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 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS**

**SUBCHAPTER K. EUROPEAN CORN BORER QUARANTINE**

4 TAC §§19.110 - 19.113

The Texas Department of Agriculture (the Department) adopts amendments to the Texas Administrative Code, Title 4, Part 1, Chapter 19, Subchapter K, European Corn Borer Quarantine, §§19.110 - 19.112, without changes to the text as published in the April 10, 2020, issue of the Texas Register (45 TexReg 2394). These rules will not be republished. Section 19.113 is adopted with changes and will be republished.

The adopted amendment to §19.110 revises the taxonomic name of the Quarantined Pest, European Corn Borer to Ostrinia nubilalis, which is the most widely acceptable taxonomic name. The adopted amendment to §19.111 modifies the European Corn Borer Quarantined Areas to include counties in Florida known to be infested with European Corn Borer. The adopted amendment to §19.112 adds Cannabis spp. to the list of Quarantined Articles in the European Corn Borer Quarantine. The adopted amendments to §19.113 clarify the restrictions on the movement of European Corn Borer Quarantined Articles from European Corn Borer Quarantined Areas.

The Department received one comment on the proposal from Mr. Steven Long, Assistant Director of Regulatory and Public Service Programs in the Department of Plant Industry at Clemson University, State Plant Regulatory Official, and National Plant Board Vice President. Mr. Long expressed concern about the compliance agreement requirement for hemp plants for planting, as most would be shipped in life-stages not conducive for European corn borer infestation. Amendments were modified to allow shipments of hemp plants for planting, as well as ornamental plants, cut flowers and vegetables if each lot or shipment is inspected and accompanied by a certificate evidencing that no European Corn Borer were found.

The amendments are adopted under §71.001 of the Texas Agriculture Code, which provides the Department with the authority to quarantine an area if it determines that a dangerous insect pest or plant disease new to and not widely distributed in this state exists in any area outside the state; §71.005 of the Texas Agriculture Code, which provides that the Department shall prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and §71.007 of the Texas Agriculture Code, which provides the Department with the authority to adopt rules as necessary for the protection of agricultural and horticultural interests.

Chapter 71 of the Texas Agriculture Code is affected by the adoption.


(a) General. Quarantined articles originating from quarantined areas are prohibited entry into or through the free areas of Texas, except as provided in subsections (b) and (c) of this section.

(b) Exemptions. The following quarantined articles are exempt from the restrictions of this subchapter:

1. individual shipments of lots of shelled grain or seed of 100 pounds or less;
2. grain comprised of packages less than 10 pounds and free from portion of plants or fragments capable of harboring the European Corn Borer;
3. shelled popcorn, seed for planting, or clean, sacked grain for human consumption;
4. dahlia tubers without stems;
5. gladiolus corms without stems;
6. pungent types of pepper fruits;
7. dried flowers and leaves, seeds for planting and human consumption, extracted fiber, and extracted oil of Cannabis spp.;
8. divisions without stems of the previous year's growth, seedling plants, rooted cuttings, and cut flowers of ornamental plants listed in §19.112(b)(3) of this subchapter (relating to Quarantined Articles) if shipped during the period between November 30th to May 1st; and
9. quarantined articles destined to a processing facility may be granted an exemption upon departmental review.

(c) Exceptions.

1. A quarantined article may be shipped into a free area in Texas if it is accompanied by a certificate issued by an authorized representative of the origin state's department of agriculture certifying that the article has met one of the following conditions:

A. the quarantined article was a product of a state not listed as quarantined in this subchapter, and the quarantined article has been maintained to assure no blending or mixing with other quarantined articles produced in or shipped from quarantined areas described in this subchapter; or
(B) grain has been screened through a 1/2 inch or smaller mesh screen, or otherwise processed prior to loading and is free from stalks, cobs, stems or such portions of plants or fragments; or

(C) the quarantined article has been fumigated in a manner prescribed by the department; or

(D) the quarantined article originated from an approved establishment:

(i) in Texas, which has a current compliance agreement with the department; or

(ii) which has a current compliance agreement with the originating state department of agriculture; or

(E) divisions without stems of the previous year's growth, seedling plants, rooted cuttings, and cut flowers of ornamental plants listed in §19.112 (b)(3) of this subchapter (relating to Quarantined Articles), seedling plants and cuttings of Cannabis spp., and articles listed in §19.112(b)(2) of this subchapter (relating to Quarantined Articles), if each lot or shipment is inspected by an authorized representative of the origin state's department of agriculture and no European Corn Borer is found; or

(F) the greenhouse or the growing area where ornamentals with divisions without stems of the previous year's growth, rooted cuttings, seedling plants or cut flowers were produced, were inspected and no European Corn Borer was found; or

(G) parts of Cannabis spp. plants have been screened through a 1/2 inch or smaller mesh screen, or otherwise processed prior to loading and are free from stalks, stems or such portions of plants or fragments capable of harboring larvae of European Corn Borer.

(2) Unfumigated and unscreened grain may be shipped through the free area of Texas if it is destined to a foreign port through a port elevator operating under the authority of the Federal Grain Inspection Service (FGIS), provided a certificate from the state of origin accompanies each shipment stating:

(A) grain is for export only; and

(B) shipment shall not be diverted to any other Texas point; and

(C) a change in destination to other Texas points is not authorized.

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 10, 2020.
TRD-202003235
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Effective date: August 30, 2020
Proposal publication date: April 10, 2020
For further information, please call: (512) 936-9630

TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 6. STATE RECORDS

SUBCHAPTER A. RECORDS RETENTION SCHEDULING

13 TAC §§6.1, 6.5, 6.8

The Texas State Library and Archives Commission (commission) adopts amendments to 13 TAC §§6.1, Definitions; 6.5, Certifica-
tion of Records Retention Schedules and Amendments; and 6.8, Implementation of Certified Records Retention Schedules. The amendments are adopted without changes to the proposed text as published in the June 26, 2020, issue of the Texas Register (45 TexReg 4249). The rules will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTIONS. The amendments are necessary to improve accuracy and clarity of the rules and to add references to the Texas State University Retention Schedule (URRS), a schedule added as §6.10(b) in December 2019.

The amendments to §6.1 add the definition of Texas State University Records Retention Schedule, update the definition of Texas State Records Retention Schedule for consistency, and renumber the definitions accordingly.

The amendment to §6.5 adds a reference to the Texas State University Records Retention Schedule.

The amendment to §6.8 updates the title of a referenced standard and adds the ability to transfer archival records in electronic format.

SUMMARY OF COMMENTS. The Commission did not receive any comments on the proposed amendments or new rule.

STATUTORY AUTHORITY. The amendments are adopted under Government Code, §441.158, which requires the Commission to adopt records retention schedules by rule and requires the Commission to provide records retention schedules to local governments, and Government Code, §441.160, which allows the commission to revise the schedules.

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 10, 2020.
TRD-202003226
Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Effective date: August 30, 2020
Proposal publication date: June 26, 2020
For further information, please call: (512) 463-5591

CHAPTER 7. LOCAL RECORDS
SUBCHAPTER A. REGIONAL HISTORICAL RESOURCE DEPOSITORIES AND REGIONAL RESEARCH CENTERS

13 TAC §§7.1, 7.7, 7.10

The Texas State Library and Archives Commission (commission) adopts amendments to §7.1, Definitions and §7.7, Title to Materials, and new §7.10, Application for Transfer of Title to Local Historical Resources. The new and amended sections are adopted with no changes to the proposed text as published in the May 8, 2020, issue of the Texas Register (45 TexReg 2963). The rules will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTION. The amendments and new rule are adopted, in part, to implement Recommendation 2.4 in the Sunset Advisory Commission's Staff Report with Final Results, 2018-2019, 86th Legislature and Government Code, §441.153(g), which requires the commission, in consultation with depositories, to adopt rules providing an application procedure and standards for evaluating applications to transfer title to local historical resources to depositories.

The amendment to §7.1 adds a definition of "local historical resources." This definition is necessary because the statute refers to "local historical resources" and "state historical resources," but only defines "historical resources." The newly added definition clarifies that when "local historical resources" is used in §7.10, it refers to local government records as defined by the Local Government Code and to other items of historical interest or value to a specific region transferred to the custody of and accepted by the commission.

The amendment to §7.7 references new §7.10 and clarifies that title to materials given, donated, or transferred to the commission but placed in a depository remains with the commission except as authorized by the new rule.

New §7.10 establishes the application procedure and standards for approval of a request.

New subsection (a) is the statement authorizing a depository to request the transfer and provides that the commission will approve the transfer only if it is in the best interest of the state, as required by statute.

New subsection (b) requires a depository that wishes to transfer title to local historical resources to apply using a form provided by the commission. The form must be filled out completely and signed by an authorized representative of the depository's institution.

New subsection (c) clarifies that a depository may only apply for transfer of title to local historical resources currently held by the depository for which the commission has accession documentation. This requirement will ensure the commission has authority to approve the legal transfer. This subsection also clarifies that a depository may not apply for transfer of historical resources unless they are local historical resources. The subsection also specifies that a depository may not apply for transfer of records of local governments not currently held by the depository on behalf of the commission. Lastly, the subsection specifies that a depository must request transfer of all historical resources in one application. This requirement will minimize confusion regarding the records for researchers and ensure the administrative burden of managing records does not increase due to a piecemeal approach.

New subsection (d) provides that the State Archivist will review applications and notify the depository whether the application is approved or denied within 30 days of receipt, or notify the depository of a new date if the State Archivist is unable to make a determination within 30 days. This subsection also allows an applicant to appeal a denial of a transfer request to the director and librarian, whose decision is final.

New subsection (e) requires approved applicants to continue to meet the requirements of §7.3, Minimum Requirements for Depositories, for local historical resources transferred to the depository under this section. This requirement will ensure the local historical resources are preserved according to established archival standards. The commission recognizes it has no authority to enforce this requirement once title to local historical records has transferred; however, this requirement remains in effect for a
depository to continue as a depository under Government Code, §441.153, and reflects generally accepted standards. As such, this requirement should not place a new burden on a depository.

New subsection (f) provides examples of when a request may not be approved, including (1) when the request is for a state historical resource, (2) the request is for a resource not currently held by the depository, (3) the application is not signed, (4) the depository is unable to demonstrate the record was transferred to the depository by the commission, (5) the depository is not in compliance with §7.3 (relating to Minimum Requirements for Depositories), and (6) the transfer is not in the best interest of the state.

SUMMARY OF COMMENTS. The Commission did not receive any comments on the proposed amendments or new rule.

STATUTORY AUTHORITY. The amendments and new section are adopted under Government Code, §441.153(g), which requires the commission, in consultation with depositories, to adopt rules providing an application procedure and standards for evaluating applications to transfer title to local historical resources to depositories.

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 10, 2020.
TRD-202003225
Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Effective date: August 30, 2020
Proposal publication date: May 8, 2020
For further information, please call: (512) 463-5591

———

TITLE 16. ECONOMIC REGULATION
PART 9. TEXAS LOTTERY COMMISSION
CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.158 (Suspension or Revocation of License), §401.160 (Standard Penalty Chart), §401.301 (General Definitions), §401.302 (Scratch Ticket Game Rules), §401.304 (Draw Game Rules (General)), §401.305 (“Lotto Texas®” Draw Game Rule), §401.307 (“Pick 3” Draw Game Rule), §401.308 (“Cash Five” Draw Game Rule), §401.312 (“Texas Two Step” Draw Game Rule), §401.315 (“Mega Millions” Draw Game Rule), §401.316 (“Daily 4” Draw Game Rule), §401.317 (“Powerball®” Draw Game Rule), §401.320 (“All or Nothing” Draw Game Rule), §401.321 (Instant Game Tickets Containing Non-English Words), §401.322 (“Texas Triple Chance” Draw Game Rule), §401.351 (Proceeds from Ticket Sales), §401.353 (Retailer Settlements, Financial Obligations, and Commissions), §401.355 (Restricted Sales), §401.363 (Retailer Record), §401.366 (Compliance with All Applicable Laws), and §401.368 (Lottery Ticket Vending Machines). The rules are adopted without changes to the proposed text as published in the June 26, 2020, issue of the Texas Register (45 TexReg 4252) and will not be republished.

The rule amendments are a result of the Commission’s recent rule review conducted in accordance with Texas Government Code §2001.039. The amendments will simplify and update the rules to conform to industry best practices. The amendments also include updates and clarifications of certain terms to conform usage of those terms throughout the rules (e.g., replacing the terms “instant ticket” and “instant game” with “scratch ticket” and “scratch ticket game”).

Among the more significant changes, the amendments move the draw game “playslip” and “entry of play” provisions from various specific draw game rules to the definitions and general draw game rule with language that will apply consistently to all draw games. Likewise, the amendments move the general provisions regarding authorized promotions and retail bonus/incentives from individual draw game rules to the general draw game rule. The amendments also update the various game trademarks and definitions of “playboard” for consistency purposes.

The amendments to Rule 401.158 (Suspension or Revocation of License) and the penalty chart in Rule 401.160 (Standard Penalty Chart) update and clarify lottery enforcement policy and practice. The amendments also remove certain outdated requirements from the licensing rules and retailer rules.

Additionally, the amendments include the repeal of §401.322 (“Texas Triple Chance” Draw Game Rule) because that draw game is no longer offered. The amendments also remove references to “Lotto Texas® Winner Take All®” from §401.305 (“Lotto Texas®” Draw Game Rule) because that promotion was never implemented. The removal of the foregoing provisions will further streamline and simplify the Commission’s rules.

The Commission received no written comments on the proposed amendments during the public comment period.

SUBCHAPTER B. LICENSING OF SALES AGENTS

16 TAC §401.158, §401.160

These amendments are adopted 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.

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 10, 2020.
TRD-202003283
Bob Biard
General Counsel
Texas Lottery Commission
Effective date: August 30, 2020
Proposal publication date: June 26, 2020
For further information, please call: (512) 344-5392

———

SUBCHAPTER D. LOTTERY GAME RULES
These amendments are adopted 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.

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 10, 2020.

TRD-202003288
Bob Biard
General Counsel
Texas Lottery Commission
Effective date: August 30, 2020
Proposal publication date: June 26, 2020
For further information, please call: (512) 344-5392

16 TAC §401.322

This repeal is adopted 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.

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 10, 2020.

TRD-202003285
Bob Biard
General Counsel
Texas Lottery Commission
Effective date: August 30, 2020
Proposal publication date: June 26, 2020
For further information, please call: (512) 344-5392

SUBCHAPTER E. RETAILER RULES

These amendments are adopted 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.

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 10, 2020.

TRD-202003289

Bob Biard
General Counsel
Texas Lottery Commission
Effective date: August 30, 2020
Proposal publication date: June 26, 2020
For further information, please call: (512) 344-5392

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER AA. COMMISSIONER’S RULES ON SCHOOL FINANCE

19 TAC §61.1008

The Texas Education Agency (TEA) adopts new §61.1008, concerning the school safety allotment. The new section is adopted without changes to the proposed text as published in the May 1, 2020 issue of the Texas Register (45 TexReg 2806) and will not be republished. The adopted new rule reflects changes made by Senate Bill (SB) 11, 86th Texas Legislature, 2019.

REASONED JUSTIFICATION: Texas Education Code (TEC), §42.168, added by SB 11, 86th Texas Legislature, 2019, directs the commissioner to adopt rules and take action as necessary to implement and administer the school safety allotment. The allotment provides additional funding for a school district in the amount provided by appropriation for each student in average daily attendance. Funds allocated for that purpose must be used to improve school safety and security, including costs associated with: (1) securing school facilities; (2) providing security for the district; (3) school safety and security training and planning; and (4) providing programs related to suicide prevention, intervention, and postvention.

House Bill 3, 86th Texas Legislature, 2019, passed independently of SB 11, transferred many Foundation School Program formulas to TEC, Chapter 48. Adopted new §61.1008 implements TEC, §42.168, by explaining that the school safety allotment will be treated as if it is located in TEC, Chapter 48. It is anticipated that the legislature will transfer TEC, §42.168, to TEC, Chapter 48, when it convenes in 2021.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began May 8, 2020, and ended June 8, 2020. No public comments were received.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code, §42.168, as added by Senate Bill 11, 86th Texas Legislature, 2019, authorizes the school safety allotment.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §42.168, as added by Senate Bill 11, 86th Texas Legislature, 2019.

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 5, 2020.

