary rules, the Commissioner may use recognized standards, including standards adopted by federal law or regulation, stan-

dards published by a nationally recognized standards-making organization or standards developed by individual manufacturers.

Insurance Code §6003.054(a) specifies that the state fire marshal must implement the rules adopted by the Commissioner for the protection and preservation of life and property in controlling: (i) the registration of an individual or an organization engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; and (ii) the requirements for the plan, sale, installation, maintenance, or servicing of fire protection sprinkler systems by determining the criteria and qualifications for registration certificate and license holders; evaluating the qualifications of an applicant for a registration certificate to engage in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; conducting examinations and evaluating the qualifications of a license applicant; and issuing registration certificates and licenses to qualified applicants.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

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

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## SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS

### 28 TAC §§34.808, 34.811, 34.814, 34.817

STATUTORY AUTHORITY. The Commissioner adopts the amendments to 28 TAC §§34.808, 34.811, 34.814, and 34.817 under Government Code §417.005, Occupations Code §2154.051 and §2154.052, and Insurance Code §36.001.

Government Code §417.005 states that the Commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of other duties for the Commissioner.

Occupations Code §2154.051 states the Commissioner must determine reasonable criteria and qualifications for licenses and permits pertaining to the regulation of fireworks and fireworks displays.

Occupations Code §2154.052 states that the Commissioner must adopt, and the state fire marshal must administer, rules the Commissioner considers necessary for the protection, safety, and preservation of life and property.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

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

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## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 57. FISHERIES

#### SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 20, 2019, adopted the repeal of §57.979 and amendments to §§57.972, 57.981, and 57.992, concerning the Statewide Recreational and Commercial Fishing Proclamations. The amendments to §§57.972, 57.981, and 57.992 are adopted with changes to the proposed text as published in the February 15, 2019, issue of the *Texas Register* (44 TexReg 668). The repeal of §57.979 is adopted without change and will not be republished.

The change to §57.972, concerning General Rules, alters the provisions of subsection (j)(3) to clarify who may participate in the public drawing for an opportunity to harvest an alligator gar of greater than 48 inches in length on the segment of the Trinity River described in §57.981(d)(1)(L)(ii), as well as making changes to subsection (j)(5) to conform with other changes made to gar harvest regulations in §57.981 and §57.992, discussed later in this preamble. As proposed, the provision restricted participation in the drawings to persons holding a valid recreational fishing license. The intent of the provision was to restrict participation to persons who by virtue of licensure or exemption by statute or rule are lawfully able to fish year-round (or from the date of purchase until August 31) in the specified segment of the Trinity River, which does not include persons holding a Lake Texoma fishing license, persons holding a temporary recreational fishing license, persons fishing in Texas border waters under a license issued in another state, or persons holding only a saltwater license. The change makes these distinctions clear. The change also eliminates the statewide restriction on the harvest of alligator gar by archery equipment or crossbow at night and replaces it with a narrower area of applicability on the Trinity River, for reasons discussed later in this preamble.

The change to §57.981, concerning Bag, Possession and Length Limits, alters proposed subsection (c)(5)(I)(vi), which would have prohibited the recreational take of alligator gar by

archery equipment or crossbow at night anywhere in the state. Following public comment, the commission decided that the provision could be confined to a specific segment of the Trinity River, with the proviso that staff monitor the effectiveness of other provisions designed to protect alligator gar.

The change to §57.992, concerning Bag, Possession, and Length Limits, alters proposed subsection (b)(4)(F)(vi), which would have prohibited the commercial take of alligator gar by archery equipment or crossbow at night. Following public comment, the commission decided that the provision could be confined to a specific segment of the Trinity River, with the proviso that staff monitor the effectiveness of other provisions designed to protect alligator gar.

The repeal of §57.979, concerning Temporary Exception to Bag, Possession, and Length Limits for King Mackerel, eliminates a rule that was promulgated to provide maximum angler opportunity in the wake of an unanticipated federal action and is no longer necessary, as the provisions were incorporated in §57.981 and §57.992 during rulemaking last year.

The amendment to §57.972, concerning General Rules, provides for a department-administered public drawing to select applicants to take alligator gar of greater than 48 inches in length on a specific segment of the Trinity River, subject to the restrictions set forth in the proposed amendment to §57.981. As discussed in greater detail later in this preamble, the department continues to be concerned about alligator gar populations. The amendment provides a method for distributing a limited, controlled harvest of large alligator gar by means of a fair and impartial method, subject to determinations made by the department.

The amendment to §57.981, concerning Bag, Possession and Length Limits implements a series of changes to largemouth bass harvest regulations on multiple reservoirs.

Over the last two years, the department's Inland Fisheries Division has conducted an extensive evaluation of largemouth bass harvest regulations across the state with the goal of reducing regulatory complexity where possible. The primary goal was to reduce the number of water bodies where harvest regulations are exceptions to the statewide standards (14-inch minimum length limit, five-fish daily bag limit) and consolidate additional water bodies under existing exceptions without confounding existing management goals and objectives.

The amendment to §57.981 implements harvest regulations for largemouth bass on Lake Lakewood (Williamson County), consisting of an 18-inch minimum length limit and three-fish daily bag limit. Lake Lakewood is a 47-acre impoundment located in Leander. The City of Leander acquired land along the northern shore of the reservoir to convert into a public nature park. The department has worked with park staff to ensure public access to the lake for anglers and paddlers. Adequate populations of game fish and forage species were confirmed by an electrofishing survey conducted in spring 2017. The size structure for largemouth bass indicated the presence of quality-size fish, with some fish surpassing 18 inches. The amendment (which implements harvest regulations differing from the statewide standards of 14-inch minimum length and five-fish daily bag limit) is designed to protect larger fish that would become highly vulnerable to harvest once the park opens. Similar lakes in the Austin area have benefited from this protective approach and have been able to sustain quality largemouth bass catches for years (Bright Lake and Brushy Creek Reservoir). Lake Lakewood has the potential to

provide excellent largemouth bass fishing to a growing paddling and bank angling constituency in the greater Austin area.

The amendment to §57.981 also eliminates the 14 - 21-inch slot length limit for largemouth bass on Mill Creek Lake (Van Zandt County) and implements a 16-inch maximum length limit with an exception allowing for possession and weighing of bass 24 inches or greater for possible submission to ShareLunker program. Mill Creek Reservoir is a 237-acre reservoir located within the city limits of Canton. The 14 - 21-inch slot-length limit was introduced on Mill Creek Reservoir in 1991, and at that time, the daily bag limit was three fish. The five-fish daily bag limit, with one fish 21 inches or greater, was established in September 1996 to increase abundance and catch of largemouth bass 14 - 21 inches while allowing limited harvest of fish larger than 21 inches. Recent improvements in habitat are anticipated to improve survival of largemouth bass and prey fishes. Abundant small largemouth bass and threadfin shad were collected in an electrofishing assessment performed in July 2018. The department and the City of Canton are working cooperatively on a long-range plan to improve fishing access for bank anglers by constructing small floating piers, clearing areas where vegetation obstructs bank access, and positioning fish attractors accessible to bank anglers. The maximum length limit of 16 inches should increase abundance of largemouth bass by providing protection to large bass currently vulnerable to harvest (21 inches or larger in length) with little or no change to abundance or size structure of bass less than 16 inches. If some small fish are harvested, reduced intraspecific competition could lead to increased growth rates.

The amendment to §57.981 also expands the area in southeast Texas under the 12-inch minimum length limit for largemouth bass. Under current rules, there is a minimum length limit of 12 inches for largemouth bass in Chambers, Galveston, Jefferson, and Orange counties (including any public waters that form boundaries with adjacent counties) and on the Sabine River from Toledo Bend dam downstream to a line across Sabine Pass between Texas Point and Louisiana Point (Newton and Orange counties). The amendment adds Hardin County, Newton County (excluding Toledo Bend Reservoir), and Liberty County (south of U.S. Highway 90). The amendment is intended to provide more uniform harvest regulations for bass populations with similar life histories in that region of the state, which should enhance and simplify compliance and enforcement.

The amendment also modifies the harvest regulations for largemouth and Alabama bass on Alan Henry Reservoir (Garza County) by removing Alabama bass from the current regulation (five-fish daily bag of which only two bass less than 18 inches may be harvested). The harvest regulations for Alabama bass thus revert to the statewide limits (no length limit and five-fish daily bag in combination with largemouth bass). Alan Henry Reservoir was originally stocked with largemouth and smallmouth bass, and later with Alabama bass. Alabama bass are native to Mobile River drainage in Alabama, Georgia, and Mississippi. This species attains larger sizes than spotted bass native to Texas and other states, and that trend is observed when this species is stocked outside its native range. This species seems to do best in highland reservoirs with water fluctuations, which was the reason for the experimental stocking in Alan Henry Reservoir. The goal of the amendment is to redistribute the harvest and produce largemouth bass and Alabama bass longer than 18 inches. Because Alan Henry is the only lake in Texas with Alabama bass, the amendment, if adopted,

will eliminate a statewide exception and further simplify the harvest regulations for bass.

The amendment also implements a 48-inch maximum length limit for alligator gar on the Trinity River and tributary waters extending from the I-30 bridge in Dallas County downstream to the I-10 bridge in Chambers County (including the East Fork of the Trinity River and all tributaries upstream to the Lake Ray Hubbard dam) and imposes a mandatory reporting requirement for all alligator gar harvested statewide except for Falcon International Reservoir (Zapata and Starr counties). The department continues to be concerned about harvest of alligator gar in the Trinity River and other areas. The 48-inch length limit is intended to protect enough spawning-aged females to reproduce and provide a sufficient supply of large, recreationally-valuable fish for anglers to catch in the Trinity River. Additionally, the amendment requires any person harvesting an alligator gar in public water to report the harvest within 24 hours via the department's website or mobile application. Because relatively few alligator gar can be sustainably harvested each year and interest in alligator gar fishing has increased, the department has determined that it is prudent to closely monitor harvest numbers and locations, information that cannot be obtained by any method other than mandatory reporting. Falcon Reservoir has a more robust population of alligator gar, and harvest information is not needed to manage that particular population.

With respect to saltwater species, the amendment to §65.981 increases the minimum size limit for cobia, from 37 inches to 40 inches. The Gulf of Mexico Fishery Management Council recently chose to change the commercial and recreational minimum size limit for Gulf cobia in federal waters to 40 inches. The amendment makes cobia harvest regulations in state waters consistent with the federal limits, which the department believes will reduce confusion and enhance compliance, administration, and enforcement.

The amendment also eliminates the current bag limit differential for spotted seatrout and implements a universal five-fish bag in all state waters. In 2007, the department became concerned about spotted seatrout populations in the Lower Laguna Madre and created regional regulations for seatrout, reducing the bag and possession limits for spotted seatrout in the Lower Laguna Madre. In 2014, the department altered the boundary of that regional regulation and reinstated a coastwide possession limit of twice the daily bag limit. The amendment is in response to persistent angler requests for lower daily bag limits in the areas where the 10-fish daily bag limit is in place. No adverse biological impacts are expected to occur as a result of lowering the limit from 10 to 5. Department survey data indicate that most anglers report harvesting fewer than five fish per day and that more than 75% of guides and nearly 50% of non-guides support lowering the limit from 10 to five fish.

The amendment also imposes new gear requirements on anglers taking sharks with natural bait. To address overfishing and rebuild the Atlantic dusky shark stock, the National Marine Fisheries Service adopted amendments to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan that include mandating the use of non-offset, non-stainless-steel circle hooks when fishing for sharks in federal waters, except when fishing with artificial lures. The amendment makes shark regulations in state waters consistent with federal regulations, which the department believes will reduce confusion and enhance compliance, administration, and enforcement.

The department received 52 comments opposing adoption of the proposed amendment to §57.981 regarding largemouth bass harvest regulations on Lake Lakewood. Of the 52 comments, six provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that there should be a 16-inch maximum length limit because the lake is small. The department disagrees with the comment and responds that similar regulations are imposed on water bodies of similar size under similar angling pressure without negative impacts to the size or availability of fish for harvest. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the daily bag limit should be five fish. The department disagrees with the comments and responds that an additional reduction in harvest to three bass per day could provide some additional protection from overharvest. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rule will result in an overabundance of 12-inch fish. The department disagrees with the comment and responds that if angling pressure on Lake Lakewood is consistent with other lakes of similar size that have a similar harvest regulation, the rule should not result in overharvest of larger size fish. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the daily bag limit should be one. The department disagrees with the comment and responds that the daily bag limit of three fish, based on data from similar water bodies, is sustainable over the long term. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the lake should not be managed for the production of trophy fish. The department agrees with the comment and responds that the rule is not intended to produce trophy fish, but to produce desirable fish for anglers to catch. No changes were made as a result of the comment.

The department received 350 comments supporting adoption of the proposed provision.

The department received 42 comments opposing adoption of the proposed amendment to §57.981 regarding largemouth bass harvest regulations on Mill Creek Lake. Of the 42 comments, two provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that there should be a minimum length limit to encourage growth of small fish. The department disagrees with the comment and responds that the purpose of a maximum length limit is to allow some harvest when sustainable and to protect large-size bass. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules were too complicated, and the daily bag limit should be three fish. The department disagrees with the comment and responds that the goal of the department is to create a fishery characterized by large largemouth bass; to do this, a maximum length limit is necessary to increase the abundance of large fish. The department believes the rule is straightforward: the bag limit is five fish, with a maximum length of limit of 16 inches, but anglers will be allowed to temporarily retain one fish of over 16 inches for weighing and

possible inclusion in the department's ShareLunker program. No changes were made as a result of the comment.

The department received 281 comments supporting adoption of the proposed provision.

The department received 55 comments opposing adoption of the proposed amendment to §57.981 regarding largemouth bass harvest regulations in a three-county area of southeast Texas. Of the 55 comments, 11 provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the rule was too complicated and that there should be statewide rules with exceptions for certain lakes. The department disagrees that the rule is complicated and responds that the rule is straightforward: in the affected waters, the minimum length limit is 12 inches. The department agrees that there should be statewide limits with exceptions for certain lakes, which is precisely the approach employed by the department in establishing harvest regulations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule would cause confusion for casual anglers and that the department's goal should be to decrease harvest in order to increase the size of fish in the affected waters. The department disagrees with the comment and responds that there is biological evidence that largemouth bass in the affected portion of southeast Texas do not reach the sizes attained by largemouth bass elsewhere in the state, and the 12-inch minimum length limit is appropriate for managing these populations. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that 12-inch fish are too small to keep. The department disagrees with the comments and responds that the rule is a minimum length limit; anglers are not required to retain 12-inch fish but may not retain fish under 12 inches long. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that the minimum length limit should be 14 inches in order to encourage the development of larger fish. The department disagrees with the comments and responds that there is biological evidence that largemouth bass predominant in the affected portion of southeast Texas do not reach the sizes attained by largemouth bass elsewhere in the state, and the 12-inch minimum length limit is appropriate for managing these populations. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the minimum length limit should be 15 inches in order to encourage the development of larger fish. The department disagrees with the comment and responds that there is biological evidence that largemouth bass predominant in the affected portion of southeast Texas do not reach the sizes attained by largemouth bass elsewhere in the state, and the 12-inch minimum length limit is appropriate for managing these populations. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the 12-inch minimum length limit should apply in all counties bordering tidal waters. The department disagrees with the comments and responds that largemouth bass predominant in the affected portion of southeast Texas do not reach the sizes attained by largemouth bass elsewhere in the state, and the 12-inch minimum

length limit is appropriate for managing these populations. No changes were made as a result of the comments.

One commenter opposed adoption and stated that all restrictions should be the same. The department disagrees with the comment and responds that although regulatory simplicity is the goal, the diversity of freshwater environments in the state make absolute simplicity impossible without frustrating the department's ability to effectively manage fish species. No changes were made as a result of the comment.

The department received 308 comments supporting adoption of the proposed provision.

The department received 28 comments opposing adoption of the proposed amendment to §57.981 regarding harvest regulations on Lake Alan Henry for largemouth and Alabama bass. Of the 159 comments, three provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the bag limit should be between seven and ten fish, only two of which could be largemouth bass under 18 inches in length. The department disagrees with the comment and responds that the five fish bag is consistent with statewide regulation while a higher bag limit is untested in these situations and may have unintended negative population impacts.

One commenter opposed adoption and stated that the daily bag limit should be "five fish, black bass 14 inches and no size limit on spotted bass". The department disagrees with the comment and responds the limit is designed to allow some harvest of bass less than 14 inches, which the population can sustain, and this increased harvest of smaller bass may benefit both bass species present in the reservoir.

One commenter opposed adoption and stated that minimum length limit should be 14 inches to prevent anglers from over-harvesting small black bass. The department disagrees with the comment and responds the limit is designed to allow some harvest of bass less than 14 inches, which the population can sustain.

The department received 277 comments supporting adoption of the proposed provision.

The department received 364 comments opposing adoption of the proposed amendment to §57.981 regarding alligator gar harvest regulations. Of the 364 comments, 345 provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow. The department notes that because many of the comments were general statements of opposition that did not explicitly indicate that the subject of the comment was the proposed amendment to harvest regulations on a specific portion of the Trinity River, the department considers all of the comments in that context wherever possible in order to ensure due consideration.

The department received 39 comments opposing adoption on the basis of hooking mortality by pole-and-line anglers. Commenters mentioned that it is impossible to know the length of a fish before it takes the bait, and therefore, the imposition of a length limit will cause hooking mortality of undersized gar; that the rule will cause bowfishers to abandon that means in favor of pole and line (resulting in larger number of alligator being harvested and released later dying of hooking mortality); that bowfishers will make mistakes and discard fish over 48 inches to avoid possessing the evidence of violations; that there is no evi-

dence that pole-and-line angling causes no mortalities; that fish caught by pole and line do not have a 100 percent survival rate when released; and that catch-and-release angling by pole and line results in far greater mortality than take by archery equipment. The department agrees that it is impossible to know with certainty prior to harvest the exact length of any fish but disagrees that the rule is likely to result in excessive or unacceptable hooking mortality. The unintended harvest of undersized, oversized, and undesirable fish (as well as fish that cannot lawfully be retained) is inherent in any fishery under any sort of regulation; however, hooking mortality studies in general indicate that when anglers exercise care in handling fish and in hook removal, mortality rates are low. The department notes that the only way to eliminate release and/or hooking mortality is to require every harvested fish to be retained, regardless of size or method of take, which the department suspects would result in overharvest and not be popular with the angling public. No changes were made as a result of the comments.

Thirty-one commenters opposed adoption and stated that the rules were not supported by science or that the department lacked sufficient data to support the rules. The department disagrees with the comment and responds that the intent of the proposed rules and the rules as adopted is to protect older alligator gar. The department's data, as well as the literature, are not in conflict with that management goal. No changes were made as a result of the comments.

Eleven commenters opposed adoption and stated that the department's own data shows the current harvest rates are sustainable, proving there is no need for the regulation. The department disagrees with the comment and responds that the available data show contemporary rates of harvest should be sustainable in the future if current population characteristics stay unchanged; however, additional data on harvest and the population are necessary to manage the species. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the department's data is corrupt. The department responds that it employs the best available science in collecting useful data used to determine appropriate harvest and management practices. No changes were made as a result of the comment.

Twenty-seven commenters opposed adoption and stated that harvest of alligator gar at night should remain legal. The department notes that the rule as adopted was modified to allow the use of archery equipment to take alligator gar at night everywhere in the state except for a specific segment of the Trinity River. The department disagrees with the comment with respect to a specific segment of the Trinity River where department concerns about alligator gar populations have caused the department, out of an abundance of caution, to prohibit the use of archery equipment and crossbows to take alligator gar at night except for persons chosen by drawing for that opportunity.

Four commenters opposed adoption and stated that the use of archery equipment to take alligator should not be limited. The department disagrees with the comments and responds that concerns about alligator gar populations in a segment of the Trinity River have caused the department, out of an abundance of caution, to prohibit the use of archery equipment and crossbows to take alligator gar at night except for persons chosen by drawing for that opportunity. No changes were made as a result of the comments.

Five commenters opposed adoption and stated that the department should engage in a stocking program in lieu of the regulations. The department disagrees with the comments and responds that prudent management is always preferable to stocking programs, which in addition to requiring additional inputs of money, time, and effort, are unproven for augmenting alligator gar populations. No changes were made as a result of the comments.

Forty-three commenters opposed adoption and stated that alligator gar are numerous, in no danger, abundant, doing well, overpopulated, the biggest population ever, or some other descriptor indicating a large and thriving population, and went on to indicate that there is therefore no need for the rules or management in general. The department disagrees with the comments and responds that because alligator gar are long lived, reach sexual maturity late in life, and spawn infrequently, populations that seem to be abundant can disappear quickly under certain circumstances and that harvest mortality is additive to that situation. Therefore, prudent management, especially measures that protect older (larger) fish, afford optimal assurances that existing populations can be sustained until the population dynamics of alligator gar in specific areas are better understood. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that everyone says there are plenty of alligator gar. The department disagrees with the comments and responds that anecdotal information by itself is not a basis for fisheries management decisions. No changes were made as a result of the comment.

Eighteen commenters opposed adoption and stated that the department is biased, is conducting a vendetta against, hates, is prejudiced against, or otherwise views bowfishing as an undesirable activity. The department disagrees with the comments and responds that the department does not value one method of take more than another. Because take by archery equipment always results in mortality, a fish taken by archery equipment cannot be released if it is oversized, undersized, or not lawful to retain; therefore, the take of fish by archery equipment is restricted to nongame fish and the take of alligator gar (a nongame fish) by archery is confined to daylight hours (except for anglers chosen to harvest an alligator gar of greater than 48 inches) on a specified segment of the Trinity River, where the department is concerned about alligator gar populations. No changes were made as a result of the comments.

Thirteen commenters opposed adoption and stated in some form or fashion that alligator gar are an undesirable species because they eat an inordinate number of game fish, are "trash" fish, will cause population declines of game fish if protected, should be exterminated, cannot be exterminated at any level of harvest, and should be heavily controlled in order to allow young game fish to mature. The department disagrees with the comments and responds that alligator gar are opportunistic ambush predators that feed primarily on other nongame fish and thus do not exert an inordinate impact on game fish populations but inarguably are critical to the health of freshwater ecosystems. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the population of alligator gar is increasing. The department disagrees with the comment and responds that the goal is to further guard against potential negative impacts of removing large (and therefore old) fish from the reproductive cycle. Protecting larger fish optimizes spawning success. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the daily bag limit is unreasonable because some people have to travel long distances to go gar fishing. The department disagrees that convenience should be a consideration in fisheries management decisions. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the reporting requirement is irresponsible because there is no plan for when the internet is down. The department disagrees with the comment and responds that the department reporting application is designed in such a fashion that data can be entered at any time and once entered is automatically transmitted once the reporting device is able to do so. The department further notes that entering harvest data to the harvest application is evidence of compliance, even if the data has not been transmitted yet. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the minimum length limit should be 60 inches. Another commenter opposed adoption and stated that the minimum length limit should be 72 inches. The department disagrees with the comments and responds that at 60 inches an alligator is likely approaching or already reached optimal reproductive potential and therefore should be protected in order to maximize reproductive contribution. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the daily bag limit should remain at one alligator gar. The department agrees with the comments and responds that the rule as proposed did not alter the daily bag limit of one alligator gar. No changes were made as a result of the comments.

Twenty commenters opposed adoption and stated that the current harvest regulations should remain in place. The department disagrees with the comments and responds that concerns about alligator gar populations in a specific segment of the Trinity River have led the department, out of an abundance of caution, to alter harvest regulations there until those concerns can be definitively addressed, and to impose a reporting requirement in order to provide better data upon which to base management strategies. No changes were made as a result of the comment.

Nine commenters opposed adoption and stated that the rule should allow the harvest of one alligator gar of any size per day. The department disagrees with the comment and responds that the only water body where size restrictions will be in place is a segment of the Trinity River, where the department is concerned that excessive harvest of older (larger) alligator gar will result in negative population impacts and therefore has imposed a maximum length limit of 48 inches. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rule would not help alligator gar. The department disagrees with the comment and responds that the rule will protect older and larger alligator in a segment of the Trinity River, ensuring that sexually mature fish remain in the population. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there is no evidence that protecting larger gar will help the population. The department disagrees with the comment and responds that the literature is rife with examples proving that for any species the protection of age classes with the highest reproductive potential is an effective management strategy, all other things being equal. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a maximum length limit of 36 inches for alligator gar. The department disagrees with the comment and responds that the data indicate that some harvest of smaller sized alligator gar is appropriate and can be accomplished without negative impacts to the resource. No changes were made as a result of the comments.

Five commenters opposed adoption and stated that the 48-inch maximum length limit for alligator gar was ridiculous, crazy, or stupid. The department disagrees with the comment and responds that the 48-inch maximum length limit is a biologically defensible size restriction and a rational response to concerns over alligator gar populations in the Trinity River. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the daily bag limit should be the same for the take of alligator gar by pole and line as it is for take by archery equipment. The department agrees with the comments and responds that as proposed there was no change to the daily bag limit, irrespective of means of take. No changes were made as a result of the comments.

Twenty-three commenters opposed adoption and stated that instead of a drawing for permits to harvest alligator gar over 48 inches there should be a license tag for a trophy gar. An additional eight commenters stated that there should also be the opportunity to purchase a bonus tag. The department disagrees with the comments and responds that at the current time, space on the license is at a premium and altering license dimensions and content are both unpopular and costly. No changes were made as a result of the comments.

Eighteen commenters opposed adoption and stated that harvest rules for bowfishing should be the same as those for other lawful means. The department agrees that certain aspects, such as the daily bag limit and the length limit, should be the same for all anglers, irrespective of means of take. However, because some means of take are immediately lethal, removing the opportunity for the release of fish that it is unlawful to retain (unlike take by pole and line which presents the opportunity to release fish that have been caught) the department reasons that separate regulations are necessary. No changes were made as a result of the comments.

One commenter opposed adoption and stated that it should be lawful to take alligator gar of any age. The department disagrees with the comment and responds that because of their infrequent spawning and late sexual maturity, it is prudent to protect older age classes of alligator gar. No changes were made as a result of the comment.

One commenter opposed adoption and stated that people should be allowed to take alligator gar. The department agrees with the comment. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that it is their right to take any fish and that the department's rules infringe on their freedom and liberty. The department disagrees with the comment and responds that rules were adopted in compliance with all applicable laws and do not violate any provision of the state or federal constitutions. No changes were made as a result of the comments.

Eight commenters opposed adoption and stated, variously, that the mandatory harvest reporting requirement is government overreach, forced servitude, will not result in good data, will

be undermined by selective reporting, underreporting, false reporting, and non-reporting, and should be voluntary. The department disagrees with the comments and responds that mandatory harvest reporting is one of the most effective methods of characterizing resource utilization impacts, that it is completely within the statutory powers granted to the agency by the legislature under Parks and Wildlife Code, Chapter 61 (among which is the authority to regulate the possession of wildlife resources), and that the department's experience with mandatory reporting requirements for other wildlife resources indicate that non-compliance and fraud are not significant factors. No changes were made as a result of the comments.

Three commenters opposed adoption and stated, respectively, that opportunity provided under a drawing system would create a black market for alligator gar tags, be an invasion of privacy, and won't be random. The department disagrees with the comments and responds that the drawing system is designed to provide opportunity only to the person named on the permit and the use of a permit by anyone else is a criminal offense. The department also responds that participation in the drawing system cannot be an invasion of privacy because participation is strictly voluntary, and the department seeks no other interaction with or use of a participant's personal information other than for purposes of identification in the narrow context of awarding angling opportunity. The department further notes that all drawings conducted by the department are by means of computer algorithms written to produce randomized outputs. No changes were made as a result of the comments.

One commenter opposed adoption and stated that a public drawing was unfair because it allows only one person to fish. The department disagrees with the comment and responds that the commenter perhaps misunderstood the proposal; the department intends to provide 150 opportunities via the drawing system next year and anticipates a similar volume of opportunity annually moving forward. No changes were made as a result of the comment.

One commenter opposed adoption and stated that if there was going to be a drawing for alligator gar opportunity there should be drawings for all other fishing opportunity. The department disagrees with the comment and responds that the drawing for alligator gar opportunity is part of department efforts to protect older alligator gar in a specific river segment, which is not necessary for other species on other water bodies, where bag, possession, and length limits are sufficient. No changes were made as a result of the comment.

Six commenters opposed adoption and stated that restricting harvest to younger age classes is unwise because it means fewer fish will reach maturity. The department disagrees with the comments and responds that because alligator are long-lived and reach sexual maturity relatively late in the life cycle, harvest of individuals in younger age classes at the levels anticipated is not problematic. No changes were made as a result of the comment.

Three commenters opposed adoption and stated the rules were either a "money grab" or a misuse of tax dollars. The department disagrees with the comments and responds that the rule as adopted has no fiscal implications for the agency and that the fisheries management activities of the department are funded not by taxes but by revenue from the sale of fishing licenses, the purchase of which is purely voluntary. No changes were made as a result of the comments.

One commenter opposed adoption and stated the department was engaging in "dictatorial tactics." The department disagrees with the comment and responds that the rules as adopted are intended solely as instruments of responsible biological management. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules were "a direct attack on a legal means." The department disagrees with the comment and responds that the commission possesses the explicit statutory to regulate the means and methods of taking game and nongame fish; therefore, any modification of rules governing means and methods is an appropriate exercise of the agency's statutory authority. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should regulate for utilization, not trophies. The department agrees with the comment. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules will result in an overpopulation of alligator gar and the decimation of game fishes. The department disagrees with the comment and responds that the rules are intended to affect age structure and are not anticipated to significantly impact the overall population of alligator gar. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the rules "criminalize mere possession," place anglers in legal jeopardy for fish taken during the day but possessed after dark or make criminals out of law-abiding citizens. The department disagrees with the comment and responds that the rules criminalize only the unlawful take of alligator gar and the possession of unlawfully taken alligator gar. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules are unnecessary, capricious, and punitive. The department disagrees with the comment and responds that the rules are biologically consistent with accepted principles of fisheries management, were promulgated for the specific reason of protecting alligator gar and are not intended to punish any person. No changes were made as a result of the comment.

Four commenters opposed adoption and stated that steel leaders and treble hooks should be unlawful for take of alligator gar and pole and line anglers should be required to use circle hooks when fishing for alligator gar. The department disagrees with the comments and responds that steel leaders and treble hooks are not believed to be significant contributors to mortality in alligator gar populations; however, if the department determines that additional gear restrictions are necessary, the department will engage in rulemaking to that effect. No changes were made as a result of the comments.

