

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 12. SWORN COMPLAINTS

SUBCHAPTER B. FILING AND INITIAL PROCESSING OF A COMPLAINT

1 TAC §12.53

The Texas Ethics Commission (the commission) proposes an amendment to Texas Ethics Commission Rule §12.53, regarding complaints initiated by the commission.

Section 12.53 relates to a preliminary review initiated by the commission. Chapter 571 of the Texas Government Code provides the commission's enforcement duties and requirements. Those requirements include certain confidentiality requirements provided by §571.140, Government Code, that apply to proceedings at a preliminary review hearing, a sworn complaint, and documents and any additional evidence relating to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint or motion. Additionally, §571.139(a) provides that the Public Information Act (Chapter 552) does not apply to documents or any additional evidence relating to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint or motion and §571.139(b) provides that the Open Meetings Act (Chapter 551) does not apply to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint or motion. Section 571.124(b), Government Code, provides that, on a motion adopted by an affirmative vote of at least six commission members, the commission, without a sworn complaint, may initiate a preliminary review of the matter that is the subject of the motion. Section 12.53 of the Commission Rules provides that a preliminary review initiated by the commission under §571.124(b) is deemed to be a complaint for purposes of all further proceedings under Chapter 571 of the Government Code and Chapter 12 of the Commission Rules. The proposed amendment clarifies that the confidentiality provisions applicable to sworn complaints in §571.140 and the exemptions under §571.139 apply to the gathering of information and discussions between the commission and commission staff that occur in contemplation of or in preparation for a commission initiated preliminary review.

Natalia Luna Ashley, Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. Ashley has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will be clarification in the commission's rules regarding the appli-

cability of the confidentiality provisions and the Open Meetings Act and Public Information Act exemptions to the gathering of information and discussions between the commission and commission staff that occur in contemplation of or in preparation for a commission initiated preliminary review. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amended rule.

The commission invites comments on the proposed amendment from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed amendment may do so at any commission meeting during the agenda item relating to the proposed amendment. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the commission's website at www.ethics.state.tx.us.

The amendment to §12.53 is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendment to §12.53 affects Chapter 571 of the Government Code.

§12.53. Commission Initiated Complaint.

(a) A preliminary review initiated by the commission under section 571.124(b) of the Government Code is deemed to be a complaint for purposes of all further proceedings under chapter 571 of the Government Code and of this chapter.

(b) Documents or evidence gathered by the commission and commission staff in contemplation of, or in preparation for, a commission initiated preliminary review are related to the processing of a preliminary review or motion for the purposes of sections 571.139 and 571.140 of the Government Code.

(c) Discussions between the commission and commission staff regarding gathering documents or evidence in contemplation of, or in preparation for, a commission initiated preliminary review are related to the processing of a preliminary review or motion for the purposes of sections 571.139 and 571.140 of the Government Code.

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

Filed with the Office of the Secretary of State on February 4, 2016.



CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER A. GENERAL RULES

1 TAC §20.3

The Texas Ethics Commission (the commission) proposes an amendment to Texas Ethics Commission Rule §20.3, regarding the requirements to file campaign finance reports with the commission.

Section 20.3 provides when the commission is the appropriate filing authority for campaign finance reports. Prior to the 2015 regular legislative session, §254.130 of the Texas Election Code required all campaign finance reports and campaign treasurer appointments to be filed with the same filing authority, depending on the type of filer and the filer's purposes. Under that law, a specific-purpose committee (SPAC) that only supported or opposed a school bond measure had to file all reports with the school district. In the 2015 session, the Texas Legislature amended §254.130 to require an SPAC created to support or oppose a measure on the issuance of bonds by a school district to file its campaign finance reports with the commission. Thus, those SPACs must now file a campaign treasurer appointment with the school board and all campaign finance reports with the commission. The amendment to §20.3 is consistent with the statutory amendment to §254.130, Texas Election Code, to require an SPAC that supports or opposes a school bond measure to file campaign finance reports with the commission.

Natalia Luna Ashley, Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. Ashley has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will be clarification in the commission's rules regarding where SPACs that support or oppose a measure on the issuance of bonds by a school district must file their campaign finance reports. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amended rule.

The commission invites comments on the proposed amendment from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed amendment may do so at any commission meeting during the agenda item relating to the proposed amendment. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the commission's website at www.ethics.state.tx.us.

The amendment to §20.3 is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendment to §20.3 affects §254.130 of the Election Code.

§20.3. Reports Filed with the Commission.

The Ethics Commission is the appropriate filing authority for reports filed by:

- (1) a candidate for one of the following offices:
 - (A) a statewide office;
 - (B) a district office filled by voters in more than one county;
 - (C) a seat in the state legislature;
 - (D) a seat on the State Board of Education;
 - (E) an office of a political subdivision other than a county, if the governing body of the political subdivision has not been formed and if the political subdivision includes territory in more than one county; or
 - (F) a judicial district office filled by voters of only one county, subject to §20.5(b);
- (2) a person holding an office listed in paragraph (1) of this section;
- (3) the secretary of state;
- (4) a specific-purpose committee supporting or opposing a candidate or officeholder required to file with the commission; or
- (5) a specific-purpose committee supporting or opposing:
 - (A) a measure to be submitted to the voters of the entire state; or
 - (B) a measure that concerns a political subdivision other than a county, if the governing body of the political subdivision has not been formed and if the political subdivision includes territory in more than one county;
- (6) a specific-purpose committee created to support or oppose a measure on the issuance of bonds by a school district; or
- (7) ~~[(6)]~~ a general-purpose committee.

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

Filed with the Office of the Secretary of State on February 4, 2016.



1 TAC §20.7

The Texas Ethics Commission (the commission) proposes an amendment to Texas Ethics Commission Rule §20.7, regarding

the requirements to file campaign finance reports with a local filing authority.

Section 20.7 provides when the secretary of a political subdivision (or the presiding officer if the political subdivision has no secretary) is the appropriate filing authority for the filing of campaign finance reports. Prior to the 2015 regular legislative session, §254.130 of the Texas Election Code, required all campaign finance reports and campaign treasurer appointments to be filed with the same filing authority, depending on the type of filer and the filer's purposes. Under that law, a specific-purpose committee (SPAC) that only supported or opposed a school bond measure had to file all reports with the school district. In the 2015 session, the Texas Legislature amended §254.130 to require an SPAC created to support or oppose a measure on the issuance of bonds by a school district to file its campaign finance reports with the commission. Thus, those SPACs must now file a campaign treasurer appointment with the school board and all campaign finance reports with the commission. The amendment to §20.7 is consistent with the statutory amendment to §254.130, Texas Election Code, to require an SPAC that supports or opposes a school bond measure to file campaign finance reports with the commission. The amendment also provides that the campaign treasurer of such an SPAC should file with the commission a file-stamped copy of the campaign treasurer appointment that it files locally. The purpose of the rule is to encourage those SPACs to notify the commission of their filing status so that the commission can inform them of filing requirements and help ensure that reports are timely filed with the commission.

Natalia Luna Ashley, Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. Ashley has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will be clarification in the commission's rules regarding where certain SPACs must file their campaign finance reports. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amended rule.