TRD-202003176
Cristina De La Fuente-Valadez  
Director, Rulemaking  
Texas Education Agency  
Effective date: August 25, 2020  
Proposal publication date: May 1, 2020  
For further information, please call: (512) 475-1497

TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.4

Introduction. The Texas Board of Nursing (Board) adopts amendments to §217.4, relating to Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States’ Jurisdiction, without changes to the proposed text as published in the March 20, 2020, issue of the Texas Register (45 TexReg 1941). The rule will not be republished.

Reasoned Justification. The amendments are being adopted under the authority of the Occupations Code §§301.157(d), 301.252, 301.2511, and 301.151.

Background. Rule 217.4 addresses applicants who graduated from nursing education programs outside the United States’ jurisdiction and are seeking initial nurse licensure by examination in Texas. Under the current rule, these applicants must provide a credential evaluation service full education course-by-course report from the Commission on Graduates of Foreign Nursing Schools, the Educational Records Evaluation Service, or the International Education Research Foundation. The adopted amendments, however, eliminate the requirement that an applicant must choose from these three specific credential evaluation services traditionally recognized by the Board, and, instead, allow applicants to utilize any credential evaluation service meeting the standards adopted by the Board. This change is intended to provide additional options for applicants and additional opportunity for credential evaluation services seeking to do business in Texas.

Minimum Criteria. Adopted §217.4(b) sets forth the minimum criteria credential evaluation services must meet in order to be approved by the Board. The Board utilizes credential evaluation service reports to inform its licensure decisions. Establishing approval criteria is important to ensure the Board receives reliable information from its credential evaluation services. For example, under the adopted requirements, a credential evaluation service must be a member of a national credentialing organization that sets performance standards for the industry, and the credential evaluation service must adhere to those standards. The credential evaluation service must also specialize in the evaluation of international nursing education and licensure and be able to demonstrate its ability to accurately analyze academic and licensure credentials and provide a course-by-course analysis of nursing academic records. While there are national associations, such as the National Association of Credential Evaluation Services (NACES), that set industry standards for these organizations, the term “specialize” in the adopted rule does not require a certification or certificate. Rather, the term is meant as an expression of experience in the field.

Further, in order to ensure reliable and efficient reports, credential evaluation services must have at least five years’ experience in the industry. The majority of other state boards of nursing require the use of the same three credential evaluation services specified in the Board's current rule. In reviewing the few other state boards of nursing that have established their own criteria for approving credential evaluation services, one board adopted a requirement that an applicant credential evaluation service be in business for a minimum of ten years before being eligible for approval. The Board has determined that ten years is too long a time period and could eliminate many new companies from providing credential evaluation services in Texas, which would defeat the intent of the proposal. However, it is important for an organization to have an established reputation of providing quality services that can be evaluated on an objective basis. The Board must have a reasonable amount of confidence that any credential evaluation service it approves is capable of providing reliable information, has proven methods over time, has longevity and is fundamentally stable, and will be available and operational in the future. The Board has determined that a five-year benchmark is a reasonable amount of time for a credential evaluation service to be able to demonstrate these assurances.

Further, because the Board relies on the reports of credential evaluation services to determine if an applicant is eligible for licensure in Texas, reliability and credibility are of paramount importance. Similar to state agency contracting and purchasing requirements, customer feedback is expected and recorded. Agencies are required to provide feedback and record satisfaction ratings for entities it contracts with. In the same vein, the Board is interested in the feedback of customers that have utilized the services of an applicant credential evaluation service. Organizations whose customers indicate that an entity is slow to respond, is disorganized, is unable to support its report/opinion with objective evidence, is not qualified to review the information needed, is unreliable, or is unable to provide the services it advertises will be carefully considered by the Board during its approval process. While negative reviews/references will not necessarily disqualify an organization from being approved, it will be a cause of concern that will have to be reviewed carefully by the Board. Credential evaluation services must also be able to complete evaluation reports within a reasonable time period, not to exceed six weeks.

Each credential evaluation service must also complete a form and affidavit required by the Board, as well as supporting documentation, evidencing the credential evaluation service's ability to meet the Board's requirements. Further, a credential evaluation service may not provide an applicant's full education course-by-course report for Board consideration until the credential evaluation service has received Board approval. These standards are consistent with those required by other state boards of nursing and with industry standards established for credential evaluation services evaluating international education.

Remaining Amendments. The current rule also requires verification of a high school diploma or equivalent educational credentials, as established by the General Education Development Equivalency Test (GED). Because credential evaluation services ensure that an applicant has obtained a high school diploma or equivalent educational credentials, as established by the General Education Development Equivalency Test (GED), as part of their full education course-by-course report, the adopted amend-
ments eliminate this unnecessarily redundant requirement from the section. The remaining adopted amendments make editorial and typographical corrections and eliminate obsolete provisions from the text. Specifically, the adopted amendments require applicants to submit their fingerprints to the Board for a complete criminal background check, in compliance with the Occupations Code §301.2511, and because the Board’s fingerprinting process has changed over time and is now automated through a third party vendor. Second, the adopted amendments eliminate the fee associated with a six-month accustomation permit, which the Board no longer assesses.

Proposal and Adoption. The Board approved the proposed amendments for publication in the Texas Register at its January 23–24, 2020 meeting. The proposal was published on March 20, 2020. The Board did not receive any comments on the proposal. However, on April 3, 2020, the Regulatory Compliance Division (Division) of the Office of the Governor informed the Board that the Division would be commencing a review of the proposal. The Division invited public comments on the proposed amendments for an additional thirty-day period ending June 25, 2020. The Division received no comments. On July 22, 2020, the Board received notice from the Division that it determined that the proposal was consistent with state policy and could be finally adopted.

Specifically, the Division found that the proposal facilitated the Board’s evaluation of an applicant’s education by requiring credential evaluation service reports to include a course-by-course analysis of nursing academic records and to describe the comparability of the foreign education to United States standards. The Division further stated that, building on standards employed by other states, the Board’s proposed rules establish criteria to ensure credential evaluation services have sufficient knowledge and experience and an acceptable national reputation to accurately evaluate nursing education programs, and provide timely, responsive services to applicants and the Board. Additional proposed criteria require credential evaluation services to use reliable, verifiable sources to evaluate education and inform the Board of any identified fraud, furthering the goals in the Occupations Code §301.451. The Division found the proposed rules to be reasonably construed to ensure the Board has a legitimate, reliable means of evaluating the qualifications of applicants educated abroad and are consistent with state policy.

How the Section Will Function. The adopted amendments to §217.4(a)(1) first eliminate the requirement that a licensed vocational nurse applicant must provide evidence of a high school diploma issued by an accredited secondary school or equivalent educational credentials as established by the General Education Development Equivalency Test (GED). The adopted amendments to §217.4(a)(1) and (2) require an applicant to provide a credential evaluation service full education course-by-course report from a credential evaluation service approved by the Board. Adopted §217.4(a)(5) requires applicants to submit fingerprints for a complete background check. Adopted §217.4(b) sets forth the criteria a credential evaluation service must meet in order to be approved by the Board. The adopted amendments to §217.4(d)(1) eliminate the fee formerly associated with an accustomation permit. The remaining adopted amendments correct editorial and typographical errors.

Summary of Comments Received. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the authority of the Occupations Code §§301.157(d), 301.2511, 301.252, and 301.151.

Section 301.157(d) provides that a person may not be certified as a graduate of any school of nursing or educational program unless the person has completed the requirements of the prescribed course of study, including clinical practice, of a school of nursing or educational program that: (1) is approved by the board; (2) is accredited by a national nursing accreditation agency determined by the Board to have acceptable standards; or (3) is approved by a state board of nursing of another state and the Board, subject to Subsection (d-4).

Section 301.2511 provides that an applicant for a registered nurse license must submit to the Board, in addition to satisfying the other requirements of the subchapter, a complete and legible set of fingerprints, on a form prescribed by the Board, for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. Section §301.2511(b) provides that the Board may deny a license to an applicant who does not comply with the requirements of subsection (a). Issuance of a license by the Board is conditioned on the Board obtaining the applicant’s criminal history record information under the section. Finally, §301.2511(c) states that the Board by rule shall develop a system for obtaining criminal history record information for a person accepted for enrollment in a nursing educational program that prepares the person for initial licensure as a registered or vocational nurse by requiring the person to submit to the Board a set of fingerprints that meets the requirements of subsection (a). The Board may develop a similar system for an applicant for enrollment in a nursing educational program. The Board may require payment of a fee by a person who is required to submit a set of fingerprints under this subsection.

Section 301.252(a) states that each applicant for a registered nurse license or a vocational nurse license must submit to the Board a sworn application that demonstrates the applicant’s qualifications under this chapter, accompanied by evidence that the applicant: (1) has good professional character related to the practice of nursing; (2) has successfully completed a program of professional or vocational nursing education approved under Section 301.157(d); and (3) has passed the jurisprudence examination approved by the Board as provided by Subsection (a-1).

Section 301.252(b) provides that Board may waive the requirement of subsection (a)(2) for a vocational nurse applicant if the applicant provides satisfactory sworn evidence that the applicant has completed an acceptable level of education in: (1) a professional nursing school approved under Section 301.157(d); or (2) a school of professional nurse education located in another state or a foreign country.

Section 301.252(c) provides that the Board by rule shall determine acceptable levels of education under Subsection (b).

Section 301.151 addresses the Board’s rulemaking authority. 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 under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.
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 4, 2020.
TRD-202003134
Jena Abel
Deputy General Counsel
Texas Board of Nursing
Effective date: August 24, 2020
Proposal publication date: March 20, 2020
For further information, please call: (512) 305-6822

22 TAC §217.5

The Texas Board of Nursing (Board) adopts amendments to §217.5, relating to Temporary License and Endorsement, without changes to the proposed text as published in the March 20, 2020, issue of the Texas Register (45 TexReg 1944). The rule will not be republished.

Reasoned Justification. The amendments are being adopted under the authority of the Occupations Code and §301.151 and §301.259.

Background. Section 217.5 addresses applicants who have been licensed in another state or Canadian province and are seeking nurse licensure by endorsement in Texas. Under the current rule, these applicants must provide a credential evaluation service full education course-by-course report from the Commission on Graduates of Foreign Nursing Schools, the Educational Records Evaluation Service, or the International Education Research Foundation. The adopted amendments, however, eliminate the requirement that an applicant must choose from these three specific credential evaluation services traditionally recognized by the Board, and, instead, allow applicants to utilize any credential evaluation service meeting the standards adopted by the Board. This change is intended to provide additional options for applicants and additional opportunity for credential evaluation services seeking to do business in Texas.

Minimum Criteria. Adopted §217.5(b) sets forth the minimum criteria credential evaluation services must meet in order to be approved by the Board. The Board utilizes credential evaluation service reports to inform its licensure decisions. Establishing approval criteria is important to ensure the Board receives reliable information from its credential evaluation services. For example, under the adopted requirements, a credential evaluation service must be a member of a national credentialing organization that sets performance standards for the industry, and the credential evaluation service must adhere to those standards. The credential evaluation service must also specialize in the evaluation of international nursing education and licensure and be able to demonstrate its ability to accurately analyze academic and licensure credentials and provide a course-by-course analysis of nursing academic records. While there are national associations, such as the National Association of Credential Evaluation Services (NACES), that set industry standards for these organizations, the term ‘specialize’ in the adopted rule does not require a certification or certificate. Rather, the term is meant as an expression of experience in the field.

Further, in order to ensure reliable and efficient reports, credential evaluation services must have at least five years’ experience in the industry. The majority of other state boards of nursing require the use of the same three credential evaluation services specified in the Board’s current rule. In reviewing the few other state boards of nursing that have established their own criteria for approving credential evaluation services, one board adopted a requirement that an applicant credential evaluation service be in business for a minimum of ten years before being eligible for approval. The Board has determined that ten years is too long a time period and could eliminate many new companies from providing credential evaluation services in Texas, which would defeat the intent of the proposal. However, it is important for an organization to have an established reputation of providing quality services that can be evaluated on an objective basis. The Board must have a reasonable amount of confidence that any credential evaluation service it approves is capable of providing reliable information, has proven methods over time, has longevity and is fundamentally stable, and will be available and operational in the future. The Board has determined that a five-year benchmark is a reasonable amount of time for a credential evaluation service to be able to demonstrate these assurances.

Further, because the Board relies on the reports of credential evaluation services to determine if an applicant is eligible for licensure in Texas, reliability and credibility are of paramount importance. Similar to state agency contracting and purchasing requirements, customer feedback is expected and recorded. Agencies are required to provide feedback and record satisfaction ratings for entities it contracts with. In the same vein, the Board is interested in the feedback of customers that have utilized the services of an applicant credential evaluation service. Organizations whose customers indicate that an entity is slow to respond, is disorganized, is unable to support its report/opinion with objective evidence, is not qualified to review the information needed, is unreliable, or is unable to provide the services it advertises will be carefully considered by the Board during its approval process. While negative reviews/references will not necessarily disqualify an organization from being approved, it will be a cause of concern that will have to be reviewed carefully by the Board. Credential evaluation services must also be able to complete evaluation reports within a reasonable time period, not to exceed six weeks.

Each credential evaluation service must also complete a form and affidavit required by the Board, as well as supporting documentation, evidencing the credential evaluation service’s ability to meet the Board’s requirements. Further, a credential evaluation service may not provide an applicant’s full education course-by-course report for Board consideration until the credential evaluation service has received Board approval. These standards are consistent with those required by other state boards of nursing and with industry standards established for credential evaluation services evaluating international education.

Remaining Amendments. The rule also currently requires individuals who have not taken the NCLEX examination or practiced nursing within the four years preceding an application by endorsement to complete the online Texas Board of Nursing Jurisprudence Prep Course; the Texas Board of Nursing Jurisprudence and Ethics Workshop; or a Texas Board of Nursing approved Nursing Jurisprudence and Ethics course in addition to completing a refresher course, extensive orientation, or program of study. Fifteen percent (15%) of the required content of a Board approved refresher course, extensive orientation, or program of study must include the review of the Nursing Practice Act.
Rules, Position Statements. This is the same content that is included in the online Texas Board of Nursing Jurisprudence Prep Course; the Texas Board of Nursing Jurisprudence and Ethics Workshop; and a Texas Board of Nursing approved Nursing Jurisprudence and Ethics course. The Board recognizes that the existing requirements of the rule may be unnecessarily redundant in this regard. The adopted amendments, therefore, eliminate these redundant requirements from the rule. Individuals will still be required to complete a Board approved refreshers course, extensive orientation, or program of study, which must include an adequate focus on nursing jurisprudence and ethics. Further, because a nurse will still be required to successfully pass the Board's nursing jurisprudence exam, the public can be adequately assured that the nurse has successfully mastered this content prior to renewal of licensure. The adopted amendments also re-number the section appropriately.

Proposal and Adoption. The Board approved the proposed amendments for publication in the Texas Register at its January 23-24, 2020 meeting. The proposal was published on March 20, 2020. The Board did not receive any comments on the proposal. However, on April 3, 2020, the Regulatory Compliance Division (Division) of the Office of the Governor informed the Board that the Division would be commencing a review of the proposal. The Division invited public comments on the proposed amendments for an additional thirty-day period ending June 25, 2020. The Division received no comments. On July 22, 2020, the Board received notice from the Division that it determined that the proposal was consistent with state policy and could be finally adopted.

Specifically, the Division found that the proposal facilitated the Board's evaluation of an applicant's education by requiring credential evaluation service reports to include a course-by-course analysis of nursing academic records and to describe the comparability of the foreign education to United States standards. The Division further stated that, building on standards employed by other states, the Board's proposed rules establish criteria to ensure credential evaluation services have sufficient knowledge and experience and an acceptable national reputation to accurately evaluate nursing education programs, and provide timely, responsive services to applicants and the Board. Additional proposed criteria require credential evaluation services to use reliable, verifiable sources to evaluate education and inform the Board of any identified fraud, furthering the goals in the Occupations Code §301.451. The Division found the proposed rules to be reasonably construed to ensure the Board has a legitimate, reliable means of evaluating the qualifications of applicants educated abroad and are consistent with state policy.