One commenter opposed adoption and stated that research by a specific scientist showed that removal of mid-sized alligator gar is harmful. The department agrees with the comment and responds that it is aware of the research cited and that excessive mortality is harmful; however, the rules as adopted are not expected to result in harvest levels anywhere near a value that would threaten age structure or general population health. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules would harm low-income populations. The department disagrees with the comment and responds that the rules do not create or



impose any economic barriers to participation in the fishery. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules were a violation of the "humans-first policy of the state." The department disagrees with the comment and responds that the policy referred to does not exist and that the department's statutory duty is to manage wildlife resources for enjoyment by the public. No changes were made as a result of the comment.

Once commenter opposed adoption and stated that the rules will cause people to violate the law. The department disagrees with the comment and responds that a person who intentionally chooses to violate the law consciously understands and accepts the risk of detection, prosecution, and conviction for that behavior. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be no restrictions on private waters. The department agrees with the comment. No changes were made as a result of the comment.

Six commenters opposed adoption and stated either that there should be no size limits for alligator gar or that alligator should not be regulated at all. The department disagrees with the comment and responds that alligator gar are an important component of freshwater ecosystems and should be managed by the application of appropriate harvest strategies, including size and possession limits. No changes were made as a result of the comments.

One commenter opposed adoption and stated that there should be no regulations governing any fish. The department disagrees with the comment and responds that the department has a statutory obligation to protect and conserve fisheries resources. The department also notes that failure to regulate typically results in undesirable outcomes. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a season for pole-and-line angling for alligator gar. The department agrees with the comment and responds that there is a season for pole-and-line angling for alligator gar from September 1 of one year to August 31 of the immediately following year. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that there should be a slot limit for alligator gar. The department disagrees with the comment and responds that the purpose of a slot limit is to protect certain size classes of fish to allow younger age classes to reach larger size. In the case of alligator gar, the management goal is to protect older age classes, which means that a slot limit would not be effective. No changes were made as a result of the comment.

One commenter opposed adoption and stated that bowfishing should not be legal. The department disagrees with the comment and responds that the take of nongame fish by lawful archery equipment and crossbows under appropriate regulations is not detrimental to populations or systems. No changes were made as a result of the comment.

One commenter opposed adoption and stated that alligator gar rules should be statewide because otherwise angling pressure will shift to other systems with deleterious effects. The department disagrees with the comment and responds that all systems are different and management approaches can and should be tailored where necessary to accommodate those differences. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules would prevent youth from being able to harvest a trophy gar. The department disagrees with the comment and responds that no part of the rules as adopted function to deprive anyone of harvest opportunity on the basis of age. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules should not be statewide because fish populations are different in different ecosystems. The department agrees with the comment. No changes were made as a result of the comment.

The department received 366 comments supporting adoption of the proposed provision.

The department received 364 comments opposing adoption of the proposed amendment to §57.981 regarding alligator gar harvest regulations. Of the 364 comments, 345 provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow. The department notes that because many of the comments were general statements of opposition that did not explicitly indicate that the subject of the comment was the proposed amendment to harvest regulations on a specific portion of the Trinity River, the department considers all of the comments in that context wherever possible in order to ensure due consideration.

The department received 39 comments opposing adoption on the basis of hooking mortality by pole-and-line anglers. Commenters mentioned that it is impossible to know the length of a fish before it takes the bait and therefore the imposition of a length limit will cause hooking mortality of undersized gar; that the rule will cause bowfishers to abandon that means in favor of pole and line (resulting in larger number of alligator being harvested and released before dying of hooking mortality); that bowfishers will make mistakes and discard fish over 48 inches to avoid possessing the evidence of violations; that there is no evidence that pole-and-line angling causes no mortalities; that fish caught by pole and line do not have a 100 percent survival rate when released; and that catch-and-release angling by pole and line results in far greater mortality than take by archery equipment. The department agrees that it is impossible to know with certainty prior to harvest the exact length of any fish but disagrees that the rule is likely to result in excessive or unacceptable hooking mortality. The unintended harvest of undersized, oversized, and undesirable fish (as well as fish that cannot lawfully be retained) is inherent in any fishery under any sort of regulation; however, hooking mortality studies in general indicate that when hook removal is performed correctly, mortality rates are low. The department notes that the only way to eliminate release and/or hooking mortality is to require every harvested fish to be retained, regardless of size or method of take, which the department suspects would not be popular with the angling public. The department also notes that it is engaged in research to determine the effects of hook removal on alligator gar specifically and will alter management strategies accordingly if the research warrants changes. No changes were made as a result of the comments.

Thirty-one commenters opposed adoption and stated that the rules were not supported by science or that the department lacked sufficient data to support the rules. The department disagrees with the comment and responds that the intent of the proposed rules and the rules as adopted is to protect older alligator gar. The department's data, as well as the literature, are not in conflict with that management goal. No changes were made as a result of the comments.

Eleven commenters opposed adoption and stated that the department's own data shows the current harvest rates are sustainable, proving there is no need for the regulation. The department disagrees with the comment and responds that the available data show contemporary rates of harvest *might* be sustainable in the future *if* parameters stay unchanged; however, that dataset isn't comprehensive, and given the susceptibility of species with a life history similar to alligator gar to sudden population declines, additional harvest and population data is necessary to gain a clearer picture. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the department's data is corrupt. The department responds that it employs the best available science in collecting useful data used to determine appropriate harvest and management practices. No changes were made as a result of the comment.

Twenty-seven commenters opposed adoption and stated that harvest of alligator gar at night should remain legal. The department partially agrees with the comments and responds that the rule as adopted will allow the use of archery equipment to take alligator gar at night everywhere in the state except for a specific segment of the Trinity River. The department disagrees with the comment with respect to a specific segment of the Trinity River where department concerns about alligator gar populations have caused the department, out of an abundance of caution, to prohibit the use of archery equipment and crossbows to take alligator gar at night except for persons chosen by drawing for that opportunity.

Four commenters opposed adoption and stated that the use of archery equipment to take alligator should not be limited. The department disagrees with the comments and responds that concerns about alligator gar populations in a segment of the Trinity River have caused the department, out of an abundance of caution, to prohibit the use of archery equipment and crossbows to take alligator gar at night except for persons chosen by drawing for that opportunity. No changes were made as a result of the comments.

Five commenters opposed adoption and stated that the department should engage in a stocking program in lieu of the regulations. The department disagrees with the comments and responds that prudent management is always preferable to stocking programs, which require additional inputs of money, time, and effort. No changes were made as a result of the comments.

Forty-three commenters opposed adoption and stated that alligator gar are numerous, in no danger, abundant, doing well, overpopulated, the biggest population ever, or some other superlative indicating a large and thriving population, and went on to indicate that there is therefore no need for the rules or management in general. The department disagrees with the comments and responds that because alligator gar are long lived, reach sexual maturity late in life, and spawn infrequently, populations that seem to be abundant can disappear quickly under certain circumstances and that harvest mortality is additive to that situation. Therefore, prudent management, especially measures that protect older (larger) fish, afford optimal assurances that existing populations can be sustained until the population dynamics of alligator gar in specific areas are better understood. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that everyone says there are plenty of alligator gar. The department disagrees with the comments and responds that anecdotal information by

itself is not an efficacious basis for fisheries management decisions. No changes were made as a result of the comment.

Eighteen commenters opposed adoption and stated that the department is biased, is conducting a vendetta against, hates, is prejudiced against, or otherwise views bowfishing as an undesirable activity. The department disagrees with the comments and responds that the department does not value one method of take more than another. Because take by archery equipment always results in mortality, a fish taken by archery equipment cannot be released if it is oversized, undersized, or not lawful to retain; therefore, the take of fish by archery equipment is restricted to nongame fish and the take of alligator gar (a nongame fish) by archery is confined to daylight hours (except for anglers chosen to harvest an alligator gar of greater than 48 inches) on a specified segment of the Trinity River, where the department is concerned about alligator gar populations. No changes were made as a result of the comments.

Thirteen commenters opposed adoption and stated in some form or fashion that alligator gar are an undesirable species because they eat an inordinate number of game fish, are "trash" fish, will cause population declines of game fish if protected, should be exterminated, cannot be exterminated at any level of harvest, and should be heavily controlled in order to allow young game fish to mature. The department disagrees with the comments and responds that alligator gar are opportunistic ambush predators that feed primarily on other nongame fish and thus do not exert an inordinate impact on game fish populations but inarguably are critical to the health of freshwater ecosystems. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the population of alligator gar is increasing. The department disagrees with the comment and responds that the issue isn't per se about populations, but the potential negative impacts of removing large (and therefore old) fish from the reproductive cycle. Protecting larger fish optimizes spawning success. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the daily bag limit is unreasonable because some people have to travel long distances to go gar fishing. The department disagrees that convenience should be a consideration in fisheries management decisions. The literature supports limited take of alligator gar because they are long lived, reach sexual maturity late, and spawn infrequently. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the reporting requirement is irresponsible because there is no plan for when the internet is down. The department disagrees with the comment and responds that the department reporting application is designed in such a fashion that data can be entered at any time and once entered is automatically transmitted once the reporting device is able to do so. The department further notes that entering harvest data to the harvest application is evidence of compliance, even if the data has not been transmitted yet. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the minimum length limit should be 60 inches. Another commenter opposed adoption and stated that the minimum length limit should be 72 inches. The department disagrees with the comments and responds that at 60 inches an alligator is likely approaching or already reached optimal reproductive potential and therefore should be protected in order to maximize reproductive contribution. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the daily bag limit should remain at one alligator gar. The department agrees with the comments and responds that the rule as proposed did not alter the daily bag limit of one alligator gar. No changes were made as a result of the comments.

Twenty commenters opposed adoption and stated that the current harvest regulations should remain in place. The department disagrees with the comments and responds that concerns about alligator gar populations in a specific segment of the Trinity River have led the department, out of an abundance of caution, to alter harvest regulations there until those concerns can be definitively addressed, and to impose a reporting requirement in order to provide better data upon which to base management strategies. No changes were made as a result of the comment.

Nine commenters opposed adoption and stated that the rule should allow the harvest of one alligator gar of any size per day. The department disagrees with the comment and responds that the only water body where size restrictions will be in place is a segment of the Trinity River, where the department is concerned that excessive harvest of older (larger) alligator gar will result in negative population impacts and therefore has imposed a maximum length limit of 48 inches. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rule would not help alligator gar. The department disagrees with the comment and responds that the rule will protect older and larger alligator in a segment of the Trinity River, ensuring that sexually mature fish remain in the population. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there is no evidence that protecting larger gar will help the population. The department disagrees with the comment and responds that the literature is rife with examples proving that for any species the protection of age classes with the highest reproductive potential is an effective management strategy, all other things being equal. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a maximum length limit of 36 inches for alligator gar. Another commenter stated that there should be a maximum length limit of 48 inches. The department disagrees with the comment and responds that the data indicate that some harvest of larger sized alligator gar is appropriate and can be accomplished without negative impacts to the resource. No changes were made as a result of the comments.

Five commenters opposed adoption and stated that the 48-inch maximum length limit for alligator gar was ridiculous, crazy, or stupid. The department disagrees with the comment and responds that the 48-inch minimum length limit is a biologically defensible size restriction and a rational response to concerns over alligator gar populations in the Trinity River. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the daily bag limit should be the same for the take of alligator gar by pole and line as it is for take by archery equipment. The department agrees with the comments and responds that as proposed there was no change to the daily bag limit, irrespective of means of take. No changes were made as a result of the comments.

Twenty-three commenters opposed adoption and stated that instead of a drawing for permits to harvest alligator gar over 48 inches there should be a license tag for a trophy gar. An ad-

ditional eight commenters stated that there should also be the opportunity to purchase a bonus tag. The department disagrees with the comments and responds that at the current time, space on the license is at a premium and altering license dimensions and content are both unpopular and costly. No changes were made as a result of the comments.

Eighteen commenters opposed adoption and stated that harvest rules for bowfishing should be the same as those for other lawful means. The department agrees that certain aspects, such as the daily bag limit and the minimum length limit, should be the same for all anglers, irrespective of means of take. However, because some means of take are immediately lethal, offering no opportunity for the release of fish that it is unlawful to retain, the department reasons that at that point, an angler has permanently and without doubt removed that individual from the population and has reached the daily bag limit, whereas a pole and line angler has the opportunity to release fish that have been caught and by virtue of not retaining the fish is able to continue fishing. No changes were made as a result of the comments.

One commenter opposed adoption and stated that it should be lawful to take alligator gar of any age. The department disagrees with the comment and responds that because of their infrequent spawning and late sexual maturity, it is prudent to protect older age classes of alligator gar. No changes were made as a result of the comment.

One commenter opposed adoption and stated that people should be allowed to take alligator gar. The department agrees with the comment. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that it is their right to take any fish and that the department's rules infringe on their freedom and liberty. The department disagrees with the comment and responds that rules were adopted in compliance with all applicable laws and do not violate any provision of the state or federal constitutions. No changes were made as a result of the comments.

Eight commenters opposed adoption and stated, variously, that the mandatory harvest reporting requirement is government overreach, forced servitude, will not result in good data, will be undermined by selective reporting, underreporting, false reporting, and non-reporting, and should be voluntary. The department disagrees with the comments and responds that mandatory harvest reporting is one of the most effective methods of characterizing resource utilization impacts, that it is completely within the statutory powers granted to the agency by the legislature under Parks and Wildlife Code, Chapter 61 (among which is the authority to regulate the possession of wildlife resources), and that the department's experience with mandatory reporting requirements for other wildlife resources indicate that non-compliance and fraud are not significant factors. No changes were made as a result of the comments.

Three commenters opposed adoption and stated, respectively, that opportunity provided under a drawing system would create a black market for alligator gar tags, be an invasion of privacy, and won't be random. The department disagrees with the comments and responds that the drawing system is designed to provide opportunity only to the person named on the permit and the use of a permit by anyone else is a criminal offense. The department also responds that participation in the drawing system cannot be an invasion of privacy because participation is strictly voluntary and the department seeks no other interaction with or use

of a participant's personal information other than for purposes of identification in the narrow context of awarding angling opportunity. The department further notes that all drawings conducted by the department are by means of computer algorithms written to produce randomized outputs. No changes were made as a result of the comments.

One commenter opposed adoption and stated that a public drawing was unfair because it allows only one person to fish. The department disagrees with the comment and responds that the commenter perhaps misunderstood the proposal; the department intends to provide 150 opportunities via the drawing system next year, and anticipates a similar volume of opportunity annually moving forward. No changes were made as a result of the comment.

One commenter opposed adoption and stated that if there was going to be a drawing for alligator gar opportunity there should be drawings for all other fishing opportunity. The department disagrees with the comment and responds that the drawing for alligator gar opportunity is part of department efforts to protect older alligator gar in a specific river segment, which is not necessary for other species on other water bodies, where bag, possession, and length limits are sufficient. No changes were made as a result of the comment.

Six commenters opposed adoption and stated that restricting harvest to younger age classes is unwise because it means fewer fish will reach maturity. The department disagrees with the comments and responds that because alligator are long-lived and reach sexual maturity relatively late in the life cycle, the survival of large numbers of fish is not crucial to population stability and the harvest of individuals in younger age classes is not problematic unless it occurs at a scale that prevents sufficient numbers of fish from reaching sexual maturity. No changes were made as a result of the comment.

Three commenters opposed adoption and stated the rules were either a "money grab" or a misuse of tax dollars. The department disagrees with the comments and responds that the rule as adopted has no fiscal implications for the agency and that the fisheries management activities of the department are funded not by taxes but by revenue from the sale of fishing licenses, the purchase of which is purely voluntary. No changes were made as a result of the comments.

One commenter opposed adoption and stated the department was engaging in "dictatorial tactics." To the extent that resource management often takes the form of prescriptions supported by force of law, the department agrees with the comment, but to the extent that the commenter intends to accuse the department of devious, nefarious, or underhanded motives, the department disagrees with the comment and responds that the rules as adopted are intended solely as instruments of responsible biological management. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules were "a direct attack on a legal means." The department disagrees with the comment and responds that the commission possesses the explicit statutory to regulate the means and methods of taking game and nongame fish; therefore, any modification of rules governing means and methods cannot, by definition, be an attack, but rather is an exercise of the agency's statutory authority. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should regulate for utilization, not trophies. The depart-

ment agrees with the comment. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules will result in an overpopulation of alligator gar and the decimation of game fishes. The department disagrees with the comment and responds that the rules are intended to affect age structure and are not anticipated to significantly impact the overall population of alligator gar. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the rules "criminalize mere possession," place anglers in legal jeopardy for fish taken during the day but possessed after dark, or make criminals out of law abiding citizens. The department disagrees with the comment and responds that the rules criminalize only the unlawful take of alligator gar and the possession of unlawfully taken alligator gar. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules are unnecessary, capricious, and punitive. The department disagrees with the comment and responds that the rules are biologically consistent with accepted principles of fisheries management, were promulgated for the specific reason of protecting alligator gar, and are not intended to punish any person. No changes were made as a result of the comment.

Four commenters opposed adoption and stated that steel leaders and treble hooks should be unlawful for take of alligator gar and pole and line anglers should be required to use circle hooks when fishing for alligator gar. The department disagrees with the comments and responds that steel leaders and treble hooks are not believed to be significant contributors to mortality in alligator gar populations; however, the department is embarking on research to make a definitive determination. If the department determines that additional gear restrictions are necessary, the department will engage in rulemaking to that effect. No changes were made as a result of the comments.

One commenter opposed adoption and stated that research by a specific scientist showed that removal of mid-sized alligator gar is harmful. The department agrees with the comment and responds that it is aware of the research cited and that excessive mortality is harmful; however, the rules as adopted are not expected to result in harvest levels anywhere near a value that would threaten age structure or general population health. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules would harm low-income populations. The department disagrees with the comment and responds that the rules do not create or impose any economic barriers to participation in the fishery. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules were a violation of the "humans-first policy of the state." The department disagrees with the comment and responds that the policy referred to does not exist and that the department's statutory duty is to manage wildlife resources for enjoyment by the public. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules will cause people to violate the law. The department disagrees with the comment and responds that person who intentionally chooses to violate the law consciously understands and accepts the risk of detection, prosecution, and conviction for that behavior, but also demonstrates disregard for the health of the

resource and contempt for their fellow citizens. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be no restrictions on private waters. The department agrees with the comment. No changes were made as a result of the comment.

Six commenters opposed adoption and stated either that there should be no size limits for alligator gar or that alligator should not be regulated at all. The department disagrees with the comment and responds that alligator gar are an important component of freshwater ecosystems and should be managed by the application of appropriate harvest strategies, including size and possession limits. No changes were made as a result of the comments.

One commenter opposed adoption and stated that there should be no regulations governing any fish. The department disagrees with the comment and responds that the department has a statutory obligation to protect and conserve fisheries resources. The department also notes that failure to regulate typically results in undesirable outcomes. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a season for pole-and-line angling for alligator gar. The department agrees with the comment and responds that there is a season for pole-and-line angling for alligator gar from September 1 of one year to August 31 of the immediately following year. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that there should be a slot limit for alligator gar. The department disagrees with the comment and responds that the purpose of a slot limit is to protect certain size classes of fish to allow younger age classes to reach larger size. In the case of alligator gar, the management goal is to protect older age classes, which means that a slot limit would not be effective. No changes were made as a result of the comment.

One commenter opposed adoption and stated that bowfishing should not be legal. The department disagrees with the comment and responds that the take of nongame fish by lawful archery equipment and crossbows under appropriate regulations is not detrimental to populations or systems. No changes were made as a result of the comment.

One commenter opposed adoption and stated that alligator gar rules should be statewide because otherwise angling pressure will shift to other systems with deleterious effects. The department disagrees with the comment and responds that all systems are different and management approaches can and should be tailored where necessary to accommodate those differences. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules would prevent youth from being able to harvest a trophy gar. The department disagrees with the comment and responds that no part of the rules as adopted function to deprive anyone of harvest opportunity on the basis of age. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules should not be statewide because fish populations are different in different ecosystems. The department agrees with the comment. No changes were made as a result of the comment.

The department received 366 comments supporting adoption of the proposed provision.

The department received 684 comments opposing adoption of the proposed amendment to §57.981 regarding spotted seatrout harvest regulations. Of the 684 comments, 334 provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Forty-seven commenters opposed adoption and stated that if the department believes the seatrout population is stable there is therefore no reason or justification for reducing the bag limit for the upper coast. The department disagrees with the comments and responds that a stable population is not necessarily a sustainable population. The department has been concerned for over a decade about long-term trends in seatrout stock assessments and recent surveys indicate that most anglers are not taking the current daily bag limit of ten fish. When considered in the context of steadily increasing fishing pressure, the reduction in the daily bag limits for the upper coast is prudent in order to prevent overfishing. No changes were made as a result of the comments.

Thirty-three commenters opposed adoption and stated that the daily bag and size limits should be different from those proposed. The commenters stated, variously, that "the minimum size limit should be increased," that the minimum size limit should be 12 inches with a 20-inch maximum size limit; that there should be a 12-inch minimum, a 14-inch minimum, a 16-inch minimum, a slot limit, no minimum length limit, no maximum length limit, a limit of one fish of greater than 2 inches per day, a limit of one fish of greater than 25 inches per day, and a limit of one fish of greater than 25 inches per day with the option of purchasing a bonus tag. The department disagrees with the comments and responds that the bag and size limits as adopted represent the intersection of appropriate biological management and recreational opportunity. The rules as adopted allow for limited recreational enjoyment of desirable fish while protecting sufficient spawning biomass to provide for long-term sustainability. No changes were made as a result of the comments.

Twenty-four commenters opposed adoption and stated that the five-fish daily bag limit would make it cost-prohibitive to go fishing for spotted seatrout. The department disagrees with the comments and responds that harvest regulations cannot be based solely on the cost-benefit motivations of individual anglers. The department also notes that there are many species of fish other than speckled seatrout that offer similar benefits and enjoyment to anglers. No changes were made as a result of the comments.

Twenty-three commenters opposed adoption and stated in some form or fashion that harvest regulations should be more restrictive for anglers participating in guided fishing activities because guided fishing parties harvest substantially more fish than individual recreational anglers and guides undertake more fishing trips per day than recreational anglers. Comments included making the five-fish limit applicable only to guided fishing activities, placing a cap on the total daily harvest of fish by anglers being guided by any given guide, prohibiting guides from catching or retaining fish while acting as a guide, and establishing bag limits for guided parties by bay system. The department disagrees with the comments and responds that department data indicate that spotted seatrout harvest by anglers in guided fishing parties is a very small percentage of the total harvest and guides are already prohibited from retaining bag limits when leading a guided fishing trip; therefore, the department does not believe it is appropriate to stratify harvest regulations on the basis of whether an angler is employing a guide. No changes were made as a result of the comments.

Twenty-seven commenters opposed adoption and stated that the effect of the rules will be to drive Texas residents to purchase Louisiana licenses and launch from that state, where there are more liberal bag and size limits. Commenters stated concerns about reduced revenue to the department, depression of economic activity associated with angling in Texas, and increased angling pressure on stocks. The department disagrees with the comment and responds that by statute the department is charged with protecting and conserving fisheries resources, a duty that takes precedence over other considerations. With respect to spotted seatrout, the department believes that although nothing prevents any Texas resident from obtaining a Louisiana fishing license and fishing in boundary waters, the likelihood that significant numbers of Texas residents will choose to do so simply to pursue spotted seatrout is minimal, and that the consequences of such choices are acceptable in light of the department's statutory duty. The department also notes that it will continue to monitor seatrout populations and make management decisions as appropriate. No changes were made as a result of the comments.

Nineteen commenters opposed adoption and stated, in so many words, that the spotted seatrout population is large, robust, and growing, making the rules unnecessary. The department disagrees with the comments and responds that department data indicate a stable population that is not growing, but because fishing pressure remains high and is expected to increase, a reduction in the bag limit is indicated in order to provide continued stability. No changes were made as a result of the comments.

Sixteen commenters opposed adoption and stated that the department's data doesn't support the rules as adopted. The department disagrees with the comments and responds that the management strategy reflected in the rules is scientifically consistent with accepted fisheries management practices, given the department's fishery dependent and fishery independent datasets. No changes were made as a result of the comments.

Fifteen commenters opposed adoption and stated that the rules favored guides. The department disagrees with the comments and responds that the rules are intended to protect spotted seatrout populations and all anglers are affected equally, including anglers who pay for guided fishing opportunities. No changes were made as a result of the comments.

Fourteen commenters opposed adoption and stated that because department survey data shows that few anglers harvest more than five seatrout per day there is no need for a daily bag limit reduction. The department disagrees with the comments and responds that while populations are stable and the long-term trend in angling pressure is upward (not to mention unfavorable environmental factors), the ingredients for potential overfishing are in place. Therefore, the department believes it is prudent to reduce the daily bag limit to protect the fishery. No changes were made as a result of the comments.

Thirteen commenters opposed adoption and stated that the department should not regulate on the basis of public opinion, emotion, or convenience. The department agrees with the comments and responds that the rules as adopted are based on scientifically valid data and established tenets of fisheries management and are not the result of opinion (personal or public), emotion, or convenience. No changes were made as a result of the comments.

Thirteen commenters opposed adoption and stated that the use of croaker as bait should be regulated. Commenters stated that

there should be a size limit on croaker, that croaker should be made a gamefish, and that the use of croaker should be prohibited. The department disagrees with the comment and responds that although there is a widespread belief that the use of croaker as bait provides some sort of advantage to anglers, there is no evidence that croaker are more effective than artificial baits or other live baits in catching spotted seatrout. The department also notes that because harvest is controlled by daily bag limits, the type of bait is irrelevant. No changes were made as a result of the comments.

Twelve commenters opposed adoption and stated that either that the rule makes it difficult to feed a family or should be altered to allow people to feed a family. The department disagrees with the comments and responds that the fisheries resources of the state are finite while harvest pressure and environmental limitations are growing; therefore, it is unrealistic to expect subsistence exploitation to be viable now or in the future. No changes were made as a result of the comments.

Twelve commenters opposed adoption and stated that freshwater inflows are to blame for population problems, not anglers. The department disagrees that freshwater inflows are the only factor affecting the distribution of spotted seatrout; loss of nursery habitat combined with increasing harvest pressure place additional stresses on these populations and are expected to continue. The reduction in the daily bag limit is designed to help mitigate for these impacts while still allowing reasonable harvest opportunities for anglers. No changes were made as a result of the comments.

Seven commenters opposed adoption and stated that the rules will cause people to "cull" fish, that is, discarding smaller fish as larger fish are caught. The department disagrees with the comment and responds that in addition to being unethical, fish culling is illegal. The department believes that most anglers are ethical and law abiding, and any culling that occurs will be at a level that does not contribute significantly to overall mortality. No changes were made as a result of the comments.

Five commenters opposed adoption and stated that rules should contain a "sunset" provision. The department disagrees with the comment and responds that because it is commission policy to provide the most liberal harvest rules possible within the tenets of sound biological management, sunset provisions are unnecessary. If circumstances change and warrant an increase in the daily bag limit, the department will alter the harvest rules accordingly. No changes were made as a result of the comment.

Five commenters opposed adoption and stated that the rules will cause people to stop fishing, resulting in revenue shortages for the department. The department disagrees with the comments and responds the likelihood that a daily bag limit change for one species will cause a significant enough number of people to cease purchasing licenses is low. No changes were made as a result of the comments.

Four commenters opposed adoption and stated that changing the rule to establish a single bag limit for the entire coast is not a good justification for the rule. The department agrees that regulatory consistency should not be the sole reason for the amendment but disagrees that regulatory consistency is the primary driver. The rule is intended to protect spotted seatrout stocks and the regulatory consistency it also introduces is a subsidiary benefit. No changes were made as a result of the rule.

Four commenters opposed adoption and stated that commercial harvest should be regulated instead of recreational harvest. The

department agrees with the comment and responds that commercial harvest of spotted seatrout is already prohibited. No changes were made as a result of the comment.

Four commenters opposed adoption and referenced Louisiana harvest regulations. The commenters stated that Texas regulations are useless so long as the current Louisiana rules are in effect, that the harvest rules in Texas and Louisiana should be the same, and that Louisiana is "the problem." The department disagrees with the comments and responds that the department has regulatory responsibility and authority only in Texas waters and exercises that authority in response to the biological reality in Texas waters, irrespective of contributing factors. Although the department works closely with Louisiana counterparts, in the final analysis the department is only able to manage resources in Texas, and in cases of divergent opinion will always choose to protect Texas resources. No changes were made as a result of the comment.

Four commenters opposed adoption and stated that the department's human dimensions survey, gill net survey, and creel survey methodology is flawed. The department disagrees with the comments and responds that the survey design utilized recognized and tested methodologies for human-dimension surveys. Utilizing 2017 recreational creel survey data, the department looked at fishing trips ending in Galveston Bay and Sabine Lake where anglers indicated they were targeting spotted seatrout or trips where spotted seatrout were retained. Analyzing the county of residence for these anglers the department found that over 90% of these anglers resided in these 14 counties (12 coastal counties and the two Dallas-Ft. Worth metroplex counties). However, the survey results were not the only information used in making the final decision to lower the daily bag limit for spotted seatrout. Increasing harvest pressure, habitat impacts and loss within the managed areas, standardization of regulations to minimize confusion among Texas anglers, public comments and enforceability were also taken into consideration. With respect to gill net and creel surveys, the department agrees that gill net survey data indicates spotted seatrout populations in these areas are currently stable but disagree that fresh water inflows is the only factor affecting the distribution of spotted seatrout. Loss of nursery habitat and expected increases in harvest pressure are placing additional stresses on these populations and are expected to continue. The reduction in the daily bag limit is designed to help mitigate for these impacts while still allowing reasonable harvest opportunities for anglers. No changes were made as a result of this comment.

Three commenters opposed adoption and stated that the rules favor trophy anglers. The department disagrees with the comments and responds that the rules are intended to protect spotted seatrout populations and all anglers are affected equally. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that the daily bag limit for spotted seatrout should be ten, coastwide. The department disagrees with the comments and responds that concerns about the spotted seatrout population have caused the department to reduce daily bag limits for spotted seatrout along the entirety of the coast in order protect populations. Reverting to the ten-fish daily bag limit would exacerbate and accelerate long-term population trends and result in undesirable impacts to the fishery. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the rules will hurt guides. The department disagrees with the comments and

responds that the rules regulate harvest by individual persons, not harvest by guides. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the rules will cause spotted seatrout to overpopulate and consume all available baitfish, leading to the crash of other populations. The department disagrees with the comments and responds that the scenario presented is a biological impossibility. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the daily bag limit should remain at ten for wade anglers. The department disagrees with the comment and responds that there is no reason to create a differential bag limit based on whether or not a boat is used, because there is no evidence that take from shore is inconsequential. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules were intended to increase the number of citations issued by the department. The department disagrees with the comment and responds that the department anticipates anglers will comply with the law, making it unnecessary to issue citations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that catch-and-release anglers disproportionately contribute to mortality. The department disagrees with the comment and responds not only that studies show release mortality is generally low for spotted seatrout but that it is illegal to retain undersize fish, leaving no choice but release. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules would hurt boat sales. The department disagrees with the comment and responds that it is unlikely that a bag limit reduction for one species of fish will affect boat sales. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department's angler survey effort didn't include much of Houston. The department agrees with the comment but disagrees that it is necessary to survey any of Houston. The angler survey was aimed at people who fish for spotted seatrout on the upper coast, which would include persons living in Houston and its environs. No changes were made as a result of the comment.