The commission invites comments on the proposed amendment from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed amendment may do so at any commission meeting during the agenda item relating to the proposed amendment. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the commission's website at www.ethics.state.tx.us.

The amendment to §20.7 is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendment to §20.7 affects §254.130 of the Election Code.

§20.7. Reports Filed with Other Local Filing Authority.

(a) Except as provided by §20.3(6) of this title (relating to Reports Filed with the Commission), the [The] secretary of a political

subdivision (or the presiding officer if the political subdivision has no secretary) is the appropriate filing authority for reports filed by:

(1) a candidate for an office of a political subdivision other than a county;

(2) a person holding an office of a political subdivision other than a county; or

(3) a specific-purpose committee supporting or opposing a measure to be submitted at an election ordered by the authority of a political subdivision other than a county.

(b) The campaign treasurer of a specific-purpose committee created to support or oppose a measure on the issuance of bonds by a school district should file with the commission a file-stamped copy of any campaign treasurer appointment filed with the appropriate local filing authority.

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

Filed with the Office of the Secretary of State on February 4, 2016.

TRD-201600562

Natalia Luna Ashley

Executive Director

Texas Ethics Commission

Earliest possible date of adoption: March 20, 2016

For further information, please call: (512) 463-5800



SUBCHAPTER E. REPORTS BY A SPECIFIC-PURPOSE COMMITTEE

1 TAC §20.315

The Texas Ethics Commission (the commission) proposes an amendment to Texas Ethics Commission Rule §20.315, regarding the termination of a campaign treasurer appointment.

Section 20.315 provides the manner by which a campaign treasurer appointment for a specific-purpose committee (SPAC) is terminated. Prior to the 2015 regular legislative session, §254.130, Texas Election Code, required all campaign finance reports and campaign treasurer appointments to be filed with the same filing authority, depending on the type of filer and the filer's purposes. Under that law, an SPAC that only supported or opposed a school bond measure had to file all reports with the school district. In the 2015 session, the Texas Legislature amended the law to require an SPAC created to support or oppose a measure on the issuance of bonds by a school district to file its campaign finance reports with the commission. Thus, those SPACs must now file a campaign treasurer appointment with the school board and all campaign finance reports with the commission. An SPAC may also terminate its campaign treasurer appointment by filing a campaign finance report designated as a "termination report." The amendment to §20.315 states that a school bond measure SPAC must file its dissolution report with the commission, and must file its campaign treasurer appointment with the secretary of the school board (or the presiding officer if the school board has no secretary). The amendment is consistent with the statutory amendment to §254.130, Texas Election Code.

Natalia Luna Ashley, Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. Ashley has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will be clarification in the Commission's rules regarding where certain SPACs must file their campaign treasurer appointments and dissolution reports. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amended rule.

The commission invites comments on the proposed amendment from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed amendment may do so at any commission meeting during the agenda item relating to the proposed amendment. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the commission's website at www.ethics.state.tx.us.

The amendment to §20.315 is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendment to §20.315 affects §254.130 of the Election Code.

§20.315. Termination of Campaign Treasurer Appointment.

(a) A specific-purpose committee may terminate a campaign treasurer appointment at any time by:

- (1) notifying the filing authority in writing of the termination;
- (2) filing a campaign treasurer appointment for a successor campaign treasurer; or
- (3) filing a dissolution report.

(b) A committee's campaign treasurer may resign by immediately notifying both the appointing authority and the filing authority in writing.

(c) Except as provided by subsection (e) of this section, if the campaign treasurer resigns or otherwise leaves the position, the termination is effective on the date the committee actually receives the notice or on the date the filing authority actually receives the notice, whichever is later.

(d) Section 20.23 of this title (relating to Timeliness of Action by Mail) does not apply to subsection (c) of this section.

(e) For purposes of the termination report required by §20.317 of this title (relating to Termination Report), a campaign treasurer's resignation is effective on the date the treasurer resigns as provided by subsection (b) of this section.

(f) Section 20.23 of this title (relating to Timeliness of Action by Mail) applies to subsection (e) of this section.

(g) A termination of a specific-purpose committee's campaign treasurer appointment and the filing of the termination report by themselves do not dissolve the specific-purpose committee. A specific-purpose committee can be dissolved only by filing a dissolution report.

(h) For purposes of this section, the appropriate filing authority for a campaign treasurer appointment of a specific-purpose committee created to support or oppose a measure on the issuance of bonds by a school district is the secretary of the school board (or the presiding officer if the school board has no secretary), except that the commission is the appropriate filing authority for a dissolution report.

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

Filed with the Office of the Secretary of State on February 4, 2016.

TRD-201600563
Natalia Luna Ashley
Executive Director
Texas Ethics Commission

Earliest possible date of adoption: March 20, 2016

For further information, please call: (512) 463-5800



CHAPTER 34. REGULATION OF LOBBYISTS SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §34.1

The Texas Ethics Commission (the commission) proposes an amendment to Texas Ethics Commission Rule §34.1, Definitions. The amendment affects paragraph (5) regarding the definition of "independent contractor."

Section 34.1(5) relates to the definition of "independent contractor" that previously was used in Chapter 305 of the Texas Government Code (state lobby law). Prior to the 2015 regular legislative session, independent contractors were permitted to receive a sales commission to lobby state agencies regarding purchasing decisions. In 2015, the Texas Legislature passed House Bill 3517, which amended §305.0041, Texas Government Code, to delete a provision that exempted from the lobby registration requirements an independent contractor who receives compensation to communicate regarding state agency purchasing decisions if the compensation is not contingent on the outcome of any administrative action. The bill also repealed §305.022(c-1) and (c-3), which provided that certain sales commissions payable to an independent contractor of a vendor of a product or service were not compensation contingent on the outcome of an administrative action. Section 305.022 now prohibits independent contractors from receiving those sales commissions. As a result, the rules that the commission adopted regarding sales commissions for independent contractors are obsolete, including §34.1(5).

Natalia Luna Ashley, Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. Ashley has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will be the deletion of an obsolete rule and clarification that independent contractors may not receive a sales commission to lobby state agencies regarding purchasing decisions. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amended rule.

The commission invites comments on the proposed amendment from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed amendment may do so at any commission meeting during the agenda item relating to the proposed amendment. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the commission's website at www.ethics.state.tx.us.

The amendment to §34.1, which deletes paragraph (5), is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendment to §34.1, which deletes paragraph (5), affects Chapter 305 of the Government Code.

§34.1. Definitions.

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

(1) Communicates directly with, or any variation of that phrase--In Government Code, Chapter 305, and in this chapter includes communication by facsimile transmission.

(2) Expenditure--In Government Code, Chapter 305, and in this chapter does not include a payment of less than \$200 that is fully reimbursed by the member of the legislative or executive branch who benefits from the expenditure if the member of the legislative or executive branch fully reimburses the person making the payment before the date the person would otherwise be required to report the payment.

(3) Lobby activity--Direct communication with and preparation for direct communication with a member of the legislative or executive branch to influence legislation or administrative action.

(4) Registrant--In Government Code, Chapter 305, and in this chapter means a person who is required to register as well as a person who has registered regardless of whether that person's registration was required.