How the Section Will Function. Adopted §217.5(a) requires an applicant who has graduated from a nursing education program outside of the United States or National Council jurisdictions to submit verifications of licensure from the country of education or as evidenced in a credential evaluation service full education course by course report from a credential evaluation service approved by the Board, as well as meeting all other requirements in paragraphs (2) and (3) of the subsection. Adopted §217.5(b) sets forth the requirements that a credential evaluation service must meet in order to be approved by the Board. The adopted amendments to §217.5(c)(3) eliminate the requirement that an applicant submit to the Board a course completion form from the online Texas Board of Nursing Jurisprudence Prep Course; the Texas Board of Nursing Jurisprudence and Ethics Workshop; or a Texas Board of Nursing approved Nursing Jurisprudence and Ethics course. The remaining adopted amendments re-number the section appropriately.

Summary of Comments Received. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the authority of the Occupations Code §301.259 and §301.151.

Section 301.259 provides that, on payment of a fee established by the Board, the Board may issue a license to practice as a registered nurse or vocational nurse in this state by endorsement without examination to an applicant who holds a registration certificate as a registered nurse or vocational nurse, as applicable, issued by a territory or possession of the United States or a foreign country if the Board determines that the issuing agency of the territory or possession of the United States or foreign country required in its examination the same general degree of fitness required by this state.

Section 301.151 addresses the Board's rulemaking authority. 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 under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

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 4, 2020.

TRD-202003137

Jena Abel
Deputy General Counsel
Texas Board of Nursing

Effective date: August 24, 2020

Proposal publication date: March 20, 2020

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.13

The Texas Parks and Wildlife Commission in a duly noticed meeting on May 21, 2020, adopted an amendment to §53.13, concerning Commercial Licenses and Permits (Fishing), with changes to the proposed text as published in the April 17, 2020, issue of the Texas Register (45 TexReg 2483). The proposed amendment establishes the fees for cultivated oyster mariculture permits issued under the provisions of Parks and Wildlife

ADOPTED RULES August 21, 2020 45 TexReg 5913
Code, Chapter 75. The amendment also corrects a grammatical disagreement in the title of the section.

The change corrects an error in the proposed coefficient for calculating the value of the surcharge imposed for nursery facilities located on public water. As published, that coefficient was $0.023 per square foot. The value that should have been published is $0.010, which represents a proportionally equivalent value of a Cultivated Oyster Mariculture Permit (COMP) for the use of public water.

The fee requirement for cultivated oyster mariculture permits is imposed by another proposed rulemaking published elsewhere in this issue. The application fee for a permit issued under the new subchapter is $200, which represents the cost to the department of the time for a biologist to evaluate a prospective project. The annual fee for a COMP is $450 per acre per year (except for COMPs located on private property), which is the estimated cost to the department for conducting an annual facility inspection, which is a requirement under the United States Food and Drug Administration's National Shellfish Sanitation Program (NSSP). This value was derived by calculating the payroll, vehicle, boat, and travel values for two department technicians to travel to a site, launch a boat, and conduct an inspection. By statute (Parks and Wildlife Code, §75.0105) the department is required to set aside 20 percent of the fees collected for oyster mariculture permits for the cleanup of illegal or abandoned cultivated oyster mariculture equipment and related debris in public water. Thus, the proposed fees incorporate 20 percent of the department's inspection expense, rounding up to the nearest $50, which yields a permit fee of $450. The annual fee for a COMP located on private property is the same as for a nursery facility, because of similar costs to the department for inspections.

The annual fee for a nursery permit is $170 per acre per year, which is the estimated cost to the department for conducting an annual facility inspection, which is required by the NSSP. This value was derived by calculating the payroll, vehicle, and travel values for one department technician to travel to a site and conduct an inspection. As noted previously, the department is required by statute (Parks and Wildlife Code, §75.0105) to set aside 20 percent of the fees collected for cultivated oyster mariculture permits for the cleanup of illegal or abandoned cultivated oyster mariculture equipment and related debris in public water. Thus, taking 20 percent of the department's inspection expense, rounded up to the nearest $10 increment, yields a permit fee of $170. In addition, if the nursery facility is located on public water, an additional fee of $0.010 per square foot per year will be assessed, which represents a proportionally equivalent value of a COMP for the use of public water.

Two commenters opposed the fee structure, stating that the proposed annual permit fee is too high and there is not a reduced rate for additional acres. The department disagrees with the comment and responds that the annual fee structure was developed to cover department costs associated with one site inspection per year, as required by the U.S. Food and Drug Administration's National Shellfish Sanitation Program. In addition to the permitted areas, annual inspections will include the buffer areas associated with sensitive habitat elements (e.g. 200-feet for seagrass, 500-feet for oyster habitat, and 2,000-feet for bird rookeries). For a 1-acre permit area, a 200-foot seagrass habitat buffer will incorporate an additional 7.5 acres and a 500-foot oyster habitat buffer will include an additional 33 acres. For a 3-acre permit area, these buffers increase to 11 acres for seagrass and 42 acres for oysters that will be included in the annual inspections. No changes were made as a result of the comments.

The amendment is adopted under the authority of Parks and Wildlife Code, §75.0103, which requires the commission to adopt rules to establish fees and conditions for use of public resources, including broodstock oysters and public water; and any other matter necessary to implement and administer Parks and Wildlife Code, Chapter 75; and Parks and Wildlife Code, §75.0104, which requires the commission to adopt rules to establish requirements for permit applications and application fees; criteria for the approval, transfer, revocation, and suspension of permits; and procedures for hearings related to a permit.


(a) Licenses. The fee amounts prescribed in paragraphs (1) - (4) of this subsection reflect the total fee paid by the purchaser and include the surcharges established in subsection (b) of this section.

1. retail fish dealer's--$92.40;
2. retail fish dealer's truck--$171.60;
3. wholesale fish dealer's--$825;
4. wholesale fish dealer's truck--$590;
5. bait dealer's--individual--$38;
6. bait dealer-place of business/building--$38;
7. bait dealer-place of business/motor vehicle--$38;
8. bait shrimp dealer's--$215;
9. finfish import--$95;
10. freshwater fishing guide (required for residents or nonresidents who operate a boat for anything of value in transporting or accompanying anyone who is fishing in freshwater of the state)--$132;
11. resident all-water fishing guide--$210;
12. resident paddle craft all-water fishing guide--$210;
13. non-resident all-water fishing guide--$1,050; and
14. non-resident paddle craft all-water fishing guide--$1,050.

(b) Business license surcharge for shrimp marketing assistance account.

1. retail fish dealer's--$8.40;
2. retail fish dealer's truck--$15.60;
3. wholesale fish dealer's--$75; and
4. wholesale fish dealer's truck--$51.

(c) License transfers.

1. retail fish dealer's license transfer--$25;
2. retail fish dealer's truck license transfer--$25;
3. wholesale fish dealer's license transfer--$25;
4. wholesale fish dealer's truck license transfer--$25;
5. bait dealer's license transfer--$25;
6. bait dealer's-place of business/building license transfer--$25;
7. bait dealer's-place of business/motor vehicle license transfer--$25;
(8) bait shrimp dealer's license transfer--$25;
(9) finfish import license transfer--$25.

(d) Cultivated Oyster Mariculture Fees.
   (1) Application fee--$200.
   (2) Cultivated Oyster Mariculture Permit (COMP).
      (A) For a COMP located in public water--$450 per acre per year.
      (B) For a COMP located on private property--$170 per acre per year.
   (3) Cultivated Oyster Mariculture Permit - Nursery Only (nursery permit)--$170 per acre per year. $0.010 per square foot per year, if the nursery facility is located in public water.

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 4, 2020.
TRD-202003146
Colette Barron-Bradsby
Acting General Counsel
Texas Parks and Wildlife Department
Effective date: August 24, 2020
Proposal publication date: April 17, 2020
For further information, please call: (512) 389-4775

31 TAC §53.15

The Texas Parks and Wildlife Commission in a duly noticed meeting on May 21, 2020 adopted an amendment to §53.15, concerning Miscellaneous Wildlife and Fisheries Licenses and Permits, without changes to the proposed text as published in April 17, 2020, issue of the Texas Register (45 TexReg 2484).

The amendment changes the name of the current broodfish permit, renaming it the broodstock permit to reflect the scope of new rules to establish the cultivated oyster mariculture program.

The department received no comments concerning adoption of the proposed rule.

The amendment is adopted under the authority of Parks and Wildlife Code, §75.0103, which requires the commission to adopt rules to establish fees and conditions for use of public resources, including broodstock oysters and public water; and any other matter necessary to implement and administer Parks and Wildlife Code, Chapter 75.

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 4, 2020.
TRD-202003148
Colette Barron-Bradsby
Acting General Counsel
Texas Parks and Wildlife Department
Effective date: August 24, 2020
Proposal publication date: April 17, 2020
For further information, please call: (512) 389-4775

CHAPTER 57. FISHERIES
SUBCHAPTER F. COLLECTION OF BROODSTOCK FROM TEXAS WATERS
31 TAC §§57.391, 57.392, 57.394 - 57.398, 57.400, 57.401

The Texas Parks and Wildlife Commission in a duly noticed meeting on May 21, 2020, adopted amendments to §§57.391, 57.392, 57.394 - 57.398, 57.400, and 57.401, concerning Collection of Broodstock from Texas Waters. Sections 57.391 and 57.397 are adopted with changes to the proposed text as published in the April 17, 2020, issue of the Texas Register (45 TexReg 2485). The rules will be republished. Sections 57.392, 57.394 - 57.396, 57.398, 57.400, and 57.401 are adopted without changes and will not be republished.

The change to §57.391, concerning Definitions, alters paragraph (8) to replace the word "broodfish" with the word "broodstock." Punctuation was added to §57.397(2) and (3). The changes are nonsubstantive.

The amendments conform the language of the subchapter to accommodate the creation of the cultivated oyster mariculture program under the provisions of new Chapter 58, Subchapter E, as adopted, which is published elsewhere in this issue. Because the new rules in Chapter 58 would allow the department to regulate the use of native oysters to propagate oysters for cultivated oyster mariculture, the provisions of Chapter 57, Subchapter F (and the title of the subchapter) need to be changed, as the term "broodfish" as currently defined does not include oysters. Therefore, the amendments replace the term "broodfish" with the term "broodstock" throughout the subchapter and refer where appropriate to "aquatic species" rather than "fish." Similarly, archaic references to "these rules" are replaced by references to "this subchapter." The portions of the amendments not specifically addressed in this preamble are nonsubstantive, housekeeping-type changes to modernize and clarify rule language to enhance readability, enforcement, administration, and compliance.

The amendment to §57.391, concerning Definitions, alters paragraph (1) to remove an irrelevant reference to private facilities. The amendment alters paragraph (2) to remove an unnecessary reference to the Agriculture Code. The amendment to paragraph (4) adds the term "mariculture" to the definition of "broodstock." The amendment adds new paragraph (10) to define "mariculture" as having the meaning assigned by Parks and Wildlife Code, Chapter 75. The amendment to paragraph (11) alters the definition of "progeny" to include oyster larvae, seed, and spat.

The amendment to §57.392, concerning General Rules, nonsubstantively rephrases subsection (a) for clarity.

The amendment to §57.395, concerning Broodstock Collection; Revocation, retitles the section "Prohibited Acts" and removes references to revocation. Parks and Wildlife Code, Chapter 12, provides a statutory process for the revocation of any license or permit; it is therefore unnecessary for revocation procedures to be established by rule. The amendment also enumerates the
categories of conduct that would constitute offenses under the subchapter rather than enumerate specific acts.

The department received no comments concerning adoption of the proposed amendments.

The amendments are adopted under the authority of Parks and Wildlife Code, §43.552, which requires the commission to prescribe by rule the requirements and conditions for the issuance of a permit under Parks and Wildlife Code, Chapter 43, Subchapter P.

§57.391. Definitions.

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

(1) Aquaculture (or fish farming)--The business of producing and selling cultured aquatic species.

(2) Aquaculturist--A person authorized by law to engage in aquaculture, fish farming or mariculture.

(3) Aquaculture facility (or fish farm)--The property including private ponds from which fish, shellfish, or aquatic plants are produced, propagated, transported, or sold.

(4) Broodstock--An aquatic species taken from the public waters of this state for the purpose of aquaculture or mariculture.

(5) Collection--Any boating, fishing, or aquatic product transportation activity involved in the take or attempted take of broodstock.

(6) Cultured species--Aquatic species raised under conditions where at least a portion of their life cycle is controlled by an aquaculturist.

(7) Department--The Texas Parks and Wildlife Department.

(8) Designated agent--A person designated by an aquaculturist and approved by permit to act on behalf of that aquaculturist in collection of broodstock.

(9) Director--The executive director of the Texas Parks and Wildlife Department or his designee.

(10) Mariculture--Cultivated oyster mariculture as defined by Parks and Wildlife Code, Chapter 75.

(11) Progeny--Offspring of aquatic species, including eggs, fry, fingerlings, oyster larvae, seed, and spat.

(12) Public waters--Bays, estuaries, and water of the Gulf of Mexico within the jurisdiction of the state, and the rivers, streams, creeks, bayous, reservoirs, lakes, and portions of those waters where public access is available without discrimination.

(13) Recreational Fishing--The act of using legal means or methods to take or to attempt to take aquatic life for noncommercial purposes from the public waters of this state.

§57.397. Prohibited Acts.

It is an offense for any person to:

(1) violate a provision of this subchapter;

(2) violate a provision of a permit issued under this subchapter;

(3) fail to comply with the reporting requirements of this subchapter;

(4) provide false information in a report required under this subchapter; or

(5) fail to remit to the department all restitution fees assessed by the department within 14 days of assessment.

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 4, 2020.

TRD-202003147
Colette Barron-Bradsby
Acting General Counsel
Texas Parks and Wildlife Department
Effective date: August 24, 2020
Proposal publication date: April 17, 2020
For further information, please call: (512) 389-4775

CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

SUBCHAPTER E. CULTIVATED OYSTER MARICULTURE

31 TAC §§58.350 - 58.361

The Texas Parks and Wildlife Commission, in a duly noticed meeting on May 21, 2020, adopted new §§58.350 - 58.361, concerning Cultivated Oyster Mariculture. Sections 58.350 - 58.354 and 58.357 - 58.361 are adopted without changes to the proposed text as published in the April 17, 2020, issue of the Texas Register (45 TexReg 2488) and will not be republished. Section 58.355 and §58.356 are adopted with changes to the proposed text as published in the April 17, 2020, issue of the Texas Register (45 TexReg 2488). These rules will be republished. The new sections are located in new Subchapter E, Cultivated Oyster Mariculture.

The 86th Texas Legislature in 2019 enacted House Bill 1300, which amended the Parks and Wildlife Code by adding Chapter 75. Chapter 75 delegated to the Parks and Wildlife Commission authority to regulate cultivated oyster mariculture, which is the process of growing oysters in captivity. The new rules establish two types of cultured oyster mariculture permits and the general provisions governing permit privileges and obligations, as well as provisions governing administrative processes such as permit application, issuance, renewal, amendment, and denial, and reporting and recordkeeping requirements.

New §58.350, concerning Applicability, establishes the new subchapter as the primary body of administrative law governing cultivated oyster mariculture in this state and further stipulates that no provision of the new subchapter is to be construed as to relieve any person of the need to comply with any other applicable provision of federal, state, or local laws.

New §58.351, concerning Application of Shellfish Sanitation Rules of Department of State Health Services, requires all activities conducted under the subchapter to be compliant with relevant provisions of the rules of the Department of State Health Services (DSHS). The regulation of shellfish sanitation in Texas is shared between the Parks and Wildlife Department and the Department of State Health Services. As a matter of expediency, the new rules reference the applicable rules of
DSHS rather than duplicate them, which has the additional benefit of preventing unintended regulatory conflict.

New §58.352, concerning Definitions, establishes the meaning of words and terms for purposes of compliance, administration, and enforcement.

New §58.352(1) defines "administratively complete" as "an application for a permit or permit renewal that contains all information requested by the department, as indicated on the application form, without omissions." The definition is necessary to establish the threshold condition that the department considers to be acceptable before committing department time and resources to evaluation and analysis of a prospective project. The permitting process for cultivated oyster mariculture permits involves several different state and federal jurisdictions and the department believes the appropriate starting point for the evaluation of such projects is when all pertinent information (as indicated on the permit application) has been submitted.

New §58.352(2) defines "container" as "any bag, sack, box, crate, tray, conveyance, or receptacle used to hold, store, or transport oysters possessed under a permit issued under this subchapter." One of the most important challenges facing the department with respect to the new rules is that of keeping farmed oysters separate from wild oysters, in order to prevent potential resource depletion on public oyster reefs by inadvertently providing an opportunity or incentives for undersized oysters to be removed from those reefs. To that end, the new rules require farmed oysters to be accompanied by a transport document when possessed outside a regulated facility, which in turn necessitates a definition for the manner in which oysters are packed and shipped for transport.