One commenter opposed adoption and stated a God-given right to a 10-fish daily bag limit. The department disagrees with the comment and responds that the Parks and Wildlife Code, Chapter 61, authorizes the commission to establish harvest limits for indigenous fish species. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the problem is people exceeding the bag limit and retaining undersized fish. The department disagrees with the comment and responds that in order to be detected at population scale, bag limit and size violations would have to be occurring at a massive level, which department contact and citation data indicate is not occurring. No changes were made as a result of the comment.

One commenter opposed adoption and stated that according to the department's own data, the rule will cause the average size of a spotted seatrout to decline by 2 inches. The department disagrees with the comment and responds that under current harvest pressure, any reduction in harvest levels leaves more fish in the water, which increases the probability that they will

grow to a larger size. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules will hurt the economy and cause layoffs. The department disagrees with the comment and responds that notwithstanding the fact that the rules do not directly regulate any entity other than recreational anglers, the result of the bag limit itself will be undetectable at the micro or macro levels of the economy. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should increase stocking efforts instead of decreasing bag limits. The department disagrees with the comment and responds that stocking, in addition to being undependable in terms of absolutely providing significant numbers of legal sized fish, is less cost-effective and not as preferable as traditional fisheries management strategies. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules will cause high mortality in undersized fish that are caught and then released. The department disagrees with the comment and responds that mortality in released spotted seatrout is low, when done correctly, and the department does not believe that hooking mortality is a significant contributor to population dynamics under the current rules and will not be a significant factor under the rules as adopted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules are government overreach. The department disagrees with the comment and responds that under the Parks and Wildlife Code, Chapter 61, the department has an affirmative duty to manage and conserve fisheries resources and believes that the rule as adopted is necessary to ensure the continued health of spotted seatrout populations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that shrimp by-catch is responsible for population declines. The department disagrees with the comment and responds that over 66% of inshore bay and bait shrimp licenses have been permanently retired and shrimping effort is at all-time lows. No changes were made as a result of the comment.

One commenter opposed adoption and stated that if the bag limit is reduced, the price of a fishing license should be reduced. The department disagrees with the comment and responds that the cost of a fishing license is not related to or dependent upon abundance or scarcity of any particular species. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule is socialism. The department disagrees with the comment and responds that the rule is a duly and lawfully promulgated fisheries management mechanism. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule is unfair to occasional anglers. The department disagrees with the comment and responds that the frequency of angling effort by any particular person is irrelevant because angling pressure is an aggregate value. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should be closed during the winter. The department disagrees with the comment and responds that the department strives

to provide maximum fishing opportunities for all anglers and these rules allow for year-round fishing opportunity for spotted seatrout. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit should be based on how far an angler has traveled to go fishing. The department disagrees with the comment and responds that convenience is not an appropriate parameter for fisheries management. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule punishes anglers who travel long distances. The department disagrees with the comment and responds that rules are not punitive and apply equally to all segments of the angling public. No changes were made as a result of the comment.

One commenter opposed adoption and stated that department gill net surveys are decimating the resource. The department disagrees with the comment and responds that gill net surveys remove an extremely small percentage of fish from the population. No changes were made as a result of the comment.

One commenter opposed adoption and stated that self-regulation and voluntary efforts are always better than government regulation. The department disagrees with the comment and responds that the literature overwhelmingly shows that failure to responsibly regulate exploitive behaviors with respect to public resources inevitably leads to resource degradation and extirpation. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are too many rules. The department disagrees with the comment and responds that rules are necessary to prevent abuse of the resource. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule should require the retention of every fish caught up to a limit of ten per day. The department disagrees with the comment and responds that eliminating the option to release undersize fish while retaining a ten-fish bag limit would cause overharvest of young fish and prevent age cohorts from reaching prime reproductive potential. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the daily bag limit should be five in winter and early spring but ten at all other times. The department disagrees with the comment and responds that the biological value of creating a differential bag limit is not substantive enough to justify the accompanying regulatory complexity. No changes were made as a result of the comment.

The department received 1,983 comments supporting adoption of the proposed provision.

The department received 363 comments opposing adoption of the proposed amendment to §57.981 regarding sharks. Of the 363 comments, 67 provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Nineteen commenters opposed adoption of the provision of the rule requiring non-offset, non-stainless-steel circle hooks to be used when taking sharks with natural bait. The commenters cited ease of removal and attendant reduction in hooking damage of J-hooks and offset circle hooks, asserted that non-offset hooks won't reduce shark mortality or gut-hooking, that the rule would make it harder to catch sharks, that circle hooks are harder to use, and that J-hooks cause less mortality than circle hooks. The department disagrees with the comments and re-



sponds that although the primary purpose of the rule is to prevent confusion and possible enforcement and compliance issues by having rules for shark harvest in Texas waters mirror those for shark harvest in federal waters, there is biological evidence to support the restrictions imposed by the rule and the department believes that any inconvenience to anglers is worth the benefits stemming from the rule. No changes were made as a result of the comments.

Fourteen commenters opposed adoption and stated some sort of trepidation regarding legal liability for incidental take of sharks in violation of the rule. The department disagrees with the comment and responds that sharks taken on hooks other non-offset, not stainless-steel hooks while using natural bait can be taken but not possessed; therefore, if sharks taken under such circumstances are released, there is no violation. No changes were made as a result of the comments.

Thirteen commenters opposed adoption and stated that the rules penalize or discriminate against shore anglers. The department disagrees with the comments and responds that the rules apply equally to all anglers and there is no evidence to suggest that there are impacts that justify treating shore angling differently than boat angling. No changes were made as a result of the comments.

Eight commenters opposed adoption and stated in some form or fashion that shark populations are robust, increasing, overabundant or in some other way too numerous to justify the rule. The department disagrees with the comment and responds that scientific data prove that populations of dusky sharks are declining across its range due to overfishing and high bycatch mortality on multi-species gear. On that basis the department believes that the rules are appropriate. No changes were made as a result of the comments.

Four commenters opposed adoption and stated the department has no data or faulty data regarding hooking mortality. The department disagrees with the comment and responds that a number of studies have concluded that circle hooks cause less mortality than other types of hooks. No changes were made as a result of the comments.

Four commenters opposed adoption and stated that stainless steel hooks should be prohibited. The department disagrees with the comments and responds that in instances in which stainless steel hooks are known to cause problems for species of concern, such as dusky sharks, it is necessary to prohibit their use with natural bait (because artificial lures and flies rarely result in gut-hooking). No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the rules constituted overregulation. The department disagrees with the comments and responds that the rules as adopted are biologically defensible as a protective measure for dusky sharks. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rule would hurt hook manufacturers. The department disagrees with the comment and responds that the rule does not prohibit hooks, it specifies a certain hook type to be used in conjunction with natural bait; therefore, a hook of some type must be used, which means there is no impact to hook manufacturers. No change was made as a result of the comment.

One commenter opposed adoption and stated that there should be no limit on sharks. The department disagrees with the com-

ment and responds that sharks are important components of marine ecosystems and to allow unlimited take would be irresponsible. No changes were made as a result of the comment.

One commenter opposed adoption and stated that recreational fishing in Texas waters does not impact shark populations, irrespective of hook type. The department disagrees with the comment and responds that dusky sharks are in decline across their range and all harvest is problematic; therefore, rules are required to diminish incidental harvest. No changes were made as a result of the comment.

The department received 1,360 comments supporting adoption of the proposed provision.

The department received 338 comments opposing adoption of the proposed amendment to §57.981 regarding harvest regulations for cobia. Of the 338 comments, 74 provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Thirteen commenters opposed adoption and stated that no action should be taken until the 2019 stock assessment has been completed. The department disagrees with the comments and responds that the rule is intended to create regulatory consistency with federal harvest regulations and not as a population management device. No changes were made as a result of the comments.

Eleven commenters opposed adoption and stated that the rule would make it very difficult or impossible to catch cobia. The department disagrees with the comments and responds that there is no evidence to suggest that the rule will result in complete or near-complete futility for anglers seeking to catch cobia, and that cobia can be caught under the gear restrictions implemented by the rule. No changes were made as a result of the comments.

Five commenters opposed adoption and stated that commercial harvest of cobia should be prohibited. The department disagrees with the comments and responds that cobia are a game fish and therefore there is no commercial harvest allowed. No changes were made as a result of the comments.

Five commenters opposed adoption and stated that the cobia population is plentiful and increasing. The department disagrees with the comments and responds that the rule is not intended as a response to population issues. No changes were made as a result of the comments.

Four commenters opposed adoption and stated that the rules should apply to commercial anglers but not recreational anglers. The department disagrees with the comments and responds that cobia are a game fish and therefore there is no commercial harvest allowed. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that the rule will result in increased mortality of undersized fish. The department disagrees with the comment and responds that capture myopathy resulting in mortality is expected to be identical to that occurring under the current size limits. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that the rule should not be based on perception. The department agrees with the comments. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that a slot limit should be imposed. The department disagrees with the com-

ment and responds that imposition of a slot limit would frustrate the goal of the rule, which is to create consistency with federal regulations. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the rules were an attack on recreational anglers. The department disagrees with the comments and responds that the intent of the rules is not to attack anyone but to eliminate differential harvest regulations to enhance compliance and enforcement. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the rules constitute overregulation. The department disagrees with the comments and responds that the rules are reasonable and not burdensome. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that overall length should be the standard. The department disagrees with the comment and responds that creating a new standard for measurement would be problematic from a data collection and analysis perspective. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that harvest regulations should be based on science, not consistency with federal regulations. The department disagrees with the comments and responds that the rule does not conflict with science. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that commercial fishing should be stopped until the stock recovers. The department disagrees with the comment and responds that cobia stock do not need to recover. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the bag limit should be decreased rather than increase the length limit because hook removal is difficult on larger fish. The department disagrees with the comment and responds that the intent of the rule is to provide harvest regulations that are consistent with federal regulations and that hook retrieval is not believed to be made more or less difficult by the three-inch increase in minimum size. No changes were made as a result of the comment.

One commenter opposed adoption and stated that data is unreliable because cobia migrate. The department disagrees with the comment and responds that data on cobia is very reliable and not dependent on migratory behavior. No changes were made as a result of the comment.

One commenter opposed adoption and stated that not enough cobia are landed to be an issue. The department disagrees with the comment and responds that the rule is intended to address issues of regulatory complexity and is not related to landings. No changes were made as a result of the comment.

One person opposed adoption and stated that the daily bag limit should be one cobia of any size. The department disagrees with the comment and responds that allowing one cobia of any size to be retained would confound the purpose of the rulemaking, which is to make state harvest regulations consistent with federal harvest regulations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the daily bag limit should be lower. The department disagrees with the comment and responds that lowering the bag limit in state waters

would confound the purpose of the rulemaking, which is to make state harvest regulations consistent with federal harvest regulations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that overfishing by commercial anglers should be stopped. The department agrees with the comment. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should use real science and not empirical suggestions. The department agrees with the comment. No changes were made as a result of the comment.

One commenter opposed adoption and stated that confusion will still exist because the federal and state measurements of length are different. The department agrees that federal and state measurement systems are slightly different; however, with few exceptions a legal fish in federal waters is also legal in state waters. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the size limit should remain the same but the season should be shortened. The department disagrees with the comment and responds that because it is lawful to catch cobia year-round, the season is continuous. The department does not believe that anglers would prefer the imposition of a harvest regime that would make cobia unlawful to take during certain times of the year. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a bonus tag for cobia of greater than 36 inches. The department disagrees with the comment and responds that not only is there no reason to create a bonus tag for cobia (stocks are healthy and the rule is intended to establish regulatory consistency with federal harvest regulations), the current license real estate makes it impossible to create a bonus tag. No changes were made as a result of the comment.

One commenter opposed adoption and stated that it is dangerous to bring a large fish on board without being able to gaff it because of uncertainty as to size. The department disagrees that a difference of two inches in length makes any fish more dangerous to handle when bringing aboard, but agrees that fishing in open water is inherently dangerous and should be done with care. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule is intended to favor commercial anglers. The department disagrees with the comment and responds that the only considerations were the health of the resource and consistency with federal regulations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that instead of an individual limit there should be a boat limit. The department disagrees with the comment and responds that harvest regulations are developed around the concept of individual angling effort, including that of commercial harvesters. No changes were made as a result of the comment.

One commenter opposed adoption and stated that state and federal regulations should be the same. The department agrees with the comment. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the commercial limits should be changed to reflect the proportionality of commercial impact on the population. The department disagrees with the comment and responds that harvest regulations are

developed on the concept of individual angling effort, which includes commercial harvest under bag limits. No changes were made as a result of the comment.

One commenter opposed adoption and stated that cobia should be a game fish. The department disagrees with the comment and responds that cobia are already listed as a gamefish in state waters and cannot be commercially harvested. The rulemaking is designed to make state harvest regulations consistent with federal harvest regulations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that federal and state measurement systems should be the same. The department disagrees with the comment and responds that it is unlikely that the federal or state management agencies will alter current measurement methodologies, since doing so would produce inconsistencies with historical datasets. No changes were made as a result of the comment.

The department received 1,398 comments supporting adoption of the proposed provision.

## DIVISION 1. GENERAL PROVISIONS

### 31 TAC §57.972

The amendment is adopted under the authority of Parks and Wildlife Code, §11.0272, which authorizes the department to conduct public drawings to select applicants for public fishing or other special events privileges, and under Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess aquatic animal life in this state; the means, methods, and places in which it is lawful to take, or possess aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the aquatic animal life authorized to be taken or possessed; and the region, county, area, body of water, or portion of a county where aquatic animal life may be taken or possessed.

#### §57.972. *General Rules.*

(a) There are no public waters closed to the taking and retaining of fish, except as provided in this subchapter.

(b) Game fish may be taken only by pole and line, except as provided in this subchapter.

(c) The bag and possession limits set forth in this subchapter do not apply to the possession or landing of fish lawfully raised under an offshore aquaculture permit issued under Subchapter C of this chapter (relating to Introduction of Fish, Shellfish, and Aquatic Plants).

(d) Fish caught in federal waters in compliance with a federal fishery management plan may be landed in Texas.

(e) In Brewster, Crane, Crockett, Culberson, Ector, El Paso, Jeff Davis, Hudspeth, Kinney, Loving, Pecos, Presidio, Reeves, Terrell, Upton, Val Verde, Ward, and Winkler counties, the only fishes that may be used or possessed for bait while fishing are common carp, fathead minnows, gizzard and threadfin shad, sunfish (*Lepomis*), goldfish, golden shiners, Mexican tetra, Rio Grande cichlid, and silversides (*Atherinidae* family).

(f) There is no open season on porpoises, dolphins (mammals), whales, or sawfishes (*Pristis pectinata* and *P. pristis*).

(g) It is unlawful:

(1) for any person to take or attempt to take fish by any means, or at any time or place, other than as permitted under this subchapter;

(2) for any person to possess fish within a protected length limit or in greater numbers than as permitted under this subchapter;

(3) for any person, while fishing on or in public waters, to have in possession fish in excess of the daily bag limit or fish within a protected length limit as established for those waters;

(4) for any person to land by boat or person any fish within a protected length limit, or in excess of the daily bag limit or possession limit established for those fish;

(5) for any person to use game fish or any part thereof as bait, except for processed catfish heads used as crab-trap bait by a licensed crab fisherman, provided the catfish is obtained from an aquaculture facility permitted to operate in the United States. A person who uses catfish as bait under this paragraph shall, upon the request of a department employee acting within the scope of official duties, furnish appropriate authenticating documentation, such as a bill of sale or receipt, to prove that the catfish was obtained from a legal source;

(6) for any person to:

(A) possess a finfish of any species, except broadbill swordfish, shark or king mackerel, taken from public water (salt water or fresh water) that has the head removed unless the fish has been:

(i) finally processed and delivered to a final destination or to a certified wholesale or retail dealer; or

(ii) finally landed on the mainland, a peninsula, or barrier island not including jetties or piers and is not transported afterwards by boat; or

(B) possess a finfish of any species taken from coastal water, except broadbill swordfish or king mackerel, that has the tail removed unless the fish has been:

(i) finally processed and delivered to a final destination or to a certified wholesale or retail dealer; or

(ii) has been finally landed on the mainland, a peninsula, or barrier island not including jetties or piers and is not transported afterwards by boat.

(7) for any person to use any vessel to harry, herd, or drive fish including but not limited to operating any vessel in a repeated circular course, for the purpose of or resulting in the concentration of fish for the purpose of taking or attempting to take fish;

(8) for any person to release into the public waters of this state a fish with a device or substance implanted or attached that is designed, constructed or adapted to produce an audible, visual, or electronic signal used to monitor, track, follow, or in any manner aid in the location of the released fish;

(9) for any person to knowingly take, kill, or disturb sea turtles or sea turtle eggs in or from the waters of the State of Texas;

(10) for any person to knowingly take or possess a diamondback terrapin (*Malaclemys terrapin*) or their eggs unless the person is authorized to do so under a permit issued under Chapter 69, Subchapter J of this title (relating to Scientific, Educational, and Zoological Permits);

(11) for any person to take or kill shell-bearing mollusks, hermit crabs, starfish, or sea urchins from November 1 through April 30 within the following boundary: the bay and pass sides of South Padre Island from the East end of the north jetty at Brazos Santiago Pass to the West end of West Marisol drive in the town of South Padre Island, out 1,000 yards from the mean high-tide line, and bounded to the south by the centerline of the Brazos Santiago Pass;

(12) for any person to take, kill, or possess more than 15 univalve snails (all species), to include no more than two of each of the following species: lightening whelk, horse conch, Florida fighting conch, pear whelk, banded tulip, and Florida rocksnail; or

(13) for any person to:

(A) purchase or use more finfish (red drum) tags during a license year than the number and type authorized by the commission, excluding duplicate tags issued under Parks and Wildlife Code, §46.006;

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

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

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

(E) catch and retain a finfish required to be tagged and fail to immediately attach and secure a tag, with the day and month of catch cut out, to the finfish at the narrowest part of the finfish tail, just ahead of the tail fin;

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

(G) have in possession both an Exempt Red Drum Tag and a Duplicate Exempt Red Drum Tag issued to the same license holder.

(h) Harvest Log.

(1) The provisions of this subsection apply to any person in possession of a license lawfully purchased by any means other than through an automated point-of-sale system.

(2) A person who takes a red drum in excess of the maximum length limit shall complete, in ink, the harvest log on the back of the hunting or fishing license, as applicable, immediately upon kill, or, in the case of fish, upon retention.

(i) Alternative Licensing System.

(1) The requirements of this title that require the attachment of license tags to wildlife resources do not apply to any person in lawful possession of a license that was sold by the department without tags for red drum. A properly executed wildlife resource document must accompany any red drum in excess of maximum size limits until the provisions of this title and Parks and Wildlife Code governing the possession of the particular wildlife resource cease to apply.

(2) The provisions of this section do not exempt any person from any provision of this subchapter that requires or prescribes the use of a wildlife resource document.

(j) Public Drawing for Alligator Gar.

(1) The department may conduct public drawings for the purpose of providing selected applicants with an opportunity to harvest an alligator gar greater than 48 inches in length on the segment of the Trinity River described in §57.981(d)(1)(L)(ii) of this title (relating to Bag, Possession, and Length Limits).

(2) A drawing under this subsection shall be administered by means of a random and impartial method.

(3) Drawings under this subsection are restricted to persons holding a recreational fishing license valid for fishing in fresh water. A person who holds only a one-day special license, a Lake Texoma

license, a saltwater license, or license issued in another state and valid in Texas is not eligible to participate in a drawing under this section.

(4) An applicant may be selected for a harvest opportunity under this subsection only once between September 1 of one year and August 31 of the following year. A harvest opportunity under this subsection is valid only for the license year in which the drawing was conducted.

(5) Harvest under this subsection may take place at any time using any legal fishing device. An alligator gar taken under this subsection must be reported within 24 hours of harvest via the department's website or mobile application.

(6) Opportunity under this subsection is not transferrable; only persons selected by a drawing under this subsection are authorized to harvest an alligator gar under this subsection.

(7) Drawings held under this subsection shall be subject to determinations made by the department to ensure the sustainability of the alligator gar fishery.

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 August 9, 2019.

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Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Effective date: September 1, 2019

Proposal publication date: February 15, 2019

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



### 31 TAC §57.979

The repeal is adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess aquatic animal life in this state; the means, methods, and places in which it is lawful to take, or possess aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the aquatic animal life authorized to be taken or possessed; and the region, county, area, body of water, or portion of a county where aquatic animal life may be taken or possessed.

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

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Texas Parks and Wildlife Department

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



## DIVISION 2. STATEWIDE RECREATIONAL FISHING PROCLAMATION

### 31 TAC §57.981

The amendment is adopted under the authority of Parks and Wildlife Code, §11.0272, which authorizes the department to conduct public drawings to select applicants for public fishing or other special events privileges, and under Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess aquatic animal life in this state; the means, methods, and places in which it is lawful to take, or possess aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the aquatic animal life authorized to be taken or possessed; and the region, county, area, body of water, or portion of a county where aquatic animal life may be taken or possessed.

#### §57.981. *Bag, Possession, and Length Limits.*

(a) For all wildlife resources taken for personal consumption and for which there is a possession limit, the possession limit shall not apply after the wildlife resource has reached the possessor's residence and is finally processed.

(b) The possession limit does not apply to fish in the possession of or stored by a person who has an invoice or sales ticket showing the name and address of the seller, number of fish by species, date of the sale, and other information required on a sales ticket or invoice.

(c) There are no bag, possession, or length limits on game or non-game fish, except as provided in this subchapter.

(1) Possession limits are twice the daily bag limit on game and non-game fish except as otherwise provided in this subchapter.

(2) For flounder, the possession limit is the daily bag limit.

(3) The bag limit for a guided fishing party is equal to the total number of persons in the boat licensed to fish or otherwise exempt from holding a license minus each fishing guide and fishing guide deck-hand multiplied by the bag limit for each species harvested.

(4) A person may give, leave, receive, or possess any species of legally taken wildlife resource, or a part of the resource, that is required to have a tag or permit attached or is protected by a bag or possession limit, if the wildlife resource is accompanied by a wildlife resource document (WRD) from the person who took the wildlife resource, provided the person is in compliance with all other applicable provisions of this subchapter and the Parks and Wildlife Code. The properly executed WRD document shall accompany the wildlife resource until it reaches the possessor's residence and is finally processed. The WRD must contain the following information:

(A) the name, signature, address, and fishing license number, as required of the person who killed or caught the wildlife resource;

(B) the name of the person receiving the wildlife resource;

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

(D) the location where the wildlife resource was killed or caught (name of ranch; area; lake, bay or stream; and county).

(5) Except as provided in subsection (d) of this section, the statewide daily bag and length limits shall be as follows.

(A) Amberjack, greater.

(i) Daily bag limit: 1.

(ii) Minimum length limit: 38 inches.

(iii) Maximum length limit: No limit.

(B) Bass:

(i) The daily bag limit for largemouth, smallmouth, spotted, Alabama, and Guadalupe is 5, in any combination.

(ii) Alabama, Guadalupe, and spotted.

(i) No minimum length limit.

(II) No maximum length limit.

(iii) Largemouth and smallmouth.

(I) Minimum length limit: 14 inches.

(II) No maximum length limit.

(iv) Striped (including hybrids and subspecies).

(I) Daily bag limit: 5 (in any combination).

(II) Minimum length limit: 18 inches.

(III) No maximum length limit.

(v) White.

(I) Daily bag limit: 25.

(II) Minimum length limit: 10 inches.

(III) No maximum length limit.

(C) Catfish:

(i) channel and blue (including hybrids and subspecies).

(I) Daily bag limit: 25 (in any combination).

(II) Minimum length limit: 12 inches.

(III) No maximum length limit.

(ii) flathead.

(I) Daily bag limit: 5.

(II) Minimum length limit: 18 inches.

(III) No maximum length limit.

(iii) gafftopsail.

(I) No daily bag limit.

(II) Minimum length limit: 14 inches.

(III) No maximum length limit.

(D) Cobia.

(i) Daily bag limit: 2.

(ii) Minimum length limit: 40 inches.

(iii) No maximum length limit.

(E) Crappie, black and white (including hybrids and subspecies).

(i) Daily bag limit: 25.

(ii) Minimum length limit: 10 inches.

(iii) No maximum length limit.

(F) Drum, black.

(i) Daily bag limit: 5.

(ii) Minimum length limit: 14 inches.

(iii) Maximum length limit: 30 inches.

(iv) One black drum over 52 inches may be retained per day as part of the five-fish bag limit.

(G) Drum, red.

(i) Daily bag limit: 3.

(ii) Minimum length limit: 20 inches.

(iii) Maximum length limit: 28 inches.

(iv) During a license year, one red drum over the stated maximum length limit may be retained when affixed with a properly executed Red Drum Tag, a properly executed Exempt Red Drum Tag or with a properly executed Duplicate Exempt Red Drum Tag and one red drum over the stated maximum length limit may be retained when affixed with a properly executed Bonus Red Drum Tag. Any fish retained under authority of a Red Drum Tag, an Exempt Red Drum Tag, a Duplicate Exempt Red Drum Tag, or a Bonus Red Drum Tag may be retained in addition to the daily bag and possession limit as stated in this section.

(H) Flounder: all species (including hybrids and subspecies).

(i) Daily bag limit: 5.

(ii) Minimum length limit: 14 inches.

(iii) No maximum length limit.

(iv) During November, lawful means are restricted to pole-and-line only and the bag and possession limit for flounder is two. For the first 14 days in December, the bag and possession limit is two, and flounder may be taken by any legal means.

(I) Gar, alligator.

(i) Daily bag limit: 1.

(ii) No minimum length limit.

(iii) No maximum length limit.

(iv) During May, no person shall fish for, take, or seek to take alligator gar in that portion of Lake Texoma encompassed within the boundaries of the Hagerman National Wildlife Refuge or that portion of Lake Texoma from the U.S. 377 bridge (Willis Bridge) upstream to the I.H. 35 bridge.

(v) Any person who takes an alligator gar in the public waters of this state other than Falcon International Reservoir shall report the harvest via the department's website or mobile application within 24 hours of take.

(vi) Between one half-hour after sunset and one half-hour before sunrise, any lawful means other than lawful archery equipment and crossbow may be used to take an alligator gar in the portion of the Trinity River described in subsection (d)(1)(L)(ii) of this section, except for persons selected for opportunity as provided in §57.972(j) of this title (relating to General Provisions).

(vii) Except for persons selected for opportunity as provided in §57.972(j) of this title, no person in the portion of the Trinity River described in subsection (d)(1)(L)(ii) of this section may take an alligator gar by means of lawful archery equipment or crossbow between one half-hour after sunset and one half-hour before sunrise, or possess an alligator gar taken by means of lawful archery equipment or crossbow between one half-hour after sunset and one half-hour before sunrise.

(J) Grouper.

(i) Black.

(I) Daily bag limit: 4.

(II) Minimum length limit: 24 inches.

(III) No maximum length limit.

(ii) Gag.

(I) Daily bag limit: 2.

(II) Minimum length limit: 24 inches.

(III) No maximum length limit.

(iii) Goliath. The take of Goliath grouper is prohibited.

(iv) Nassau. The take of Nassau grouper is prohibited.

(K) Mackerel.

(i) King.

(I) Daily bag limit: 3.

(II) Minimum length limit: 27 inches.

(III) No maximum length limit.

(ii) Spanish.

(I) Daily bag limit: 15.

(II) Minimum length limit: 14 inches.

(III) No maximum length limit.

(L) Marlin.

(i) Blue.

(I) No daily bag limit.

(II) Minimum length limit: 131 inches.

(III) No maximum length limit.

(ii) White.

(I) No daily bag limit.

(II) Minimum length limit: 86 inches.

(III) No maximum length limit.

(M) Mullet: all species (including hybrids, and subspecies).

(i) No daily bag limit.

(ii) No minimum length limit.

(iii) From October through January, no mullet more than 12 inches in length may be taken from public waters or possessed on board a vessel.

(N) Sailfish.

(i) No daily bag limit.

(ii) Minimum length limit: 84 inches.

(iii) No maximum length limit.

(O) Seatrout, spotted.

(i) Daily bag limit: 5.

(ii) Minimum length limit: 15 inches.

(iii) Maximum length limit: 25 inches.

(iv) Only one spotted seatrout greater than 25 inches may be retained per day. A spotted seatrout retained under this subclause counts as part of the daily bag and possession limit.

(P) Shark: all species (including hybrids and subspecies).

(i) all species other than the species listed in clauses (ii) - (iv) of this subparagraph:

- (I) Daily bag limit: 1.
- (II) Minimum length limit: 64 inches.
- (III) No maximum length limit.

(ii) Atlantic sharpnose, blacktip, and bonnethead:

- (I) Daily bag limit: 1.
- (II) Minimum length limit: 24 inches.
- (III) No maximum length limit.

(iii) great, scalloped, and smooth hammerhead:

- (I) Daily bag limit: 1.
- (II) Minimum length limit: 99 inches.
- (III) No maximum length limit.

(iv) The take of the following species of sharks from the waters of this state is prohibited and they may not be possessed on board a vessel at any time:

- (I) Atlantic angel;
- (II) Basking;
- (III) Bigeye sand tiger;
- (IV) Bigeye sixgill;
- (V) Bigeye thresher;
- (VI) Bignose;
- (VII) Caribbean reef;
- (VIII) Caribbean sharpnose;
- (IX) Dusky;
- (X) Galapagos;
- (XI) Longfin mako;
- (XII) Narrowtooth;
- (XIII) Night;
- (XIV) Sandbar;
- (XV) Sand tiger;
- (XVI) Sevengill;
- (XVII) Silky;
- (XVIII) Sixgill;
- (XIX) Smalltail;
- (XX) Whale; and
- (XXI) White.

(v) Except for the species listed in clause (ii) - (iv) of this subparagraph, sharks may be taken using pole and line, but must be taken by non-offset, non-stainless-steel circle hook when using natural bait.

(Q) Sheepshead.

- (i) Daily bag limit: 5.
- (ii) Minimum length limit: 15 inches.
- (iii) No maximum length limit.

(R) Snapper.

- (i) Lane.
  - (I) Daily bag limit: None.
  - (II) Minimum length limit: 8 inches.
  - (III) No maximum length limit.