~~{(5) Independent contractor--In Section 305.022 of the Government Code and this chapter, means a person, including a consultant, who communicates with a member of the executive branch concerning state agency purchasing decisions involving a product, service, or service provider or negotiations regarding such decisions. The term does not include an employee, as defined by Section 305.022(e) of the Government Code, of a vendor.}~~

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

Filed with the Office of the Secretary of State on February 4, 2016.

TRD-201600564

Natalia Luna Ashley
Executive Director

Texas Ethics Commission

Earliest possible date of adoption: March 20, 2016

For further information, please call: (512) 463-5800



1 TAC §34.14

The Texas Ethics Commission (the commission) proposes new Texas Ethics Commission Rule §34.14, regarding Expenditures for Fact-Finding Trips.

Section 34.14 relates to when an expenditure for transportation or lodging provided by a lobbyist to a member of the legislative or executive branch would be for a fact-finding trip. Section 305.024 of the Government Code restricts travel expenditures by lobbyists for members of the legislative and executive branches. However, §305.025(4), Texas Government Code, permits a lobbyist to provide, in part, "necessary expenditures for transportation and lodging when the purpose of the travel is to explore matters directly related to the duties of a member of the legislative or executive branch, such as fact-finding trips." The proposed §34.14 provides clarity on what constitutes a fact-finding trip and how to disclose the purpose of such an expenditure on a lobby activities report when detailed itemization is required.

Natalia Luna Ashley, Executive Director, has determined that for the first five-year period the proposed new rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed new rule.

Ms. Ashley has also determined that for each year of the first five years the proposed new rule is in effect the public benefit will be clarification in the Commission's rules regarding when a lobbyist may provide transportation or lodging to a member of the legislative or executive branch for a fact-finding trip, and how the purpose of such an expenditure must be reported on a lobby activities report. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new rule.

The commission invites comments on the proposed new rule from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed new rule may do so at any commission meeting during the agenda item relating to the proposed new rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the commission's website at www.ethics.state.tx.us.

The proposed new rule, §34.14, is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed new rule, §34.14, affects Chapter 305 of the Government Code.

§34.14. Expenditures for Fact-Finding Trips.

(a) For purposes of §305.025(3), Government Code, an expenditure for transportation or lodging provided to a member of the legislative or executive branch is for a fact-finding trip only if:

(1) the expenditure is necessary for the member to obtain facts that directly relate to the member's official duties;

(2) the member cannot obtain the facts by any means, electronic or otherwise, without the expenditure; and

(3) the expenditure is not for the member's attendance at a merely ceremonial event or pleasure trip.

(b) If an expenditure made for transportation or lodging for a fact-finding trip is required to be disclosed on a lobby activities report by §305.0061(a), Government Code, the purpose of the transportation or lodging must include a description of the facts that the expenditure was necessary to obtain under subsection (a) of this section.

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

Filed with the Office of the Secretary of State on February 4, 2016.

TRD-201600567

Natalia Luna Ashley

Executive Director

Texas Ethics Commission

Earliest possible date of adoption: March 20, 2016

For further information, please call: (512) 463-5800



SUBCHAPTER B. REGISTRATION REQUIRED

1 TAC §34.46

The Texas Ethics Commission (the commission) proposes the repeal of Texas Ethics Commission Rule §34.46, regarding registration under §305.0041 of the Government Code.

Section 34.46 relates to registration of certain independent contractors as lobbyists. Prior to the 2015 regular legislative session, independent contractors were permitted to receive a sales commission to lobby state agencies regarding purchasing decisions. In 2015, the Texas Legislature passed House Bill 3517, which amended §305.0041, Texas Government Code, to delete a provision that exempted from the lobby registration requirements an independent contractor who receives compensation to communicate regarding state agency purchasing decisions if the compensation is not contingent on the outcome of any administrative action. The bill also repealed §305.022(c-1) and (c-3), which provided that certain sales commissions payable to an independent contractor of a vendor of a product or service were not compensation contingent on the outcome of an administrative action. Section 305.022 now prohibits independent contractors from receiving those sales commissions. As a result, the rules that the commission adopted regarding sales commissions for independent contractors are obsolete, including §34.46.

Natalia Luna Ashley, Executive Director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repealed rule.

Ms. Ashley has also determined that for each year of the first five years the repeal is in effect the public benefit will be the deletion of an obsolete rule and clarification that independent contractors may not receive a sales commission to lobby state agencies regarding purchasing decisions. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repealed rule.

The commission invites comments on the proposed repeal from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile

(FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed repeal may do so at any commission meeting during the agenda item relating to the proposed repeal. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the commission's website at www.ethics.state.tx.us.

The repeal of §34.46 is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The repeal of §34.46 affects Chapter 305 of the Government Code.

§34.46. Registration under §305.0041 of the Government Code.

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

Filed with the Office of the Secretary of State on February 4, 2016.

TRD-201600565

Natalia Luna Ashley

Executive Director

Texas Ethics Commission

Earliest possible date of adoption: March 20, 2016

For further information, please call: (512) 463-5800



SUBCHAPTER C. COMPLETING THE REGISTRATION FORM

1 TAC §34.73

The Texas Ethics Commission (the commission) proposes the repeal of Texas Ethics Commission Rule §34.73, regarding reporting by independent contractors under Chapter 305 of the Government Code.

Section 34.73 relates to reporting by certain independent contractors under Chapter 305 of the Texas Government Code (state lobby law). Prior to the 2015 regular legislative session, independent contractors were permitted to receive a sales commission to lobby state agencies regarding purchasing decisions. In 2015, the Texas Legislature passed House Bill 3517, which amended §305.0041, Texas Government Code, to delete a provision that exempted from the lobby registration requirements an independent contractor who receives compensation to communicate regarding state agency purchasing decisions if the compensation is not contingent on the outcome of any administrative action. The bill also repealed §305.022(c-1) and (c-3), which provided that certain sales commissions payable to an independent contractor of a vendor of a product or service were not compensation contingent on the outcome of an administrative action. Section 305.022 now prohibits independent contractors from receiving those sales commissions. As a result, the rules that the commission adopted regarding sales commissions for independent contractors are obsolete, including §34.73.

Natalia Luna Ashley, Executive Director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repealed rule.

Ms. Ashley has also determined that for each year of the first five years the proposed repeal is in effect the public benefit will be the deletion of an obsolete rule and clarification that independent contractors may not receive a sales commission to lobby state agencies regarding purchasing decisions. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repealed rule.

The commission invites comments on the proposed repeal from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed repeal may do so at any commission meeting during the agenda item relating to the proposed repeal. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the commission's website at www.ethics.state.tx.us.

The repeal of §34.73 is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The repeal of §34.73 affects Chapter 305 of the Government Code.

§34.73. Reporting by Independent Contractor.

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

Filed with the Office of the Secretary of State on February 4, 2016.

TRD-201600566
Natalia Luna Ashley
Executive Director
Texas Ethics Commission

Earliest possible date of adoption: March 20, 2016
For further information, please call: (512) 463-5800



CHAPTER 46. DISCLOSURE OF INTERESTED PARTIES

1 TAC §46.3

The Texas Ethics Commission (the commission) proposes an amendment to Texas Ethics Commission §46.3, relating to the disclosure of interested parties in certain contracts with a governmental entity or state agency.