New §58.352(3) defines "cultured oyster mariculture facility (facility)" as "any building, cage, or other infrastructure within a permitted area." The definition is necessary to distinguish those places to which the rules apply.

New §58.352(4) defines "gear tag" as "a tag composed of material as durable as the device to which it is attached." The definition is necessary because the rules require infrastructure components of cultivated oyster mariculture facilities to be equipped with gear tags to facilitate cleanup activities under strong storm and tides, which can move such things great distances.

New §58.352(5) define "infrastructure" as "a building, platform, dock, vessel, cage, nursery structure, or any other apparatus or equipment within a permitted area." The definition is necessary to designate a single term for the various physical components of a facility.

New §58.352(6) defines "larvae" as "the free-swimming, planktonic life stage of an oyster." The definition is necessary because the new rules create legal distinctions between oysters on the basis of shell length, but also allow for oyster hatcheries, which typically produce oyster larvae. The new rules establish two categories of cultivated oyster mariculture permits, one of which (the nursery-only permit) applies to facilities in which oysters are obtained as larvae and grown to a size at which they can be moved to a farm (oyster seed) to be grown to legal harvest size; thus, it is necessary to make the distinction between the early life stages of oysters and the later life stages, which are regulated in different types of facilities under separate permit categories.

New §58.352(7) defines "National Shellfish Sanitation Program (NSSP)" as "the cooperative program administered by the United States Food and Drug Administration (USFDA) for the sanitary control of shellfish produced and sold for human consumption in the United States and adopted by rule of the Department of State Health Services." The definition is necessary because in order to market oysters outside the state of Texas, the state of Texas must be compliant with the federal program for oyster sanitation. The new rules require compliance with NSSP standards governing the tagging of oysters and because the NSSP has already been adopted by reference by DSHS, it is expedient for the department simply to refer to DSHS rules rather than reproduce NSSP standards in the new rules.

New §58.352(8) defines "nursery structure" as "a tank or chamber or system of tanks or chambers or other, similar devices in which a cultivated oyster is grown." The definition is necessary because the new rules establish two categories of cultivated oyster mariculture permits, one of which (the nursery-only permit) applies to facilities in which oysters are obtained as larvae and grown to a size at which they can be moved to a farm (oyster seed) to be grown to legal harvest size. Therefore, the new rules require a legal definition for the structures where larval oysters are held and cultured.

New §58.352(9) defines "oyster seed" as "shellstock of less than legal size." This definition is necessary to distinguish oysters that are not larval but not large enough to harvest.

New §58.352(10) defines "permitted area" as "the geophysical and/or geographical area identified in a permit where cultivated oyster mariculture activities are authorized." The term is necessary in order to avoid the repetition of cumbersome phraseology when referring to spatial parameters within which cultivated oyster mariculture is authorized under a permit.

New §58.352(11) defines "Permit Identifier (permit ID)" as "a unique alphanumeric identifier issued by the department to a permittee holding a Cultivated Oyster Mariculture permit." The definition is necessary because the department will issue each permittee an alphanumeric string that serves to uniquely identify a specific area where cultivated oyster mariculture activities are authorized to take place and which must be attached to various tags, labels, and equipment.

New §58.352(12) defines "permittee" as "a person who holds a permit issued under this subchapter." The definition is necessary to ensure that the term is not misunderstood to refer to any other permit or permits besides the cultivated oyster mariculture permits.

New §58.352(13) defines "Prohibited Area" as having the meaning defined by Health and Safety Code, §436.002(27). The definition is necessary for purposes of establishing conditions under which oysters grown under a cultivated oyster permit must be depurated.

New §58.352(14) defines "Restricted Area" as having the meaning defined by Health and Safety Code, §436.002(30). The definition is necessary for purposes of establishing conditions under which oysters grown under a cultivated oyster permit must be depurated.

New §58.352(15) defines "restricted visibility" as "any condition in which visibility is restricted by fog, mist, falling snow, heavy rainstorm, sandstorms, or any other similar causes." The definition is necessary to establish a reasonable standard for the visual markers delineating a permitted area.

New §58.352(16) defines "shellstock (stock)" as "live eastern oysters (Crassostrea virginica) in the shell." The definition establishes the taxonomic identity of the only species of oyster the
rules allow to be grown under a cultivated oyster mariculture permit.

New §58.352(17) defines "wild-caught oyster" as "an oyster harvested from natural oyster beds." The definition establishes the distinction between oysters harvested from cultivated oyster mariculture facilities and any other oyster.

New §58.353, concerning General Provisions, consists of several actions, all of which have general applicability to the provisions of the new subchapter.

New subsection (a) prohibits any person from engaging in cultivated oyster mariculture unless the person either possesses a permit for the activity or is acting as a subpermittee. The department wishes to make it abundantly clear that it is unlawful to engage in oyster cultivation in Texas without the appropriate authorization from the department.

New subsection (b) sets forth the privileges of a Cultivated Oyster Mariculture Permit (COMP), namely, to purchase, receive, grow, and sell cultivated oysters.

New subsection (c) sets forth the privileges of a Cultivated Oyster Mariculture Permit - Nursery Only (nursery permit), namely, to purchase, receive, and grow oyster seed and larvae, and sell oyster seed to a COMP permittee.

New subsection (d) prohibits the conduct of permit activities at any place other than the locations specified by the permit. An activity conducted under a permit issued for a specific location should be conducted only at the specified location; therefore, the new rules stipulate that requirement.

New subsection (e) establishes that permits issued under the new subchapter are valid for 10 years. The 10-year period was selected because it takes several years for mariculture operations to reach optimum production capacity and they are susceptible to a variety of environmental factors that can affect operations. A 10-year period of validity allows for the continuity necessary to sustain operations.

New subsection (f) requires COMP permittees to plant at least 100,000 oyster seed per acre on an annual basis, unless otherwise specifically authorized in writing by the department. Because there is a finite amount of bay bottom that is suitable for cultivated oyster mariculture within the matrix of biological and other parameters, the department reasons that it is prudent to require persons who obtain a cultivated oyster mariculture permit to actually engage in the practice of cultivated oyster mariculture. Otherwise, that opportunity is denied to someone else.

New subsection (g) restricts cultivated oyster mariculture to seed and larvae from native Eastern oyster broodstock collected in Texas waters and propagated in a hatchery located in Texas unless otherwise specifically authorized by the department in writing, including the importation, with a time constraint of December 31, 2027, of triploid oysters, tetraploid oyster seed, oyster larvae, and or oyster semen/eggs (germplasm) produced in permitted out-of-state hatcheries located along the Gulf of Mexico for use in cultivated oyster mariculture in this state and/or oyster seed, oyster larvae, and oyster semen/eggs (germplasm) produced from Texas broodstock at out-of-state hatcheries located along the Gulf of Mexico for use in cultivated oyster mariculture in this state. The department's mission is to protect and conserve the fish and wildlife resources of Texas. For that reason, the new rules do not allow the cultivation of oyster species that are not native to Texas or the cultivation of oysters that are not propagated in Texas from oysters collected in Texas, unless the department determines that such importation can be done without threatening native oyster stocks. By requiring all oysters in mariculture operations to be native species grown in Texas from native broodstock or department-approved broodstock, the department seeks to ensure that wild oyster populations and the ecosystems they inhabit are not threatened by the escape or accidental release of organisms that are not genetically compatible. The deadline of December 31, 2027 is intended to encourage prospective permittees who seek to utilize genetically acceptable stock obtained outside of Texas to do so within a limited amount of time, after which the department expects all stock to be propagated in Texas facilities.

New subsection (h) sets forth the department's inspection, sampling, and permit provision authority. In order to ensure that the provisions of the new rules are being followed, the department must be able to inspect the permitted areas, facilities, infrastructure, containers, vessels, and vehicles used to engage in cultivated oyster mariculture activities. Similarly, the department must be able to determine the genetic identity of all oysters used in oyster mariculture activities. Therefore, the new rules reflect those priorities. Additionally, it is impossible for the new rules to contemplate and address the unique circumstances that could exist in any given mariculture operation. For this reason, the rules allow the department to include specific permit provisions in any given permit, as circumstances dictate.

New subsection (i) prescribes notification requirements for permittees in the event of disease outbreaks or other disruptions that could result in the release of pathogens or farmed oysters into the surrounding ecosystem. The department believes it is important to be notified as quickly as possible in the event of a condition that could result in an immediate threat to native ecosystems, such as the emergence of contagious disease in a facility transmissible to wild oysters outside of the facility or the physical breaching of infrastructure (which could be caused by severe weather, marine collision, etc.) that could result in the unintentional broadcast of stock or larvae from the facility to surrounding areas. Therefore, the new subsection requires a permittee to notify the department within 24 hours of the discovery of such an area of disease or any condition, man-made or natural, that creates a threat of the unintentional release of stock or larvae. The new provision makes an exception for dero (Perkinosis marinus), a microscopic oyster parasite that is so common in natural ecosystems as to be ubiquitous.

New subsection (j) allows the department to take any appropriate action, including ordering the cessation of activities and the removal of all stock and larvae from a permitted area, in response to a disease condition (other than dero) or the suspension or revocation by a federal or state entity of a permit or authorization required to be held under the subchapter. Clearly, the presence of disease within a permitted area is a potential threat to native ecosystems and therefore cause for concern, response, and preventative measures, up to and including cessation of operations and the removal of stock, as appropriate. Similarly, failure by the permittee to comply with the rules would be cause for the department to order the suspension of operations, including the removal of all stock, until the deficiency is remedied, and the department authorizes resumption of permitted activities in writing. Therefore, new subsection (k) stipulates.

New subsection (l) establishes the legal size at which oysters may be harvested and transported from a COMP. The department's rules governing the harvest of wild oysters establish a minimum size of three inches for lawful harvest. Because farmed
oysters grow faster and are meatier than wild oysters, the new rules establish a minimum size of 2.5 inches, but live oysters of less than 2.5 inches could not leave a COMP facility, which is necessary because the NSSP requires the establishment of a maximum size for nursery oysters grown in waters classified as Restricted or Prohibited (given a minimum of 120 days for depuration).

New subsection (m) restricts the harvest of oysters in a COMP to daylight hours, which is necessary to enhance enforcement and inspection activities. It is easier to observe and document harvest activities in daylight.

New subsection (n) addresses subpermittees. The department acknowledges that it is not possible for a single permittee to conduct all the activities authorized by a permit, so the new rules allow permittees to designate subpermittees to perform permitted activities in the absence of the permittee. In order to prevent confusion and misunderstandings, the new rules require subpermittees to be named on the permit, and, at all times they are engaged in a regulated activity, possess a copy of the permit under which the activity is being performed and a subpermittee authorization signed and dated by both the permittee and the subpermittee. The new subsection also stipulates that permittees and subpermittees are jointly liable for violations. The department reasons that a permittee, as the person to whom a permit is issued, is responsible for compliance with the provisions of the subchapter, and any person the permittee designates to perform permitted activities should be held accountable as well.

New subsection (o) prescribe the marking requirements for a permitted area. The new subsection requires the installation and maintenance of boundary markers, requires the boundary markers to be at least six inches in diameter, extend at least three feet above the water at mean high tide, be of a shape and color visible at one half-mile under conditions that do not constitute restricted visibility, and bear the permittee’s identifier. The department considers the standards to be a reasonable way of identifying a permitted area. The new subsection also requires the installation, functionality, and maintenance of any safety lights and signals required by applicable federal regulations, including regulations of the United States Coast Guard (USCG), and requires permittees to repair or otherwise restore to functionality any light or signal within 24 hours of notification by the U.S.C.G or the department. As the state agency with primary responsibility for water safety, the department strongly believes that compliance with applicable federal regulations regarding safety lights and signals is important.

New subsection (p) prohibits the transfer or sale of permits. The department reasons that the permit application process set forth in the new rules exists to ensure that a person who seeks to engage in permitted activities meets all of the requirements of the various governmental entities with regulatory jurisdiction before being allowed to engage in permitted activities. Allowing sale or transfer of permits would defeat the purpose of the application process and introduce administrative complexity.

New subsection (q) requires permittees at their expense to remove all containers, enclosures, and associated infrastructure from public waters within 60 days of permit expiration or revocation. The department believes it is not appropriate to allow a facility to be abandoned in public water, which would constitute a danger, a nuisance, and an impediment to public enjoyment. Rough weather is not uncommon in coastal waters and, though infrequent, severe events such as tropical storms and hurricanes are not rare. Such events have the potential to destroy facilities and distribute the detritus and debris over long distances. For this reason, new subsection (r) requires a valid gear tag to be attached to each piece of component infrastructure (e.g., containers, cages, bags, sacks, totes, trays, nursery structures) within a permitted area. The gear tag must bear, in legible fashion, the name and address of the permittee and the permit identifier of the permitted area. The new subsection allows the department to identify components so permittees can retrieve or dispose of them properly.

New subsection (s) requires oysters bound for sale in containers that are tagged as required by the NSSP and DSHS regulations and to bear the destination of the container by permit identifier and/or business name and physical address. Shellfish sanitation is strictly regulated at the federal and state levels because of the known health hazards associated with mishandled shellfish. The department believes that oysters destined for the food chain should be handled in accordance with appropriate legal requirements. Additionally, because the department wishes to ensure that cargoes of farmed oysters are not commingled with wild-caught oysters, the new subsection requires information about cargo destination, which allows the department to match records required to be maintained by buyers and sellers of shellfish.

New subsection (t) sets forth the requirements for transporting oyster seed. As discussed elsewhere in this preamble, the department seeks to ensure the separation at all times of farmed oysters from wild-caught oysters. It is unlawful in Texas for anyone to possess a wild-caught oyster less than three inches in size. Because the new rules allow the movement of oysters of less than three inches in size to hatcheries, from hatcheries to nurseries, and from nurseries to COMP facilities, it is therefore necessary to prescribe a documentation mechanism to be used during the transport of oyster seed or larvae for permitted activities. An Oyster Seed Transport Document is required to accompany all oyster seed or larvae that is possessed outside of a permitted area. The document bears the name, address, and permit identifier of each permittee from whom the oyster seed or larvae was obtained, the name, address, and permit identifier of each permittee to whom the oyster seed or larvae is to be delivered, and precisely accounts for and describes all containers in possession. In this way, the department is able to ensure that persons in possession of undersized oysters are able to document the source and destination of the oysters in their possession.

New subsection (u) requires vessels used to engage in activities regulated under the new subchapter to prominently display an identification plate supplied by the department at all times the vessel is being used in such activities. The provision is necessary to enable enforcement personnel to quickly and efficiently identify vessels working on permitted areas or being used to carry farmed oysters.

New §58.354, concerning Oyster Seed Hatchery, allows a person to whom the department has issued a broodstock permit under the provisions of Chapter 57, Subchapter F of this title for the collection of wild oysters to furnish oyster seed or larvae produced from wild-caught oysters to a COMP or nursery permitted under this subchapter, but stipulates that all oyster seed or larvae leaving such a facility must be accompanied by the Oyster Seed Transport Document set forth in §58.352(t), and for the same reasons.
New §58.355, concerning Permit Application, prescribes the application requirements to obtain a permit issued under the new subchapter. New subsection (a) requires an applicant to submit an administratively complete application and stipulate that an application will not be reviewed unless it is administratively complete. As discussed earlier in this preamble with the respect to the definition of "administratively complete," it is insufficient to begin any evaluation of a prospective project unless all pertinent information has been obtained, including evidence that the applicant has obtained or is in the process of obtaining all necessary authorizations and permits from other governmental entities. Therefore, the application requires the key information necessary for the department to determine whether or not permit issuance is feasible. The application requires the applicant to prepare and submit an Operation Plan, evidence of the necessary permits from other governmental entities, and a natural resource survey (using department-approved protocols). New subsections (b) and (c) create a mechanism for public comment on proposed projects. New subsection (b) stipulates that the department publish public notice of a permit application, which is necessary to provide interested and affected members of the public an opportunity to comment on the pending permit application. The department will consider all public comment relevant to matters under the jurisdiction of the department. The department is the primary state agency for fish and wildlife management and water safety and is involved to a lesser extent in several other aspects, such as water quality, environmental flows, and environmental pollution enforcement and response. For these reasons, the department believes it is critical that the public be made aware of permit applications and given comment opportunity; however, the department will only consider comment relevant to matters under the department's jurisdiction, including but not limited to aquatic resource and ecosystem impacts, recreational and commercial user impacts, and water safety impacts. New subsection (c), for prospective projects within or partially within public waters, requires the department to hold a public meeting in the city or municipality closest to the proposed permitted area to take public comment on the proposed project. The department will publish notice of the public meeting at least two weeks prior to the meeting, in print or electronically, in the daily newspaper of general circulation closest to the proposed operational area, and the costs of newspaper notice are to be borne by the applicant. The new subsection also conditions any permit issuance on payment of public notice costs to the department. New subsection (d) stipulates the various fees associated with permits issued under the new subchapter must accompany the application. The fee requirements for permits issued under the new subchapter are created in this rulemaking; however, the fee amounts are established in another rulemaking published elsewhere in this issue.