(ii) Red.

- (I) Daily bag limit: 4.
- (II) Minimum length limit: 15 inches.
- (III) No maximum length limit.

(IV) Red snapper may be taken using pole and line, but it is unlawful to use any kind of hook other than a circle hook baited with natural bait.

(iii) Vermilion.

- (I) Daily bag limit: None.
- (II) Minimum length limit: 10 inches.
- (III) No maximum length limit.

(S) Snook.

- (i) Daily bag limit: 1.
- (ii) Minimum length limit: 24 inches.
- (iii) Maximum length limit: 28 inches.

(T) Tarpon.

- (i) Daily bag limit: 1.
- (ii) Minimum length limit: 85 inches.
- (iii) No maximum length limit.

(U) Triggerfish, gray.

- (i) Daily bag limit: 20.
- (ii) Minimum length limit: 16 inches.
- (iii) No maximum length limit.

(V) Tripletail.

- (i) Daily bag limit: 3.
- (ii) Minimum length limit: 17 inches.
- (iii) No maximum length limit.

(W) Trout (rainbow and brown trout, including their hybrids and subspecies).

- (i) Daily bag limit: 5 (in any combination).
- (ii) No minimum length limit.
- (iii) No maximum length limit.

(X) Walleye and Saugeye.

- (i) Daily bag limit: 5.
- (ii) No minimum length limit.

(iii) No maximum length limit.

(iv) Two walleye or saugeye of less than 16 inches may be retained.

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

(1) Freshwater species.

(A) Bass: largemouth, smallmouth, spotted, and Guadalupe (including their hybrids and subspecies). Devils River (Val Verde County) from State Highway 163 bridge crossing (Bakers Crossing) to the confluence with Big Satan Creek including all tributaries within these boundaries and all waters in the Lost Maples State Natural Area (Bandera County).

(i) Daily bag limit: 0.

(ii) No minimum length limit.

(iii) Catch and release only.

(B) Bass: largemouth and spotted.

(i) Caddo Lake (Marion and Harrison counties).

(I) Daily bag limit: 8 (in any combination with spotted bass).

(II) Minimum length limit: 14 - 18 inch slot limit (largemouth bass); no limit for spotted bass.

(III) It is unlawful to retain largemouth bass between 14 and 18 inches. No more than 4 largemouth bass 18 inches or longer may be retained. Possession limit is 10.

(ii) Toledo Bend Reservoir (Newton, Sabine, and Shelby counties).

(I) Daily bag limit: 8 (in any combination with spotted bass).

(II) Minimum length limit: 14 inches (largemouth bass); no limit for spotted bass. Possession limit is 10.

(iii) Sabine River (Newton and Orange counties) from Toledo Bend dam to a line across Sabine Pass between Texas Point and Louisiana Point.

(I) Daily bag limit: 8 (in any combination with spotted bass).

(II) Minimum length limit: 12 inches (largemouth bass); no limit for spotted bass. Possession limit is 10.

(C) Bass: largemouth.

(i) Chambers, Hardin, Galveston, Jefferson, Liberty (south of U.S. Highway 90), Newton (excluding Toledo Bend Reservoir), and Orange counties including any public waters that form boundaries with adjacent counties.

(I) Daily bag limit: 5.

(II) Minimum length limit: 12 inches.

(ii) Lake Conroe (Montgomery and Walker counties).

(I) Daily bag limit: 5.

(II) Minimum length limit: 16 inches.

(iii) Lakes Bellwood (Smith County), Davy Crockett (Fannin County), Kurth (Angelina County), Mill Creek (Van Zandt County), Nacogdoches (Nacogdoches County), Naconiche (Nacog-

doches County), Purtil Creek State Park (Henderson and Van Zandt counties), and Raven (Walker).

(I) Daily bag limit: 5.

(II) Maximum length limit: It is unlawful to retain largemouth bass of 16 inches or greater in length. Largemouth bass 24 inches or greater in length may be retained in a live well or other aerated holding device for purposes of weighing but may not be removed from the immediate vicinity of the lake. After weighing the bass must be released immediately back into the lake unless the department has instructed that the bass be kept for donation to the ShareLunker Program.

(iv) Lakes Bright (Williamson County), Brushy Creek (Williamson County), Casa Blanca (Webb County), Cleburne State Park (Johnson County), Fairfield (Freestone County), Gilmer (Upshur County), Marine Creek Reservoir (Tarrant County), Meridian State Park (Bosque County), Pflugerville (Travis County), Rusk State Park (Cherokee County), and Welsh (Titus County).

(I) Daily bag limit: 5.

(II) Minimum length limit: 18 inches.

(v) Bedford Boys Ranch Lake (Tarrant County), Buck Lake (Kimble County), Lake Kyle (Hays County), and Nelson Park Lake (Taylor County).

(I) Daily bag limit: 0.

(II) Minimum length limit: No limit.

(III) Catch and release only.

(vi) Lakes Alan Henry (Garza County), Grapevine (Denton and Tarrant counties), Jacksonville (Cherokee County), and O.H. Ivie Reservoir (Coleman, Concho, and Runnels counties).

(I) Daily bag limit: 5.

(II) Minimum length limit: No limit.

(III) It is unlawful to retain more than two bass of less than 18 inches in length.

(vii) Nasworthy (Tom Green).

(I) Daily bag limit: 5.

(II) Minimum length limit: 14 - 18 inch slot limit.

(III) It is unlawful to retain largemouth bass between 14 and 18 inches in length.

(viii) Lakes Athens (Henderson County), Bastrop (Bastrop County), Buescher State Park (Bastrop County), Houston County (Houston County), Joe Pool (Dallas, Ellis, and Tarrant counties), Lady Bird (Travis County), Murvaul (Panola County), Pinkston (Shelby County), Timpson (Shelby County), Walter E. Long (Travis County), and Wheeler Branch (Somervell County).

(I) Daily bag limit: 5.

(II) Minimum length limit: 14 - 21 inch slot limit.

(III) It is unlawful to retain largemouth bass between 14 and 21 inches in length. No more than 1 bass 21 inches or greater in length may be retained each day.

(ix) Lakes Fayette County (Fayette County), Fork (Wood Rains and Hopkins counties), Gibbons Creek Reservoir (Grimes County), and Monticello (Titus County).



(I) Daily bag limit: 5.  
(II) Minimum length limit: 16 - 24 inch slot limit.

(III) It is unlawful to retain largemouth bass between 16 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.

(x) Lake Lakewood (Williamson County).

(I) Daily bag limit: 3.

(II) Minimum length limit: 18 inches.

(D) Bass: striped and white bass their hybrids and subspecies.

(i) Sabine River (Newton and Orange counties) from Toledo Bend dam to I.H. 10 bridge and Toledo Bend Reservoir (Newton, Sabine, and Shelby counties).

(I) Daily bag limit: 5.

(II) Minimum length limit: No limit.

(III) No more than 2 striped bass 30 inches or greater in length may be retained each day.

(ii) Lake Texoma (Cooke and Grayson counties).

(I) Daily bag limit: 10 (in any combination).

(II) Minimum length limit: No limit.

(III) No more than 2 striped or hybrid striped bass 20 inches or greater in length may be retained each day. Striped or hybrid striped bass caught and placed on a stringer in a live well or any other holding device become part of the daily bag limit and may not be released. Possession limit is 20.

(iii) Red River (Grayson County) from Denison Dam downstream to and including Shawnee Creek (Grayson County).

(I) Daily bag limit: 5 (in any combination).

(II) Minimum length limit: No limit.

(III) Striped bass caught and placed on a stringer in a live well or any other holding device become part of the daily bag limit and may not be released.

(iv) Trinity River (Polk and San Jacinto counties) from the Lake Livingston dam downstream to the F.M. 3278 bridge.

(I) Daily bag limit: 2 (in any combination).

(II) Minimum length limit: 18 inches.

(E) Bass: white. Lakes Caddo (Harrison and Marion counties), Texoma (Cooke and Grayson counties), and Toledo Bend (Newton Sabine and Shelby counties) and Sabine River (Newton and Orange counties) from Toledo Bend dam to I.H. 10 bridge.

(i) Daily bag limit: 25.

(ii) Minimum length limit: No limit.

(F) Carp: common. Lady Bird Lake (Travis County).

(i) Daily bag limit: No limit.

(ii) Minimum length limit: No limit.

(iii) It is unlawful to retain more than one common carp of 33 inches or longer per day.

(G) Catfish: blue. Lakes Lewisville (Denton County), Richland-Chambers (Freestone and Navarro counties), and Waco (McLennan County).

(i) Daily bag limit: 25 (in any combination with channel catfish).

(ii) Minimum length limit: 30-45-inch slot limit.

(iii) It is unlawful to retain blue catfish between 30 and 45 inches in length. No more than one blue catfish 45 inches or greater in length may be retained each day.

(H) Catfish: channel and blue catfish, their hybrids and subspecies.

(i) Lake Kyle (Hays County).

(I) Daily bag limit: 0.

(II) Minimum length limit: No limit.

(III) Catch and release and only.

(ii) Lake Livingston (Polk, San Jacinto, Trinity, and Walker counties).

(I) Daily bag limit: 50 (in any combination).

(II) Minimum length limit: 12 inches.

(iii) Trinity River (Polk and San Jacinto counties) from the Lake Livingston dam downstream to the F.M. 3278 bridge.

(I) Daily bag limit: 10 (in any combination).

(II) Minimum length limit: 12 inches.

(III) No more than 2 channel or blue catfish 24 inches or greater in length may be retained each day.

(iv) Lakes Kirby (Taylor County) and Palestine (Cherokee, Anderson, Henderson, and Smith counties).

(I) Daily bag limit: 50 (in any combination).

(II) Minimum length limit: No limit.

(III) No more than five catfish 20 inches or greater in length may be retained each day.

(IV) Possession limit is 50.

(v) Lakes Caddo (Harrison and Marion counties) and Toledo Bend (Newton Sabine and Shelby counties) and the Sabine River (Newton and Orange counties) from Toledo Bend dam to the I.H. 10 bridge.

(I) Daily bag limit: 50 (in any combination).

(II) Minimum length limit: No limit.

(III) No more than five catfish 30 inches or greater in length may be retained each day.

(IV) Possession limit is 50.

(vi) Lake Texoma (Cooke and Grayson counties).

(I) Daily bag limit: 15 (in any combination).

(II) Minimum length limit: 12 inches.

(III) No more than one blue catfish 30 inches or greater in length may be retained each day.

(vii) Canyon Lake Project #6 (Lubbock County), North Concho River (Tom Green County) from O.C. Fisher Dam to

Bell Street Dam, and South Concho River (Tom Green County) from Lone Wolf Dam to Bell Street Dam.

(I) Daily bag limit: 5 (in any combination).

(II) Minimum length limit: No limit.

(viii) Community fishing lakes.

(I) Daily bag limit: 5 (in any combination).

(II) Minimum length limit: No limit.

(ix) Bellwood (Smith County), Dixieland (Cameron County), and Tankersley (Titus County).

(I) Daily bag limit: 5 (in any combination).

(II) Minimum length limit: 12 inches.

(x) Lake Tawakoni (Hunt, Rains, and Van Zandt counties).

(I) Daily bag limit: 25 (in any combination).

(II) Minimum length limit: No limit.

(III) No more than seven blue or channel catfish 20 inches or greater may be retained each day, and of these, no more than two can be 30 inches or greater in length.

(I) Catfish: flathead.

(i) Lake Texoma (Cooke and Grayson counties) and the Red River (Grayson County) from Denison Dam to and including Shawnee Creek (Grayson County).

(I) Daily bag limit: 5.

(II) Minimum length limit: 20 inches.

(ii) Lakes Caddo (Harrison and Marion counties) and Toledo Bend (Newton, Sabine, and Shelby) and the Sabine River (Newton and Orange counties) from Toledo Bend dam to the I.H. 10 bridge.

(I) Daily bag limit: 10.

(II) Minimum length limit: 18 inches.

(III) Possession limit: 10.

(J) Crappie: black and white crappie their hybrids and subspecies.

(i) Caddo Lake (Harrison and Marion counties), Toledo Bend Reservoir (Newton Sabine and Shelby counties), and the Sabine River (Newton and Orange counties) from Toledo Bend dam to the I.H. 10 bridge.

(I) Daily bag limit: 25 (in any combination).

(II) Minimum length limit: No limit.

(ii) Lake Fork (Wood, Rains, and Hopkins counties) and Lake O' The Pines (Camp, Harrison, Marion, Morris, and Upshur counties).

(I) Daily bag limit: 25 (in any combination).

(II) Minimum length limit: 10 inches.

(III) From December 1 through the last day in February there is no minimum length limit. All crappie caught during this period must be retained.

(iii) Lake Texoma (Cooke and Grayson counties).

(I) Daily bag limit: 37 (in any combination).

(II) Minimum length limit: 10 inches.

(III) Possession limit is 50.

(K) Drum, red. Lakes Braunig and Calaveras (Bexar County), Coletto Creek Reservoir (Goliad and Victoria counties), and Fairfield (Freestone County).

(i) Daily bag limit: 3.

(ii) Minimum length limit: 20.

(iii) No maximum length limit.

(L) Gar, alligator.

(i) Falcon International Reservoir (Starr and Zapata counties).

(I) Daily bag limit: 5.

(II) No minimum length limit.

(III) No maximum length limit.

(IV) The provisions of this subparagraph expire on September 1, 2020.

(ii) On the Trinity River and all tributary waters from the I-30 bridge in Dallas County downstream through Anderson, Ellis, Freestone, Henderson, Houston, Kaufman, Leon, Liberty, Madison, Navarro, Polk, San Jacinto, Trinity, and Walker counties to the I-10 bridge in Chambers County, including the East Fork of the Trinity River and all tributaries upstream to the Lake Ray Hubbard dam, the maximum length limit is 48 inches, except for persons selected by a department-administered drawing authorizing the take of a gar in excess of 48 inches in length.

(iii) During May, no person shall fish for, take, or seek to take alligator gar in that portion of Lake Texoma encompassed within the boundaries of the Hagerman National Wildlife Refuge or that portion of Lake Texoma from the U.S. 377 bridge (Willis Bridge) upstream to the I.H. 35 bridge.

(M) Shad gizzard and threadfin. Trinity River below Lake Livingston (Polk and San Jacinto counties).

(i) Daily bag limit: 500 (in any combination).

(ii) No minimum length limit.

(iii) Possession limit: 1000 (in any combination).

(N) Sunfish: all species. Lake Kyle (Hays County).

(i) Daily bag limit: 0.

(ii) Minimum length limit: No limit.

(iii) Catch and release and only.

(O) Trout: rainbow and brown trout (including hybrids and subspecies).

(i) Guadalupe River (Comal County) from the second bridge crossing on the River Road upstream to the easternmost bridge crossing on F.M. 306.

(I) Daily bag limit: 1.

(II) Minimum length limit: 18 inches.

(ii) Guadalupe River (Comal County) from the easternmost bridge crossing on F.M. 306 upstream to 800 yards below the Canyon Lake dam.

(I) Daily bag limit: 5.

(II) Minimum length limit: 12 - 18 inch slot limit.

(III) It is unlawful to retain trout between 12 and 18 inches in length. No more than one trout 18 inches or greater in length may be retained each day.

(P) Walleye. Lake Texoma (Cooke and Grayson counties).

(i) Daily bag limit: 5.

(ii) Minimum length limit: 18.

(2) Saltwater species. There are no exceptions to the provisions established in subsection (c)(5) of 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 August 9, 2019.

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Texas Parks and Wildlife Department

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



### DIVISION 3. STATEWIDE COMMERCIAL FISHING PROCLAMATION

#### 31 TAC §57.992

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess aquatic animal life in this state; the means, methods, and places in which it is lawful to take, or possess aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the aquatic animal life authorized to be taken or possessed; and the region, county, area, body of water, or portion of a county where aquatic animal life may be taken or possessed.

#### §57.992. *Bag, Possession, and Length Limits.*

(a) The possession limit applies to all aquatic animal life in the possession of or stored by any person, but does not apply to aquatic animal life that has been lawfully obtained and for which a person possesses an invoice or sales ticket showing the name and address of the seller or person from whom the aquatic animal life was obtained, the amount of aquatic animal life by number and species, date of the sale, and any other information required on a sales ticket or invoice.

(b) There are no bag, possession, or length limits on game fish, non-game fish, or shellfish, except as otherwise provided in this subchapter.

(1) Possession limits are twice the daily bag limit on game fish, non-game fish, and shellfish, except as provided in this subchapter.

(2) For flounder, the possession limit is the daily bag limit.

(3) The bag limit for a guided fishing party is equal to the total number of persons in the boat licensed to fish or otherwise exempt from holding a license minus each fishing guide and fishing guide deck-hand multiplied by the bag limit for each species harvested.

(4) The statewide daily bag and length limits for commercial fishing shall be as follows.

(A) Amberjack, greater.

(i) Daily bag limit: 1.

(ii) Minimum length: 34 inches.

(iii) Maximum length limit: No limit.

(B) Catfish.

(i) channel and blue (including hybrids and subspecies).

(I) Daily bag limit: 25 (in any combination).

(II) Minimum length limit: 14 inches.

(III) No maximum length limit.

(ii) Gaffstopsail.

(I) No daily bag limit.

(II) Minimum length limit: 14 inches.

(III) No maximum length limit.

(C) Cobia.

(i) Daily bag limit: 2.

(ii) Minimum length limit: 40 inches.

(iii) No maximum length limit.

(D) Drum, black.

(i) Daily bag limit: None.

(ii) Minimum length limit: 14 inches.

(iii) Maximum length limit: 30 inches.

(E) Flounder: all species (including hybrids and subspecies).

(i) Daily bag limit: 30. Possession limit is equal to the daily bag limit.

(ii) Minimum length limit: 14 inches.

(iii) No maximum length limit.

(iv) During November, lawful means are restricted to pole-and-line only and the bag and possession limit for flounder is two. For the first 14 days in December, the bag and possession limit is two, and flounder may be taken by any legal means.

(F) Gar, alligator.

(i) Daily bag limit:

(I) On Falcon International Reservoir: 5.

(II) Remainder of the state: 1.

(ii) No minimum length limit.

(iii) No maximum length limit except that on the Trinity River and all tributary waters from the I-30 bridge in Dallas County downstream through Anderson, Ellis, Freestone, Henderson, Houston, Kaufman, Leon, Liberty, Madison, Navarro, Polk, San Jacinto, Trinity, and Walker counties to the I-10 bridge in Chambers County, including the East Fork of the Trinity River and all tributaries upstream to the Lake Ray Hubbard dam, the maximum length limit is 48 inches.

(iv) During May, no person shall fish for, take, or seek to take alligator gar in that portion of Lake Texoma encompassed within the boundaries of the Hagerman National Wildlife Refuge or that portion of Lake Texoma from the U.S. 377 bridge (Willis Bridge) upstream to the I.H. 35 bridge.

(v) any person who takes an alligator gar in the public waters of this state other than Falcon International Reservoir shall report the harvest via the department's website or mobile application within 24 hours of take.

(vi) Between one half-hour after sunset and one half-hour before sunrise, any lawful means other than lawful archery equipment and crossbow may be used to take an alligator gar in the portion of the Trinity River described in subsection (d)(1)(L)(ii) of this section. In the portion of the Trinity River described in §57.981(d)(1)(L)(ii) of this title (relating to Bag, Possession and Length Limits), no person may take an alligator gar by means of lawful archery equipment or crossbow between one half-hour after sunset and one half-hour before sunrise, or possess an alligator gar taken by means of lawful archery equipment or crossbow between one half-hour after sunset and one half-hour before sunrise.

(G) Grouper.

(i) Black.

(I) Daily bag limit: 4.

(II) Minimum length limit: 24 inches.

(III) No maximum length limit.

(ii) Gag.

(I) Daily bag limit: 2.

(II) Minimum length limit: 24 inches.

(III) No maximum length limit.

(iii) Goliath. The take of Goliath grouper is prohibited.

ited.

(iv) Nassau. The take of Nassau grouper is prohibited.

ited.

(H) Mackerel.

(i) King.

(I) Daily bag limit: 3.

(II) Minimum length limit: 27 inches.

(III) No maximum length limit.

(ii) Spanish.

(I) Daily bag limit: 15.

(II) Minimum length limit: 14 inches.

(III) No maximum length limit.

(I) Mullet: all species (including hybrids, and subspecies).

(i) No daily bag limit.

(ii) No minimum length limit.

(iii) From October through January, no mullet more than 12 inches in length may be taken from public waters or possessed on board a vessel.

(J) Shark: all species (including hybrids and subspecies).

(i) all species other than the species listed in clauses (ii) - (iv) of this subparagraph:

(I) Daily bag limit: 1.

(II) Minimum length limit: 64 inches.

(III) No maximum length limit.

(ii) Atlantic sharpnose, blacktip, and bonnethead:

(I) Daily bag limit: 1.

(II) Minimum length limit: 24 inches.

(III) No maximum length limit.

(iii) great, scalloped, and smooth hammerhead:

(I) Daily bag limit: 1.

(II) Minimum length limit: 99 inches.

(III) No maximum length limit.

(iv) The take of the following species of sharks from the waters of this state is prohibited and they may not be possessed on board a vessel at any time:

(I) Atlantic angel;

(II) Basking;

(III) Bigeye sand tiger;

(IV) Bigeye sixgill;

(V) Bigeye thresher;

(VI) Bignose;

(VII) Caribbean reef;

(VIII) Caribbean sharpnose;

(IX) Dusky;

(X) Galapagos;

(XI) Longfin mako;

(XII) Narrowtooth;

(XIII) Night;

(XIV) Sandbar;

(XV) Sand tiger;

(XVI) Sevengill;

(XVII) Silky;

(XVIII) Sixgill;

(XIX) Smalltail;

(XX) Whale; and

(XXI) White.

(v) Except for the species listed in clause (ii) - (iv) of this subparagraph, sharks may be taken using pole and line, but must be taken by non-offset, non-stainless-steel circle hook when using natural bait.

(K) Sheepshead.

(i) Daily bag limit: No limit.

(ii) Minimum length limit: 15 inches.

(iii) No maximum length limit.

- (L) Snapper.
  - (i) Lane.
    - (I) Daily bag limit: None.
    - (II) Minimum length limit: 8 inches.
    - (III) No maximum length limit.
  - (ii) Red.
    - (I) Daily bag limit: 4.
    - (II) Minimum length limit: 15 inches.
    - (III) No maximum length limit.
    - (IV) Red snapper may be taken using pole and line, but it is unlawful to use any kind of hook other than a circle hook baited with natural bait.
  - (iii) Vermilion.
    - (I) Daily bag limit: None.
    - (II) Minimum length limit: 10 inches.
    - (III) No maximum length limit.
- (M) Triggerfish, gray.
  - (i) Daily bag limit: 20.
  - (ii) Minimum length limit: 16 inches.
  - (iii) No maximum length limit.
- (N) Tripletail.
  - (i) Daily bag limit: 3.
  - (ii) Minimum length limit: 17 inches.
  - (iii) No maximum length limit.

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

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 TRD-201902561  
 Robert D. Sweeney, Jr.  
 General Counsel  
 Texas Parks and Wildlife Department  
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 Proposal publication date: February 15, 2019  
 For further information, please call: (512) 389-4775

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**TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

**PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT**

**CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES**  
**SUBCHAPTER C. PROGRAM SERVICES**  
**DIVISION 2. EDUCATION PROGRAMS**  
**37 TAC §380.9141**

The Texas Juvenile Justice Department (TJJD) adopts amendments to §380.9141, concerning Education Administration, without changes to the proposed text as published in the March 1, 2019, issue of the *Texas Register* (44 TexReg 928). The amended rule will not be republished.

**JUSTIFICATION FOR CHANGES**

The public benefit anticipated as a result of administering the section is to give TJJD flexibility on managing the education of the youth in its care. This flexibility will allow greater emphasis on youth rehabilitation, thereby benefiting the public when they are released.

**SUMMARY OF CHANGES**

The amended rule removes the requirement for: (1) TJJD to provide 180 days of educational instruction each school year; and (2) the average school day to consist of 5½ hours of instruction.

The amended rule clarifies that: (1) a youth's progress in education programs does not affect the youth's privileges or progress toward release; and (2) a youth who has earned a certificate of high school equivalency may continue to take high school classes.

The amended rule also replaces: (1) the term *Positive Behavioral Interventions and Supports system* with the term *positive behavior support system*, which is the term used in the relevant statute, Education Code §30.106; and (2) the terms *GED* and *high school equivalency diploma* with the term *certificate of high school equivalency*.

**PUBLIC COMMENTS**

TJJD did not receive any public comments on the proposed rule-making action.

**STATUTORY AUTHORITY**

The amended section is adopted under: Section 242.003, Human Resources Code, which requires TJJD to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs; and Section 242.051, Human Resources Code, which authorizes TJJD to have general charge of and be responsible for the welfare, custody, and rehabilitation of the children in a school, facility, or program operated or funded by TJJD.

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

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 TRD-201902556  
 Christian von Wupperfeld  
 General Counsel  
 Texas Juvenile Justice Department  
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 Proposal publication date: March 1, 2019  
 For further information, please call: (512) 490-7278

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**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**PART 15. TEXAS VETERANS COMMISSION**

## CHAPTER 450. VETERANS COUNTY SERVICE OFFICERS CERTIFICATE OF TRAINING

### 40 TAC §§450.1, 450.3, 450.5

The Texas Veterans Commission adopts amendments to §§450.1, 450.3, and 450.5 of Title 40, Part 15, Chapter 450 of the Texas Administrative Code, concerning Veterans County Service Officers Certification, without changes to the proposed text as published in the May 24, 2019, issue of the *Texas Register* (44 TexReg 2599). The rules will not be republished.

The adopted amendment is a minor revision to §§450.1, 450.3, and 450.5 to implement a procedure to approve training provided by third-party, public or private entities, to fulfill initial and continuing training requirements established by the commission. Senate Bill (SB) 544 took effect on September 1, 2017.

No comments were received regarding the proposed rule amendment.

The amended rules are adopted under Texas Government Code §434.010, which provides the Texas Veterans Commission with the authority to establish rules that it considers necessary for the effective administration of the agency; and Texas Government Code §434.038, which authorizes the commission to establish rules governing the training and certification for Veteran County Service Officers and Assistant Veterans County Service Officers.

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

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Madeleine Connor

General Counsel

Texas Veterans Commission

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Proposal publication date: May 24, 2019

For further information, please call: (512) 463-3605



## CHAPTER 451. VETERANS COUNTY SERVICE OFFICERS ACCREDITATION

### 40 TAC §451.1, §451.3

The Texas Veterans Commission adopts the amendment to subsections §451.1 and §451.3 of Title 40, Part 15, Chapter 451 of the Texas Administrative Code relating to Veterans County Service Officers Accreditation, without changes to the proposed text as published in the May 24, 2019, issue of the *Texas Register* (44 TexReg 2601) and will not be republished.

The adopted amendment is a minor revision to harmonize Rule 451's key definition with Title 38 of the U.S. Code of Federal Regulations, and minor revisions to improve clarity and to reflect the recent name change of the Claims Department.

No comments were received regarding the proposed rule amendment.

The amended rules are adopted under Texas Government Code §434.010, which provides the Texas Veterans Commission with

the authority to establish rules that it considers necessary for the effective administration of the agency; and Texas Government Code §434.038, which authorizes the commission to establish rules governing the training and certification for Veterans County Service Officers and Assistant Veterans County Service Officers.

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

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Madeleine Connor

General Counsel

Texas Veterans Commission

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For further information, please call: (512) 463-3605



## TITLE 43. TRANSPORTATION

### PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

#### CHAPTER 206. MANAGEMENT

##### SUBCHAPTER E. ADVISORY COMMITTEES

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts the repeal of 43 TAC §206.94 and §206.95. The department adopts amendments to 43 TAC §206.92 and §206.93. The department also adopts new 43 TAC §§206.94 - 206.99. The repealed, new, and amended sections relate to advisory committees.

The department adopts amendments 43 TAC §§206.92, 206.93, 206.96 - 206.99, and new sections 43 TAC §206.94 and §206.95 concerning advisory committees, with nonsubstantive, grammatical changes to the proposed text as published in the March 1, 2019, issue of the *Texas Register* (44 TexReg 1111). These rules will be republished. The department also adopts the repeals to §206.94 and §206.95 without changes to the proposed text and these rules will not be republished. Non-substantive, grammatical changes were made to §206.93(a) to provide greater clarity on the role of the advisory committee. The phrase "to the board" was added after "the role of an advisory committee under this subchapter is to provide advice and recommendations," to clarify who receives the advice and recommendations. Additional nonsubstantive, grammatical changes were made to §206.93(e) to clarify what action an advisory committee may take when a quorum is present. The phrase "transact business" was deleted and replaced with "deliberate on issues within the jurisdiction of the department or any public business," to conform to the language and definitions used in the Open Meetings Act, Government Code, §551.001. The changes to the adopted sections do not change issues raised in the proposal, introduce new subject matter, incur costs, or affect persons other than those previously on notice.

Amendments to 43 TAC §206.93 implement Senate Bill (SB) 604, Section 1.08, 86th Regular Session (2019), which repealed Government Code, §2110.002(c). Prior to the repeal, the department was exempt from the Government Code, §2110.002(c) requirements that an advisory committee be composed of a rea-

sonable number of members not to exceed 24 and that the composition of an advisory committee provide a balanced representation between the industry or occupation and the consumers of services provided by the agency, industry, or occupation. However, SB 604 now applies the Government Code, §2110.002(c) requirements to the department.

**REASONED JUSTIFICATION.** The amendments, new sections, and repeals are necessary to implement the Sunset Advisory Commission's adopted recommendation 1.7 in the Staff Report with Final Results, revised June 2019. The Sunset Advisory Commission recommended that the department establish advisory committees to provide expertise for rulemaking and other issues, and adopt rules regarding standard committee structure and operating criteria. The report also recommended the department establish advisory committees to provide expertise for rulemaking related to motor vehicle and carrier regulation, vehicle title and registration, consumer protection, and customer service. The amendments and new sections are necessary to specify the purposes, powers, and duties, of advisory committees, including the manner of reporting their work, under Transportation Code, §1001.031.

Amendments to §209.92, Definitions, add a definition for the term "member" to clarify that a member is appointed to the committee by the board of the Texas Department of Motor Vehicles (board), as required by Transportation Code, §1001.031(b). The definition of the new term "presiding officer" clarifies that the advisory boards are composed of members that are not members of the board, and presided over by a presiding officer elected by the other advisory committee members. The term further clarifies that advisory committee meetings will be presided over by a presiding officer who facilitates efficient functioning of the advisory committee by overseeing discussions and votes.