House Bill 1295, adopted by the 84th Texas Legislature, created §2252.908, Texas Government Code. Section 2252.908 requires a business entity entering into certain contracts with a governmental entity or state agency to file with the governmental entity or state agency a disclosure of interested parties at the time the business entity submits the signed contract to the governmental entity or state agency. In relevant part, House Bill 1295 requires the commission to adopt rules necessary to implement the new disclosure requirement and to prescribe the disclosure form. Section 2252.908 provides definitions of certain terms occurring in the section. House Bill 1295 provides

that §2252.908 applies only to a contract entered into on or after January 1, 2016.

In December 2015, the commission adopted rules (effective December 24, 2015) necessary to implement §2252.908, including §46.3 and additional rules in Chapter 46. Section 46.3 defines several terms related to §2252.908, including the terms "controlling interest," "interested party," and "intermediary." The commission has also implemented an electronic filing application that must be used to file the disclosure form (Form 1295) required under §2252.908. Since the implementation of the Form 1295, the commission has received inquiries from persons expressing confusion about how the definitions in §46.3 apply and how to complete Form 1295. The proposed amendment to §46.3 would clarify that the definition of "interested party" applies in the same way that Form 1295 requires interested parties to be listed: as either having a controlling interest or as an intermediary (or both), as applicable.

Natalia Luna Ashley, Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. Ashley has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will be clarification in the commission's rules regarding the definition of "interested party" for purposes of Form 1295, Disclosure of Interested Parties. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amended rule.

The commission invites comments on the proposed amendment from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070 or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed amendment may do so at any commission meeting during the agenda item relating to the proposed amendment. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the commission's website at www.ethics.state.tx.us.

Statutory Authority:

The amendment to §46.3 is proposed under §2252.908(g), Texas Government Code, which requires and authorizes the commission to adopt rules necessary to implement §2252.908.

The proposed amendment to §46.3 affects §2252.908 of the Government Code.

§46.3. Definitions.

(a) "Contract" includes an amended, extended, or renewed contract.

(b) "Business entity" includes an entity through which business is conducted with a governmental entity or state agency, regardless of whether the entity is a for-profit or nonprofit entity. The term does not include a governmental entity or state agency.

(c) "Controlling interest" means:

(1) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent;

(2) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or

(3) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers.

(d) "Interested party" means:

(1) a person who has a controlling interest in a business entity with whom a governmental entity or state agency contracts; or

(2) an intermediary [a person who actively participates in facilitating a contract or negotiating the terms of a contract with a governmental entity or state agency, including a broker, intermediary, adviser, or attorney for the business entity].

(e) "Intermediary," for purposes of this rule, means, a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who:

(1) receives compensation from the business entity for the person's participation;

(2) communicates directly with the governmental entity or state agency on behalf of the business entity regarding the contract; and

(3) is not an employee of the business entity.

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

Filed with the Office of the Secretary of State on February 4, 2016.

TRD-201600547

Natalia Luna Ashley

Executive Director

Texas Ethics Commission

Earliest possible date of adoption: March 20, 2016

For further information, please call: (512) 463-5800



TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 7. PESTICIDES

SUBCHAPTER H. STRUCTURAL PEST CONTROL SERVICE

DIVISION 3. COMPLIANCE AND ENFORCEMENT

4 TAC §7.155

The Texas Department of Agriculture (Department) proposes the repeal of Subchapter H, Division 3, §7.155, relating to incidental use for schools. The repeal will eliminate confusion as a result of the adoption of a duplicative section, Chapter 7, Subchapter H, Division 7, §7.205.

Stephen Pahl, Administrator for Consumer Protection, has determined for the first five years the repeal is in effect, there will

be no fiscal implications for state government as a result of administering the proposed rule.

Mr. Pahl has also determined that for each year of the first five years the proposal is in effect, the public benefit will be the avoidance of confusion relating to sections involving incidental use for schools in two divisions of Chapter 7, Subchapter H. There will be no adverse fiscal impact on individuals, small or micro businesses as a result of the proposed rule repeal.

Written comments on the proposal may be submitted to Stephen Pahl, Administrator for Consumer Protection, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711 or by email to Stephen.Pahl@TexasAgriculture.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeal of §7.155 is proposed pursuant to Chapter 1951 of the Texas Occupations Code, which provides the Department with the authority to license and regulate structural pest control applicators.

The code affected by the proposal is the Texas Occupations Code, Chapter 1951.

§7.155. *Incidental Use for Schools.*

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

Filed with the Office of the Secretary of State on February 8, 2016.

TRD-201600585

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: March 20, 2016

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



TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §115.20

The Texas State Securities Board proposes new §115.20, concerning Texas crowdfunding portal registration and activities of small business development entities. New §115.20 would implement Section 44 of the Texas Securities Act, which was added by House Bill 1629 passed during the last legislative session. The bill permits an authorized small business development entity to register and operate an intrastate crowdfunding portal ("Section 44 portal").

New §115.20 would provide for registration and operation of Texas crowdfunding portals by authorized small business development entities (a variety of governmental entities, political subdivisions, and nonprofits) specified in the statute and in subsection (a)(1) of the proposal. The last category, in (a)(1)(F), is for a nonprofit community development financial institution ("CDFI") certified by the Community Development Financial Institutions Fund. A CDFI certification is a designation conferred

by the CDFI Fund (part of the United States Department of the Treasury) and is a requirement for accessing financial and technical award assistance from the CDFI Fund through the CDFI Program, Native American CDFI Assistance Program, and certain benefits under the BEA Program to support an organization's established community development financial programs. On February 28, 2015, there were 33 CDFIs in Texas, consisting of loan funds, credit unions, banks or thrifts. It is not known how many of these are organized as nonprofits that would be eligible to register to operate a Texas crowdfunding portal.

These Section 44 portals would generally be subject to the same conditions and requirements as other Texas crowdfunding portals with a few exceptions, also specified in Section 44. These exceptions permit a Section 44 portal to: (1) list on its web portal an offering of securities by an issuer in which the portal is financially interested, and (2) subcontract the operations of its crowdfunding web portal to a third party as permitted by Board rule. The first of these exceptions is addressed in subsection (d) of the proposal; the second exception is addressed in subsection (h).

Unlike other types of portals, a Section 44 portal would be required to limit offerings of securities on its web portal to securities of issuers located within the service area of the authorized small business development entity. This requirement appears in subsection (b) of the proposal.

To avoid confusion, since there would be two different intrastate crowdfunding portal rules, this proposal uses the term "registered small business development entity" (defined in (a)(2)) to refer to the Section 44 category of registered portals, rather than "Texas CF portals" (the term used throughout the other portal rule, §115.19).

To make it clear that these Section 44 portals are subject to most of the same requirements as the other registered intrastate crowdfunding portals, throughout this proposal there are numerous cross-references to the requirements in §115.19. This should also make future changes to portal requirements easier to implement since it may be possible in most instances to only amend §115.19 to have the requirements applicable to both types of portals.