New §58.356 provides for permit renewal, which requires an applicant to submit an administratively complete application for permit renewal, accompanied by the appropriate fee.

New §58.357, concerning Permit Amendment, provides for amendments to an existing permit, provided the permittee has completed and submitted an administratively complete application for permit renewal and possesses all necessary authorizations and permits required by any other state or federal entity for the conduct of the activities for which the amendment is sought. The department considers that a permittee during the course of permit validity might desire to increase the intensity of an operation or alter some other facet of production. The department is not averse to amending permits to accommodate such things, provided the applicant possesses all necessary authorizations and permits from other regulatory authorities with respect to the prospective amendment. The department will not, however, consider an amendment that would increase the size of a permitted area. In such cases, the applicant will be required to go through the permit application process set forth in §58.355. The new subsection also prohibits amendment of an expired permit, for obvious reasons.

New §58.358, concerning Reporting and Recordkeeping, establishes the necessary administrative responsibilities of permittees. The new section requires permittees to maintain current, accurate records of all shellstock and larvae acquired, introduced, removed, or harvested from a permitted facility and to submit an annual report to the department. For a variety of reasons, not the least of which are public health and the protection of native ecosystems, it is necessary to be able to verify that cultivated oyster mariculture activities are being conducted as set forth in the new subchapter. Therefore, the new rules require permittees to keep and maintain records regarding permitted activities, and to submit an annual report, which enables the department to quickly and accurately identify improper activities, if questions arise. Additionally, under Parks and Wildlife Code, Chapter 47, no person may engage in business as a wholesale or retail fish dealer unless that person has obtained the appropriate license, and under Parks and Wildlife Code, §66.019, no dealer who purchases or receives aquatic products directly from any person other than a licensed dealer may fail to file the report with the department each month on or before the 10th day of the month following the month in which the reportable activity occurred. The new section therefore makes clear that permittees, as persons who buy and sell an aquatic product, are required to comply with the statistical reporting requirements of Parks and Wildlife Code, §66.019. The new subsection also stipulates a records retention requirement of two years. Violations of the new rules are a Class B misdemeanor by statute, and two years is the statute of limitations for Class B misdemeanors.

New §58.359, concerning Agency Decision to Refuse to Issue or Renew Permit; Review of Agency Decision, allows the department to refuse permit issuance or renewal to any person who has been finally convicted of, pleaded nolo contendere to, received deferred adjudication, or been assessed an administrative penalty for a violation of: the subchapter; Parks and Wildlife Code, Chapters 47, 56, 76, 77, 78, or 75 (for which a commercial license or permit is required); a provision of the Parks and Wildlife Code that is a Class A or B misdemeanor, state jail felony, or felony; Parks and Wildlife Code, §63.002; or the Lacey Act (16 U.S.C. §§3371-3378). In addition, the new section allows the department to prevent a person from acting on behalf of or as a surrogate for a person prevented from obtaining a permit under the new provisions and provides for a review process for agency decisions to refuse permit issuance or renewal.

The department has determined that the decision to issue a permit to hold protected live wildlife or to collect and possess wildlife for commercial purposes should take into account an applicant's history of violations involving the capture and possession of live animals, major violations of the Parks and Wildlife Code (Class B misdemeanors, Class A misdemeanors, and felonies), and Lacey Act violations. The department reasons that it is appropriate to deny the privilege of taking or allowing the take of wildlife resources to a person who exhibits a demonstrable disregard for laws and regulations governing wildlife. Similarly, it is appropriate to deny the privilege of holding wildlife to a person who has exhibited demonstrable disregard for wildlife law in general.
by committing more egregious (Class B misdemeanors, Class A misdemeanors, and felonies) violations of wildlife law.

The Lacey Act (16 U.S.C. §§3371-3378) is a federal law that, among other things, prohibits interstate trade in or movement of wildlife, fish, or plants taken, possessed, transported, or sold in violation of state law. Lacey Act prosecutions are normally conducted by the United States Department of Justice in federal courts. Although a Lacey Act conviction or civil penalty is often predicated on a violation of state law, the federal government need only prove that a state law was violated; there is no requirement for there to be a record of conviction in a state jurisdiction. Rather than expending resources and time conducting concurrent state and federal prosecutions, the department believes that it is reasonable to use a Lacey Act conviction or civil penalty as the basis for refusing to issue or renew a permit. Because the elements of the underlying state criminal offense must be proven to establish a conviction or assessment of a civil penalty for a Lacey Act violation, the department reasons that such conviction or assessment constitutes legal proof that a violation of state law occurred, and it is therefore redundant and wasteful to pursue a conviction in state jurisdiction to prove something that has already been proven in a federal court.

The denial of permit issuance or renewal as a result of an adjudicative status listed in the amendment would not be automatic, but within the discretion of the department. Factors that may be considered by the department in determining whether to refuse permit issuance based on adjudicative status include, but are not limited to: the number of final convictions or administrative violations; the seriousness of the conduct on which the final conviction or administrative violation is based; the existence, number, and seriousness of offenses or administrative violations other than offenses or violations that resulted in a final conviction; the length of time between the most recent final conviction or administrative violation and the application for enrollment or renewal; whether the final conviction, administrative violation, or other offenses or violations were the result of negligence or intentional conduct; whether the final conviction or administrative violations resulted from the conduct committed or omitted by the applicant, an agent of the applicant, or both; the accuracy of information provided by the applicant; for renewal, whether the applicant agreed to any special provisions recommended by the department as conditions; and other aggravating or mitigating factors.

The new section also provides for department review of a decision to refuse permit issuance or renewal. The amendment requires the department to notify an applicant not later than the 10th day following a decision to refuse permit issuance or denial and to set a time and date for conducting a review of an agency decision to refuse permit issuance or renewal within 10 days of receiving a request for a review. The amendment stipulates that a review panel consists of three department managers with appropriate expertise in the activities conducted under the permit in question. The new provision is intended to help ensure that decisions affecting permit issuance and renewal are correct.

New §58.360, concerning Prohibited Acts, identifies specific acts that constitute violations of the new subchapter.

New paragraph (1) makes it a criminal act to possess a commercial oyster dredge or oyster tongs within a permitted area or aboard a vessel transporting oysters under the provisions of this subchapter. The provision is necessary because the department wishes to employ measures to safeguard native oyster populations from exploitation by unscrupulous persons. Prohibiting the possession of common oyster gear on board a vessel transporting farmed oysters obviates the opportunity for persons to engage in the harvest of native oysters while transporting farmed oysters. For similar reasons, new paragraph (2) creates an offense for commingling or allowing the commingling of wild-caught and farmed oysters.

New paragraphs (3) and (4) clarify that it is an offense for failing to notify the department within 24 hours upon the discovery of a disease condition within a permitted facility and for failing to notify the department within 24 hours upon discovery of any condition that could result in the unintentional release of shellstock or larvae. As discussed previously in this preamble with respect to §58.353(i), the department wishes to prevent the release of farmed oysters and oyster diseases to wild populations.

New paragraph (5) clarifies the offense of failing to maintain all corner markers of the permitted area of a facility within public water as prescribed by the new subchapter, which is necessary for the reasons described earlier in this preamble with respect to new §58.353(a).

New paragraph (6) creates an offense for failing to remove all enclosures and infrastructure from public waters within 60 calendar days of permit expiration or revocation. Under the provisions of new §58.353(q), permittees are required to remove, at the expense of the permittees, all containers, enclosures and associated infrastructure from public waters within 60 calendar days of permit expiration or revocation. The new paragraph clarifies that it is a criminal offense not to do so.

New paragraph (7) clarifies that it is an offense to operate a COMP or nursery facility except as specified by this subchapter and the provisions of a permit. The provision is intended to ensure that criminal liability is not limited to the specific offenses identified throughout the new subchapter, but to any violation of the new subchapter or the provisions of a permit issued under the new subchapter.

Finally, new paragraph (8) clarifies that it is an offense to operate a COMP or nursery facility without all authorizations and permits required by any federal, state, or local governmental authority. Possession of all necessary authorizations and permits is a predicate for facility operation. The department believes that continuing to operate a facility without one or more authorizations or permits constitutes a criminal act.

New section §58.361, concerning Violations and Penalties, provides that a person who violates a provision of this subchapter or a provision of a permit issued under this subchapter commits an offense punishable by the penalty prescribed by the Parks and Wildlife Code, §75.0107. Violations and penalties are prescribed by statute and the department believes it is prudent to reference the applicable statutory provisions for clarity. Finally, the new section provides that a permit issued under this section is not a defense to prosecution for any conduct not specifically authorized by the permit. The department believes it is prudent to reinforce that a permit issued under this section does not relieve a permittee or subpermittee of criminal responsibility as the offenses prescribed by statute constitute a Class B Parks and Wildlife Code Misdemeanor.

The department received three comments regarding adoption of the proposed new rules. Each of the comments provided a reason or rationale for opposing adoption. Those comments, accompanied by the department’s response to each, follow. Because each commenter presented multiple reasons for opposing adoption, the number of agency responses is greater than the total number of comments.
Two commenters opposed the active use criteria that requires the planting of 100,000 seed oysters per acre per year, stating that this is a new industry and applicants/permittees may need time to grow into their business. The department disagrees with the comment and responds that permits for oyster mariculture will remove the permitted area from use by other users of public waters of the state. As such, the requirement to plant at least 100,000 seed oysters per acre per year is intended to ensure the permitted area is being used for the purpose intended. Additionally, the rules provide that the department may specify another amount, if warranted. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the movement of oysters and oyster seed produced outside the Lower Laguna Madre back into this area, stating that this would affect the genetic population of oysters in the Southern zone and increase the risk of bringing new unknown pathogens or more virulent strains of pathogens into this area. The department agrees with the comment that movement of oysters originating from outside the Southern zone could affect the unique genetic population of oysters found in this area. This activity is prohibited under the rules. Oyster seed must be produced from oysters originating from either the Northern or Southern zone and can only be placed within a corresponding Northern or Southern permitted area. The primary pathogen of oysters in Texas is dermo (*Perkinsus marinus*) which is transmitted from oyster to oyster. Since broodstock held in hatcheries will be isolated for spawning and oyster seed used for COMP activities are also isolated and would typically be shipped to growers within two months of setting, the risk of dermo infection is considered minimal. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the environmental scope of definitions within the rules should include ecologically significant areas, such as submerged aquatic vegetation, and not be limited to areas designated by the Texas Department of State Health Services for reasons of shellfish sanitation. The department disagrees with the comment and responds that the designation of areas as "Prohibited" or "Restricted" is determined by the Texas Department of State Health Services to identify areas where water quality may result in public health issues if oysters were harvested and consumed from these areas. A condition of a COM permit establishes buffers between permitted mariculture areas and sensitive habitats such as seagrass. A 200-foot buffer for seagrass beds will be used in evaluating proposed cultivated oyster mariculture sites. No changes were made as a result of the comment.

The department received 11 comments supporting adoption of the proposed new rules.

The new sections are adopted under the authority of Parks and Wildlife Code, §75.0103, which requires the commission to adopt rules to establish a program governing cultivated oyster mariculture, which may establish requirements for the location and size of a cultivated oyster mariculture operation; the taking, possession, transport, movement, and sale of cultivated oysters; the taking, possession, transport, and movement of broodstock oysters; marking structures for the cultivation of oysters in a cultivated oyster mariculture operation; fees and conditions for use of public resources, including broodstock oysters and public water; and any other matter necessary to implement and administer Parks and Wildlife Code, Chapter 75; and Parks and Wildlife Code, §75.0104, which requires the commission to adopt rules to establish requirements for permit applications and application fees; criteria for the approval, transfer, revocation, and suspension of permits; and procedures for hearings related to a permit.

§58.355. Permit Application.

(a) An applicant for a permit under this subchapter must submit an administratively complete application to the department. The department will not review an application that is not administratively complete.

(b) The department will publish notice of the application for a permit under this subchapter and provide opportunity for public comment. The department will consider all public comment relevant to matters under the jurisdiction of the department.

(c) For proposed facilities that will be within or partially within public water, the department will hold a public meeting in the city or municipality closest to the proposed permitted area to take public comment on the proposed project. The department will publish notice of the public meeting at least two weeks prior to the meeting, in print or electronically, in the daily newspaper of general circulation closest to the proposed operational area. Costs of newspaper notice are the responsibility of the applicant and no permit will be issued until the department has received payment for the required notice.

(d) An application for a permit under this subchapter shall be accompanied by the applicable permit fee established in §53.13 of this title (relating to Business License and Permits (Fishing)).

(1) The department shall assess a nonrefundable annual fee based on the size of the permitted area for which a COMP or nursery permit is issued. The fee is as specified under §53.13 for a COMP.

(2) For nursery structures located on public waters, a surcharge in addition to the fee imposed by paragraph (1) of this subsection shall be assessed as specified under §53.13.

(3) The fees established in this subsection shall be recalculated at three-year intervals beginning on the effective date of the permit and proportionally adjusted to any change in the Consumer Price Index.

(4) The fees established by this subsection are due annually by the anniversary of the date of permit issuance.

§58.356. Renewal.

The department may renew a permit under this subchapter, provided the permittee has submitted an administratively complete application for permit renewal on a form provided or approved by the department, accompanied by the permit renewal fee specified in §53.13 of this title (relating to Business License and Permits (Fishing)).

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 4, 2020.

TRD-202003149

Colette Barron-Bradsby

Acting General Counsel

Texas Parks and Wildlife Department

Effective date: August 24, 2020

Proposal publication date: April 17, 2020

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

∗  ∗  ∗  ∗  

CHAPTER 65. WILDLIFE

The change to §65.358, concerning Alligator Egg Collection, provides for conditional partial issuance of nest stamps to egg collectors on properties that have historically received nest stamps, based on biological factors and compliance history. The change also clarifies that the notification requirements of the section apply only to the person to whom the nest stamps were issued, not every person in an egg collection party.

The change to §65.360, concerning Reporting and Recordkeeping Requirements, corrects a subject/verb conflict in subsection (b). The change is nonsubstantive.

The amendments make generally applicable changes to language governing references to reports and notifications required by rule. In such cases, the amendments stipulate that the report be made on a form supplied or approved by the department.


The current rules governing the collection and incubation of alligator eggs employ the term "clutch" when referring to groups of eggs; however, the rules do not define that term. The amendment defines "clutch" as "the number of alligator eggs, both fertile and infertile, in a single alligator nest." The definition is necessary not only to provide an unambiguous meaning of the term for purposes of compliance and enforcement, but to make clear that all alligator eggs, including infertile eggs, are considered by the department to be part of a wild nest.

The amendment defines "egg" as "an alligator egg" to clarify that when the term "egg" is used in any context in the rules, it means alligator eggs.

The amendment provides definitions for "export" and "import." Although the current rules govern export and import of alligators (which by statute include alligator eggs, parts, and products), the department believes it is prudent to provide unmistakable meanings for those terms. Therefore, the definition for "export" is "the physical transportation of an alligator to any point outside the state of Texas." Similarly, the definition for "import" is "the physical transportation of an alligator from outside of Texas across the state line into Texas."

The amendment defines "nest disturbance" as "the act of physically manipulating, handling, or tampering with an alligator nest in any way." The definition is necessary because the department has identified a deficiency in the current rules governing egg collection. Current rules unintentionally apply only to the removal of eggs and not to associated activities prior to or during removal. Alligator nests and eggs are extremely sensitive to disturbance. Because the department, based on a biological assessment, issues a specific number of nest authorizations for any given property, it is theoretically possible under current rule to disturb a nest without removing eggs, which results in unnecessary mortalities.
if the eggs succumb to environmental exposure or the mother abandons the nest. The amendment clarifies that egg collection includes the intrusion that must occur in order to physically remove eggs.