Nonsubstantive, grammatical changes were made to §206.92(6) and (7) to provide clarity for the roles of the member and presiding officer.

Amendments to §206.93, Advisory Committee Operations and Procedures, delete subsections (a) through (f) and add new subsections (a) through (l) to reorganize the subsections and provide clearer guidance for advisory committee operations and procedures. In addition, these new subsections promote the efficient handling of advisory committee meetings.

Requirements under existing §206.93(a) are now in new §206.93(f) and (b). The term of service for advisory committee members more closely aligns with the fourth anniversary expiration date for advisory committees consistent with Government Code, §2110.008.

Requirements under §206.93(b) were deleted and moved to new §206.93(j) to provide clearer guidance on how and when to report recommendations to the board.

Requirements under §206.93(c) were deleted entirely. In place of this subsection, §206.93(g) is added to require advisory committee members to receive training regarding the Open Meetings Act, Government Code, Chapter 551, the Public Information Act, and Government Code, Chapter 552. This amendment will ensure advisory committee members are aware of the open meeting and public information requirements of advisory committee meetings.

Requirements under §206.93(d) were deleted and moved to new §206.93(l). New §206.93(l) outlines permissible reimbursement of advisory committee members under Government

Code, §2110.004, which states that the manner and amount of reimbursement may be prescribed only by the General Appropriations Act or through the budget execution process under Government Code, Chapter 317, if the advisory committee was created after it is practicable to address the existence of the advisory committee in the General Appropriations Act.

Requirements under §206.93(e) were deleted and moved to new §206.93(k). New §206.93(k) requires the board to consider reports in addition to recommendations submitted by the advisory committees to ensure the board considers all available advisory committee resources.

Requirements under §206.93(f) were deleted to better reflect the notice requirements of the Open Meetings Act, Government Code, Chapter 551.

Section 206.93(g) was reorganized as new §206.93(m) and adds the title "Expiration dates for advisory committees," for consistency.

In addition, the amendments add several new subsections to §206.93, Advisory Committee Operations and Procedures. Section 206.93(a) is necessary to provide clarity for the role of the advisory committee to the board. Section 206.93(c) is necessary to clarify the qualifications for advisory committee members and includes a prohibition on board members serving on advisory committees to ensure the advisory group has independent external expertise and recommendations. Section 206.93(d) is necessary to ensure balanced representation on advisory committees, by requiring membership from different geographical regions of the state, to the extent practical, who have an interest of expertise in the subject area of the particular advisory committee. Section 206.93(e) is necessary to outline committee size, consistent with the requirements under Government Code, §2110.002, and quorum requirements, under the Open Meetings Act, Government Code, Chapter 551. Section 206.93(h) is necessary to ensure advisory committee compliance with the Open Meetings Act, Government Code, Chapter 551. Section 206.93(i) is necessary to require advisory committees to accept public comments to promote constituent engagement in the rule-making process.

The department is repealing §206.94, Household Goods Rules Advisory Committee (HGRAC), because this advisory committee completed recommendations to modernize and streamline rules to protect consumers using the service of a motor carrier who is transporting household goods for compensation and rules to ensure that a customer of a motor carrier transporting household goods is protected from unfair practices and unreasonably hazardous activities adopted under Transportation Code, §643.153(a) and (b). The committee is set to expire on August 14, 2019, under §206.95 of this title. Any rules regarding household goods may be addressed by the new Consumer Protection Advisory Committee (CPAC) created by amendment.

New §206.94, Motor Vehicle Industry Regulation Advisory Committee (MVIRAC), replaces repealed §206.94, HGRAC, to advise and make recommendations to the board and the executive director, as requested, on issues related to regulation of the motor vehicle industry. The MVIRAC may provide the department with independent external expertise and recommendation on motor vehicle regulation topics. Motor vehicle industry regulation makes up a significant part of the department's operations with over 33,000 regulated motor vehicle-related licenses issued in Fiscal Year 2019. The department may utilize the expertise of advisory committee members regarding the business operations

of motor vehicle and salvage dealers and other elements of the motor vehicle industry to improve the efficiency of department operations and procedures.

Nonsubstantive, grammatical changes were made to §206.94(a) to clarify the purpose of MVIRAC. "Issues" was deleted and replaced with "topics" to ensure the advisory committee may make all relevant recommendations.

The department is repealing §206.95, Motor Vehicle Licensing Advisory Committee (MVLAC), because the committee has completed the review of license requirements and procedures, and made recommendations to the department simplifying and modernizing the licensing process. The committee is set to expire on August 14, 2019, under §206.95 of this title.

New §206.95, Motor Carrier Regulation Advisory Committee (MCRAC), replaces repealed §206.95, MVLAC, to advise and make recommendations to the board and the executive director, as requested, on topics related to regulation of the motor carrier industry. The Sunset Advisory Commission Staff Report with Final Results, revised June 2019, noted the department enforces statute and rules governing nearly 50,000 registered motor carrier companies, including trucking and moving companies. The MCRAC will provide valuable independent external expertise and recommendations on motor vehicle carrier topics to the department.

Nonsubstantive, grammatical changes were made to §206.95(a) to clarify the purpose of MCRAC. "Issues" was deleted and replaced with "topics" to ensure the advisory committee may make all relevant recommendations.

New §206.96, Vehicle Titles and Registration Advisory Committee (VTRAC), is created to advise and make recommendations to the board and the executive director, as requested, on topics related to vehicle titles and registration. The Sunset Advisory Commission Staff Report with Final Results, revised June 2019, noted the department registers approximately 24 million vehicles across the state each year. The VTRAC is necessary to provide valuable independent external expertise and recommendations on title and registration topics to the department.

Nonsubstantive, grammatical changes were made to §206.96(a) to clarify the purpose of VTRAC. "Issues" was deleted and replaced with "topics" to ensure the advisory committee may make all relevant recommendations.

New §206.97, Consumer Protection Advisory Committee (CPAC), is created to advise and make recommendations to the board and the executive director, as requested, on investigation and enforcement topics, including vehicle titles and registration fraud; lemon law; the warranty performance program; and other consumer protection topics. Also, the department is creating the CPAC to gain valuable independent external expertise on various consumer protection topics.

Nonsubstantive, grammatical changes were made to §206.97(a) to clarify the purpose of CPAC. "But not limited to" was deleted following "including" because "including" is a word of expansion, and serves to encompass the following terms, rather than limit. "Issues" was deleted and replaced with "topics" to ensure the advisory committee may make all relevant recommendations.

New §206.98, Customer Service Advisory Committee (CSAC), is created to advise and make recommendations to the board and the executive director, as requested, on topics related to improving and enhancing department customer service, including infrastructure; new customer service initiatives; policy and

process improvements; and technology. The CSAC will have the opportunity to obtain valuable information from the department's customers and utilize the independent expertise of committee members for recommendations to improve the department's customer service operations.

New §206.99, Use of Advisory Committees and Working Groups, provides that the board shall prioritize the use of advisory committees over working groups in rulemaking on significant or controversial issues of public policy. Informal working groups may lack stakeholder and consumer inclusivity, and public transparency. This section is adopted to clarify situations in which advisory committees are to be used in preference to working groups.

**SUMMARY OF COMMENTS.** Tax Assessor-Collectors Association (TACA) submitted comments on the proposed rules. TACA expressed concern that the language of §206.93(d), Composition of Advisory Committee, did not include a specific statement of who should serve on the committees. TACA stated they do not necessarily feel they are regulated by the board, but the service they provide as partners with the department and the State is somewhat regulated by statute and state agency rule. TACA asked that the County Tax Assessor-Collector be specifically mentioned as an advisory committee member to applicable advisory committees. TACA stated that by not naming the County Tax Assessor-Collector for those applicable advisory committees, there is no guarantee that the interests of the department's most vital partner will be represented.

**RESPONSE.** The department agrees that County Tax Assessor-Collectors are vital partners of the department. In response to TACA's concerns, the department is amending the language of §206.93(d) to require the board to ensure representation of members from diverse geographical regions of the state who have an interest or expertise in the subject area of the particular advisory committee, to the extent practical. The amended language will promote a balanced advisory committee membership, by preserving board flexibility in appointing members to the advisory committees and still ensuring that County Tax Assessor-Collectors are eligible to become advisory committee members.

The department disagrees with TACA's suggested amendment to specifically name Tax Assessor-Collectors to specific committees, as Sunset Committee Recommendation 1.7 in the Staff Report with Final Results, revised June 2019, did not recommend the department to include such language. The amended language adopted by the department will ensure the composition of the advisory committees provide balanced representation and clarifies that County Tax Assessor-Collectors are eligible to become advisory committee members.

#### **43 TAC §§206.92 - 206.99**

**STATUTORY AUTHORITY.** The amendments and new sections are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department. More specifically, Transportation Code, §1001.031, states that the department shall retain or establish one or more advisory committees to make recommendations to the board or the executive director. Transportation Code, §1001.031, provides the department authority to specify by rule, the purposes, powers, and duties of advisory committees, including the manner of reporting their work. Government Code, §2110.002(b)



provides the department authority to adopt rules governing balanced representation on advisory committees. Government Code, §2110.005 authorizes the department to adopt rules stating the purposes and tasks of advisory committees, and describing the manner in which advisory committees will report to the agency. Transportation Code, §643.155(b) gives the department the authority to adopt rules to govern the operations of the rules advisory committee, which examines the rules adopted by the department under Transportation Code, §643.153(a) and (b) and makes recommendations to the department on modernizing and streamlining the rules.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 1001.

#### §206.92. *Definitions.*

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

- (1) Advisory committee--Any committee created by the board to make recommendations to the board or to the executive director pursuant to Transportation Code, §1001.031.
- (2) Board--The board of the Texas Department of Motor Vehicles.
- (3) Department--The Texas Department of Motor Vehicles.
- (4) Division director--The chief administrative officer in charge of a division of the department.
- (5) Executive director--The chief executive officer of the Texas Department of Motor Vehicles.
- (6) Member--An appointed member of an advisory committee created under this subchapter.
- (7) Presiding officer--The presiding officer of an advisory committee elected by the membership of the advisory committee created under this subchapter.

#### §206.93. *Advisory Committee Operations and Procedures.*

(a) Role of advisory committee. The role of an advisory committee under this subchapter is to provide advice and recommendations to the board. Advisory committees shall meet and carry out their functions upon a request from the department or board for advice and recommendations on an issue(s).

(b) Appointment of advisory committee. The board shall appoint members to an advisory committee by selecting potential members from a list provided to the board by the executive director. Each advisory committee shall elect from its members a presiding officer, who shall report the advisory committee's recommendations to the board. The executive director may designate a division or divisions of the department to participate with, or to provide subject-matter expertise, guidance, or administrative support to the advisory committee as necessary.

(c) Member qualifications. Members shall have knowledge about and interests in, and represent a broad range of viewpoints about, the work of the committee or applicable division(s). Board members shall not serve as advisory committee members.

(d) Composition of advisory committees. In making appointments to the advisory committees, the board shall, to the extent practical, ensure representation of members from diverse geographical regions of the state who have an interest or expertise in the subject area of the particular advisory committee.

(e) Committee size and quorum requirements. An advisory committee shall be composed of a reasonable number of members not to exceed 24 as determined by the board. A simple majority of advisory committee members will constitute a quorum. An advisory committee may only deliberate on issues within the jurisdiction of the department or any public business when a quorum is present.

(f) Terms of service. Advisory committee members will serve terms of four years. A member will serve on the committee until the member resigns, is dismissed or replaced by the board, or the member's term expires.

(g) Member training requirements. Each member of an advisory committee must receive training regarding the Open Meetings Act, Government Code, Chapter 551; and the Public Information Act, Government Code, Chapter 552.

(h) Compliance with Open Meetings Act. The advisory committee shall comply with the Open Meetings Act, Government Code, Chapter 551.

(i) Public input and participation. The advisory committee shall accept public comments made in-person at advisory committee meetings or submitted in writing. Public comments made in writing should be submitted to the advisory committee five business days in advance of the advisory committee meeting with sufficient copies for all members.

(j) Reporting recommendations. Recommendations of the advisory committee shall be reported to the board at a board meeting prior to board action on issues related to the recommendations. The recommendations shall be in writing and include any necessary supporting materials. The presiding officer of the advisory committee or the presiding officer's designee may appear before the board to present the committee's advice and recommendations. This subsection does not limit the ability of the advisory committee to provide advice and recommendations to the executive director as necessary.

(k) Board use of advisory committee recommendations. In developing department policies, the board shall consider the written recommendations and reports submitted by advisory committees.

(l) Reimbursement. The department may, if authorized by law and the executive director, reimburse advisory committee members for reasonable and necessary travel expenses.

(m) Expiration dates for advisory committees. Unless a different expiration date is established by the board for the advisory committee, each advisory committee is abolished on the fourth anniversary of its creation by the board.

#### §206.94. *Motor Vehicle Industry Regulation Advisory Committee (MVIRAC).*

(a) The MVIRAC is created to make recommendations, as requested by the department and board, on topics related to regulation of the motor vehicle industry.

(b) The MVIRAC shall comply with the requirements of §206.93 of this title (relating to Advisory Committee Operations and Procedures).

(c) The MVIRAC shall expire on July 7, 2023.

#### §206.95. *Motor Carrier Regulation Advisory Committee (MCRAC).*

(a) The MCRAC is created to make recommendations, as requested by the department and board, on topics related to motor carrier registration and motor carrier regulation.

(b) The MCRAC shall comply with the requirements of §206.93 of this title (relating to Advisory Committee Operations and Procedures).

(c) The MCRAC shall expire on July 7, 2023.

§206.96. *Vehicle Titles and Registration Advisory Committee (VTRAC).*

(a) The VTRAC is created to make recommendations, as requested by the department and board, on topics related to vehicle titles and registration.

(b) The VTRAC shall comply with the requirements of §206.93 of this title (relating to Advisory Committee Operations and Procedures).

(c) The VTRAC shall expire on July 7, 2023.

§206.97. *Consumer Protection Advisory Committee (CPAC).*

(a) The CPAC is created to make recommendations, as requested by the department and board, on investigation and enforcement issues, including: vehicle titles and registration fraud; lemon law; the warranty performance program; and various other topics affecting consumers.

(b) The CPAC shall comply with the requirements of §206.93 of this title (relating to Advisory Committee Operations and Procedures).

(c) The CPAC shall expire on July 7, 2023.

§206.98. *Customer Service Advisory Committee (CSAC).*

(a) The CSAC is created to make recommendations, as requested by the department and board, on topics related to improving and enhancing customer service by the department, including, but not limited to: infrastructure; new customer service initiatives; policy and process improvements; and technology.

(b) The CSAC shall comply with the requirements of §206.93 of this title (relating to Advisory Committee Operations and Procedures).

(c) The CSAC shall expire on July 7, 2023.

§206.99. *Use of Advisory Committees and Working Groups.*

In determining appropriate situations in which to utilize an advisory committee versus a working group, the department and the board shall prioritize the use of advisory committees in rulemaking on significant or controversial issues of public policy. The department may form working groups to advise department staff. A working group is not a standing committee formed to advise the board, but a group formed by department staff on an as-needed basis.

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

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Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

Effective date: August 28, 2019

Proposal publication date: March 1, 2019

For further information, please call: (512) 465-5665



**43 TAC §206.94, §206.95**

STATUTORY AUTHORITY. The repeals are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department. More specifically, Transportation Code, §1001.031, states that the department shall retain or establish one or more advisory committees to make recommendations to the board or the executive director. Transportation Code, §1001.031, provides the department authority to specify by rule, the purposes, powers, and duties of advisory committees, including the manner of reporting their work. Government Code, §2110.002(b) provides the department authority to adopt rules governing balanced representation on advisory committees. Government Code, §2110.005 authorizes the department to adopt rules stating the purposes and tasks of advisory committees, and describing the manner in which advisory committees will report to the agency. Transportation Code, §643.155(b) gives the department the authority to adopt rules to govern the operations of the rules advisory committee, which examines the rules adopted by the department under Transportation Code, §643.153(a) and (b) and makes recommendations to the department on modernizing and streamlining the rules.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 1001.

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 August 9, 2019.

TRD-201902569

Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

Effective date: August 29, 2019

Proposal publication date: March 1, 2019

For further information, please call: (512) 465-5665



# 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 Attorney General

### Title 1, Part 3

The Office of the Attorney General (OAG) files this notice of its intent to review 1 TAC Chapter 52, Administration. The review is conducted in accordance with Government Code §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During the review, the OAG will assess whether the reasons for initially adopting the rules continue to exist.

For 30 days following the publication of this notice, the OAG will accept public comments regarding the review. Comments should be directed to Gregory Simpson, Director, Human Resources Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, [Gregory.Simpson@oag.texas.gov](mailto:Gregory.Simpson@oag.texas.gov).

Any proposed changes to these rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption.

TRD-201902605  
Ryan L. Bangert  
Deputy Attorney General for Legal Counsel  
Office of the Attorney General  
Filed: August 12, 2019



Finance Commission of Texas

### Title 7, Part 1

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking files this notice of intention to review and consider for readoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, in its entirety:

Chapter 6 (Banking Development Districts), comprised of §§6.1 - 6.6.

The review is conducted pursuant to Government Code, §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register*.

Any questions or written comments pertaining to this notice of intention to review should be directed to Catherine Reyer, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705, or e-mailed to [legal@dob.texas.gov](mailto:legal@dob.texas.gov).

Any proposed changes to these sections as a result of the rule review will be published as proposed rules in the *Texas Register*. Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-201902653  
Catherine Reyer  
General Counsel  
Finance Commission of Texas  
Filed: August 14, 2019



Texas Department of Banking

### Title 7, Part 2

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking files this notice of intention to review and consider for readoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, in its entirety:

Chapter 15 (Corporate Activities), comprised of Subchapter A (§§15.1 - 15.7 and §§15.9 - 15.12); Subchapter B (§15.23 and §15.24); Subchapter C (§§15.41 - 15.44); Subchapter E (§15.81); Subchapter F (§§15.101 - 15.111 and §§15.113 - 15.117); and Subchapter G (§15.121 and §15.122).

The review is conducted pursuant to Government Code §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register*.

Any questions or written comments pertaining to this notice of intention to review should be directed to Catherine Reyer, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705, or e-mailed to [legal@dob.texas.gov](mailto:legal@dob.texas.gov).

Any proposed changes to these sections as a result of the rule review will be published as proposed rules in the *Texas Register*. Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-201902654  
Catherine Reyer  
General Counsel  
Texas Department of Banking  
Filed: August 14, 2019



On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking files this notice of intention to review and consider for re-adoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, in its entirety:

Chapter 17 (Trust Company Regulation), comprised of Subchapter A (§§17.2 - 17.4) and Subchapter B (§§17.21 - 17.23)

The review is conducted pursuant to Government Code §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register*.

Any questions or written comments pertaining to this notice of intention to review should be directed to Catherine Reyer, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705, or e-mailed to [legal@dob.texas.gov](mailto:legal@dob.texas.gov).

Any proposed changes to these sections as a result of the rule review will be published as proposed rules in the *Texas Register*. Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-201902655  
Catherine Reyer  
General Counsel  
Texas Department of Banking  
Filed: August 14, 2019



On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking files this notice of intention to review and consider for re-adoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, in its entirety:

Chapter 19 (Trust Company Loans and Investments), comprised of Subchapter B (§19.22); and Subchapter C (§19.51)

The review is conducted pursuant to Government Code §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register*.

Any questions or written comments pertaining to this notice of intention to review should be directed to Catherine Reyer, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705, or e-mailed to [legal@dob.texas.gov](mailto:legal@dob.texas.gov).

Any proposed changes to these sections as a result of the rule review will be published as proposed rules in the *Texas Register*. Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-201902656  
Catherine Reyer  
General Counsel  
Texas Department of Banking  
Filed: August 14, 2019



On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking files this notice of intention to review and consider for re-adoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, in its entirety:

Chapter 21 (Trust Company Corporate Activities), comprised of Subchapter A (§§21.1 - 21.7 and §§21.9 - 21.12); Subchapter B

(§21.23 and §21.24); Subchapter C (§21.31 and §21.32); Subchapter D (§§21.41 - §21.44); Subchapter E (§21.51); Subchapter F (§§21.61 - 21.64; §§21.67 - 21.70 and §§21.72 - 21.76); and Subchapter G (§21.91 and §21.92)

The review is conducted pursuant to Government Code §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register*.

Any questions or written comments pertaining to this notice of intention to review should be directed to Catherine Reyer, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705, or e-mailed to [legal@dob.texas.gov](mailto:legal@dob.texas.gov).

Any proposed changes to these sections as a result of the rule review will be published as proposed rules in the *Texas Register*. Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-201902657  
Catherine Reyer  
General Counsel  
Texas Department of Banking  
Filed: August 14, 2019



## Credit Union Department

### Title 7, Part 6

The Texas Credit Union Commission (Commission) will review and consider for re-adoption, revision, or repeal, Chapter 91, Subchapter K, concerning Credit Union Development Districts, consisting of §§91.2000, concerning Purpose and Scope, 91.2001 concerning Definitions, 91.2002 concerning Application Requirements to Establish a District, 91.2003 concerning Submission and Processing of Application, 91.2004 concerning Criteria for Approval of a District by the Commission, 91.2005 concerning Monitoring, and 91.2006 concerning Rulemaking and Amendment for this Subchapter.

The Commission will also review and consider for re-adoption, revision, or repeal, Subchapter O, concerning Trust Powers, consisting of §§91.6001 concerning Fiduciary Duties, 91.6002 concerning Fiduciary Capacities, 91.6003 concerning Notice Requirements, 91.6004 concerning Exercise of Fiduciary Powers, 91.6005 concerning Exemption from Notice, 91.6006 concerning Policies and Procedures, 91.6007 concerning Review of Fiduciary Accounts, 91.6008 concerning Recordkeeping, 91.6009 concerning Audit, 91.6010 concerning Custody of Fiduciary Assets, 91.6011 concerning Trust Funds, 91.6012 concerning Compensation, Gifts, and Bequests, 91.6013 concerning Bond Coverage, 91.6014 concerning Errors and Omissions Insurance, and 91.6015 concerning Litigation File.

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission believes that the reasons for adopting the rules contained in this chapter continue to exist. The commission will accept written comments received on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register* as to whether the reasons for adopting these rules continue to exist. The commission also invites comments on how to make these rules easier to understand. For example:

Does the rule organize the material to suit your needs? If not, how could the material be better organized?

Does the rule clearly state the requirements? If not, how could the rule be more clearly stated?

Does the rule contain technical language or jargon that is not clear? If so, what language requires clarification?

Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

Would more (but shorter) sections be better in any of the rules? If so, what sections should be changed?

Each rule will also be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Credit Union Department.

Any questions or written comments pertaining to this notice should be directed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or by email to [cudmail@cud.texas.gov](mailto:cudmail@ cud.texas.gov). Any proposed amendments as a result of the review will be published in the *Texas Register* in compliance with Texas Government Code, Chapter 2001, and will be open for an additional 31-day public comment period prior to final adoption or repeal by the commission.

TRD-201902600

John J. Kolhoff  
Commissioner  
Credit Union Department  
Filed: August 12, 2019



## Adopted Rule Reviews

Texas Veterans Commission

### Title 40, Part 15

The Texas Veterans Commission (Commission) has completed its review of 40 TAC Chapter 452, relating to Administration General Provisions.

The notice of proposed rule review was published in the May 31, 2019, issue of the *Texas Register* (44 TexReg 2734). The Commission received no comments regarding the proposed rule review.

After completing the review of 40 TAC Chapter 452, the Commission determined that the reasons for initially adopting these rules continue to exist and readopts these rules, without changes, pursuant to the requirements of Texas Government Code §2001.039.

This notice concludes the Commission's review of 40 TAC Chapter 452.

TRD-201902572  
Madeleine Connor  
General Counsel  
Texas Veterans Commission  
Filed: August 9, 2019



The Texas Veterans Commission (Commission) has completed its review of 40 TAC Chapter 453, relating to Historically Underutilized Business Program.

The notice of proposed rule review was published in the May 31, 2019, issue of the *Texas Register* (44 TexReg 2734). The Commission received no comments regarding the proposed rule review.

After completing the review of 40 TAC Chapter 453, the Commission determined that the reasons for initially adopting these rules continue

to exist and readopts these rules, without changes, pursuant to the requirements of Texas Government Code §2001.039.

This notice concludes the Commission's review of 40 TAC Chapter 453.

TRD-201902573  
Madeleine Connor  
General Counsel  
Texas Veterans Commission  
Filed: August 9, 2019



The Texas Veterans Commission (Commission) has completed its review of 40 TAC Chapter 455, relating to Taps Program.

The notice of proposed rule review was published in the May 31, 2019, issue of the *Texas Register* (44 TexReg 2734). The Commission received no comments regarding the proposed rule review.

After completing the review of 40 TAC Chapter 455, the Commission determined that the reasons for initially adopting these rules continue to exist and readopts these rules, without changes, pursuant to the requirements of Texas Government Code §2001.039.

This notice concludes the Commission's review of 40 TAC Chapter 455.

TRD-201902574  
Madeleine Connor  
General Counsel  
Texas Veterans Commission  
Filed: August 9, 2019



The Texas Veterans Commission (Commission) has completed its review of 40 TAC Chapter 456, relating to Contract Negotiation and Mediation.

The notice of proposed rule review was published in the May 31, 2019, issue of the *Texas Register* (44 TexReg 2734). The Commission received no comments regarding the proposed rule review.

After completing the review of 40 TAC Chapter 456, the Commission determined that the reasons for initially adopting these rules continue to exist and readopts these rules, without changes, pursuant to the requirements of Texas Government Code §2001.039.

This notice concludes the Commission's review of 40 TAC Chapter 456.

TRD-201902575  
Madeleine Connor  
General Counsel  
Texas Veterans Commission  
Filed: August 9, 2019



The Texas Veterans Commission (Commission) has completed its review of 40 TAC Chapter 459, relating to Transportation Support Services.

The notice of proposed rule review was published in the May 31, 2019, issue of the *Texas Register* (44 TexReg 2735). The Commission received no comments regarding the proposed rule review.

After completing the review of 40 TAC Chapter 459, the Commission determined that the reasons for initially adopting these rules continue

to exist and readopts these rules, without changes, pursuant to the requirements of Texas Government Code §2001.039.

This notice concludes the Commission's review of 40 TAC Chapter 459.

TRD-201902576  
Madeleine Connor  
General Counsel  
Texas Veterans Commission  
Filed: August 9, 2019



The Texas Veterans Commission (Commission) has completed its review of 40 TAC Chapter 461, relating to Veterans Education.

The notice of proposed rule review was published in the May 31, 2019, issue of the *Texas Register* (44 TexReg 2735). The Commission received no comments regarding the proposed rule review.

After completing the review of 40 TAC Chapter 461, the Commission determined that the reasons for initially adopting these rules continue to exist and readopts these rules, without changes, pursuant to the requirements of Texas Government Code §2001.039.

This notice concludes the Commission's review of 40 TAC Chapter 461.