Instead of filing a Form 133.15, a new Form 133.20 would be filed by these Section 44 portals. Staff determined that different information would be needed when the applicant is a nonprofit, political subdivision, or government agency. This new form is being concurrently proposed.

Section 44 permits the portal operations to be subcontracted out to a third party, as permitted by Board rule. Subsection (h) imposes certain conditions on such a subcontracting arrangement. First, since the Third Party Operator will be performing certain portal functions and will likely have required records, it should be located in the state so the Agency has ready access to the records. (Since the Third Party Operator is not registered with us as a dealer, the Agency would lack inspection authority over them.)

Second, there must be a written agreement between the Registered Small Business Development Entity and the Third Party Operator that specifies certain terms, including: (1) the scope of work to be performed by the Third Party Operator; (2) business offices and records reflecting the activities of the portal must be located in Texas and identified in the agreement; and (3) the division of responsibility between the Registered Small Business

Development Entity and the Third Party Operator for maintaining records and instituting procedures to comply with requirements imposed by rule upon the portal. A copy of this written agreement must be filed with the Securities Commissioner at least 10 days before the Third Party Operator can begin work operating the web portal. When registering a crowdfunding portal under §115.19, the Registration Division looks at how the portal functions will be performed. Accordingly, if a Third Party Operator is used, it will need to be identified during the registration process and the functioning of the website available for review by Staff as is the case with portals registered under §115.19. The Section 44 portal would be responsible for providing the Commissioner access to the records and website.

Patricia Louterback, Director, Registration Division, has determined that for the first five-year period the rule is in effect there may be fiscal implications as a result of enforcing or administering new §115.20 on state, but not local government.

The effect on state government for the first five-year period §115.20 will be in effect is a potential increase in revenue in the form of fees paid by small business development entities registering in Texas as crowdfunding portals and by their agents. Currently no small business development entities are registered in Texas as crowdfunding portals. It is anticipated that the exceptions granted in §115.20, that are not otherwise available to other Texas crowdfunding portals, would encourage the formation of Section 44 portals. The result would be a minor increase in state revenue from these potential new registrants, specifically: \$75 for each firm and \$35 for each agent that registers in Texas; and \$40 and \$20, respectively, thereafter for each annual renewal by these registrants.

Ms. Louterback also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to allow persons restricting their activities as provided by new §115.20 to use a simplified registration process. There will be no effect on micro- or small businesses. Since the rule will have no adverse economic effect on micro- or small businesses, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The new rule is proposed under Texas Civil Statutes, Articles 581-28-1 and 581-44. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 44 provides the Board with the authority to adopt rules to regulate and facilitate online intrastate crowdfunding by authorized small business development entities.

The proposal affects Texas Civil Statutes, Articles 581-12, 581-13, 581-14, 581-15, 581-18, and 581-44.

§115.20. Texas Crowdfunding Portal Registration and Activities of Small Business Development Entities.

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

(1) Authorized small business development entity--An entity incorporated or organized under the laws of Texas and authorized to do business in Texas that is:

(A) a Type A corporation authorized under the Texas Local Government Code, Chapter 504;

(B) a Type B corporation authorized under Texas Local Government Code, Chapter 505;

(C) a Texas nonprofit organization authorized by an agency or authority of the federal government to distribute housing and community development block grants;

(D) a Texas municipal corporation;

(E) the Texas Veterans Commission; or

(F) a Texas nonprofit community development financial institution certified by the Community Development Financial Institutions Fund.

(2) Registered Small Business Development Entity--An Authorized Small Business Development Entity registered as a Texas crowdfunding portal under this section.

(3) Crowdfunding Web Portal--The Internet website of a Registered Small Business Development Entity through which offers and sales of securities exempt from registration pursuant to §139.25 of this title (relating to Intrastate Crowdfunding Exemption) are made.

(4) Third Party Operator--A third party that a Registered Small Business Development Entity subcontracts with pursuant to subsection (h) of this section.

(b) Securities offered and sold. A Registered Small Business Development Entity must limit the securities offered and sold on its Crowdfunding Web Portal to those of issuers located within its service area. Such securities must be exempt from securities registration pursuant to §139.25 of this title (relating to Intrastate Crowdfunding Exemption).

(c) Internet website. The Crowdfunding Web Portal must meet the requirements in §115.19(b) of this chapter (relating to Texas Crowdfunding Portal Registration and Activities).

(d) Prohibited activities. A Registered Small Business Development Entity shall not engage in the activities listed in §115.19(c) of this chapter (relating to Texas Crowdfunding Portal Registration and Activities), except that a Registered Small Business Development Entity is permitted to hold a financial interest in an issuer offering securities on its Crowdfunding Web Portal. A Registered Small Business Development Entity may not operate or facilitate a secondary market in securities offered and sold through its Crowdfunding Web Portal.

(e) Background and regulatory checks. A Registered Small Business Development Entity must meet the requirements in §115.19(d) of this chapter (relating to Texas Crowdfunding Portal Registration and Activities).

(f) Recordkeeping. A Registered Small Business Development Entity must meet the requirements in §115.19(e) of this chapter (relating to Texas Crowdfunding Portal Registration and Activities). In

lieu of a copy of Form 133.15 (relating to Texas Crowdfunding Portal registration), the Registered Small Business Development Entity must maintain a copy of Form 133.20 (relating to Texas Crowdfunding Portal Registration by an Authorized Small Business Development Entity).

(g) Filings.

(1) Application. In lieu of the application requirements in §115.2 of this title (relating to Application Requirements), a complete application of an Authorized Small Business Development Entity registering as a Texas crowdfunding portal consists of the following and must be filed with the Securities Commissioner:

(A) Form 133.20, including all applicable schedules and supplemental information;

(B) Form U-4, for the designated officer and a Form U-4 for each agent to be registered (officers of a corporation or partners of a partnership shall not be deemed agents solely because of their status as officers or partners);

(C) a copy of the articles of incorporation or other documents which indicate the form of organization, certified by the Texas Secretary of State or by an officer or partner of the applicant;

(D) any other information deemed necessary by the Commissioner to determine the financial responsibility, business repute, or qualifications of the applicant; and

(E) the appropriate registration fee(s).

(2) Post-reporting requirements. A Registered Small Business Development Entity is subject to the dealer and agent requirements in §115.9 of this title (relating to Post-Registration Reporting Requirements).

(3) Renewal. The registration of a Registered Small Business Development Entity expires at the close of the calendar year, but subsequent registration for the succeeding year shall be issued upon written application and upon payment of the appropriate renewal fee(s), without filing of further statements or furnishing any further information unless specifically requested by the Commissioner.

(h) Subcontracting of portal operations. A Registered Small Business Development Entity may subcontract with a Third Party Operator to operate its Crowdfunding Web Portal under the following conditions:

(1) The Third Party Operator is located in Texas and authorized to do business in Texas;

(2) A written agreement is executed between the Registered Small Business Development Entity and the Third Party Operator specifying:

(A) the scope of work to be performed by the Third Party Operator;

(B) that the business offices and records reflecting the activities of the Crowdfunding Web Portal are located in Texas and those locations are identified in the written agreement; and

(C) the division of responsibility between the Registered Small Business Development Entity and the Third Party Operator for maintaining records and instituting procedures to comply with subsections (c), (d), and (e) of this section; and

(3) A copy of the written agreement required by paragraph (2) is filed with the Securities Commissioner a minimum of 10 days prior to the commencement of operations by the Third Party Operator of the Crowdfunding Web Portal;

(4) A Registered Small Business Development Entity registered as a Texas Crowdfunding Portal pursuant to this section is responsible for ensuring the Securities Commissioner is provided with access to the records and website as required by subsection (f) of this section and §115.19(e) of this chapter.