The amendment adds a definition for "incubation-only facility." Under current rule, an alligator farmer may operate a facility solely for the purpose of incubating and hatching alligator eggs for purposes of sale to another farmer. In the amendment to §65.360, concerning Reporting Requirements, the quarterly alligator farm report requirement for farmers operating incubation-only facilities has been eliminated and replaced with a single report. There is no reason to require quarterly reports for incubation-only facilities, because incubation activities occur seasonally, based on the life history of the resource. Therefore, a definition for incubation-only facility is necessary to distinguish such operations from other alligator farming operations.

The amendment defines "partially processed alligator" as "a whole alligator that has been skinned except for the head, or a whole alligator that has been skinned except for the head and feet." Current rules address "processed" and "unprocessed" alligators. The department has become aware of an emerging market for whole alligators that have been prepared for culinary use by consumers, such as tailgate activities at sporting events. Such products are in a regulatory nether region under current rule. In order to eliminate misunderstandings, the amendment defines such products as "partially processed alligators," which, in conjunction with the amendment to §65.357, concerning Purchase and Sale of Alligators, allows wholesale dealers to sell directly to consumers and eliminates any reporting and recordkeeping requirements for the consumer.

The amendment alters the term "egg collection" to "egg collection activities" and alters the definition to include nest disturbance in addition to removal of eggs, or possession of eggs removed from wild nests. The amendment is necessary to clarify that "nest disturbance" is an egg collection activity.

The amendment alters the current definition of "farmer" to clarify that the term applies only to a person possessing a valid permit issued for alligator farming by the department.

The amendment alters the current definition of "processed product" to stipulate that alligator meat that has been removed from the skeleton is a processed product, which is necessary to clarify, in conjunction with the amendment to §65.357, that only wholesale dealers and farmers are permitted to sell alligator meat, except as otherwise provided.

The amendment alters the definitions of "retail dealer" and "wholesale dealer" to simplify the definitions and relocate regulatory provisions to the rules where they more properly belong. A retail dealer is defined as "a person possessing a valid retail dealer permit issued under this subchapter" and a whole dealer is defined as "a person possessing a valid wholesale dealer permit issued under this subchapter." The amendment eliminates the definitions for "gig," "propagation," and "subpermittee." The definition for gig is an artifact from a time when recreational alligator hunting was regulated under the subchapter and is thus unnecessary. The definition of "propagation" is superfluous, since the alligator farmer permit by rule authorizes permit holders to engage in the practice. The definition of "subpermittee" is unnecessary because it is unique to and defined within another rule regulating nuisance alligator control.

The amendment to §57.353, concerning General Provisions, alters subsection (b) to eliminate confusion by removing verbiage related to common carriers that is addressed by another provision of the rules. The amendment also clarifies that no person other than a wholesale dealer or farmer may process alligator meat for sale. Although alligator meat may be possessed for resale by retail dealers and re-sold to consumers (grocery stores, restaurants, etc.), only wholesale dealers and farmers are allowed to process alligators for purposes of meat production. The amendment also incorporates an existing provision prohibiting alligator eggs collected under the subchapter from being exported. The provision is currently located in §65.358 and is being relocated for reasons of topical consistency. The amendment also includes a provision to make clear the rules do not relieve any person of an obligation imposed by another legal authority regarding food safety. The department wishes to make clear that rules or statutes governing food preparation, handling, distribution, and so forth are in addition to any requirements of the subchapter.

The amendment to §57.357, concerning Purchase and Sale of Alligators, consists of several changes. The amendment clarifies that a retail dealer permit is not required for the purchase of packaged alligator meat for re-sale to consumers, which is necessary to definitively address the circumstances under which chain of custody and permit requirements do not apply. The amendment removes language regarding the applicability of food safety regulations, which is being relocated to another part of the rules and has been addressed earlier in this preamble. The amendment allows wholesale dealers to sell partially processed alligators, for reasons discussed in the amendment to §65.352, concerning Definitions. The amendment makes changes to subsection (d) to clarify the classes of persons from whom a farmer may purchase live or dead alligators. The current rules are confusing because they are predicated on the term "live or dead," which seems to imply that wholesale dealers and recreational hunters are able to sell live or dead alligators to farmers, which isn't the case. Farmers are allowed to purchase live alligators only from another farmer or a control hunter. Farmers are allowed to purchase dead alligators from another farmer, a wholesale dealer, a recreational hunter, or a control hunter. The amendment clearly delineates these distinctions and provides the additional clarification that alligator eggs may be purchased by a farmer only from a person legally authorized to sell eggs. Additionally, the amendment replaces the current provision regarding department notification of impending transport or receipt of live alligators with a provision requiring notification to be effected via fax or email to the department's Law Enforcement Communications Center not less than 24 hours nor more than 48 hours in advance of transport or receipt. The department has determined that the current notification requirements, which require a game warden at the point of origin and at the destination to be notified "at least 24 hours prior to transport," are problematic because they create an open-ended situation in which transportation could occur at any time following notification, indefinitely. The department believes it is prudent to establish a specific timeframe or window within which transport must occur or be cancelled, in order to prevent situations in which department personnel do not know with reasonable certainty when a regulated activity will occur, which interferes with efficiency and the performance of other duties. Additionally, the department believes it is more efficacious to require the notifications to be made to a central location, which allows the department greater flexibility in personnel allocation as well as providing the benefit of creating a single recordkeeping function. Therefore, the new provision requires an alligator
farmer to complete and submit to the department's Law Enforcement Communication Center by fax or email a transfer notification on a form supplied or approved by the department, requires the notification to be submitted not less than 24 hours nor more than 48 hours prior to the transport or receipt, and requires cancellation via notification of the Law Enforcement Communications Center by fax or email prior to the transport in the event that the transport cannot take place. Finally, the amendment alters subsection (e)(2) to replace the current reference to alligators taken on "wildlife management areas" with a reference to alligators taken under "annual public hunting permit," which is more accurate.

The amendment to §57.358, concerning Alligator Egg Collectors, consists of several actions. In addition to the references to department forms addressed earlier in this preamble and a changer to the title of the section to more accurately define the subject of the section, the amendment requires applicants for nest stamp issuance to supply GPS coordinates indicating the locations of alligator nests on a specific tract of land and restates the department's authority to verify the accuracy of application materials. The department authorizes the collection of eggs from nests on the basis of a biological and ecological determination of the portion of reproductive potential can be removed from the ecosystem as harvestable surplus. The department believes that utilization of widely available and extremely accurate GPS technologies to identify exact nest locations will reduce confusion and misunderstandings caused by more rudimentary methods, as well as provide the department with accurate datasets that provide greater resolution for purposes of better resource management. Under Parks and Wildlife Code, §12.103, an authorized employee of the department may, for purposes of enforcing game and fish laws of the state, enter on any land or water where wild game or fish are known to range or stray. Therefore, the amendment restates that authority in terms of nest location verification. The amendment also replaces references to egg collection and collecting with references to egg collection activities, for the reasons explained in the discussion of the amendments to §65.352 earlier in this preamble, concerning Definitions. The amendment also clarifies that egg collection activities shall only be conducted on designated tracts of water in addition to designated tracts of land, which is more accurate as alligator nests are often located in wetland environments. The amendment also establishes lawful hours for the collection of alligator eggs. For purposes of enhancing the department's ability to monitor egg collection activities, if necessary, and to promote the safety of persons engaged in egg collection activities, the department believes it is prudent to restrict egg collection activities to daylight hours. Therefore, the amendment prohibits egg collection between sunset and one half-hour before sunrise. Finally, similar to the amendment to §65.357 regarding notification requirements for farmers, and for the same reason addressed in the discussion of that amendment previously in this preamble, the amendment replaces existing notification requirements for egg collection activities with the requirement that egg collectors complete and submit to the department's Law Enforcement Communication Center by fax or email an egg collection activity notification on a form supplied or approved by the department, requires the notification to be submitted not less than 24 hours nor more than 48 hours prior to the transport or receipt, and requires cancellation via notification of the Law Enforcement Communications Center by fax or email prior to the transport in the event that the activity cannot take place.

The amendment to §57.359, concerning Possession, stipulates that eggs possessed under a farmer's permit must be kept at the permitted farm facility. A farming permit allows the possession, incubation, hatching, and growing of alligators, but it does not authorize egg collection (although farmers may obtain nest authorizations and nest stamps and engage in collection activities); therefore, the amendment makes clear that once an alligator egg is possessed under a farmer's permit, it must remain in the farming facility of the permittee, which is necessary to monitor the movement of alligator eggs from the wild into commercial activities. The amendment also provides that all meat products processed and packaged, rather than meat products finally processed and packaged, by a farmer or wholesale dealer must be accompanied by an invoice, which is necessary because the amendment to §57.357, concerning Purchase and Sale of Alligators, allows wholesale dealers to sell partially processed alligators, for reasons discussed in the amendment to §65.352, concerning Definitions. Finally, the amendment alters the citation to the definition of skull length, which is necessary because the citation has changed as the result of the amendment to §65.352, concerning Definitions.

The amendment to §57.360, concerning Report Requirements, retitles the section Reporting and Recordkeeping, implements the standardized language regarding department forms (discussed previously in this preamble), and replaces the quarterly reporting requirement of farmers operating incubation-only facilities with a one-time reporting requirement (also discussed earlier in this preamble). Finally, the amendment clarifies that a wholesale dealer is required to produce a copy of an Alligator Transaction Report only to a department employee acting in the discharge of official duties.

The amendment to §57.361, concerning Alligator Farm Facility Requirements, implements the standardized language regarding department forms (discussed previously in this preamble), requires applications to be accompanied by the GPS coordinates and a map of the prospective facility, requires alligators in a farm to be kept within the facility, requires set minimum criteria for egg incubators, requires hatchings to be transferred to a farming facility from an incubator-only facility by October 1 of each year, clarifies that a hide tag issued to a farming facility may not be used on an alligator killed under and hunting license, and that alligators within an alligator farm may not be hunted for sport. The department believes that utilization of widely available and extremely accurate GPS technologies to identify exact boundaries of alligator farm facilities will reduce confusion and misunderstandings as to the exact geographical area under regulation as an alligator farm; therefore, the amendment requires applicants for an alligator farming permit to supply a map and the GPS coordinates of the facility area. The amendment also requires alligators kept under a farming permit to be retained in the facility. Although it is intuitive that alligator stock should be kept within a facility, it is necessary to stipulate that requirement by rule in order to establish a regulatory duty on the part of permittees to prevent escape. The amendment also establishes environmental control standards for egg incubation facilities. Alligator eggs are a public resource and their collection for commercial purposes is a permit privilege. The department believes that basic environmental control standards should exist in order to prevent possible waste of a public resource; therefore, the amendment requires incubators to be capable of maintaining water and air temperatures of 85 to 91 degrees Fahrenheit on a continuous basis when eggs and hatchlings are present. The amendment also establishes that incubator-only facilities are farming facili-
ties for which a farming permit is required and requires hatchlings at such facilities to be transferred to a grow-out farm by October 1 of each year. Although most incubation facilities are located within a grow-out facility, there are incubator-only facilities. The amendment clarifies that such facilities are alligator farms for which a farming permit is necessary. Because such facilities do not meet the facility requirements established by the subchapter for growing alligators to adult size, the amendment stipulates that all hatchlings be moved once they have achieved hatchling status and are capable of surviving in a grow-out facility. The amendment also prohibits recreational hunting within alligator farms. The department believes that alligator farms, as commercial entities, should not be engaged in the offering of recreational hunting opportunity, since the alligators in farms are confined and their hunting within a farm would therefore not be fair chase. There are abundant opportunities in Texas for alligator hunting in the wild. Therefore, the amendment prohibits the use of a hide tag issued to a farming facility to be used on an alligator killed under a recreational hunting license and creates an offense for allowing the sale, offering for sale, or the acceptance of such an offer for the killing of alligator within a farming facility. Finally, the amendment also makes various nonsubstantive grammatical and organizational changes.

The amendment to §57.362, concerning Importation and Exportation, implements the language regarding department forms (discussed earlier in this preamble); clarifies that an alligator import permit is not required for activities authorized under a permit issued under the authority of Parks and Wildlife Code, Chapter 43, Subchapter C; restricts import tag eligibility to wholesale dealers, retail dealers, and farmers; establishes a period of validity for an import permit; establishes a notification requirement similar to those for live alligator transport and egg collection activities (for the same reasons addressed in those discussions earlier in this preamble); updates a reference to a fee amount; and reiterates the prohibition on the export of alligator eggs. Current rules do not specifically identify the classes of permittees authorized to obtain import tags from the department, although for all practical purposes the rules governing possession of alligators restrict such activities to persons holding wholesale, retail, or farming permits. Similarly, current rules do not state the period of validity for an import permit, although again, for all practical purposes it is connected to the period of validity of the permits that must be possessed in order to engage in the activity, all of which are one year. Therefore, for purposes of clarity, the amendment restricts the issuance of import permits to persons holding a wholesale, retail, or farming permit and establishes a period of validity from the date of purchase until the immediately following August 31. The amendment also clarifies provisions governing possession of alligators taken by sport or recreational license in another state. The intent of the current provision is to exempt recreational hunters from provisions that apply to commercial activity; however, the department has encountered situations in which alligators lawfully taken in another state have been sold to a third party and then introduced to Texas for commercial purposes. The amendment clarifies that an alligator lawfully taken in another state may be brought into Texas without an import permit, but it must be accompanied by evidence of lawful possession or take and cannot have been sold or exchanged for anything of value in return, including for transport or delivery of the alligator.

The amendment to §57.365, concerning Management Tag, quantifies the size of alligators for which a management tag could be used to harvest and update a reference to fee amounts. The department received three comments opposing adoption. Each commenter offered multiple reasons or rationale for opposing adoption. Those comments, accompanied by the department’s response to each, follow. The department notes that because each comment contained multiple points, the total number of responses is greater than the number of commenters.

One commenter opposed adoption and stated that there should be a definition for "alligator nest." The department disagrees with the comment and responds that a definition of "alligator nest" is unnecessary because the department issues nest stamps based on location received from the landowner and subsequently verified, if necessary, by the department. The common and ordinary meaning of "nest" is "a place where eggs are laid and incubated." Therefore, it is incumbent upon the landowner to ensure that what they report to the department as an alligator nest is, in fact, an alligator nest. No changes were made as a result of the comment.

One commenter opposed adoption and stated that nest disturbance does not result in hatchling mortality. The department disagrees with the comment and responds that there is a strong negative correlation between nest disturbance and hatchling survival. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the rules should allow for provisional issuance of nest stamps to persons who have a record of compliance in order to take advantage of environmental conditions that are optimal for egg collection. The department agrees with the comment and has made changes accordingly.

Two commenters opposed adoption and stated that the notification "window" for egg collectors (not less than 24 hours nor more than 48 hours prior to engaging in collection activities) will cause hardship because egg collectors do not know how long it will take to complete activities on any given property. The department disagrees with the comments and responds that the rules do not require any collector to estimate how long egg collection efforts will take, only to provide notice to the department that collection activities will occur. No changes were made as a result of the comments.

The department received three comments supporting adoption of the proposed rules.

The amendments are adopted under the authority of Parks and Wildlife Code, §65.003, which authorizes the commission to regulate taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of alligators, alligator eggs, or any part of an alligator that the commission considers necessary to manage this species, including regulations to provide for the periods of time when it is lawful to take, possess, sell, or purchase alligators, alligator hides, alligator eggs, or any part of an alligator; and limits, size, means, methods, and places in which it is lawful to take or possess alligators, alligator hides, alligator eggs, or any part of an alligator; and control of nuisance alligators.

§65.358. Alligator Egg Collection.

(a) A landowner may apply for alligator nest stamps by submitting a completed application for nest stamp issuance to the department on a form supplied or approved by the department. The application must contain the GPS coordinates of each known alligator nest and a map showing the location and dimensions of the property where the nests are located.
(b) The department may make a conditional partial issuance of nest stamps to egg collectors on properties that have historically received nest stamps, based on biological factors and compliance history; however, no further issuance of nest stamps shall take place until the egg collector who has received partial issuance has submitted complete nest location data for the property, including nests disturbed under the partial issuance.