TRD-201902577  
Madeleine Connor  
General Counsel  
Texas Veterans Commission  
Filed: August 9, 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 227 - Preamble

Program Accountability Changes By Program Type and Assessment		
Program Type	Non-PPR	PPR
Traditional	None	None
Post-Baccalaureate	Yes, if they currently use PACT for admission	None
ACP	Yes, if they currently use PACT for admission	None

**Figure: 19 TAC §227.10(a)(4)(C)**

<b><u>Certificate TAC Reference</u></b>	<b><u>Certificate Name</u></b>	<b><u>Pre-Admission Content Test</u></b>	<b><u>Passing Standard</u></b>
<b><u>Art</u></b>			
<u>§233.10</u>	<u>Art: Early Childhood-Grade 12</u>	<u>778 TX PACT Art: Early Childhood-Grade 12</u>	<u>63 out of 100 selected-response items</u>
<b><u>Career and Technical Education</u></b>			
<u>§233.13</u>	<u>Technology Education: Grades 6-12</u>	<u>771 TX PACT: Technology Education: Grades 6-12</u>	<u>40 out of 80 selected-response items</u>
<u>§233.13</u>	<u>Family and Consumer Sciences, Composite: Grades 6-12</u>	<u>721 TX PACT: Family and Consumer Sciences, Composite</u>	<u>51 out of 100 selected-response items</u>
<u>§233.13</u>	<u>Human Development and Family Studies: Grades 8-12</u>	<u>721 TX PACT: Family and Consumer Sciences, Composite</u>	<u>51 out of 100 selected-response items</u>
<u>§233.13</u>	<u>Hospitality, Nutrition, and Food Sciences: Grades 8-12</u>	<u>721 TX PACT: Family and Consumer Sciences, Composite</u>	<u>51 out of 100 selected-response items</u>
<u>§233.13</u>	<u>Agriculture, Food, and Natural Resources: Grades 6-12</u>	<u>772 TX PACT: Agriculture, Food, and Natural Resources: Grades 6-12</u>	<u>52 out of 100 selected-response items</u>
<u>§233.13</u>	<u>Business and Finance: Grades 6-12</u>	<u>776 TX PACT: Business and Finance: Grades 6-12</u>	<u>64 out of 100 selected-response items</u>
<b><u>Computer Science and Technology Applications</u></b>			
<u>§233.5</u>	<u>Computer Science: Grades 8-12</u>	<u>741 TX PACT Computer Science: Grades 8-12</u>	<u>52 out of 80 selected-response items</u>
<u>§233.5</u>	<u>Technology Applications: Early Childhood-Grade 12</u>	<u>742 TX PACT Technology Applications: Early Childhood-Grade 12</u>	<u>52 out of 80 selected-response items</u>



<u>Certificate TAC Reference</u>	<u>Certificate Name</u>	<u>Pre-Admission Content Test</u>	<u>Passing Standard</u>
<b><u>Core Subjects</u></b>			
<u>§233.2</u>	<u>Core Subjects: Early Childhood-Grade 6</u>	<u>701 TX PACT: Essential Academic Skills (Subtest I: Reading) and 702 TX PACT: Essential Academic Skills (Subtest II: Writing) and 703 TX PACT: Essential Academic Skills (Subtest III: Mathematics) or 790 TX PACT Core Subjects: Grades 4-8</u>	<u>(701) 25 out of 35 selected-response items</u> <u>(702) 20 out of 30 selected-response items</u> <u>(702) 5 out of 8 score points (1 constructed-response item)</u> <u>(703) 23 out of 36 selected-response items</u> <u>(790) 94 out of 160 selected-response items</u>
<u>§233.2</u>	<u>Core Subjects: Grades 4-8</u>	<u>790 TX PACT Core Subjects: Grades 4-8</u>	<u>94 out of 160 selected-response items</u>
<b><u>Dance</u></b>			
<u>§233.10</u>	<u>Dance: Grades 6-12</u>	<u>779 TX PACT Dance: Grades 6-12</u>	<u>53 out of 80 selected-response items</u>
<b><u>English Language Arts and Reading</u></b>			
<u>§233.3</u>	<u>English Language Arts and Reading: Grades 4-8</u>	<u>717 TX PACT English Language Arts and Reading: Grades 4-8</u>	<u>71 out of 100 selected-response items</u>
<u>§233.3</u>	<u>English Language Arts and Reading: Grades 7-12</u>	<u>731 TX PACT English Language Arts and Reading: Grades 7-12</u>	<u>59 out of 100 selected-response items</u>
<u>§233.3</u>	<u>English Language Arts and Reading/Social Studies: Grades 4-8</u>	<u>717 TX PACT English Language Arts and Reading: Grades 4-8 and 718 TX PACT Social Studies: Grades 4-8</u>	<u>(717) 71 out of 100 selected-response items</u> <u>(718) 57 out of 100 selected-response items</u>
<b><u>Health</u></b>			
<u>§233.11</u>	<u>Health: Early Childhood-Grade 12</u>	<u>757 TX PACT Health: Early Childhood-Grade 12</u>	<u>57 out of 80 selected-response items</u>

<u>Certificate TAC Reference</u>	<u>Certificate Name</u>	<u>Pre-Admission Content Test</u>	<u>Passing Standard</u>
<b><u>Journalism</u></b>			
<u>§233.3</u>	<u>Journalism: Grades 7-12</u>	<u>756 TX PACT Journalism: Grades 7-12</u>	<u>45 out of 72 selected-response items</u>
<b><u>Languages Other Than English</u></b>			
<u>§233.15</u>	<u>American Sign Language: Early Childhood-Grade 12</u>	<u>784 TX PACT American Sign Language: Early Childhood-Grade 12 (Subtest I) and 785 TX PACT: American Sign Language (ASL): Early Childhood-Grade 12 (Subtest II)</u>	<u>(784) 22 out of 40 selected-response items</u> <u>(785) 23 out of 40 selected-response items</u> <u>(785) 19 out of 32 score points (4 constructed-response items)</u>
<u>§233.15</u>	<u>Arabic: Early Childhood-Grade 12</u>	<u>ACTFL 605 OPI – Arabic and 600 WPT – Arabic</u>	<u>ACTFL 605 OPI – Arabic: Advanced Low; 600 WPT – Arabic: Advanced Low</u>
<u>§233.15</u>	<u>Chinese: Early Childhood-Grade 12</u>	<u>714 TX PACT: LOTE Chinese: Early Childhood-Grade-12</u>	<u>58 out of 80 selected-response items</u> <u>11 out of 16 score points (2 constructed-response items)</u>
<u>§233.15</u>	<u>French: Early Childhood-Grade 12</u>	<u>710 TX PACT LOTE French: Early Childhood-Grade 12</u>	<u>57 out of 80 selected-response items</u> <u>10 out of 16 score points (2 constructed-response items)</u>
<u>§233.15</u>	<u>German: Early Childhood-Grade 12</u>	<u>711 TX PACT LOTE German: Early Childhood-Grade 12</u>	<u>59 out of 80 selected-response items</u> <u>11 out of 16 score points (2 constructed-response items)</u>

<u>Certificate TAC Reference</u>	<u>Certificate Name</u>	<u>Pre-Admission Content Test</u>	<u>Passing Standard</u>
<b><u>Languages Other Than English (continued)</u></b>			
<u>§233.15</u>	<u>Hindi: Early Childhood-Grade 12</u>	<u>ACTFL 622 OPI – Hindi and 623 WPT – Hindi</u>	<u>ACTFL 622 OPI – Hindi: Advanced Low; 623 WPT – Hindi: Advanced Low</u>
<u>§233.15</u>	<u>Italian: Early Childhood-Grade 12</u>	<u>ACTFL 624 OPI – Italian and 625 WPT – Italian</u>	<u>ACTFL 624 OPI – Italian: Advanced Low; 625 WPT – Italian: Advanced Low</u>
<u>§233.15</u>	<u>Japanese: Early Childhood-Grade 12</u>	<u>ACTFL 607 OPI – Japanese and 602 WPT – Japanese</u>	<u>ACTFL 607 OPI – Japanese: Intermediate High; 602 WPT – Japanese: Intermediate High</u>
<u>§233.15</u>	<u>Korean: Early Childhood-Grade 12</u>	<u>ACTFL 630 OPI – Korean and 631 WPT – Korean</u>	<u>ACTFL 630 OPI – Korean: Advanced Low; 631 WPT – Korean: Advanced Low</u>
<u>§233.15</u>	<u>Latin: Early Childhood-Grade 12</u>	<u>712 TX PACT LOTE Latin: Early Childhood-Grade 12</u>	<u>31 out of 50 selected-response items 11 out of 16 score points (2 constructed-response items)</u>
<u>§233.15</u>	<u>Portuguese: Early Childhood-Grade 12</u>	<u>ACTFL 632 OPI – Portuguese and 633 WPT – Portuguese</u>	<u>ACTFL 632 OPI – Portuguese: Advanced Low; 633 WPT – Portuguese: Advanced Low</u>
<u>§233.15</u>	<u>Russian: Early Childhood-Grade 12</u>	<u>ACTFL 608 OPI – Russian and 603 WPT – Russian</u>	<u>ACTFL 608 OPI – Russian: Intermediate High; 603 WPT – Russian: Intermediate High</u>

<u>Certificate TAC Reference</u>	<u>Certificate Name</u>	<u>Pre-Admission Content Test</u>	<u>Passing Standard</u>
<b>Languages Other Than English (continued)</b>			
<u>§233.15</u>	<u>Spanish: Early Childhood-Grade 12</u>	<u>713 TX PACT LOTE Spanish: Early Childhood-Grade 12</u>	<u>55 out of 80 selected-response items</u> <u>12 out of 16 score points (2 constructed-response items)</u>
<u>§233.15</u>	<u>Turkish: Early Childhood-Grade 12</u>	<u>ACTFL 626 OPI – Turkish and 627 WPT – Turkish</u>	<u>ACTFL 626 OPI – Turkish: Advanced Low; 627 WPT – Turkish: Intermediate High</u>
<u>§233.15</u>	<u>Vietnamese: Early Childhood-Grade 12</u>	<u>ACTFL 609 OPI – Vietnamese and 604 WPT – Vietnamese</u>	<u>ACTFL 609 OPI – Vietnamese: Advanced Mid; 604 WPT – Vietnamese: Advanced Low</u>
<b>Mathematics and Science</b>			
<u>§233.4</u>	<u>Mathematics: Grades 4-8</u>	<u>715 TX PACT Mathematics: Grades 4-8</u>	<u>58 out of 100 selected-response items</u>
<u>§233.4</u>	<u>Science: Grades 4-8</u>	<u>716 TX PACT Science: Grades 4-8</u>	<u>62 out of 100 selected-response items</u>
<u>§233.4</u>	<u>Mathematics/Science: Grades 4-8</u>	<u>715 TX PACT Mathematics: Grades 4-8 and 716 TX PACT Science: Grades 4-8</u>	<u>(715) 58 out of 100 selected-response items</u> <u>(716) 62 out of 100 selected-response items</u>
<u>§233.4</u>	<u>Mathematics: Grades 7-12</u>	<u>735 TX PACT Mathematics: Grades 7-12</u>	<u>52 out of 100 selected-response items</u>
<u>§233.4</u>	<u>Science: Grades 7-12</u>	<u>736 TX PACT Science: Grades 7-12</u>	<u>48 out of 100 selected-response items</u>
<u>§233.4</u>	<u>Life Science: Grades 7-12</u>	<u>738 TX PACT Life Science: Grades 7-12</u>	<u>63 out of 100 selected-response items</u>
<u>§233.4</u>	<u>Physical Science: Grades 6-12</u>	<u>737 TX PACT Physical Science: Grades 6-12</u>	<u>61 out of 100 selected-response items</u>

<u>Certificate TAC Reference</u>	<u>Certificate Name</u>	<u>Pre-Admission Content Test</u>	<u>Passing Standard</u>
<b><u>Mathematics and Science (continued)</u></b>			
<u>§233.4</u>	<u>Physics/Mathematics Grades 7-12</u>	<u>735 TX PACT: Mathematics: Grades 7-12 and 739 TX PACT: Physics Grades 7-12</u>	<u>(735) 52 out of 100 selected-response items (739) 52 out of 100 selected-response items</u>
<u>§233.4</u>	<u>Mathematics/Physical Science/Engineering: Grades 6-12</u>	<u>735 TX PACT Mathematics: Grades 7-12 and 737 TX PACT Physical Science: Grades 6-12</u>	<u>(735) 52 out of 100 selected-response items (737) 61 out of 100 selected-response items</u>
<u>§233.4</u>	<u>Chemistry: Grades 7-12</u>	<u>740 TX PACT Chemistry: Grades 7-12</u>	<u>62 out of 100 selected-response items</u>
<b><u>Music</u></b>			
<u>§233.10</u>	<u>Music: Early Childhood-Grade 12</u>	<u>777 TX PACT Music: Early Childhood-Grade 12</u>	<u>68 out of 100 selected-response items</u>
<b><u>Physical Education</u></b>			
<u>§233.12</u>	<u>Physical Education: Early Childhood-Grade 12</u>	<u>758 TX PACT Physical Education: Early Childhood-Grade 12</u>	<u>52 out of 80 selected-response items</u>
<b><u>Social Studies</u></b>			
<u>§233.3</u>	<u>Social Studies: Grades 4-8</u>	<u>718 TX PACT Social Studies: Grades 4-8</u>	<u>57 out of 100 selected-response items</u>
<u>§233.3</u>	<u>Social Studies: Grades 7-12</u>	<u>732 TX PACT Social Studies: Grades 7-12</u>	<u>62 out of 100 selected-response items</u>
<u>§233.3</u>	<u>History: Grades 7-12</u>	<u>733 TX PACT History: Grades 7-12</u>	<u>57 out of 100 selected-response items</u>
<b><u>Speech Communications</u></b>			
<u>§233.3</u>	<u>Speech: Grades 7-12</u>	<u>729 TX PACT Speech: Grades 7-12</u>	<u>40 out of 64 selected-response items 5 out of 8 score points (1 constructed-response item)</u>

<u>Certificate TAC Reference</u>	<u>Certificate Name</u>	<u>Pre-Admission Content Test</u>	<u>Passing Standard</u>
<b><u>Special Education</u></b>			
<u>§233.8</u>	<u>Special Education: Early Childhood-Grade 12</u>	<u>701 TX PACT: Essential Academic Skills (Subtest I: Reading) and 702 TX PACT: Essential Academic Skills (Subtest II: Writing) and 703 TX PACT: Essential Academic Skills (Subtest III: Mathematics)</u>	<u>(701) 25 out of 35 selected-response items</u> <u>(702) 20 out of 30 selected-response items</u> <u>(702) 5 out of 8 score points (1 constructed-response item)</u> <u>(703) 23 out of 36 selected-response items</u>
<u>§233.8</u>	<u>Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12</u>	<u>701 TX PACT: Essential Academic Skills (Subtest I: Reading) and 702 TX PACT: Essential Academic Skills (Subtest II: Writing) and 703 TX PACT: Essential Academic Skills (Subtest III: Mathematics)</u>	<u>(701) 25 out of 35 selected-response items</u> <u>(702) 20 out of 30 selected-response items</u> <u>(702) 5 out of 8 score points (1 constructed-response item)</u> <u>(703) 23 out of 36 selected-response items</u>
<b><u>Theatre</u></b>			
<u>§233.10</u>	<u>Theatre: Early Childhood-Grade 12</u>	<u>780 TX PACT Theatre: Early Childhood-Grade 12</u>	<u>48 out of 80 selected-response items</u>

# 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.

## Texas State Affordable Housing Corporation

### Notice of Request for Proposals

Texas State Affordable Housing Corporation (TSAHC)

Notice is hereby given of a Request for Proposals (RFP) by TSAHC for Bond Counsel for Single Family and Multifamily Private Activity Bond Programs of the Corporation. Entities interested in providing legal counsel services must submit all of the materials listed in the RFP which can be found on the Corporation's website at [www.tsahc.org](http://www.tsahc.org).

The deadline for submissions in response to this RFP is **Friday, September 6, 2019**. No proposal will be accepted after **5:00 p.m.** on that date. Responses should be emailed to Michael Wilt at [mwilt@tsahc.org](mailto:mwilt@tsahc.org). Faxed responses will not be accepted. For questions or comments, please contact Michael Wilt at (512) 334-2157 or by email at [mwilt@tsahc.org](mailto:mwilt@tsahc.org).

TRD-201902663

David Long

President

Texas State Affordable Housing Corporation

Filed: August 14, 2019



### Notice of Request for Proposals

Texas State Affordable Housing Corporation (TSAHC)

Notice is hereby given of a Request for Proposals (RFP) by TSAHC for General Partner Counsel for Development Finance Programs of the Corporation. Entities interested in providing legal counsel services must submit all of the materials listed in the RFP which can be found on the Corporation's website at [www.tsahc.org](http://www.tsahc.org).

The deadline for submissions in response to this RFP is Friday, September 6, 2019. No proposal will be accepted after 5:00 p.m. on that date. Responses should be emailed to Michael Wilt at [mwilt@tsahc.org](mailto:mwilt@tsahc.org). Faxed responses will not be accepted. For questions or comments, please contact Michael Wilt at (512) 334-2157 or by email at [mwilt@tsahc.org](mailto:mwilt@tsahc.org).

TRD-201902664

David Long

President

Texas State Affordable Housing Corporation

Filed: August 14, 2019



### Notice of Request for Proposals

Texas State Affordable Housing Corporation (TSAHC)

Notice is hereby given of a Request for Proposals (RFP) by TSAHC for Issuer Counsel for Multifamily Private Activity Bond Programs of the Corporation. Entities interested in providing legal counsel services must submit all of the materials listed in the RFP which can be found on the Corporation's website at [www.tsahc.org](http://www.tsahc.org).

The deadline for submissions in response to this RFP is Friday, September 6, 2019. No proposal will be accepted after 5:00 p.m. on that date. Responses should be emailed to Michael Wilt at [mwilt@tsahc.org](mailto:mwilt@tsahc.org). Faxed responses will not be accepted. For questions or comments, please contact Michael Wilt at (512) 334-2157 or by email at [mwilt@tsahc.org](mailto:mwilt@tsahc.org).

TRD-201902665

David Long

President

Texas State Affordable Housing Corporation

Filed: August 14, 2019



### Notice of Request for Proposals

Texas State Affordable Housing Corporation (TSAHC)

Notice is hereby given of a Request for Proposals (RFP) by TSAHC for Disclosure Counsel for Single Family Private Activity Bond Programs of the Corporation. Entities interested in providing legal counsel services must submit all of the materials listed in the RFP which can be found on the Corporation's website at [www.tsahc.org](http://www.tsahc.org).

The deadline for submissions in response to this RFP is Friday, September 6, 2019. No proposal will be accepted after 5:00 p.m. on that date. Responses should be emailed to Michael Wilt at [mwilt@tsahc.org](mailto:mwilt@tsahc.org). Faxed responses will not be accepted. For questions or comments, please contact Michael Wilt at (512) 334-2157 or by email at [mwilt@tsahc.org](mailto:mwilt@tsahc.org).

TRD-201902666

David Long

President

Texas State Affordable Housing Corporation

Filed: August 14, 2019



### Notice of Request for Proposals

Texas State Affordable Housing Corporation (TSAHC)

Notice is hereby given of a Request for Proposals (RFP) by TSAHC for General Counsel of the Corporation. Entities interested in providing legal counsel services must submit all of the materials listed in the RFP which can be found on the Corporation's website at [www.tsahc.org](http://www.tsahc.org).

The deadline for submissions in response to this RFP is Friday, September 6, 2019. No proposal will be accepted after 5:00 p.m. on that date. Responses should be emailed to Michael Wilt at [mwilt@tsahc.org](mailto:mwilt@tsahc.org). Faxed responses will not be accepted. For questions or comments, please contact Michael Wilt at (512) 334-2157 or by email at [mwilt@tsahc.org](mailto:mwilt@tsahc.org).

TRD-201902668

David Long

President

Texas State Affordable Housing Corporation

Filed: August 14, 2019

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## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/19/19 - 08/25/19 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 08/19/19 - 08/25/19 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.

TRD-201902616

Leslie Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: August 13, 2019

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## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 24, 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 **September 24, 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: Boot Construction, LLC; DOCKET NUMBER: 2019-1055-WR-E; IDENTIFIER: RN110722543; LOCATION: Hearn, Robertson County; TYPE OF FACILITY: home construction company; RULES VIOLATED: 30 TAC §297.11, and TWC, §11.081

and §11.121, by failing to obtain authorization prior to impounding, diverting, or using state water or beginning construction of any work designed for the storage, taking, or diversion of water without first obtaining a water right; PENALTY: \$350; ENFORCEMENT COORDINATOR: Chase Davenport, (512) 239-2615; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Canyon West Construction, LLC; DOCKET NUMBER: 2019-1083-WQ-E; IDENTIFIER: RN110809126; LOCATION: Lipan, Parker County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$875; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: CITGO Refining and Chemicals Company L.P.; DOCKET NUMBER: 2019-0609-AIR-E; IDENTIFIER: RN102555166; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 111.111(a)(1)(B), 116.115(c), and 122.143(4), New Source Review Permit Numbers 9604A and PSDTX653M1, Special Conditions Number 1, Federal Operating Permit Number O1423, General Terms and Conditions and Special Terms and Conditions Numbers 3.A.i and 26, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions and excess opacity; PENALTY: \$6,075; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(4) COMPANY: City of Lorenzo; DOCKET NUMBER: 2019-0788-MWD-E; IDENTIFIER: RN101917730; LOCATION: Lorenzo, Crosby County; TYPE OF FACILITY: domestic wastewater treatment facility and disposal site; RULES VIOLATED: 30 TAC §305.65 and §305.125(2) and TWC, §26.121(a)(1), by failing to maintain authorization to discharge wastewater into or adjacent to any water in the state; PENALTY: \$5,250; ENFORCEMENT COORDINATOR: Chase Davenport, (512) 239-2615; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(5) COMPANY: Diamond Shamrock Refining Company, L.P.; DOCKET NUMBER: 2019-0155-AIR-E; IDENTIFIER: RN100210517; LOCATION: Sunray, Moore County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 9708 and PSDTX861M3, Special Conditions Number 3, Federal Operating Permit (FOP) Number O1555, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 16, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1)(B) and §122.143(4), FOP Number O1555, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; PENALTY: \$5,960; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(6) COMPANY: DLUGOSCH III, LLC dba The Texan 2; DOCKET NUMBER: 2019-0723-PST-E; IDENTIFIER: RN101435162; LOCATION: Yorktown, DeWitt County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to inspect and test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years; PENALTY: \$7,316; ENFORCEMENT COORDINATOR: Berenice Munoz, (915)



834-4976; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(7) COMPANY: FAIZAYSH ENTERPRISE INC dba Linta Quickway; DOCKET NUMBER: 2019-0650-PST-E; IDENTIFIER: RN102092673; LOCATION: Everman, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(4) and TWC, §26.3475(d), by failing to provide corrosion protection to all underground metal components of the underground storage tank (UST) system; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every 30 days; PENALTY: \$5,813; ENFORCEMENT COORDINATOR: Amanda Scott, (512) 239-2558; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Frankston Rural Water Supply Corporation; DOCKET NUMBER: 2019-0329-PWS-E; IDENTIFIER: RN101440857; LOCATION: Frankston, Anderson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.43(c)(6), by failing to ensure that clearwells and potable water storage tanks, including associated appurtenances such as valves, pipes, and fittings, are thoroughly tight against leakage; PENALTY: \$130; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: Lake Conroe Holdings, LLC; DOCKET NUMBER: 2019-0455-WQ-E; IDENTIFIER: RN110553096; LOCATION: Montgomery, Montgomery County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121 and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; and TWC, §26.121(a)(2), by failing to prevent the unauthorized discharge of waste into or adjacent to any water in the state; PENALTY: \$9,375; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Lone Star Ranch Stores, LLC dba Lone Star Ranch 2; DOCKET NUMBER: 2019-0616-PST-E; IDENTIFIER: RN108879644; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(c) and §334.50(b)(1)(B) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring for tanks installed on or after January 1, 2009, and failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel; and 30 TAC §334.51(b)(2)(B)(ii) and TWC, §26.3475(c)(2), by failing to equip the spill containment device for the UST system with a liquid-tight lid or cover designed to minimize the entrance of any surface water, groundwater, or other foreign substances into the container; PENALTY: \$4,875; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Luciano Trevino; DOCKET NUMBER: 2019-0250-WQ-E; IDENTIFIER: RN109241158; LOCATION: Bastrop, Bastrop County; TYPE OF FACILITY: sand and gravel pit; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, 40 Code of Federal Regulations §122.26(c), and TCEQ Default Order Docket Number 2017-0282-WQ-E, Ordering Provision Numbers 3.a.i, 3.a.ii, and 3.b, by failing to obtain authorization to discharge stormwater associated with industrial activities; PENALTY: \$20,250; ENFORCEMENT CO-

ORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(12) COMPANY: Mitsubishi Caterpillar Forklift America Incorporated; DOCKET NUMBER: 2019-0698-AIR-E; IDENTIFIER: RN100219161; LOCATION: Houston, Harris County; TYPE OF FACILITY: forklift manufacturing site; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(B) and (C), Federal Operating Permit Number O3313, General Terms and Conditions, 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: \$2,513; ENFORCEMENT COORDINATOR: Soraya Bun, (713) 422-8912; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: MOLINA'S COUNTRY STORE, INCORPORATED; DOCKET NUMBER: 2019-0668-PST-E; IDENTIFIER: RN102395217; LOCATION: Laredo, Webb County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the pressurized piping associated with the underground storage tanks; PENALTY: \$14,436; ENFORCEMENT COORDINATOR: Amanda Scott, (512) 239-2558; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(14) COMPANY: Quick Stripe Paving, Incorporated; DOCKET NUMBER: 2019-0659-AIR-E; IDENTIFIER: RN108622135; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: aggregate production operation; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Soraya Bun, (713) 422-8912; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(15) COMPANY: Ray French Land Company, Ltd.; DOCKET NUMBER: 2019-1097-WQ-E; IDENTIFIER: RN106096407; LOCATION: Lipan, Parker County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$875; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Royalwood Municipal Utility District; DOCKET NUMBER: 2019-0602-PWS-E; IDENTIFIER: RN102673886; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(h)(1)(C), by failing to meet the requirements of the affected utility's emergency preparedness plan (EPP) by providing the option selected in the EPP; and 30 TAC §290.46(m)(6), by failing to maintain all pumps, motors, valves, and other mechanical devices in good working condition; PENALTY: \$100; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: South Texas Illumination, LLC; DOCKET NUMBER: 2019-0969-WR-E; IDENTIFIER: RN110773926; LOCATION: Rose City, Orange County; TYPE OF FACILITY: aggregate production operation; RULES VIOLATED: TWC, §11.081 and §11.121, by failing to obtain authorization prior to impounding, diverting, or using state water; PENALTY: \$350; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(18) COMPANY: Texas Department of Transportation; DOCKET NUMBER: 2019-0541-PWS-E; IDENTIFIER: RN101205649; LO-

CATION: Eden, Concho County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate; PENALTY: \$660; ENFORCEMENT COORDINATOR: Julianne Dewar, (512) 239-1001; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(19) COMPANY: Walter J. Carroll Water Company, Incorporated; DOCKET NUMBER: 2019-0595-MLM-E; IDENTIFIER: RN101282762; LOCATION: Red Oak, Ellis County; TYPE OF FACILITY: public water supply and utility; RULES VIOLATED: 30 TAC §290.39(l)(4) and (5), by failing to meet the conditions for an issued exception; 30 TAC §§290.41(c)(3)(O), 290.42(m), and 290.43(e), by failing to provide an intruder-resistant fence or building around each water treatment plant, well unit, potable water storage tank, pressure maintenance facility, and related appurtenances that remains locked during periods of darkness and when the facility is unattended; 30 TAC §290.42(b)(1) and (e)(3), by failing to provide continuous and effective disinfection that can be secured under all conditions; 30 TAC §290.42(e)(4)(B), by failing to house the gas chlorination equipment and cylinders of chlorine in separate buildings or separate rooms with impervious walls or partitions separating all mechanical and electrical equipment from the chlorine facilities; 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(c)(3), by failing to provide the overflow discharge opening on the ground storage tank with a gravity-hinged and weighted cover that closes automatically and fits tightly with no gap over 1/16 inch, an elastomeric duckbill valve, or other approved device to prevent the entrance of insects and other nuisances, and designed in strict accordance with current American Water Works Association standards; 30 TAC §290.45(b)(1)(C)(iii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide two or more service pumps having a total capacity of 2.0 gallons per minute per connection; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and THSC, §341.0315(c), by failing to maintain a minimum disinfectant residual of 0.2 milligrams per liter (mg/L) free chlorine throughout the distribution system at all times; 30 TAC §290.46(f)(2) and (3)(A)(i)(III), (ii)(III), (iii), and (iv) and (B)(iii), and (D)(i), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director (ED) upon request; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(n)(1), by failing to maintain at the facility accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can easily be located during emergencies; 30 TAC §290.46(u), by failing to plug an abandoned public water supply well with cement in accordance with 16 TAC Chapter 76 or submit test results proving that the well is in a non-deteriorated condition; 30 TAC §290.118(a) and (b), by failing to meet the maximum secondary constituent levels for sulfate of 300 mg/L and total dissolved solids of 1,000 mg/L or receive written approval from the ED to use the water source for public drinking water; 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements and maintain a copy at each plant site; and 30 TAC §291.93(3)(A) and TWC, §13.139(d), by failing to provide a written planning report for a utility possessing a Certificate of Convenience and Necessity that

has reached or exceeded 85% of all or part of its capacity; PENALTY: \$2,933; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: William Brent Davis dba Cypresswood Estates; DOCKET NUMBER: 2019-0224-PWS-E; IDENTIFIER: RN101176287; LOCATION: Magnolia, Montgomery County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay annual Public Health Service fees and associated late fees for TCEQ Financial Administration Account Number 91700301 for Fiscal Years 2018 and 2019; and TCEQ Agreed Order Docket Number 2016-2052-PWS-E, Ordering Provision Number 2.a.ii, by failing to provide public notification and submit a copy of the public notification to the executive director (ED) regarding the failure to collect lead and copper tap samples for the January 1, 2014 - December 31, 2014, January 1, 2015 - December 31, 2015, and January 1, 2016 - June 30, 2016, monitoring periods, and failing to submit a Disinfectant Level Quarterly Operating Report to the ED each quarter by the tenth day of the month following the end of the quarter for the second quarter of 2014 through the third quarter of 2015, and the first quarter of 2016 through the third quarter of 2016; PENALTY: \$870; ENFORCEMENT COORDINATOR: Julianne Dewar, (512) 239-1001; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201902612  
Charmaine Backens  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: August 13, 2019

◆ ◆ ◆  
Cancellation of Notice and Comment Hearing: Valero Refining Texas, L.P.; Federal Operating Permit No. 01381

The Notice and Comment Hearing previously scheduled for August 29, 2019, has been cancelled. **The Notice and Comment Hearing will be rescheduled for a later date.**

Issue Date: August 14, 2019  
TRD-201902658  
Bridget C. Bohac  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: August 14, 2019

◆ ◆ ◆  
Enforcement Orders

An agreed order was adopted regarding Phillips 66 Company, Docket No. 2017-0879-AIR-E on August 14, 2019, assessing \$55,848 in administrative penalties with \$11,169 deferred. Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Nanak Groceries Inc. dba Kuntry Korner, Docket No. 2017-1343-PST-E on August 14, 2019, assessing \$7,517 in administrative penalties with \$1,503 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Dario V. Guerra III dba DERBY ING, Docket No. 2017-1437-PWS-E on August 14, 2019, assessing \$3,014 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Clayton Smith, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Albemarle Corporation, Docket No. 2017-1580-AIR-E on August 14, 2019, assessing \$9,450 in administrative penalties with \$1,890 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was adopted regarding Shehab Alkam dba Big 5 Beverage, Docket No. 2017-1644-PST-E on August 14, 2019, assessing \$7,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Audrey Liter, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Tidmore Acquisition and Development, LP dba Canyon Xpress, Docket No. 2018-0144-PST-E on August 14, 2019, assessing \$7,774 in administrative penalties with \$1,554 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Moran, Docket No. 2018-0525-MWD-E on August 14, 2019, assessing \$9,100 in administrative penalties with \$1,820 deferred. Information concerning any aspect of this order may be obtained by contacting Christopher Moreno, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Wright City Water Supply Corporation, Docket No. 2018-0552-PWS-E on August 14, 2019, assessing \$426 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LOVE'S TRAVEL STOPS & COUNTRY STORES, INC., Docket No. 2018-0581-PWS-E on August 14, 2019, assessing \$924 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Soraya Bun, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Diane Espinoza, Docket No. 2018-0745-PST-E on August 14, 2019, assessing \$16,875 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Adam Taylor, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Fort Worth, Docket No. 2018-0838-WQ-E on August 14, 2019, assessing \$9,375 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding HENDERSON DRIVE INN, INC., Docket No. 2018-1142-PST-E on August 14, 2019, assessing \$8,649 in administrative penalties with \$1,729 deferred. Information

concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was adopted regarding ALI ROSHAN, INC. dba Conoco 66, Docket No. 2018-1190-PST-E on August 14, 2019, assessing \$5,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Benjamin Warms, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Midland County, Docket No. 2018-1245-WQ-E on August 14, 2019, assessing \$21,250 in administrative penalties with \$4,250 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Stolthaven Houston, Inc., Docket No. 2018-1345-AIR-E on August 14, 2019, assessing \$11,475 in administrative penalties with \$2,295 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Plano, Docket No. 2018-1351-WQ-E on August 14, 2019, assessing \$7,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GARNEY COMPANIES, INC., Docket No. 2018-1386-WQ-E on August 14, 2019, assessing \$6,563 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Mesquite, Docket No. 2018-1410-WQ-E on August 14, 2019, assessing \$4,875 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Oxbow Calcining LLC, Docket No. 2018-1687-AIR-E on August 14, 2019, assessing \$39,000 in administrative penalties with \$7,800 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201902649

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 14, 2019



#### Enforcement Orders

An agreed order was adopted regarding Pico Propane Operating, LLC, Docket No. 2016-1974-PST-E on August 13, 2019, assessing \$6,879 in administrative penalties with \$1,375 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell,

Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Atmos Energy Corporation, Docket No. 2017-0312-AIR-E on August 13, 2019, assessing \$2,813 in administrative penalties with \$562 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ASA REALESTATE, LP, Docket No. 2017-1069-EAQ-E on August 13, 2019, assessing \$6,663 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jake Marx, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding RANDOLPH WATER SUPPLY CORPORATION, Docket No. 2017-1664-PWS-E on August 13, 2019, assessing \$613 in administrative penalties with \$122 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Christina Duncan dba Lakeside Water and Christopher W. Duncan dba Lakeside Water, Docket No. 2018-0269-PWS-E on August 13, 2019, assessing \$1,687 in administrative penalties with \$337 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Mukhtar Farooqui dba Cypress Chevron, Docket No. 2018-0634-PST-E on August 13, 2019, assessing \$7,187 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jaime Garcia, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Dale W. Haggard dba Whispering Pines Subdivision, Docket No. 2018-0778-PWS-E on August 13, 2019, assessing \$652 in administrative penalties with \$130 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding THE ALZAFAR TEMPLE OF THE ANCIENT ARABIC ORDER OF THE NOBLES OF THE MYSTIC SHRINE FOR NORTH AMERICA, Docket No. 2018-0827-PWS-E on August 13, 2019, assessing \$624 in administrative penalties with \$124 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ORANGEFIELD WATER SUPPLY CORPORATION, Docket No. 2018-0881-PWS-E on August 13, 2019, assessing \$817 in administrative penalties with \$163 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Knife River Corporation - South, Docket No. 2018-1046-WQ-E on August 13, 2019, assessing \$5,000 in administrative penalties with \$1,000 deferred. Information concerning any aspect of this order may be obtained by contacting

Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Trinity, Docket No. 2018-1086-PWS-E on August 13, 2019, assessing \$1,515 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jaime C. Garcia, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding UNION WATER SUPPLY CORPORATION, Docket No. 2018-1107-PWS-E on August 13, 2019, assessing \$1,411 in administrative penalties with \$281 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Roby, Docket No. 2018-1111-PWS-E on August 13, 2019, assessing \$362 in administrative penalties with \$72 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LOMA ALTA WATER SUPPLY CORPORATION, Docket No. 2018-1123-PWS-E on August 13, 2019, assessing \$62 in administrative penalties with \$12 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of San Angelo, Docket No. 2018-1199-AIR-E on August 13, 2019, assessing \$1,250 in administrative penalties with \$250 deferred. Information concerning any aspect of this order may be obtained by contacting Robyn Babyak, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding David Johnson, Docket No. 2018-1222-MSW-E on August 13, 2019, assessing \$1,312 in administrative penalties with \$262 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding AMES-MINGLEWOOD WATER SUPPLY CORPORATION, Docket No. 2018-1297-PWS-E on August 13, 2019, assessing \$100 in administrative penalties with \$20 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Stillman Enterprises, LLC, Docket No. 2018-1334-AIR-E on August 13, 2019, assessing \$1,312 in administrative penalties with \$262 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Praxair, Inc., Docket No. 2018-1352-IWD-E on August 13, 2019, assessing \$3,000 in administrative penalties with \$600 deferred. Information concerning any aspect of this order may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Dimmit County, Docket No. 2018-1374-PWS-E on August 13, 2019, assessing \$250 in administrative penalties with \$50 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding New Progress Water Supply Corporation, Docket No. 2018-1395-PWS-E on August 13, 2019, assessing \$210 in administrative penalties with \$42 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Centana Intrastate Pipeline, LLC, Docket No. 2018-1415-AIR-E on August 13, 2019, assessing \$1,626 in administrative penalties with \$325 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TPC Group LLC, Docket No. 2018-1451-PWS-E on August 13, 2019, assessing \$50 in administrative penalties with \$10 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NOORJI MAREDA, INC., Docket No. 2018-1456-PWS-E on August 13, 2019, assessing \$50 in administrative penalties with \$10 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PIRPIAI, LLC, Docket No. 2018-1513-PWS-E on August 13, 2019, assessing \$1,300 in administrative penalties with \$260 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BAILEY BARK MATERIALS, INC., Docket No. 2018-1523-MLM-E on August 13, 2019, assessing \$2,128 in administrative penalties with \$425 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Alan Danner dba Country Paradise Mobile Home & RV Park and Mary Danner dba Country Paradise Mobile Home & RV Park, Docket No. 2018-1533-PWS-E on August 13, 2019, assessing \$620 in administrative penalties with \$124 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding EBENEZER WATER SUPPLY CORPORATION, Docket No. 2018-1548-MLM-E on August 13, 2019, assessing \$1,165 in administrative penalties with \$233 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Pedro Vasquez dba Fairview Gardens MHP, Docket No. 2018-1550-PWS-E on August 13, 2019, assessing \$200 in administrative penalties with \$40 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MOUNTAIN BREEZE, L.L.C., Docket No. 2018-1554-PWS-E on August 13, 2019, assessing \$228 in administrative penalties with \$45 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Blue Mound, Docket No. 2018-1560-WQ-E on August 13, 2019, assessing \$6,000 in administrative penalties with \$1,200 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Crockett, Docket No. 2018-1586-PWS-E on August 13, 2019, assessing \$650 in administrative penalties with \$130 deferred. Information concerning any aspect of this order may be obtained by contacting Soraya Bun, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GROFF PETROLEUM CARRIERS, INC., Docket No. 2018-1632-PST-E on August 13, 2019, assessing \$1,255 in administrative penalties with \$251 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Scott, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Zarzamora Grocery, Inc. dba Amigo Food Mart, Docket No. 2018-1703-PST-E on August 13, 2019, assessing \$2,470 in administrative penalties with \$494 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Scott, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CONNERS CONSTRUCTION, INC. dba Dippel Quarry, Docket No. 2018-1705-PST-E on August 13, 2019, assessing \$813 in administrative penalties with \$162 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Del Rio, Docket No. 2018-1711-AIR-E on August 13, 2019, assessing \$1,837 in administrative penalties with \$367 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Gallagher Acquisitions, LLC, Docket No. 2018-1730-PWS-E on August 13, 2019, assessing \$220 in administrative penalties with \$44 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Alice, Docket No. 2018-1743-MSW-E on August 13, 2019, assessing \$1,461 in administrative penalties with \$292 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Port O'Connor Improvement District, Docket No. 2019-0051-PWS-E on August 13, 2019, assessing \$935 in administrative penalties with \$187 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding H2O Tech, Inc., Docket No. 2019-0076-PWS-E on August 13, 2019, assessing \$272 in administrative penalties with \$54 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MSR INTERNATIONAL, LLC, Docket No. 2019-0117-PWS-E on August 13, 2019, assessing \$1,941 in administrative penalties with \$388 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jeffrey H. Brennan dba Robin Cove Water Subdivision, Docket No. 2019-0149-PWS-E on August 13, 2019, assessing \$105 in administrative penalties with \$21 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Ronnie W. Sharp and Debbie Sharp dba Chipper Point Apartments, Docket No. 2019-0206-PWS-E on August 13, 2019, assessing \$525 in administrative penalties with \$105 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Scurry County, Docket No. 2019-0272-PWS-E on August 13, 2019, assessing \$180 in administrative penalties with \$36 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Mearstone Properties, L.P., Docket No. 2019-0477-WQ-E on August 13, 2019, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Herbert Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding City of Alice, Docket No. 2019-0580-WQ-E on August 13, 2019, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Sandoval, Jesse, Docket No. 2019-0584-WOC-E on August 13, 2019, assessing \$175 in adminis-

trative penalties. Information concerning any aspect of this citation may be obtained by contacting James Knittel, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Sons, George D. Jr., Docket No. 2019-0598-WOC-E on August 13, 2019, assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Thomas, Robbie, Docket No. 2019-0601-WOC-E on August 13, 2019, assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation order was adopted regarding City of Alice, Docket No. 2019-0656-WQ-E on August 13, 2019, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Christopher Moreno, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding JW Rentals INC, Docket No. 2019-0691-WQ-E on August 13, 2019, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding GARZA, JESUS, Docket No. 2019-0727-WOC-E on August 13, 2019, assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Chase Davenport, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation order was adopted regarding MARBLE, JIMMY J., Docket No. 2019-0732-WOC-E on August 13, 2019, assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding C. C. Crawford Retreading Company, Inc., Docket No. 2019-0742-WQ-E on August 13, 2019, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Chase Davenport, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding MICHAEL D. MCCLEARY, SR., Docket No. 2019-0767-WOC-E on August 13, 2019, assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Epi Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Omt Flow, LLC, Docket No. 2019-0782-WQ-E on August 13, 2019, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Newport Homebuilders, Ltd., Docket No. 2019-0783-WQ-E on August 13, 2019, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding The Construction Management Company, Docket No. 2019-0793-WQ-E on August 13, 2019, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201902651  
Bridget C. Bohac  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: August 14, 2019



#### Notice of Correction to Agreed Order Number 12

In the June 15, 2018, issue of the *Texas Register* (43 TexReg 3915), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 12, for Deyma Davila dba Dey's RV and Mobile Park, LLC. The error is as submitted by the commission.

The reference to the penalty should be corrected to read: "\$720."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-201902613  
Charmaine Backens  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: August 13, 2019



#### Notice of Hearing Blake Rossing: SOAH Docket No. 582-19-6472; TCEQ Docket No. 2019-0945-LIC

##### APPLICATION.

Blake Rossing, 12531 West Highway 71, Apartment 3102, Bee Cave, Texas 78738, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Water Treatment Specialist (WTS) License. The Executive Director denied Mr. Rossing's application for cause. Mr. Rossing has requested a formal hearing on the Executive Director's decision. During the review of Mr. Rossing's application, the Executive Director discovered that Mr. Rossing received a deferred adjudication for a Third-Degree Felony in 2016. The Executive Director considers the deferred adjudication as a conviction for the purposes of this application. The Executive Director denied Mr. Rossing's application because he has been convicted of an offense that does not directly relate to the duties and responsibilities of the licensed occupation but was committed less than five years prior to his application.

##### CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing on this application at:

**10:00 a.m. - September 10, 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, provide an opportunity for settlement discussions, and address other matters as determined by the administrative law judge. The preliminary hearing will be held unless all timely hearing requests are withdrawn or the parties agree to waive the preliminary hearing.

The evidentiary phase of the contested case hearing, to be held at a later date, will be a legal proceeding similar to a civil trial in state district court to determine whether Mr. Rossing should be issued a WTS License. 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. **If Blake Rossing fails to appear at the preliminary hearing or evidentiary hearing, the Executive Director will request that the hearing be canceled, and that appeal of the Executive Director's decision be dismissed.**

**SOAH's rules allow for participation by telephone or videoconference. Permission must be obtained from SOAH at least ten days before the hearing.**

Legal Authority: Texas Water Code Chapters 5 and 37; Texas Occupations Code Chapter 53; Texas Government Code, Chapter 2001; 30 Texas Administrative Code (TAC) Chapter 30, and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapters 70 and 80 and 1 TAC Chapter 155.

##### INFORMATION.

For information concerning the hearing process, please contact the TCEQ Office of Public Interest Counsel, MC 103, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3144. Further information regarding this hearing may be obtained by contacting Alicia Ramirez, Staff Attorney, TCEQ, Environmental Law Division, MC 173, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0133. General information about the TCEQ can be found at our web site at <http://www.tceq.texas.gov/>. General information about SOAH can be found on its website at <http://www.soah.texas.gov/index.asp>, or by calling (512) 475-4993.

**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 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://www.soah.texas.gov), or in printed format upon request to SOAH."**

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.

Issued: August 8, 2019

TRD-201902639

Bridget C. Bohac  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: August 13, 2019



Notice of Hearing Bosque Solutions LLC: SOAH Docket No. 582-19-6473; TCEQ Docket No. 2019-0665-AIR; Proposed Registration No. 152013

**APPLICATION.**

Bosque Solutions LLC, P.O. Box 2101, Mansfield, Texas 76063-0020, has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit, Registration No. 152013, which would authorize construction of a permanent concrete batch plant located at 7327 Gibson Cemetery Road, Mansfield, Tarrant County, Texas 76063. 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=32.592818&lng=-97.203907&zoom=13&type=r](http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.592818&lng=-97.203907&zoom=13&type=r)>. For the exact location, refer to the application. The proposed facility will emit the following air contaminants: particulate matter including (but not limited to) aggregate, cement, road dust, and particulate matter with diameters of 10 microns or less and 2.5 microns or less. This application was submitted to the TCEQ on May 23, 2018.

The TCEQ Executive Director has determined that the application meets all of the requirements of a standard permit authorized by 30 Texas Administrative Code (TAC) §116.611, which would establish the conditions under which the plant must operate. The Executive Director has made a preliminary decision to issue the registration because it meets all applicable rules. The application, executive director's preliminary decision, and standard permit are available for viewing and copying at the TCEQ central office, the TCEQ Dallas/Fort Worth regional office, and the Mansfield Public Library, 104 South Wisteria, Mansfield, Tarrant County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Dallas/Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas. Visit [www.tceq.texas.gov/goto/cbp](http://www.tceq.texas.gov/goto/cbp) to review the standard permit.

**CONTESTED CASE HEARING.**

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing for a formal contested case hearing at:

10:00 a.m. - September 30, 2019

Council Chambers

City Hall

1200 East Broad Street

Mansfield, Texas 76063

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, allow an opportunity for settlement discussions, and to address other matters as determined by the judge. The evidentiary hearing phase of this contested case hearing will be a legal proceeding, held at a later date, and 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 July 11, 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 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 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](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 Bosque Solutions LLC at the address stated above or by calling Mr. Josh Butler, Project Manager, Elm Creek Environmental, LLC at (214) 334-6954.

Issued: August 8, 2019

TRD-201902641

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 13, 2019



Notice of Hearing Sergio Rincon: SOAH Docket No. 582-19-6471; TCEQ Docket No. 2019-0944-LIC

**APPLICATION.** Sergio Rincon, 519 Edalyn, San Antonio, Texas 78219, has applied to the Texas Commission on Environmental Quality (TCEQ) for an Irrigation Technician License. The Executive Director denied Mr. Rincon's application for cause. Mr. Rincon has requested a formal hearing on the Executive Director's decision. During the review of Mr. Rincon's application, the Executive Director discovered



that Mr. Rincon was convicted of two Class A misdemeanors in 2012 and a Second-Degree Felony in 2014. The Executive Director denied Mr. Rincon's application because he has been convicted of offenses that directly relate to the duties and responsibilities of the licensed occupation and the court order requirements have not been met.

#### CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing on this application at:

**10:00 a.m. - September 9, 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, provide an opportunity for settlement discussions, and address other matters as determined by the administrative law judge. The preliminary hearing will be held unless all timely hearing requests are withdrawn or the parties agree to waive the preliminary hearing.

The evidentiary phase of the contested case hearing, to be held at a later date, will be a legal proceeding similar to a civil trial in state district court to determine whether Mr. Rincon should be issued an Irrigation Technician License. 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. **If Sergio Rincon fails to appear at the preliminary hearing or evidentiary hearing, the Executive Director will request that the hearing be canceled, and that appeal of the Executive Director's decision be dismissed.**

**SOAH's rules allow for participation by telephone or videoconference. Permission must be obtained from SOAH at least ten days before the hearing.**

Legal Authority: Texas Water Code Chapters 5 and 37; Texas Occupations Code Chapter 53; Texas Government Code, Chapter 2001; 30 Texas Administrative Code (TAC) Chapter 30, and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapters 70 and 80 and 1 TAC Chapter 155.

#### INFORMATION.

For information concerning the hearing process, please contact the TCEQ Office of Public Interest Counsel, MC 103, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3144. Further information regarding this hearing may be obtained by contacting Alicia Ramirez, Staff Attorney, TCEQ, Environmental Law Division, MC 173, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0133. General information about the TCEQ can be found at our web site at <http://www.tceq.texas.gov/>. General information about SOAH can be found on its website at <http://www.soah.texas.gov/index.asp>, or by calling (512) 475-4993.

**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 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://www.soah.texas.gov), or in printed format upon request to SOAH."**

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.

Issued: August 8, 2019

TRD-201902644

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 13, 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 **September 24, 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 September 24, 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: CANYON RIDGE INVESTMENT COMPANY; DOCKET NUMBER: 2017-1105-PWS-E; TCEQ ID NUMBER: RN101262483; LOCATION: 1001 Tempe Street, Amarillo, Randall County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.117(c)(2)(B), (h), and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the executive director (ED) for the January 1 2016- December 31, 2016 monitoring period, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples for the January 1 2016 - December 31, 2016 monitoring period; 30

TAC §290.117(c)(2)(C), (h), and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2013 - December 31, 2015 monitoring period and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples for the January 1, 2013 - December 31, 2015 monitoring period; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to conduct repeat coliform monitoring for the month of May 2013, regarding the failure to conduct increased coliform monitoring for the month of June 2013, and regarding the failure to conduct routine coliform monitoring for the month of July 2014; PENALTY: \$838; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(2) COMPANY: DAKOTA RESOURCES, INC.; DOCKET NUMBER: 2018-1186-WR-E; TCEQ ID NUMBER: RN110470853; LOCATION: Approximately two miles southwest of the intersection of Farm-to-Market Road 1323 and Kent Hatchery Road near Johnson City, Blanco County; TYPE OF FACILITY: recreational retreat; RULES VIOLATED: TWC, §11.121 and 30 TAC §297.11 and §297.21(c), by failing to obtain authorization prior to impounding, storing, diverting, taking, or using state water or beginning construction of any work designed for the storage, taking, or diversion of state water; PENALTY: \$2,250; STAFF ATTORNEY: Audrey Liter, Litigation Division, MC 175, (512) 239-0684; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

(3) COMPANY: Eagle Mountain Real Estate Investments, Inc.; DOCKET NUMBER: 2017-0431-PWS-E; TCEQ ID NUMBER: RN109422428; LOCATION: 12820 Morris Dido Newark Road, Fort Worth, Tarrant County; TYPE OF FACILITY: public water system (PWS); RULES VIOLATED: 30 TAC §290.46(n)(1), by failing to maintain accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank at the PWS until the facility is decommissioned; 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data such as well material setting data, geological log, sealing information (pressure cementing and surface protection), disinfection information, microbiological sample results, and a chemical analysis report of a representative sample of water from the well for as long as the well remains in service; and 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply to ensure that continuous and effective disinfection can be secured under all conditionals for the purpose of microbiological control and distribution; PENALTY: \$550; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: ECS Big Town, LLC; DOCKET NUMBER: 2018-1486-MLM-E; TCEQ ID NUMBER: RN100547967; LOCATION: 1515 Big Town Boulevard, Mesquite, Dallas County; TYPE OF FACILITY: electronics recycling facility; RULES VIOLATED: 30 TAC §330.15(a) and (c) and §335.4, by causing, suffering, allowing, or permitting the unauthorized disposal of municipal solid waste and industrial solid waste; and 30 TAC §§335.62, 335.503(a), and 335.504, and 40 Code of Federal Regulations §262.11, by failing to conduct hazardous waste determinations and waste classifications; PENALTY: \$5,000; 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.

(5) COMPANY: Interstate Pipeline Utility Construction, LLC; DOCKET NUMBER: 2017-0211-WQ-E; TCEQ ID NUMBER: RN109435610; LOCATION: intersection of Old North Road and Cooper Creek, Denton, Denton County; TYPE OF FACILITY: construction site; RULES VIOLATED: TWC, §26.121(a)(2), by failing to prevent the unauthorized discharge of other waste into or adjacent to any water in the state; and TWC, §26.039(b), by failing to provide notification to the TCEQ of an accidental discharge which caused pollution as soon as possible and not later than 24 hours after the occurrence; PENALTY: \$7,538; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201902614

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: August 13, 2019



### Notice of Opportunity to Comment on Default 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 Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is 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 **September 24, 2019**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO 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 DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO 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 the DO should be sent to the attorney designated for the DO 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 September 24, 2019**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Chelsea Watson dba Triple 777 Deer Blinds; DOCKET NUMBER: 2018-0861-AIR-E; TCEQ ID NUMBER: RN109971044; LOCATION: 125 North Pearl, Marquez, Leon County; TYPE OF FACILITY: surface coating facility; RULES VIOLATED: Texas Health and Safety Code, §382.0518(a) and §382.085(b) and 30 TAC §116.110(a), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$1,312; STAFF ATTORNEY: Clayton Smith, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Cody L. Cain; DOCKET NUMBER: 2019-0264-WOC-E; TCEQ ID NUMBER: RN107295016; LOCATION: approximately six and a half miles east of the City of Ozona at the intersection of Interstate Highway 10 and Taylor Box Road, Crockett County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.0301(c) and §37.003, and 30 TAC §30.5(a) and §30.331(b), by failing to have a valid and current wastewater operator license prior to performing process control activities at a wastewater treatment facility; PENALTY: \$4,198; STAFF ATTORNEY: Logan Harrell, Litigation Division, MC 175, (512) 239-1439; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(3) COMPANY: Matthew T. Tamplen; DOCKET NUMBER: 2018-1315-MLM-E; TCEQ ID NUMBER: RN110459864; LOCATION: 0.2 miles east of County Road 125 and 0.5 miles north of County Road 130 near Crowell, Foard County; TYPE OF FACILITY: property involving the management of municipal solid waste (MSW); RULES VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; and Texas Health and Safety Code, §382.085(b) and 30 TAC §111.201, by causing, suffering, allowing, or permitting outdoor burning within the state of Texas; PENALTY: \$14,345; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(4) COMPANY: RANGER UTILITY COMPANY; DOCKET NUMBER: 2017-0083-PWS-E; TCEQ ID NUMBER: RN101249910; LOCATION: 17823 Brookway Drive near Houston, Harris County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director (ED) each quarter by the tenth day of the month following the end of each quarter; 30 TAC §290.117(c)(2)(B), (h), and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples; 30 TAC §290.117(c)(2)(C), (h), and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required five sample sites, have samples analyzed, and report the results to the ED, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year, and failing to submit a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect triggered source monitoring

samples for coliform analysis; 30 TAC §290.122(c)(2)(A) and (f) and TCEQ Agreed Order Docket Number 2015-0820-PWS-E, Ordering Provision Number 2.a.ii., by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a Disinfectant Level Quarterly Operating Report; 30 TAC §290.122(b)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to comply with the maximum contaminant level for coliform; 30 TAC §290.117(c)(2)(A), (h), and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED; 30 TAC §§290.46(f)(4), 290.115(c), and 290.122(c)(2)(A) and (f), by failing to collect Stage 2 Disinfection Byproducts (DBP2) samples, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect DBP2 samples; and TWC, §5.702 and 30 TAC §291.76, by failing to pay Regulatory Assessment Fees for TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 12324; PENALTY: \$2,776; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201902615

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: August 13, 2019



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Noor Ali dba Brazos Bend Home & Ranch and Tank Works, Inc. dba Brazos Bend Home & Ranch: SOAH Docket No. 582-19-6625; TCEQ Docket No. 2018-0856-PWS-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. - September 5, 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 September 26, 2018, concerning assessing administrative penalties against and requiring certain actions of Noor Ali dba Brazos Bend Home & Ranch and TANK WORKS, INC. dba Brazos Bend Home & Ranch, for violations in Fort Bend County, Texas, of: 30 Texas Administrative Code (TAC) §290.109(d)(4)(B).

The hearing will allow Noor Ali dba Brazos Bend Home & Ranch and TANK WORKS, INC. dba Brazos Bend Home & Ranch, 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 Noor Ali dba Brazos Bend Home & Ranch and TANK WORKS, INC. dba Brazos Bend Home & Ranch, 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 Noor Ali dba Brazos Bend Home & Ranch and TANK WORKS, INC. dba Brazos Bend Home & Ranch 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.** Noor Ali dba Brazos Bend Home & Ranch and TANK WORKS, INC. dba Brazos Bend Home & Ranch, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Health & Safety Code ch. 341 and 30 TAC chs. 70 and 290; 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 TAC ch. 155.

Further information regarding this hearing may be obtained by contacting John S. Mercurief II, 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.suah.texas.gov](http://www.suah.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: August 7, 2019

TRD-201902643

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 13, 2019



Notice of Public Meeting Air Quality Standard Permit for Concrete Batch Plants: Proposed Registration No. 157195

**Application.** Rocket Materials, LLC, has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit, Registration No. 157195, which would authorize construction of a permanent concrete batch plant located at 914 Pinafore Lane, Houston, Harris County, Texas 77039. This application is being processed in an expedited manner, as allowed by

the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.921644&lng=-95.373286&zoom=13&type=r>. The proposed facility will emit the following air contaminants: particulate matter including (but not limited to) aggregate, cement, road dust, and particulate matter with diameters of 10 microns or less and 2.5 microns or less.

The executive director has completed the administrative and technical reviews of the application and determined that the application meets all of the requirements of a standard permit authorized by 30 TAC §116.611, which would establish the conditions under which the plant must operate. The executive director has made a preliminary decision to issue the registration because it meets all applicable rules.

**Public Comment/Public Meeting. You may submit public comments to the Office of the Chief Clerk at the address below.** The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

**The Public Meeting is to be held:**

**Monday, September 9, 2019, at 6:30 p.m.**

**BakerRipley East Aldine Campus**

**3000 Aldine Mail Route Road**

**Houston, Texas 77039**

**INFORMATION.** Citizens are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <http://www14.tceq.texas.gov/epic/eComment/>. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our website at [www.tceq.texas.gov](http://www.tceq.texas.gov). *Si desea información en español, puede llamar al (800) 687-4040.*

The application, executive director's preliminary decision, and standard permit will be available for viewing and copying at the TCEQ central office, the TCEQ Houston regional office, and the Aldine Branch Library, 11331 Airline Drive, 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, Hous-

ton, Texas. Visit [www.tceq.texas.gov/goto/cbp](http://www.tceq.texas.gov/goto/cbp) to review the standard permit. Further information may also be obtained from Rocket Materials, LLC, 14115 Luthe Road, Suite 104, Houston, Texas 77039-1828 or by calling Ms. Monique Wells, Environmental Consultant, CIC Environmental, LLC at (512) 292-4314.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Notice Issuance Date: August 13, 2019

TRD-201902645

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 13, 2019



#### Notice of Public Meeting for an Air Quality Permit: Proposed Permit Number 149313

**APPLICATION.** GCGV Asset Holding LLC, 1735 Hughes Landing Blvd # E07.s185, The Woodlands, Texas 77380-1688, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of Proposed Air Quality Permit Number 149313, which would authorize construction of a Gulf Coast Growth Venture Terminal located near the intersection of Highway 181 Frontage Road and Kay Bailey Hutchison Road and follow Kay Bailey Hutchison Road to the end, Portland, San Patricio County, Texas 78374. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=27.883333&lng=-97.278055&z=13&type=r>. This application was processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. The proposed facility will emit the following contaminants: carbon monoxide, hazardous air pollutants, hydrogen sulfide, nitrogen oxides, organic compounds, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less and sulfur dioxide.

The executive director has completed the technical review of the application and 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.

#### **PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below.**

The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested

to be on the mailing list for this permit application and provides a mailing address.

#### **The Public Meeting is to be held:**

**Monday, September 16, 2019 at 7:00 p.m.**

**Gregory-Portland High School**

**Charlotte Brown Performing Arts Theatre**

**4601 Wildcat Drive**

**Portland, Texas 78374**

**INFORMATION.** Citizens are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/>. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at [www.tceq.texas.gov](http://www.tceq.texas.gov). *Si desea información en español, puede llamar al (800) 687-4040.*

The permit application, executive director's preliminary decision, and draft permit will be available for viewing and copying at the TCEQ central office, the TCEQ Corpus Christi regional office, and at the Bell/Whittington Public Library, 2400 Memorial Parkway, Portland, San Patricio County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Corpus Christi Regional Office, NRC Bldg Ste 1200, 6300 Ocean Dr, Unit 5839, Corpus Christi, Texas. Further information may also be obtained from GCGV Asset Holding LLC at the address stated above or by calling Mrs. Tammy Headrick, Environmental Advisor at (832) 625-4775.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Notice Issuance: Date August 14, 2019

TRD-201902652

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 14, 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: Lobby Activities Report due August 10, 2018**

Lilyanne H. McClean, 1701 Brun St., Ste. 200, Houston, Texas 77019

##### **Deadline: Lobby Activities Report due April 10, 2019**

Lilyanne H. McClean, 1701 Brun St., Ste. 200, Houston, Texas 77019

##### **Deadline: Personal Financial Statement due May 3, 2019**

Pamela Medina, 2352 Camden Dr., Unit C, Houston, Texas 77021-1055

TRD-201902552

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**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 August 5, 2019 to August 9, 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 web site. The notice was published on the web site on Friday, August 16, 2019. The public comment period for this project will close at 5:00 p.m. on Sunday, September 15, 2019.

**FEDERAL AGENCY ACTIONS:**

**Applicant:** Oiltanking North America

**Location:** The project site is located in the waters and adjacent wetlands of the Texas City Ship Channel Turning Basin, at 2800 Loop 197 South, in Texas City, Galveston County, Texas.

**Latitude & Longitude (NAD 83):** 29.360719, -94.912881

**Project Description:** The applicant proposes to hydraulically or mechanically dredge 130,000 cubic yards from a 4.2-acre area of the turning basin to a depth of -40 feet below the mean lower low water line with an allowable 2 feet over dredge to facilitate the construction of a pile support dock. The proposed project includes: an access trestle to extend south to the shoreline; pipe rack bents along the east side of the trestle to support the piping infrastructure; and the placement of four monopile breasting dolphins and four monopile mooring dolphins for ship berthing.

The proposed project would impact approximately 3.65 acres of palustrine emergent wetlands (PEM) and estuarine emergent wetlands (EEM). Applicant proposes to purchase mitigation credits from Gulf Coast Plains Mitigation Bank for the PEM and EEM impacts.

**Type of Application:** U.S. Army Corps of Engineers (USACE) permit application # SWG-2007-00606. 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. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

**CMP Project No:** 19-1392-F1

**Applicant:** Strategic Petroleum Reserve

**Location:** The project site is located in Blue Lake, at the Strategic Petroleum Reserve of the United States Department of Energy, in Freeport, Brazoria County, Texas.

**Latitude & Longitude (NAD 83):** 28.922123, -95.37761

**Project Description:** The applicant proposes to modify the previous authorization to discharge and dredge 300 cubic yards of compacted clay, 0.5 cubic yards of filter cloth, and 63 cubic yards of crushed stone to facilitate the construction of an aggregate boat back down ramp, vehicle turning area, and timber boat dock. The proposed boat back down will require dredging of 14.22 cubic yards, maintaining a 1:4 slope. The proposed dredged materials will be stockpiled on the existing road and re-used during proposed construction. The proposed turning area will fill a 72-foot by 60-foot area that will consist of layers of compact clay, filter cloth, and a minimum 6-inch thick crushed stone. The proposed work will be done by lifts to facilitate the access from just above the water level to perform compaction and placement to final grade. The proposed boat dock will be a timber dock that measures 24-foot by 10-foot. The proposed work will be done by a track hoe and a bulldozer impacting 0.1 acres of intermediate marsh on the southwest corner of the proposed turning area. The proposed fill is to give space for proper ingress and egress of construction equipment and will be placed on the west side of the widest part of an existing road.