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

Filed with the Office of the Secretary of State on February 4, 2016.

TRD-201600549

John Morgan

Securities Commissioner

State Securities Board

Earliest possible date of adoption: March 20, 2016

For further information, please call: (512) 305-8301



CHAPTER 123. ADMINISTRATIVE GUIDELINES FOR REGISTRATION OF OPEN-END INVESTMENT COMPANIES

7 TAC §123.3

The Texas State Securities Board proposes an amendment to §123.3, concerning conditional exemption for money market funds. The amendment would align the Texas rule for money market funds to the federal definition of money market fund in SEC Rule 2a-7 under the Investment Company Act of 1940. The federal rule was updated as part of the SEC's money market fund reforms enacted in July 2014 in Release IC-31166. The amendment was requested by a representative of the Investment Company Institute who represented that the proposed amendment would not result in a fiscal impact to Texas because all existing money market funds that will continue to be offered to investors must qualify under the revisions to SEC Rule 2a-7.

Patricia Louterback, Director, Registration Division, has determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Louterback also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that money market funds meeting SEC Rule 2a-7 may continue to take advantage of the fee relief provided by the Texas rule. There will be no effect on micro- or small businesses. Since the rule will have no adverse economic effect on micro- or small businesses, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by

the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under Texas Civil Statutes, Articles 581-5.T and 581-28-1. Section 5.T provides that the Board may prescribe new exemptions by rule. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Articles 581-5, 581-7, and 581-35.

§123.3. *Conditional Exemption for Money Market Funds.*

(a) (No change.)

(b) Definition. In this section, a "money market fund" or "fund": is an open-end investment company which must meet all of the following conditions.

(1) (No change.)

(2) The fund must hold itself out to be a money market fund or an equivalent to a money market fund and must be in compliance with the Investment Company Act of 1940, Rule 2a-7, as revised [made effective] in Securities and Exchange Commission Release Number IC-31166 [IC-13380 and as amended in Release Numbers IC-14606, IC-14983, IC-18005, IC-18177, and IC-21837].

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

(c) - (j) (No change.)

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

Filed with the Office of the Secretary of State on February 4, 2016.

TRD-201600548

John Morgan

Securities Commissioner

State Securities Board

Earliest possible date of adoption: March 20, 2016

For further information, please call: (512) 305-8301



CHAPTER 133. FORMS

7 TAC §133.20

The Texas State Securities Board proposes new §133.20, which adopts by reference a form concerning Texas crowdfunding portal registration by an authorized small business development entity. The form would be used by an authorized small business development entity to apply for registration as a Texas intrastate crowdfunding portal under new §115.20, which is being concurrently proposed.

The form is very similar to Form 133.15, used by an applicant for intrastate crowdfunding portal registration under §115.19 with the following exceptions: (a) Item 2, forms of organization are limited to those permitted to pursue portal registration pursuant to Section 44(C) of the Texas Securities Act; (b) Items 3, 4, and 5, and related Schedules A and B, would be required only of appli-

cants that are nonprofit organizations; (c) Item 6, collects information about any subcontract for portal operations rather than for non-securities related businesses engaged in by the applicant; and (d) Schedule D has been added to collect information about any third party operator for the portal.

Patricia Louterback, Director, Registration Division, has determined that for the first five-year period the form is used, there will be no foreseeable fiscal implications for state or local government as a result of using the form.

Ms. Louterback also has determined that for each year of the first five years the form is used the public benefit anticipated as a result will be that authorized small business development entities will be able to use a simplified form to register and amend their registration as Texas crowdfunding portals. There will be no effect on micro- or small businesses. Since the form will have no adverse economic effect on micro- or small businesses, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to use the form as proposed. There is no anticipated impact on local employment.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The new rule is proposed under Texas Civil Statutes, Articles 581-28-1 and 581-44. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 44 provides the Board with the authority to adopt rules to regulate and facilitate online intrastate crowdfunding by authorized small business development entities.

The proposal affects Texas Civil Statutes, Articles 581-12, 581-13, 581-14, 581-15, 581-18, and 581-44.

§133.20. Texas Crowdfunding Portal Registration by an Authorized Small Business Development Entity.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

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

Filed with the Office of the Secretary of State on February 4, 2016.

TRD-201600550

John Morgan

Securities Commissioner

State Securities Board

Earliest possible date of adoption: March 20, 2016

For further information, please call: (512) 305-8301



CHAPTER 139. EXEMPTIONS BY RULE OR ORDER

7 TAC §139.25

The Texas State Securities Board proposes an amendment to §139.25, concerning intrastate crowdfunding exemption. Subsection (l) of the intrastate crowdfunding exemption would be amended to take into account new Section 44 of the Texas Securities Act. The amendment to §139.25 and new §115.20, which is being concurrently proposed, would permit certain small business development entities registered as Texas intrastate crowdfunding portals to have a financial interest in an issuer listed on its Internet web portal.

Patricia Louterback, Director, Registration Division, has determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Louterback also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will consistency with a related statute. There will be no effect on micro- or small businesses. Since the rule will have no adverse economic effect on micro- or small businesses, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711 3167 or faxed to (512) 305 8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under Texas Civil Statutes, Articles 581-5.T, 581-12.C, 581-28-1, and 581-44. Section 5.T provides that the Board may prescribe new exemptions by rule. Section 12.C provides the Board with the authority to prescribe new dealer, agent, investment adviser, or investment adviser representative registration exemptions by rule. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 44 provides the Board with the authority to adopt rules to regulate and facilitate online intrastate crowdfunding by authorized small business development entities.

The proposal affects Texas Civil Statutes, Articles 581-7, 581-12, 581-13, 581-14, 581-15, 581-18, and 581-44.

§139.25. Intrastate Crowdfunding Exemption.

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

(l) Commissions and remuneration. A commission or other remuneration shall not be paid or given, directly or indirectly, for the offer or sale of the securities unless the person receiving such compensation is registered in Texas as a dealer or agent or as a Texas crowdfunding portal. The issuer may not list its securities on the Internet website of

a general dealer or portal that holds an interest in the issuer. The issuer may not compensate a general dealer or a portal by providing a financial interest in the issuer as compensation for services provided to or on behalf of the issuer. A general dealer or portal may not be affiliated with or under common control with an issuer whose securities appear on its Internet website. Notwithstanding the foregoing, a Registered Small Business Development Entity, as defined in §115.20 of this title (relating to Texas Crowdfunding Portal Registration and Activities of Small Business Development Entities), may have a financial interest in an issuer listed on its Crowdfunding Web Portal, as defined in §115.20.

(m) (No change.)

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

Filed with the Office of the Secretary of State on February 4, 2016.