(c) The department may, at its discretion, verify reported nest locations to confirm the accuracy of application materials.

(d) It is unlawful for a landowner to utilize a nest stamp for a tract of land or water other than the tract for which the stamp was originally issued.

(e) An alligator egg collector shall conduct egg collection activities only on the tracts of land or water designated for the stamps in their possession.

(f) Alligator eggs shall be collected from the wild only by hand.

(g) No person may possess alligator eggs without possessing an egg collection permit or a valid alligator farmer permit.

(h) No person may engage in egg collection activities between sunset and one half-hour before sunrise.

(i) When engaged in egg collection activities, an alligator egg collector must possess on his or her person one or more current nest stamps and an Alligator Nest Stamp Authorization on a form supplied or approved by the department. At least one person in possession of a current nest stamp and nest stamp authorization must be present during all collection activities.

(j) No person may collect alligator eggs without possessing a valid hunting license.

(k) Immediately upon collection and throughout transportation and incubation each clutch of eggs must be accompanied by a completed nest stamp.

(l) No person to whom the department has issued a nest stamp may engage in egg collection without having completed and submitted to the department’s Law Enforcement Communication Center by fax or email an egg collection activity notification on a form supplied or approved by the department. The notification required by this subsection shall be submitted not less than 24 hours nor more than 48 hours prior to beginning egg collection activities. If for any reason egg collection activities cannot take place after the department has been notified under this subsection, the department’s Law Enforcement Communications Center shall be contacted by fax or email to cancel the notification. The cancellation notice must be received by the department prior to the initiation time indicated on the egg collection activity notification.

(m) An alligator egg collector may sell alligator eggs only to a farmer designated by permit.

§65.360. Reporting and Recordkeeping Requirements.

(a) A Nuisance Alligator Hide Tag Report shall be completed by a control hunter on a form supplied or approved by the department immediately upon take and shall be submitted to the department within seven days. A dealer or person possessing the alligator hide shall retain a copy of the report until the hide is shipped or sold out of state, at which time the copy shall be forwarded to the department.

(b) A person receiving hide tags from the department shall complete and submit an Annual Hide Target Report on a form supplied or approved by the department accounting for all tags by October 10 following the end of the open season for which tags were issued. Unused tags shall be returned with this report.

(c) A wholesale dealer shall complete and submit an Alligator Transaction Report on a form supplied or approved by the department by October 31 and by the last day of every third month thereafter detailing purchase and sale transactions during the license year. A wholesale dealer shall retain a copy of each report required by this subsection for a minimum of two years and shall produce such records upon the request of a department employee acting in the discharge of official duties.

(d) A retail dealer shall retain records of all purchases from wholesale dealers for a minimum of two years.

(e) An alligator import permit holder shall complete and submit an Alligator Import Report on a form supplied or provided by the department within 30 days following permit period termination.

(f) Except for farmers operating an incubation-only facility under §65.361(e) of this title (relating to Alligator Farm Facility Requirements), a farmer shall submit quarterly reports on a form supplied or approved by the department within 15 days of the end of each quarterly period (February, May, August, and November).

(g) A farmer operating an incubation-only facility under the provisions of §65.361(e) of this title shall file an Incubation Summary on a form supplied or approved by the department no later than October 1 of each year.

(h) An alligator egg collector shall complete and submit an Annual Egg Collection Report provided or approved by the department and return all unused nest stamps by October 1 of each year.

(i) All persons to whom hide tags or nest stamps have been issued shall notify the department in writing within 15 days in the event that any tags or stamps are lost, stolen, mutilated, or destroyed. The department will not replace tags or stamps so reported.

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 4, 2020.
TRD-202003151
Colette Barron-Bradsby
Acting General Counsel
Texas Parks and Wildlife Department
Effective date: August 24, 2020
Proposal publication date: April 17, 2020
For further information, please call: (512) 389-4775

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES

SUBCHAPTER B. PUBLIC PROCUREMENT AUTHORITY AND ORGANIZATION

DIVISION 5. CONTRACT ADVISORY TEAM

34 TAC §§20.160 - 20.166

review, 20.164 concerning enhanced solicitation review, 20.165 concerning contract formation and award, and 20.166 concerning contract management and termination, with changes to the proposed text as published in the June 26, 2020, issue of the Texas Register (45 TexReg 4293). The rules will be republished. These rules will be included in Subchapter B (Public Procurement Authority and Organization), new Division 5 (Contract Advisory Team).

These rules implement Government Code, §2054.158(d) and §2261.258(d), added by Senate Bill 65, 86th Legislature, 2019. This legislation requires the comptroller to provide guidelines for additional and reduced monitoring of certain agencies. In order to accomplish this, these rules describe the Contract Advisory Team monitoring procedure that generally applies to solicitations and contracts subject to CAT monitoring.

Section 20.160 sets out the definitions for Division 5. Paragraph (1) defines "CAT" as the Contract Advisory Team established in Government Code, Chapter 2262, Subchapter C. Paragraph (2) identifies the key terms of a solicitation or contract.

Section 20.161 defines the scope of the division. Subsection (a) clarifies that this division does not apply unless a solicitation or contract is subject to monitoring by the Contract Advisory Team. Subsection (b) implements Government Code, §2054.158(d), by creating a guideline for the monitoring of major information resources projects, which will be governed by rules adopted by the Department of Information Resources.

Section 20.162 describes the requirement for pre-publication review of solicitations by CAT. Subsection (a) requires an agency to obtain solicitation review from CAT before publication, and either comply with each recommendation or explain why it does not apply. Subsection (b) identifies the documents that must be submitted to obtain CAT review. Subsection (c) addresses solicitations that are substantially revised after CAT review and requires them to be resubmitted before publication. The guidelines described in this section generally pre-date Senate Bill 65 and are restated in the rule to provide a baseline for additional or reduced monitoring.

Section 20.163 defines the circumstances under which CAT may conduct an expedited solicitation review. Subsection (a) states that an agency may designate a solicitation as low-risk when submitting it for CAT review. Subsection (b) sets out conditions under which solicitations that follow a template may be designated as low-risk. Subsection (c) sets out conditions under which a solicitation may be designated as high-risk based on an agency risk analysis. Subsection (d) sets out a lesser requirement for agencies subject to reduced monitoring to demonstrate their risk analysis. Subsection (e) states that agencies subject to additional monitoring may not seek review through an expedited procedure.

Section 20.164 requires an enhanced review of solicitations submitted by agencies subject to additional monitoring. It requires those agencies to submit additional documents to facilitate the review.

Section 20.165 provides guidelines for CAT monitoring of contract formation and award. Subsection (a) permits an agency to request recommendations and assistance from CAT. Subsection (b) requires agencies subject to additional monitoring to provide contract documents to CAT upon request, so that CAT can develop recommendations for improving contract formation and award practices.

Section 20.166 provides guidelines for CAT monitoring of contract management and termination. Subsection (a) permits an agency to request recommendations and assistance from CAT. Subsection (b) requires agencies subject to additional monitoring to obtain additional training for their contract managers. Subsection (c) requires agencies subject to additional monitoring to submit documents describing certain contract management procedures to CAT annually. Subsection (d) requires agencies subject to additional monitoring to retain contract closeout documentation and provide it to CAT or auditors upon request.

The comptroller received four suggestions regarding adoption of these rules from The Health and Human Services Commission (HHSC). First, HHSC recommended a clarification that contracts associated with a major information resources project are subject to monitoring by the Quality Assurance Team. The requested clarification is both accurate and consistent with the intent of the rules. The comptroller adopts this suggestion in §20.161(b).

Second, HHSC requested "a definition or other guidance" for the concept of a substantial change to a solicitation in §20.162(c), such as fixing it by rule at a percentage of the anticipated contract value. The comptroller agrees that a bright line boundary would make it easy for agencies to comply. However, the purpose of §20.162(c) is to codify an existing requirement for CAT review. The concept of a substantial change to a solicitation is both implicit in statute and explicit in longstanding comptroller guidance. CAT is required to review solicitations for "contracts of state agencies that have a value of at least $5 million," pursuant to Government Code, §2262.101(a)(1). Put another way, unless a revised solicitation is substantially the same as one CAT has already reviewed, CAT must review it. The comptroller's Procurement and Contract Management Guide states that a solicitation is substantially changed if its estimated value is increased by 25%, or if there are significant revisions to key terms. Because the comptroller has provided the requested guidance, and because the suggested revision would be inconsistent with the purpose of the rule, the comptroller adopts §20.162(c) without revision.

Third, HHSC proposed to delete the documentation requirement for an agency that bypasses CAT review in an emergency. It noted that §20.82(d)(2)(B) already requires agencies to justify emergency purchases that exceed $25,000. However, that section applies only to emergency purchases made under the comptroller's delegated authority. The CAT review requirement may apply to purchases made under other sources of authority, in which case, not every procurement that would be subject to CAT review would trigger the justification requirement in §20.82(d)(2)(B). The comptroller has revised §20.162(d) to make clear that a justification prepared to satisfy §20.82(d)(2)(B) may also justify bypassing CAT review.

Finally, HHSC requested a definition for "descriptive information" in §20.165(b)(1). That section has been revised to clarify that an agency must provide to CAT the information specified in CAT's request.

These rules are adopted under Government Code §2054.158(d) and §2261.258(d).

These rules implement Government Code §2054.158(d) and §2261.258(d). The comptroller consulted the Contract Advisory Team before proposing these rules.
The following words and terms, when used in this division, shall have the following meaning unless the context clearly indicates otherwise.

1. CAT—The Contract Advisory Team established in Government Code, Chapter 2262, Subchapter C.

2. Key terms--Deliverables, duration, performance standards, amount of compensation or method of computing compensation to the contractor, specification or limitation of remedies, and any other term identified as a "key term" in the procurement manual and contract management guide developed under §20.131 of this chapter (relating to Procurement Manual and Contract Management Guide).

(a) This division applies only to solicitations and contracts subject to monitoring by CAT.
(b) Major information resources projects and any associated contracts, as defined in Government Code, Chapter 2054, are subject to monitoring by the Quality Assurance Team under the rules of the Department of Information Resources.

§20.162. Solicitation Review.
(a) An agency may not publish a solicitation on the ESBD or in the Texas Register until it obtains a CAT review of the solicitation and either complies with each recommendation or submits a written explanation regarding why the recommendation is not applicable to the solicitation.
(b) To obtain CAT review of a solicitation, an agency must submit all solicitation documents, including the solicitation, any documents that are incorporated by reference into the solicitation, and essential supporting documents such as the proprietary purchase justification.
(c) After obtaining CAT review of a solicitation, if an agency substantially revises the solicitation, it may not publish the revised solicitation until it meets the prerequisites in subsections (a) and (b) of this section.
(d) If an agency cannot obtain CAT review within the amount of time it has to complete a procurement to prevent a hazard to life, health, safety, welfare, or property in an emergency, the requirement to obtain CAT review in this section does not apply. An agency shall justify its reliance on this subsection in the procurement file for each procurement that would otherwise require CAT review. A justification submitted in accordance with §20.82(d)(2)(B) of this title and maintained in the procurement file may be sufficient if it demonstrates that CAT review is not required.

§20.163. Expedited Solicitation Review.
(a) Low-risk solicitations. If a solicitation qualifies as low-risk according to this section, an agency may designate it as low-risk when submitting it for CAT review. CAT review of a solicitation that has been designated as low-risk using an expedited process that focuses on key terms, or request additional documentation to determine which level of review to perform.
(b) Template solicitations. An agency may request CAT review of a solicitation template, which must include all key terms for a contemplated contract. For one year after a template has been reviewed, the agency may designate a solicitation following that template without substantial revision as low-risk.
(c) Risk analysis procedure. An agency that has developed a risk analysis procedure as described in Government Code, §2261.256(a), may designate a solicitation as low-risk if it submits its analysis and conclusion that the contractor selection process, contract provisions, and payment and reimbursement rates for the types of goods and services to be solicited present a low risk of fraud, abuse, or waste.
(d) Reduced monitoring. An agency that is currently reported by the State Auditor's Office as requiring reduced monitoring during contract solicitation and development may designate a solicitation as low-risk without submitting an analysis to CAT.
(e) Additional monitoring. An agency that is currently reported by the State Auditor's Office as requiring additional monitoring during contract solicitation and development may not designate any solicitation as low-risk, even if the solicitation would otherwise qualify under this section.

§20.164. Enhanced Solicitation Review.
(a) Recommendations and assistance. An agency may request recommendations and assistance from CAT regarding contract formation and award.
(b) Additional monitoring. An agency that is currently reported by the State Auditor's Office as requiring additional monitoring during contract solicitation and award shall provide to CAT upon request:

1. descriptive information specified by CAT on all contracts it has awarded from solicitations that were reviewed by CAT; and
2. copies of all contract documents requested by CAT for the purpose of providing recommendations and assistance to the agency.

(a) Recommendations and assistance. An agency may request recommendations and assistance from CAT regarding contract management and termination.
(b) Additional monitoring - training requirement. An agency that is reported by the State Auditor's Office as requiring additional monitoring during contract management and termination shall ensure that each of its contract managers has received additional training specified by and provided by the comptroller before December 31st of the year it is reported, or before another date agreed between the agency and the comptroller.
(c) Additional monitoring - submission of procedures. An agency that is reported by the State Auditor's Office as requiring additional monitoring during contract management and termination shall submit to CAT before November 30th of the year it is reported, or before another date agreed between the agency and the comptroller:

1. the procedure by which it will identify each contract that requires enhanced contract or performance monitoring; and
2. its handbook of policies and practices for contract management and termination.
(d) Additional Monitoring - Closeout Report. An agency that is currently reported by the State Auditor's Office as requiring additional monitoring during contract management and termination shall, within 30 days of the closeout of a contract it has identified as one that requires enhanced contract or performance monitoring, place the following information in the contract file, and provide it to the State Auditor, the comptroller, or CAT upon request:
(1) each of its performance expectations for the contract;
(2) the performance indicators it monitored during the contract;
(3) the methods it used to monitor performance indicators;
(4) whether the contractor met its performance expectations;
(5) a summary of corrective action plans and corrective actions taken by the contractor;
(6) any liquidated damages assessed or collected from the contractor; and
(7) a summary of lessons learned during management of the contract that the agency will apply to future procurements.

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 7, 2020.
TRD-202003208
Don Neal
General Counsel, Operations and Support Legal Services
Comptroller of Public Accounts
Effective date: August 27, 2020
Proposal publication date: June 26, 2020
For further information, please call: (512) 475-2220

pageTitle

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

SUBCHAPTER A. ACCREDITATION

37 TAC §651.7

The Texas Forensic Science Commission ("Commission") adopts an amendment to 37 TAC §651.7 which describes forensic disciplines exempt from accreditation requirements without changes to the text as published in the July 3, 2020, issue of the Texas Register (45 TexReg 4478). The rules will not be republished. The amendment removes the modifying phrase "including bloodstain pattern analysis and trajectory determination" from the term "crime scene reconstruction," because the term "crime scene reconstruction" is now defined in better detail elsewhere in the Commission rules (§651.202, Definitions). The Commission recently defined the term "crime scene reconstruction" in §651.202 to clarify which types of crime scene activities are considered forensic analysis. The new definition renders the modifying phrase "including bloodstain pattern analysis and trajectory determination" unnecessary, because these activities are covered by the new definition provided in §651.202. The adopted amendment is nonsubstantive. The amendment is necessary to reflect adoptions made by the Commission at its June 12, 2020 quarterly meeting. The adoption is made in accordance with the Commission’s accreditation authority under Code of Criminal Procedure, Article 38.01 §4-d, and the Commission’s rulemaking authority under Article 38.01 §3-a.

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The adoption is proposed pursuant to Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Article 38.01, and §4-d(b) and (c), which authorize the Commission to adopt rules providing, modifying, or removing accreditation exemptions.