**Type of Application:** U.S. Army Corps of Engineers (USACE) permit application # SWG-1995-01780. This application will be reviewed pursuant to Section 404 of the Clean Water Act.

**CMP Project No:** 19-1393-F1

**Applicant:** WEB Fleeting, LP

**Location:** The project site is located in the Old River Channel of the San Jacinto River, at 7112 Market Street, in Channelview, Harris County, Texas.

**Latitude & Longitude (NAD 83):** 29.788608, -95.077220

**Project Description:** The applicant requests a five-year extension of time to maintenance dredge their previously authorized 12-acre project site to a depth of -14 feet Mean Lower Low Water (MLLW) by removing approximately 50,000 cubic yards of material. The dredged material will be disposed of in a previously authorized dredge material placement area in uplands on site. This project area is located within the San Jacinto Waste Pits Superfund Site Area of Concern and is being evaluated with consideration to the 21 October 2009 Public Announcement.

**Type of Application:** U.S. Army Corps of Engineers (USACE) permit application # SWG-2002-00218. 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:** 19-1394-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. Comments should be sent to Ms. Buchtien at the above address or by email.

TRD-201902662

Mark A. Havens

Chief Clerk and Deputy Land Commissioner

General Land Office

Filed: August 14, 2019

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**Texas Health and Human Services Commission**

**Public Notice - Texas State Plan for Medical Assistance  
Amendment Effective September 1, 2019**

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2019.

The proposed amendment will provide increased Medicaid inpatient reimbursement rates to rural hospitals, update the definition of a children's hospital and create a new SDA add-on for children's hospitals. This new SDA add-on, called the Children's Hospital Supplemental add-on, will be effective for inpatient hospital discharges occurring after August 31, 2019, and before September 1, 2020.

The proposed amendment is estimated to result in an increase in annual aggregate expenditures of \$14,832,147 for federal fiscal year (FFY) 2019, consisting of \$8,630,825 in federal funds and \$6,201,322 in non-federal funds. For FFY 2020, the estimated increase in annual aggregate expenditures is \$167,785,804, consisting of \$102,164,776 in federal funds and \$65,621,028 in non-federal funds.

**Copy of Proposed Amendment.** Interested parties may obtain a copy of the proposed amendment and/or additional information about the amendment by contacting Cynthia Henderson, State Plan Policy Advisor, 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) 428-1932; by facsimile at (512) 730-7472; or by email at [Medicaid\\_Chip\\_SPA\\_Inquiries@hhsc.state.tx.us](mailto: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 (which were formerly the local offices of the Department of Aging and Disability Services).

**Written Comments.** Written comments and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax or email:

**U.S. Mail**

Texas Health and Human Services Commission  
Attention: Rate Analysis Department, Mail Code H-400  
P.O. Box 149030  
Austin, Texas 78714-9030

**Overnight mail, special delivery mail, or hand delivery**

Texas Health and Human Services Commission  
Attention: Rate Analysis Department, Mail Code H-400 Brown-Heatly Building  
4900 North Lamar Blvd.  
Austin, Texas 78751  
Phone number for package delivery: (512) 730-7401

**Fax**

Attention: Rate Analysis Department at (512) 730-7475

**Email**

[RAD\\_Operations@hhsc.state.tx.us](mailto:RAD_Operations@hhsc.state.tx.us)  
TRD-201902667  
Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: August 14, 2019



**Public Notice - Texas State Plan for Medical Assistance Amendments Effective September 1, 2019**

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are effective September 1, 2019.

The purpose of the amendments is to update the fee schedules in the current state plan by adjusting fees, rates, or charges for Personal Care Services, Private Duty Nursing Services, and Physical, Occupational and Speech Therapy services effective September 1, 2019 included in the following:

for Early and Periodic Screening, Diagnosis, and Treatment Services (EPSDT);

Physicians and Other Practitioners; and

Home Health Services.

The proposed amendments are estimated to result in an annual aggregate expenditure of \$5,633,553 for federal fiscal year (FFY) 2019, consisting of \$3,278,164 in federal funds and \$2,355,389 in state general revenue. For FFY 2020, the estimated annual aggregate expenditure is \$68,570,895, consisting of \$41,752,818 in federal funds and \$26,818,077 in state general revenue. For FFY 2021, the estimated annual aggregate expenditure is \$69,332,036, consisting of \$43,041,328 in federal funds and \$26,290,708 in state general revenue.

Further detail on specific reimbursement rates and percentage changes is available on the HHSC Rate Analysis website under the proposed effective date at: <http://rad.hhs.texas.gov/rate-packets>.

**Rate Hearing.** A rate hearing was conducted on July 29, 2019, at 10:30 a.m. in Austin, Texas. Information about the proposed rate change(s) and the hearing can be found in the July 12, 2019, issue of the *Texas Register* on pages 3569-3570. These can be found at <http://www.sos.state.tx.us/texreg/index.shtml>.

**Copy of Proposed Amendments.** Interested parties may obtain additional information and/or a free copy of the proposed amendments by contacting Cynthia Henderson, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, TX 78711; by telephone at (512) 487-3349; by facsimile at (512) 730-7472; or by e-mail at [Medicaid\\_Chip\\_SPA\\_Inquiries@hhsc.state.tx.us](mailto:Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us). Copies of the proposed amendments will be available for review at the local county offices of the Texas Health and Human Services Commission (which were formerly the local offices of the Department of Aging and Disability Services).

**Written Comments.** Written comments about the proposed amendments and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

**U.S. Mail** Texas Health and Human Services Commission Attention: Rate Analysis, Mail Code H-400 P.O. Box 149030 Austin, Texas 78714-9030

**Overnight mail, special delivery mail, or hand delivery** Texas Health and Human Services Commission Attention: Rate Analysis, Mail Code H-400 Brown-Heatly Building 4900 North Lamar Blvd Austin, Texas 78751 Phone number for package delivery: (512) 730-7401

**Fax** Attention: Rate Analysis at (512) 730-7475

**Email** [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us)

TRD-201902669

Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: August 14, 2019

**Department of State Health Services**  
Licensing Actions for Radioactive Materials





During the first half of July, 2019, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Safety Licensing Branch has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Spring	Pulse Physician Organization P.L.L.C.	L07007	Spring	00	07/02/19
Throughout TX	Axio Cased Hole Services L.L.C.	L07008	Victoria	00	07/02/19
Webster	Premier Cardiology Associates P.L.L.C.	L07006	Webster	00	07/02/19

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Arlington	Health Imaging Partners L.L.C. dba Envision Imaging	L06634	Arlington	07	07/03/19
Brownwood	3M Company	L00918	Brownwood	52	07/01/19
Dallas	Methodist Hospitals of Dallas	L00659	Dallas	133	07/15/19
Dallas	Alliance Geotechnical Group Inc.	L05314	Dallas	38	07/11/19
Dallas	University of Texas Southwestern Medical Center at Dallas	L05947	Dallas	41	07/08/19
Fort Worth	Sterigenics U.S. L.L.C.	L03851	Fort Worth	51	07/09/19
Houston	Memorial Hermann Health System dba Memorial Hermann Northeast Hospital	L02412	Houston	133	07/15/19
Houston	ECS Southwest L.L.P.	L06693	Houston	08	07/01/19
Longview	Texas Oncology P.A. dba Longview Cancer Center	L05017	Longview	22	07/09/19
Lubbock	Texas Tech University	L01536	Lubbock	106	07/12/19
Lubbock	Lubbock County Hospital District of Lubbock County Texas	L04719	Lubbock	164	07/09/19
Plano	Columbia Medical Center of Plano Subsidiary L.P. dba Medical City Plano	L02032	Plano	119	07/08/19

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

San Antonio	The University of Teas Health Science Center at San Antonio	L01279	San Antonio	170	07/02/19
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	168	07/09/19
San Antonio	Cardiovascular Associates of San Antonio P.A.	L04996	San Antonio	25	07/09/19
San Antonio	Jawad Z. Shaikh M.D.	L06668	San Antonio	03	07/03/19
Seguin	Guadalupe Regional Medical Center	L02292	Seguin	58	07/09/19
Texarkana	J. M Hurley M.D., P.A. dba Texarkana Cardiology Associates	L04738	Texarkana	19	07/15/19
Three Rivers	Diamond Shamrock Refining Company L.P. dba Valero Three Rivers Refinery	L03699	Three Rivers	27	07/03/19
Throughout TX	Zetex Enterprise	L06295	Burnet	02	07/09/19
Throughout TX	Pioneer Wireline Services L.L.C.	L06220	Converse	40	07/12/19
Throughout TX	Alpha Testing Inc.	L03411	Dallas	34	07/02/19
Throughout TX	Southwestern Testing Laboratories L.L.C. dba STL Engineers	L06100	Dallas	14	07/12/19
Throughout TX	Nuclear Sources & Services Inc. dba NSSI/Sources & Services Inc. NSSI	L02991	Houston	47	07/09/19
Throughout TX	NIS Holdings Inc. dba Nuclear Imaging Services	L05775	Houston	108	07/15/19
Throughout TX	Advanced Corrosion Technologies and Training L.L.C. dba ACTT – Advanced Corrosion Technologies and Training L.L.C.	L06508	La Porte	17	07/12/19
Throughout TX	Enviro-Clean Services L.L.C.	L06890	Midland	01	07/03/19
Throughout TX	Parker Hannifin Filtration (US) Inc.	L00330	Mineral Wells	46	07/10/19
Throughout TX	Campbell & Barnes L.L.C. dba CIMA Inspection L.L.C.	L06910	Pasadena	02	07/09/19
Throughout TX	SCI Engineering Inc.	L06961	Selma	01	07/09/19
Throughout TX	Cudd Pumping Services Inc.	L06989	The Woodlands	02	07/11/19
Tyler	Mother Frances Hospital Regional Health Care Center dba Christus Mother Frances Hospital – Tyler	L01670	Tyler	212	07/09/19
Tyler	Texas Oncology P.A.	L04788	Tyler	34	07/09/19
Waco	Texas Oncology P.A.	L05940	Waco	14	07/01/19

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Hereford	Deaf Smith County Hospital District dba Hereford Regional Medical Center	L03111	Hereford	20	07/10/19

TRD-201902601  
Barbara L. Klein  
General Counsel  
Department of State Health Services  
Filed: August 12, 2019

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**Texas Higher Education Coordinating Board**

Notice of Intent to Engage in Negotiated Rulemaking--Core Curriculum Study and Report (Texas Public Institutions of Higher Education)

Senate Bill 25, Sections 8-10, 86th Texas Legislature, amends certain sections of the Texas Education Code. Section 8 amends Section 61.821 by adding Subdivision (4); Section 9 amends Subchapter S by adding Section 61.8221, Study and Report on Core Curriculum; and Section 10 amends Section 61.827, Rules. The legislation requires the Texas Higher Education Coordinating Board (THECB) to establish an advisory committee to assist the Board of the THECB in completing the board's duties under Section 61.8221 and provide the board with subject matter expertise and analysis. The legislation also requires the THECB to use the negotiated rulemaking process in accordance with Texas Government Code, Section 2008 (Negotiated Rulemaking Act) in developing rules regarding the recommended core curriculum developed under Section 61.822.

In identifying persons likely affected by the proposed rules, the Convener of Negotiated Rulemaking sent a memo via GovDelivery to all chancellors and presidents at Texas public institutions of higher education soliciting their interest and willingness to participate in the negotiated rulemaking process, or to nominate a representative from their system/institution.

From this effort, 35 individuals responded (out of approximately 149 affected entities) and expressed an interest to participate or nominated someone from their system/institution to participate on the negotiated rulemaking committee for core curriculum study and report. The positions held by the nominees include a president, vice chancellors and presidents, provosts, deans, an instructor and associate professor. This indicates a probable willingness and authority of the affected interests to negotiate in good faith and a reasonable probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rules.

The following is a list of the stakeholders who are significantly affected by these rules and will be represented on the negotiated rulemaking committee for core curriculum study and report:

1. Public Community Colleges;
2. Public Health-Related Institutions;
3. Public Universities;
4. Public Technical Colleges;
5. Public State Colleges; and
6. Texas Higher Education Coordinating Board.

The THECB proposes to appoint the following 23 individuals to the negotiating rulemaking committee for core curriculum study and report to represent affected parties and the agency:

Public Community Colleges

Lynda Villanueva, Provost and Vice President for Academic and Student Affairs, Brazosport College

Robin Garrett, Deputy Chancellor for Academic and Student Success, Central Texas College

Norma Perez, Vice Chancellor of Instructional Services and Chief Academic Officer, Houston Community College

Horacio Salinas, Dean of Arts and Sciences, Laredo College

Fred Hills, Vice President of Instruction, McLennan Community College

Bruce King, Dean of English, Social Sciences, and eLearning, North Central Texas College

Jennifer Kent, Vice President, Ranger College

Robin Satterwhite, President, South Plains College

Susan Guzman-Trevino, Vice President for Academic Affairs, Temple College

Joe Johnston, English Instructor and Division Chair, Vernon College

Public Technical Colleges

Hector Yanez, Senior Vice President of Student Learning, Texas State Technical College

Public Universities

Kristen Garrison, Associate Vice President of Academic Affairs, Midwestern State University

Yvonne Villanueva-Russell, Dean College of Innovation and Design, Texas A&M University-Commerce (Texas A&M University System)

Barbara Lerner, Vice Provost for Undergraduate Studies and Academic Partnerships, Texas Woman's University

Kambra K. Bolch, Associate Dean for Academic Programs, Texas State University (Texas State University System)

Donald Topliff, Provost and Vice President for Academic Affairs, Angelo State University (Texas Tech University System)

Katherine Jager, Associate Professor of English, University of Houston-Downtown (University of Houston System)

Shannon Goodman, Vice President for Enrollment, University of North Texas (University of North Texas System)

Rebecca Lewis, Assistant Vice Provost, The University of Texas at Arlington (The University of Texas System)

Brent Iverson, Dean of School of Undergraduate Studies, The University of Texas at Austin (The University of Texas System)

Si Millican, Associate Vice Provost for Core Curriculum, The University of Texas at San Antonio (The University of Texas System)

Jonikka Charlton, Associate Vice President for Student Academic Success, The University of Texas Rio Grande Valley (The University of Texas System)

Texas Higher Education Coordinating Board

Rex Peebles, Assistant Commissioner, Academic Quality and Workforce

Meetings will be open to the public. If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

\*Name and contact information of the person submitting the application;

\*Description of how the persons are significantly affected by the rules and how their interests are different than those represented by the persons named above;

\*Name and contact information of the person being nominated for membership; and

\*Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee for core curriculum study and report. Comments and applications for membership on the committee must be submitted by September 1, 2019, to: Laurie A. Frederick, Convener, Negotiated Rulemaking, Texas Higher Education Coordinating Board, P.O. Box 12788; Austin, Texas 78711, Fax: (512) 427-6127, Email: [laurie.frederick@thehb.state.tx.us](mailto:laurie.frederick@thehb.state.tx.us).

TRD-201902659

William Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: August 14, 2019



## Texas Department of Housing and Community Affairs

TDHCA Announcement of a Request for Proposal from Firms Interested in Providing Services of a Market Rate TBA Program Administrator

The Texas Department of Housing and Community Affairs ("TDHCA") is issuing a request for proposal from firms interested in providing services of a Market Rate TBA Program Administrator (the "TBA Program Administrator") to (1) manage and hedge its pipeline, (2) estimate pipeline fallout, and (3) purchase mortgage-backed securities from TDHCA or pair out of pipeline hedges, as directed by TDHCA.

Responses to the RFP must be received at TDHCA no later than 2:00 p.m. C.T. on Monday, September 9, 2019. To obtain a copy of the RFP, please email your request to the attention of Roxanne Koltermann at [Roxanne.koltermann@tdhca.state.tx.us](mailto:Roxanne.koltermann@tdhca.state.tx.us). The RFP can also be viewed on the Electronic State Business Daily (ESBD) [www.txsmartbuy.com](http://www.txsmartbuy.com) and you can search by the RFP number (Solicitation ID/PO Number) 332-RFP20-1003 or on the Department website at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us) under "What's New" on our homepage.

TRD-201902626

David Cervantes

Acting Director

Texas Department of Housing and Community Affairs

Filed: August 13, 2019

## Texas Department of Insurance

Company Licensing

Application for incorporation in the state of Texas for Southlake Insurance Company, a domestic fire and/or casualty company. The home office is in Austin, Texas.

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 Robert Rudnai, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-201902648

James Person

General Counsel

Texas Department of Insurance

Filed: August 14, 2019

## Texas Lottery Commission

Correction of Error

The Texas Lottery Commission published the game procedure for Scratch Ticket Game No. 2193 "Monopoly™ 10X®" in the August 9, 2019, issue of the *Texas Register* (44 TexReg 4247). Due to an error by the Texas Register, the name of the Scratch Ticket Game was incorrect in only the title section of this game procedure. The title section of this game procedure is corrected by capitalizing the "x" of "10x" as follows:

## Texas Lottery Commission

Scratch Ticket Game Number 2193 "Monopoly™ 10X®"

TRD-201902602

### Notice of Public Comment Hearing

A public hearing to receive comments regarding proposed amendments to 16 TAC §§402.401 (Temporary License), 402.413 (Military Service Members, Military Veterans, and Military Spouses), and 402.422 (Amendment to a Regular License to Conduct Charitable Bingo) will be held on Wednesday, September 4, 2019, at 10:00 a.m., at 611 E. 6th Street, Austin, Texas 78701. Persons requiring any accommodation for disability should notify Debbie Jamieson at (512) 344-5038 at least 72 hours prior to the public hearing.

TRD-201902551

Bob Biard

General Counsel

Texas Lottery Commission

Filed: August 7, 2019

### Scratch Ticket Game Number 2178 "Money"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2178 is "MONEY". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2178 shall be \$20.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2178.

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, 03, 04, 06, 07, 08, 09, 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, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 2X SYMBOL, 5X SYMBOL, 10X SYMBOL, \$20.00, \$25.00, \$40.00, \$50.00, \$75.00, \$100, \$150, \$200, \$500, \$1,000, \$10,000, \$1,000,000, MONEY STACK SYMBOL, STACK OF COINS SYMBOL and GOLD BAR SYMBOL.

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. 2178 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
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	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY

41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
56	FFSX
57	FFSV
58	FFET
59	FFNI
60	SXTY
2X SYMBOL	WINX2
5X SYMBOL	WINX5
10X SYMBOL	WINX10
\$20.00	TWY\$
\$25.00	TWV\$
\$40.00	FRTY\$
\$50.00	FFTY\$
\$75.00	SVFV\$
\$100	ONHN
\$150	ONFF
\$200	TOHN
\$500	FVHN
\$1,000	ONTH
\$10,000	10 <sup>TH</sup>
\$1,000,000	TPPZ
MONEY STACK SYMBOL	WIN\$50
STACK OF COINS SYMBOL	WIN\$100
GOLD BAR SYMBOL	WIN\$500

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 (2178), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 2178-0000001-001.

H. Pack - A Pack of the "MONEY" Scratch Ticket Game contains 025 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 025 while the other fold will show the back of Ticket 001 and front of 025.

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 "MONEY" Scratch Ticket Game No. 2178.

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 "MONEY" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose fifty-eight (58) Play Symbols. GAME 1: If a 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 a player reveals a "2X" Play Symbol, the player wins DOUBLE the prize for that symbol. If a player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If a player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. GAME 2: If a 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 "MONEY STACK" Play Symbol, the player wins \$50 instantly. If a player reveals a "STACK OF COINS" Play Symbol, the player wins \$100 instantly. If a player reveals a "GOLD BAR" Play Symbol, the player wins \$500 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 fifty-eight (58) 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 fifty-eight (58) 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 fifty-eight (58) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the fifty-eight (58) 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. GAME 1: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and \$20).

D. GAME 1: No matching non-winning YOUR NUMBERS Play Symbols in this GAME on a Ticket.

E. GAME 1: No matching WINNING NUMBERS Play Symbols in this GAME on a Ticket, unless restricted by other parameters, play action or prize structure.

F. GAME 1: A non-winning Prize Symbol will never match a winning Prize Symbol in this GAME.

G. GAME 1: A Ticket may have up to two (2) matching non-winning Prize Symbols in this GAME, unless restricted by other parameters, play action or prize structure.

H. GAME 1: The "2X" (WINX2) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

I. GAME 1: The "5X" (WINX5) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

J. GAME 1: The "10X" (WINX10) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

K. GAME 2: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 50 and \$50).

L. GAME 2: No matching non-winning YOUR NUMBERS Play Symbols in the GAME on a Ticket.

M. GAME 2: No matching WINNING NUMBERS Play Symbols in this GAME on a Ticket, unless restricted by other parameters, play action or prize structure.

N. GAME 2: A non-winning Prize Symbol will never match a winning Prize Symbol in this GAME.

O. GAME 2: A Ticket may have up to two (2) matching non-winning Prize Symbols in this GAME, unless restricted by other parameters, play action or prize structure.

P. GAME 2: The "MONEY STACK" (WIN\$50) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure, and will only appear with the \$50 Prize Symbol.

Q. GAME 2: The "STACK OF COINS" (WIN\$100) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure, and will only appear with the \$100 Prize Symbol.

R. GAME 2: The "GOLD BAR" (WIN\$500) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure, and will only appear with the \$500 Prize Symbol.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "MONEY" Scratch Ticket Game prize of \$20.00, \$40.00, \$50.00, \$100, \$200, \$250 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, \$50.00, \$100, \$200, \$250 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 "MONEY" Scratch Ticket Game prize of \$1,000, \$10,000 or \$1,000,000, 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 "MONEY" 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 "MONEY" Scratch Ticket Game, the Texas Lottery shall deliver to an adult mem-



ber 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 "MONEY" 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 Ticket Prizes. There will be approximately 7,080,000 Scratch Tickets in Scratch Ticket Game No. 2178. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2178 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$20	920,400	7.69
\$40	212,400	33.33
\$50	637,200	11.11
\$100	200,600	35.29
\$200	28,320	250.00
\$250	56,640	125.00
\$500	7,965	888.89
\$1,000	150	47,200.00
\$10,000	50	141,600.00
\$1,000,000	3	2,360,000.00

\*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 3.43. 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. 2178 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. 2178, 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-201902627

Bob Biard  
General Counsel  
Texas Lottery Commission  
Filed: August 13, 2019



Scratch Ticket Game Number 2197 "Monopoly™ 200X"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2197 is "MONOPOLY™ 200X". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2197 shall be \$20.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2197.

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, 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, 41, 42, 43, 44, 45, 46, 47, 48, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 10X SYMBOL, 50X SYMBOL, 200X SYMBOL, \$10.00, \$20.00, \$30.00, \$50.00, \$100, \$200, \$500, \$2,500, \$20,000, \$100,000 and \$1,000,000.

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. 2197 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
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
41	FRON
42	FRT0
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
56	FFSX
57	FFSV
58	FFET
59	FFNI
60	SXTY
10X SYMBOL	WINX10
50X SYMBOL	WINX50
200X SYMBOL	WINX200
\$10.00	TEN\$
\$20.00	TWY\$
\$30.00	TRTY\$
\$50.00	FFTY\$
\$100	ONHN
\$200	TOHN
\$500	FVHN
\$2,500	25HN
\$20,000	20 <sup>TH</sup>
\$100,000	100 <sup>TH</sup>
\$1,000,000	TPPZ

E. Serial Number - A unique thirteen (13) 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 twenty-four (24) 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 (2197), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 2197-0000001-001.

H. Pack - A Pack of the "MONOPOLY™ 200X" Scratch Ticket Game contains 025 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 025 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 025 will be shown on the back of the Pack.

I. Non-Winning 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 - A Texas Lottery "MONOPOLY™ 200X" Scratch Ticket Game No. 2197.

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 "MONOPOLY™ 200X" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose fifty-six (56) Play Symbols. If a 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 "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. If the player reveals a "50X" Play Symbol, the player wins 50 TIMES the prize for that symbol. If the player reveals a "200X" Play Symbol, the player wins 200 TIMES 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 fifty-six (56) 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 fifty-six (56) 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 fifty-six (56) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the fifty-six (56) 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. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

C. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and \$20).

D. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket, unless restricted by other parameters, play action or prize structure.

E. No matching WINNING NUMBERS Play Symbols on a Ticket, unless restricted by other parameters, play action or prize structure.

F. A non-winning Prize Symbol will never match a winning Prize Symbol.

G. A Ticket may have up to five (5) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

H. The "10X" (WINX10) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

I. The "50X" (WINX50) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

J. The "200X" (WINX200) 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 "MONOPOLY™ 200X" Scratch Ticket Game prize of \$20.00, \$30.00, \$50.00, \$100, \$200 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 \$30.00 \$50.00, \$100, \$200 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 "MONOPOLY™ 200X" Scratch Ticket Game prize of \$2,500, \$20,000, \$100,000 or \$1,000,000, 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 "MONOPOLY™ 200X" 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.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 30 days of notification or the prize will be awarded to an Alternate.

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 "MONOPOLY™ 200X" 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 "MONOPOLY™ 200X" 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 Game 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.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "MONOPOLY™ 200X" Scratch Ticket may be entered into one (1) of five (5) promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

### 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 Ticket Prizes. There will be approximately 9,000,000 Scratch Tickets in the Scratch Ticket Game No. 2197. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2197 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$20	900,000	10.00
\$30	720,000	12.50
\$50	540,000	16.67
\$100	360,000	25.00
\$200	80,250	112.15
\$500	9,000	1,000.00
\$2,500	975	9,230.77
\$20,000	20	450,000.00
\$100,000	5	1,800,000.00
\$1,000,000	4	2,250,000.00

\*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 3.45. 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. 2197 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 Game 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. 2197, 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-201902647  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: August 14, 2019

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**Workforce Solutions Brazos Valley Board**

RFP - Workforce Center and Business Services

**PUBLIC NOTICE**

**Workforce Solutions Brazos Valley Board**

**Notice of Request for Proposals for the Management and Operations of**

**Workforce Center Services**

**And**

**Business Services**

On Friday August 16, 2019, the Workforce Solutions Brazos Valley Board (WSBVB) is releasing a Request for Proposal (RFP) for a contractor to manage and operate Workforce Center Services and Business Services in the Brazos Valley Region. These services are provided for the residents of Brazos, Burleson, Grimes, Leon, Madison, Robertson, and Washington counties. WSBVB will receive proposals from private and public organizations or individuals to provide management as an independent contractor for the seven Workforce Centers in the Brazos Valley Region, effective October 1, 2019.

A Bidder's Conference will be held through a telephone conference call on August 21, 2019, beginning at 10:00 a.m. Individuals and organizations interested in calling should visit [www.bvjobs.org](http://www.bvjobs.org) to obtain the phone number and pass code for the call. To view and download the

RFP, go to [www.bvjobs.org](http://www.bvjobs.org). Bidders can submit questions concerning this RFP to Shawna Rendon at [SRendon@bvcog.org](mailto:SRendon@bvcog.org) no later than August 21, 2019, 5:00 p.m. (CST). Attendance at the bidder's conference is not mandatory. All answers to questions will be posted at [www.bvjobs.org](http://www.bvjobs.org) by close of business on August 22, 2019.

Proposals in response to this RFP are due no later than 4:00 p.m. September 12, 2019, to Workforce Solutions Brazos Valley Board at 3991 East 29th Street, Bryan, Texas 77802. Proposals arriving after the due date and time will not be accepted, regardless of the postmarked date.

This RFP can be accessed at the Board's web page at [www.bvjobs.org](http://www.bvjobs.org) or by request to Shawna Rendon via email at [SRendon@bvcog.org](mailto:SRendon@bvcog.org) or via phone at (979) 595-2801 ext. 2012. The contact person for this RFP is Shawna Rendon, Board Program Administrator.

Equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.

Deaf, hard of hearing or speech-impaired customers may contact: Relay Texas: (800) 735-2989 (TTY) and 711 Voice.

TRD-201902646  
Vonda Morrison  
Program Manager  
Workforce Solutions Brazos Valley Board  
Filed: August 14, 2019

◆ ◆ ◆  
**Workforce Solutions North Texas**

**Public Notice Request for Qualifications for Legal Services, RFQ 19-201**

Workforce Resource, Inc., dba Workforce Solutions North Texas, a 501(c)3 non-profit corporation, is requesting interested and qualified parties to respond to this Request for Qualifications (RFQ 19-201) for Legal Services for Workforce Development Board.

Workforce Solutions North Texas (WSNT) is soliciting Request for Qualifications (RFQ) from individuals or firms licensed to practice law in the State of Texas. The purpose of the RFQ is to provide legal services to furnish advice and counsel and to issue legal opinions on general, administrative and statutory matters including, but not limited to, personnel and employment issues, real estate matters, competitive bidding procedures, contractual matters, statutory funding requirements, statutory contractual oversight functions, Open Records request and Open Meetings requirements. Attendance at WSNT Board and Committee meetings may be required on occasion.

Refer to website for link to RFQ at: <https://ntxworksolutions.org/business/>.

**Proposals are due by 3:00 p.m. on Friday, September 6, 2019.**

TRD-201902660  
Sharon Hulcy  
QA Manager  
Workforce Solutions North Texas  
Filed: August 14, 2019

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**Request for Proposals #19-200-1 Employer of Record for Wage Services for Paid Work Experience**

Workforce Resource, Inc. dba: Workforce Solutions North Texas

Information necessary to prepare proposals is contained in the Request for Proposals. Prospective proposers should read this package carefully before preparing a proposal.

Written questions will be accepted via email to [Brenda.Roland@ntx-worksolutions.org](mailto:Brenda.Roland@ntx-worksolutions.org) until 3:00 p.m. CDT, August 30, 2019. This will be the only opportunity for technical assistance.

Proposals are due no later than, 3:00 p.m. CDT on Friday September 6, 2019.

Late proposals will not be accepted.

Proposals to be Submitted to:

Workforce Solutions North Texas  
Brenda A. Roland, Student HireAbility Navigator  
719 Scott Ave., Ste. 800  
Wichita Falls, Texas 76301

**Issue Date:**

August 23, 2019

**Proposal Deadline:**

September 6, 2019

Workforce Solutions North Texas is an Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities. For the hearing impaired: (800) 735-2989 English (Voice) / (800) 662-4954 Spanish (Voice) / (800) 735-2989 or 7-1-1 (TDD).

TRD-201902650  
Sharon Hulcy  
QA Manager  
Workforce Solutions North Texas  
Filed: August 14, 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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