TRD-201600551

John Morgan

Securities Commissioner

State Securities Board

Earliest possible date of adoption: March 20, 2016

For further information, please call: (512) 305-8301



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION SUBCHAPTER CC. FINANCIAL LITERACY ADVISORY COMMITTEE

19 TAC §§1.9521 - 1.9527

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§1.9521 - 1.9527, concerning the creation of the Financial Literacy Advisory Committee. The new rules are in accordance with Senate Bill 215 passed by the 83rd Texas Legislature, Regular Session. Specifically, these new rules govern the purpose, membership, meeting requirements, tasks, reporting requirements, and abolishment date of the Financial Literacy Advisory Committee.

Dr. Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs for the Coordinating Board, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Puls has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering these sections will be the efficient and transparent administration of the advisory committee. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Charles W. Puls, Ed. D., Deputy Assistant Commissioner, Student Financial Aid Programs, Texas Higher Education Coordinating Board,

1200 E. Anderson Lane, Austin, Texas 78752, (512) 427-6365, charles.puls@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new rules are proposed under Texas Education Code, Chapter 61, §61.026(c), and Government Code, Chapter 2110, which provide the Coordinating Board with the authority to create advisory committees.

The proposed rules affect Texas Education Code, Chapter 61, §61.0026, and Texas Government Code, Chapter 2110, §2110.0012.

§1.9521. Authority and Specific Purposes of the Financial Literacy Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Government Code, Chapter 2110, §2110.0012.

(b) Purposes. The Financial Literacy Advisory Committee is created to provide the Board with advice and recommendation(s) regarding ways to better advise students and parents on financial aid options and the impact of those options on students' finances before, during, and after their college careers.

§1.9522. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Interested persons--Persons who attend committee meetings as representatives of stakeholder entities and any other persons who have made their interest in the work of the committee known to its presiding officer. Such interested persons may participate in committee discussions, as invited by the presiding officer to do so, but do not have the authority to cast votes.

§1.9523. Committee Membership and Officers.

(a) Membership on the committee shall include leaders from:

(1) Student financial aid;

(2) Higher education;

(3) K-12 education;

(4) Community-based organizations;

(5) Business.

(b) Interested persons, such as institutional representatives, and legislative and governmental relations staff shall be regularly advised of committee meetings.

(c) The number of committee members shall not exceed 24.

(d) Members of the committee shall select the presiding officer, who will be responsible for conducting meetings. A co-chair shall also be elected by the committee to serve in the presiding officer's stead as needed.

(e) Members shall serve staggered 2-year terms and may serve multiple terms.

§1.9524. Duration.

The committee shall be abolished no later than January 1, 2020 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§1.9525. Meetings.

The committee shall meet on a monthly basis, as required by workload and tasks. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties. Minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the committee.

§1.9526. Tasks Assigned the Committee.

Tasks assigned the committee include:

(1) making recommendations for statewide strategies to better advise students and parents on financial aid options, choice of major and future career, as well as the impact of those options on students' finances before, during, and after their college careers; and

(2) soliciting input from stakeholders across the state.

§1.9527. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The committee shall report any recommendations to the Board on no less than an annual basis. The committee shall also report committee activities to the Board to allow the Board to properly evaluate the committee's work, usefulness, and the costs related to the committee's existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

Filed with the Office of the Secretary of State on February 5, 2016.

TRD-201600573

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 20, 2016

For further information, please call: (512) 427-6114



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE

SUBCHAPTER B. AUTHORITY TO CONTRACT

31 TAC §51.60, §51.61

The Texas Parks and Wildlife Department (the department) proposes an amendment to §51.60, concerning Authority to Contract, and new §51.61, concerning Enhanced Contract Monitoring.

The proposed amendment and new rule implement the requirements of Senate Bill (S.B.) 20 as enacted by the 84th Texas Legislature (2015). Senate Bill 20 amended Government Code, Chapter 2261, by adding new §2261.253(c), which states "each state agency by rule shall establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the governing

board...." Government Code, §2261.253(c) further requires that the agency's governing body be immediately notified of any serious issue or risk that is identified with respect to a contract monitored under that section.

S.B. 20 also added Government Code, §2261.254, which requires a state agency's governing board to approve contracts with a value in excess of \$1 million, and requires the presiding officer of the state agency to sign such contract. However, the approval and signature of such contracts may be delegated to the state agency's executive director. Department regulations (31 TAC §51.60) currently delegate authority to enter contracts to the department's executive director.

The proposed amendment to §51.60 would amend the current delegation of contracting authority to ensure compliance with S.B. 20 and to ensure proper review and approval of agency contracts. Proposed new subsection (a) would clarify that the delegation of authority includes, but is not limited to, contracts for the purchase of goods or services with a value exceeding \$1 million. The Commission is a part-time body that generally holds five meetings each year. Given the number of contracts entered by the department and the part-time nature of the Commission, delegating contracting authority to the executive director will help ensure that contracts are processed more efficiently.

The proposed amendment to §51.60 also would add new subsection (b) to require the executive director to implement appropriate policies and procedures regarding the solicitation and signature of agency contracts. Proposed new subsection (b)(1) would require the implementation of policies and procedures to ensure that contracts are awarded in a manner that is fair and equitable and in accordance with applicable law. Proposed new subsection (b)(2) would ensure proper review and approval of agency contracts, including review by department legal staff. The department currently has internal policies, procedures and processes for soliciting, awarding, reviewing and approving agency contracts. The proposed amendment would codify a requirement to maintain such policies and procedures.

The proposed amendment to §51.60 also would add new subsection (c) to clearly authorize the executive director to delegate authority to sign department contracts with a value of less than \$1 million to appropriate department staff, unless otherwise prohibited by statute or regulation. The delegation of contract signature authority would be subject to the requirements of subsection (b) of the section. In other words, a contract for which signature has been delegated would still be required to go through the appropriate review and approval process.

Proposed new §51.61 would set forth the criteria to be used by the department in determining whether a contract should be subject to enhanced contract monitoring. Proposed new subsection (a) would require that the department determine if enhanced contract monitoring is needed based on the criteria set out in subsection (b) of the section.

Proposed new §51.61(b) lists and describes the criteria to be considered by the department, to the extent applicable, in determining if enhanced contract monitoring is necessary. The criteria to be considered are: Total Contract Price; Total Contract Duration; Funding Source; User Impacts; Criticality of Deliverable Timing; Impact of Contract Failure; Locations Impacted; Availability of Resources for Contract Management; Complexity of Project; Health and Safety Risk; Business Process Impact; Payment Methodology Risks; and End Users' Training Needs. In addition, for technology contracts, the department will consider

Software Technology Customization; Impact on Existing Technology; and, Interface Connectivity. The department intends to rate proposed contracts using the criteria listed in proposed new subsection (b). Those contracts with a higher rating will receive enhanced monitoring and oversight by the department.

Proposed new §51.61(c) provides that the department may determine, after considering the factors listed in subsection (b), that certain types or classes of contracts are low-risk and have a low likelihood of serious issues. As a result, there would be no requirement to individually evaluate whether such contracts require enhanced contract monitoring. For example, certain very low-dollar, short-term contracts may be categorically excluded from the assessment required by proposed new subsection (b).