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, 2020.
TRD-202003181
Leigh Savage
Associate General Counsel
Texas Forensic Science Commission
Effective date: August 26, 2020
Proposal publication date: July 3, 2020
For further information, please call: (512) 784-0037

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

The Texas Forensic Science Commission ("Commission") adopts new rule 37 TAC §651.106 to describe the existing process by which accreditation may be reinstated after revocation by the Commission, and adopts conforming amendments to 37 TAC §651.10 which describes the term of Commission accreditation without changes to the text as published in the July 3, 2020, issue of the Texas Register (45 TexReg 4480). The adoption also amends §§651.101 - 651.105 to clarify the sources, grounds, and procedures for crime laboratory accreditation-related complaints and reviews by the Commission without changes to the text as published in the July 3, 2020, issue of the Texas Register (45 TexReg 4480). The rules will not be republished. The adopted amendments clarify and codify existing procedures. The amendments and additions are necessary to reflect adoptions made by the Commission at its June 12, 2020 quarterly meeting and were made in accordance with the Commission’s rulemaking authority under Code of Criminal Procedure, Article 38.01 §3-a, and crime laboratory accreditation authority under Code of Criminal Procedure, Article 38.01 §4-d(b).

Summary of Comments. No comments were received regarding the amendments to this section.

SUBCHAPTER A. ACCREDITATION

37 TAC §651.10

Statutory Authority. The amendments are adopted under Code of Criminal Procedure, Article 38.01 §§3-a and 4-d(b). Article 38.01 §3-a directs the Commission to adopt rules necessary to implement Article 38.01, and Article 38.01 §4-d(b), which directs the Commission to adopt rules establishing and ensuring compliance with the accreditation process.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.
SUBCHAPTER B. ACCREDITATION-RELATED ACTIONS AND PROCEDURE FOR HEARING AND APPEAL

37 TAC §§651.101 - 651.106

Statutory Authority. The amendments and new rule are adopted under Code of Criminal Procedure, Article 38.01 §§3-a and 4-d(b). Article 38.01 §3-a directs the Commission to adopt rules necessary to implement Article 38.01, and Article 38.01 §4-d(b), which directs the Commission to adopt rules establishing and ensuring compliance with the accreditation process.

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, 2020.

TRD-202003183
Leigh Savage
Associate General Counsel
Texas Forensic Science Commission
Effective date: August 26, 2020
Proposal publication date: July 3, 2020
For further information, please call: (512) 784-0037

SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

37 TAC §§651.207, 651.208, 651.220, 651.221

The Texas Forensic Science Commission ("Commission") adopts amendments to 37 TAC §651.207, describing the requirements for forensic analyst and forensic technician licensure, §651.208, describing the requirements for renewal of a forensic analyst or technician license, and §651.220, which describes the option for an uncommon forensic analysis license issued for purposes of ensuring the availability of uncommon forensic analysis, timeliness of forensic analysis, and/or service to counties with limited access to forensic analysis. The Commission also adopts new §651.221, which moves an existing provision (permitting an out-of-state laboratory to obtain a license for certain purposes) for clarity. The amended rules and new rule are adopted without changes to the text as published in the July 3, 2020, issue of the Texas Register (45 TexReg 4483). The rules will not be republished.

The proposed amendments to §651.207 and §651.220 remove the distinction between in-state and out-of-state laboratories and establish a universally applied de minimis casework threshold for license category determination. Under the Commission's current blanket (as revised de minimis) rule, a laboratory only qualified if the laboratory was not located in Texas. The amendments apply to all laboratories regardless of geographic location and update qualifying criteria to achieve greater consistency and parity among laboratories regardless of geographic location.

The adopted amendments to §651.207 authorize and set an exam fee of $50 for forensic analysts practicing in unaccredited forensic disciplines who make a voluntary choice to take the exam. This is the same exam fee charged for forensic analysts retesting after the first three attempts.

The adopted amendments to §651.208 remove the limitation on the number of journal articles a forensic analyst may count towards his or her total credit for continuing forensic education in a license cycle. The current limit on journal articles is 8 of 24 total required credit hours per two-year license cycle, and the proposed rule change removes this limit. The Commission makes this change in light of the current COVID-19 pandemic that has resulted in travel and gathering restrictions preventing analysts from fulfilling their continuing forensic education requirements at in-person or live trainings, many of which have been cancelled. The Commission plans to reinstate the requirement for live training modalities during the next license cycle if the large gathering restrictions are lifted or if analysts are provided access to traditional forensic training conferences and meetings via alternative digital platforms.

Finally, adopted new rule §651.221 moves an existing provision (permitting an out-of-state laboratory to obtain a license for certain purposes) for clarity. It also extends the rule to apply to any laboratory regardless of geographical location. The new rule does not change the requirements for a laboratory to obtain this type of license.

The amendments are necessary to reflect adoptions made by the Commission at its June 12, 2020, quarterly meeting. The amendments are made in accordance with the Commission's forensic analyst licensing authority under Code of Criminal Procedure, Article 38.01 §4-a, and the Commission's rulemaking authority under Code of Criminal Procedure, Article 38.01 §3-a.

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The rule is adopted pursuant to Code of Criminal Procedure, Article 38.01 §§3-a and 4-a. Article 38.01 §3-a directs the Commission to adopt rules necessary to implement Article 38.01, and Article 38.01 §4-a, which directs the Commission to adopt rules establishing the requirements for forensic analyst licensure.

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, 2020.

TRD-202003180
Leigh Savage
Associate General Counsel
Texas Forensic Science Commission
Effective date: August 26, 2020
Proposal publication date: July 3, 2020
For further information, please call: (512) 784-0037
The Texas Forensic Science Commission ("Commission") adopts an amendment to 37 TAC §651.219 without changes to the text as published in the July 3, 2020 issue of the Texas Register (454 TexReg 4491). The rules will not be republished. §651.219 outlines the Commission's Code of Professional Responsibility for Forensic Analysts, Forensic Technicians, and Crime Laboratory Management ("Code"). The adopted amendment removes the distinction to clarify that the Code applies to forensic science-related professional activities engaged in by a licensee regardless of geographic location. The amendment is necessary to reflect adoptions made by the Commission at its June 12, 2020 quarterly meeting. The amendment is made in accordance with the Commission's forensic analyst licensing authority under Code of Criminal Procedure, Article 38.01 §§3-a and 4-(a).

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The amendment is adopted under Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Article 38.01, and Article 38.01 §4-(a), which directs the Commission to adopt rules to establish the qualifications for a forensic analyst license.

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, 2020.

TRD-202003179
Leigh Savage
Associate General Counsel
Texas Forensic Science Commission
Effective date: August 26, 2020
Proposal publication date: July 3, 2020
For further information, please call: (512) 784-0037

SUBCHAPTER D. PROCEDURE FOR PROCESSING COMPLAINTS AND LABORATORY SELF-DISCLOSURES

The Texas Forensic Science Commission ("Commission") adopts new 37 TAC §651.309 to describe the existing process by which a person or party may appeal a final investigative report by the Commission and adopts amendments to 37 TAC §651.302, relating to definitions to add a definition for the term "final investigative report" for clarity. Section 651.309 is adopted without changes to the text as published in the July 3, 2020, issue of the Texas Register (45 TexReg 4492). The rule will not be republished. Section 651.302 is adopted with a non-substantive change to the text as published in the July 3, 2020, issue of the Texas Register (45 TexReg 4492). The rule will be republished.

The changes are necessary to reflect adoptions made by the Commission at its June 12, 2020, quarterly meeting and are made in accordance with the Commission's rulemaking authority under Code of Criminal Procedure, Article 38.01 §§3-a, and investigative authority under Code of Criminal Procedure, Article 38.01 §4(a).

Summary of Comments. No comments were received regarding the new rule or amendments to this section.

Statutory Authority. The rules are adopted pursuant to Code of Criminal Procedure, Article 38.01 §§3-a and 4-(a). Article 38.01 §3-a directs the Commission to adopt rules necessary to implement Article 38.01, and Article 38.01 §4-(a) directs the Commission to investigate allegations of professional negligence or professional misconduct.

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

(1) Accredited field of forensic science--means a specific forensic method or methodology validated or approved by the Commission under Article 38.01, Code of Criminal Procedure §4-d as part of the accreditation process for crime laboratories.

(2) Crime laboratory--has the meaning assigned by Article 38.35, Code of Criminal Procedure.

(3) Forensic analysis--has the meaning assigned by Article 38.01, Code of Criminal Procedure.

(4) Forensic pathology--includes that portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician.

(5) Accredited laboratory--includes a public or private laboratory or other entity that conducts forensic analysis as defined in Article 38.35, Code of Criminal Procedure and is accredited by a national accrediting body recognized by the Commission and listed in §651.4 of this title (relating to List of Recognized Accrediting Bodies).

(6) Physical evidence--has the meaning assigned by Article 38.35, Code of Criminal Procedure.

(7) Professional misconduct--means the forensic analyst or crime laboratory, through a material act or omission, deliberately failed to follow a standard of practice that an ordinary forensic analyst or crime laboratory would have followed, and the deliberate act or omission would substantially affect the integrity of the results of a forensic analysis. An act or omission was deliberate if the forensic analyst or crime laboratory was aware of and consciously disregarded an accepted standard of practice.

(8) Professional negligence--means the forensic analyst or crime laboratory, through a material act or omission, negligently failed to follow the standard of practice that an ordinary forensic analyst or crime laboratory would have followed, and the negligent act or omission would substantially affect the integrity of the results of a forensic analysis. An act or omission was negligent if the forensic analyst or crime laboratory should have been but was not aware of an accepted standard of practice.

(9) For purposes of these definitions, the term "standard of practice" includes any of the activities engaged in by a "forensic analyst" as those activities are defined in Article 38.01, Code of Criminal Procedure. "Forensic analyst" means a person who on behalf of a crime laboratory accredited under Article 38.01, Code of Criminal Procedure technically reviews or performs a forensic analysis or draws conclusions from or interprets a forensic analysis for a court or crime laboratory.

(10) The term "would substantially affect the integrity of the results of a forensic analysis" does not necessarily require that a criminal case be impacted or a report be issued to a customer in error. The term includes acts or omissions that would call into question the
integrity of the forensic analysis, the forensic analyst or analysts, or the crime laboratory as a whole regardless of the ultimate outcome in the underlying criminal case.

(11) Final investigative report—means a required, written report issued by the Commission pursuant to Article 38.01, Code of Criminal Procedure §4(b).

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, 2020.

TRD-202003178
Leigh Savage
Associate General Counsel
Texas Forensic Science Commission
Effective date: August 26, 2020
Proposal publication date: July 3, 2020
For further information, please call: (512) 784-0037

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER J. ASSISTANCE PROGRAMS FOR RELATIVES AND OTHER CAREGIVERS

DIVISION 1. RELATIVE AND OTHER DESIGNATED CAREGIVER PROGRAM

40 TAC §700.1003

The Department of Family and Protective Services (DFPS) adopts an amendment to §700.1003, in Chapter 700, concerning Child Protective Services. The rule is adopted without changes to the proposed text published in the April 10, 2020 issue of the Texas Register (45 TexReg 2405). The rule will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the rule change is to comply with House Bill (HB) 3390, which was enacted into law by the 86th Texas Legislature and became effective immediately on June 14, 2019. HB 3390, among other things, amends Family Code Section 264.751, regarding the definitions pertaining to the Relative and Other Designated Caregiver (RODC) Program, or Kinship Program, to expand the statutory definition of a “designated caregiver” to also include an individual with a longstanding and significant relationship to the family of a child that is in DFPS conservatorship. Current statute and agency rule limits the definition to an individual with a longstanding and significant relationship with the child only.

HB 3390 requires rules necessary for implementation to be adopted as soon as practicable after the effective date.

COMMENTS

The 30-day comment period ended May 8, 2020. During this period, DFPS did not receive any comments regarding the proposed rules.

STATUTORY AUTHORITY

The amendment is adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted amendment implements Family Code section 264.751 per HB 3390.

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 4, 2020.

TRD-202003144
Tiffany Roper
General Counsel
Department of Family and Protective Services
Effective date: August 24, 2020
Proposal publication date: April 10, 2020
For further information, please call: (512) 438-3397

TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER G. INSPECTIONS

43 TAC §217.144

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to Title 43 of the Texas Administrative Code (TAC) §217.144, concerning inspections. The department adopts the amendments to §217.144 without changes to the proposed text as published in the April 17, 2020, issue of the Texas Register (45 TexReg 2533). The rule will not be republished.

REASONED JUSTIFICATION. The amendments to §217.144 update the citation to Transportation Code §501.0321 for consistency in citation format throughout the section. The amendments to §217.144(1) update the name of a required training from “Motor Vehicle Burglary and Theft Investigator Training” to “Motor Vehicle Crime Investigator Training” to reflect the new name of the training. The substance of the training will not change as a result of the name change. Amendments to §217.144(1) also change the reference to the “Automobile Burglary and Theft Prevention Authority” to the “Motor Vehicle Crime Prevention Authority.” The amendments are necessary to implement SB 604.

SUMMARY OF COMMENTS. The department received no comments on the proposal.

STATUTORY AUTHORITY. The department adopts amended §211.144 under Transportation Code §501.0321, which provides the department authority to adopt rules to determine appropriate training programs for a person who performs vehicle identifica-
tion number inspections, and 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.

CROSS REFERENCE TO STATUTE. Transportation Code §501.0321 and §1002.001.

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, 2020.
TRD-202003192
Tracey Beaver
General Counsel
Texas Department of Motor Vehicles
Effective date: August 26, 2020
Proposal publication date: April 17, 2020
For further information, please call: (512) 465-5665

SUBCHAPTER I. FEES
43 TAC §217.182

INTRODUCTION. The Texas Department of Motor Vehicles adopts amendments to Title 43 Texas Administrative Code (TAC) §217.182, concerning Registration Transactions. These amendments implement Transportation Code §504.002, as amended by House Bill (HB) 1548, 86th Legislature, Regular Session (2019). The department adopts §217.182 without changes to the proposed rule text in the April 17, 2020, issue of the Texas Register (45 TexReg 2535).

EXPLANATION. The amendment to §217.182(5) inserts the word "license" before plate. This amendment is necessary to accurately reflect that an administrative fee is being assessed for a golf cart license plate under Transportation Code §551A.052, and to achieve consistency throughout the entire rule in the use of the term "license plate."

The amendment to §217.182(6) inserts the word "license" before plate. This amendment is necessary to accurately reflect that an administrative fee is being assessed for a golf cart, neighborhood electric vehicle, or off-highway vehicle issued a package delivery vehicle license plate under Transportation Code §551.452 and to achieve consistency throughout the entire rule in the use of the term "license plate."

New §217.182(7) adds issuance of an off-highway vehicle license plate under Transportation Code §551A.052, to the list of registration transactions. A registration transaction is a transaction for which an administrative fee, called a processing and handling fee, is assessed to cover the costs of collecting fees for issuing license plates and other resignation insignia. The administrative fee to cover the costs of issuing an off-highway vehicle license plate is authorized in Transportation Code §504.002(b) as amended by HB 1548, 86th Legislature, Regular Session (2019). Processing and handling fees are authorized in Transportation Code §502.1911. For purposes of Transportation Code §551.452 and §551A.052, off-highway vehicles are defined in Transportation Code §551A.001.

SUMMARY OF COMMENTS. The department received one comment on the proposal. The Lubbock County Tax Assessor-Collector commented in support of the proposal with changes.

Comment. A commenter noted that County Road and Bridge Fees were not mentioned in the proposal. The commenter added that the County Road and Bridge Fees should be collected and remitted to each county.

Agency Response. The department agrees with the comment to the extent that County Road and Bridge Fees are not mentioned in the proposal. The proposal provides that an off-highway vehicle license plate under Transportation Code §551A.052 is a registration transaction in §217.182, and makes two changes for consistent references. The proposal does not affect the collection or remittance of County Road and Bridge Fees. Addressing the collection or remittance of county road and bridge fees in this adoption would involve matters not noticed in the proposal. As such, the department makes no changes based on this comment.

STATUTORY AUTHORITY. The department adopts amendments to §217.182 under Transportation Code §§504.002(b), 551.402(c), and 551A.052(c).

Transportation Code §504.002 authorizes the department to charge a fee to cover the costs of issuing license plates for golf carts or off-highway vehicles in an amount established by rule. Transportation Code §551A.052 requires the department to adopt rules establishing a procedure to issue license plates for golf carts and charge a fee not to exceed $10.

Transportation Code §551A.052 requires the department to adopt rules establishing a procedure to issue license plates for unregistered off-highway vehicles and charge a fee not to exceed $10.

Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code, Chapters 502, 504, and 551A.

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, 2020.
TRD-202003193
Tracey Beaver
General Counsel
Texas Department of Motor Vehicles
Effective date: August 26, 2020
Proposal publication date: April 17, 2020
For further information, please call: (512) 465-5665

45 TexReg 5934 August 21, 2020 Texas Register