Proposed new §51.61(d) would require the department's director of contracting and procurement to notify the executive director regarding any serious risk or issue identified in connection with a contract subject to enhanced contract monitoring. The executive director will then be required to notify the Parks and Wildlife Commission of any such serious risk or issue identified.

Dawn Heikkila, Deputy Executive Director for Policy and Administration, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rules as proposed, as the rules are for the purpose of implementing S.B. 20 as enacted by the Texas Legislature and impose no obligations other than those imposed by S.B. 20 or currently being handled by the department. To the extent S.B. 20 or the regulations impose additional duties, those duties will be handled with current department resources.

Ms. Heikkila also has determined that for each of the first five years the amended and new rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be ensuring that department contracts are appropriately awarded, reviewed, and monitored.

There will be no adverse economic impact on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), in April 2008, the Office of the Attorney General issued guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small or micro-businesses. These guidelines state that "[g]enerally, there is no need to examine the indirect effects of a proposed rule on entities outside of an agency's regulatory jurisdiction." The guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. The guidelines also list examples of the types of costs that may result in a "direct economic impact." Such costs may include costs associated with additional recordkeeping or reporting requirements; new taxes or fees; lost sales or profits; changes in market competition; or the need to purchase or modify equipment or services. The department has determined that the proposed rules will have no adverse economic impact on any small or micro-business.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, Government Code, §2001.022, as the agency has determined that the rules as proposed will not result in direct impacts to local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Dawn Heikkila, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4604 (e-mail: dawn.heikkila@tpwd.texas.gov); or via the department's website at www.tpwd.texas.gov.

The amendment and new rule are proposed under the authority of Government Code, §2261.253, which requires state agencies to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing board and requires that the agency's governing body be immediately notified of any serious issue or risk that is identified with respect to a contract monitored under that section; §2261.254, which requires a state agency's governing board to approve and the presiding officer of the governing body to sign contracts with a value in excess of \$1 million, but authorizes the delegation of approval and signature authority for such contracts to the state agency's executive director; and Parks and Wildlife Code, §11.0171, which requires the commission to adopt by rule policies and procedures consistent with state procurement practices for soliciting and awarding contracts under that section.

The proposed amendment and new rule affects Government Code, Chapter 2261, Subchapter F, and Parks and Wildlife Code, Chapter 11, Subchapter A.

§51.60. Authority to Contract.

(a) The executive director or the executive director's designee may execute ~~negotiate and enter into~~ an agreement on behalf of the department, including but not limited to a contract for the purchase of goods or services that has a value exceeding \$1 million, provided ~~if~~ the agreement is in the best interests of the department.

(b) Subject to the provisions of subsection (a) of this section, the executive director shall develop and implement internal policies and procedures to ensure that:

(1) contracts are awarded in a manner that is fair and equitable and in compliance with applicable statutes and regulations; and

(2) contracts and contract templates are reviewed and approved by appropriate agency staff, including, but not limited to, the general counsel or designated attorney prior to final approval and signature.

(c) Unless otherwise prohibited by statute or department regulation, the executive director may delegate signature authority for contracts with a total dollar value of less than \$1 million, subject to the policies and procedures implemented pursuant to subsection (b) of this section.

§51.61. Enhanced Contract Monitoring.

(a) Except as otherwise provided in this section, before the department enters into a contract, the department will determine if enhanced monitoring of the contract and the contractor's performance is required.

(b) In determining if a contract requires enhanced contract monitoring, the department will consider the following factors, to the extent applicable:

(1) Total Contract Price. The department will consider the estimated dollar amount of the contract. Contracts with a higher dollar amount are more likely to require enhanced contract monitoring.

(2) Total Contract Duration. The department will consider anticipated overall contract period including renewal options. Longer term contracts are more likely to require enhanced contract monitoring.

(3) Funding Source. The department will consider the complexity of and restrictions associated with funding sources for the contract. Contracts funded from multiple types or sources of funding and contracts funded with restricted or time-limited funds are more likely to require enhanced contract monitoring.

(4) User Impacts. The department will consider the extent and number of persons impacted by this contract. Contracts with wider impacts are more likely to require enhanced contract monitoring.

(5) Criticality of Deliverable Timing. The department will consider the impact to the agency if contract deliverables are delayed. Contracts for which timely completion is critical are more likely to require enhanced contract monitoring.

(6) Impact of Contract Failure. The department will consider the impact to the department and the state if the contractor fails to deliver as required in the contract. Contracts for which failure would have statewide impacts, would result in violation of state or federal mandates, or would result in the loss of substantial funds are more likely to require enhanced contract monitoring.

(7) Locations Impacted. The department will consider the number of locations impacted by the contract. Contracts that will be implemented in multiple locations around the state are more likely to require enhanced contract monitoring.

(8) Availability of Resources for Contract Management. The department will consider the extent of resources readily available to manage the contract. Contracts for which resources are limited or for which consultants or temporary staff are required to manage the contract are more likely to require enhanced contract monitoring.

(9) Complexity of Project. The department will consider the complexity of requirements and resources to be managed. Contracts with more complex requirements involving external experts or evaluators are more likely to require enhanced contract monitoring.

(10) Health and Safety Risk. The department will consider how the contract would impact the health and safety of department employees and the general public. Contracts that are required to reduce or eliminate health and safety risks are more likely to require enhanced contract monitoring.

(11) Business Process Impact. The department will consider the level of impact to the department's business processes. Contracts that will have department-wide business impacts are more likely to require enhanced contract monitoring.

(12) Payment Methodology Risks. The department will consider the complexity of the methodology for calculating and making payments under the contract. Contracts with more complex payment methodology are more likely to require enhanced contract monitoring.

(13) End Users' Training Needs. The department will consider the extent of training required for end-users as a result of the contract. Contracts requiring extensive training by a vendor or external trainers are more likely to require enhanced contract monitoring.

(14) Software Technology Customization. With regard to a technology contract, the department will consider the level of software customization required. Technology contracts that involve a fully customized software solution are more likely to require enhanced contract monitoring.

(15) Impact on Existing Technology. With regard to a technology contract, the department will consider whether the technology

application which is the subject of the contract is an enhancement, replacement or new technology and the impact on existing technology applications or infrastructure. Contracts for a new technology service or product that will impact existing technology applications or infrastructure are more likely to require enhanced contract monitoring.

(16) Interface Connectivity. With regard to technology contracts, the department will consider the number of existing technology applications with which any new technology will need to interface. Technology contracts that will interface with multiple department systems are more likely to require enhanced contract monitoring.

(c) The department may determine, after considering the factors listed in subsection (b) of this section, that certain types or classes of contracts are low risk and have a low likelihood of serious issues, and are not required to be individually considered for enhanced contract monitoring.

(d) The department's director of contracting and procurement will notify the executive director who will notify the Parks and Wildlife Commission regarding any serious risk or issue identified in connection with a contract subject to enhanced contract monitoring.

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

Filed with the Office of the Secretary of State on February 5, 2016.

TRD-201600579

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: March 20, 2016

For further information, please call: (512) 389-4727



CHAPTER 57. FISHERIES

SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

The Texas Parks and Wildlife Department proposes amendments to §§57.972, 57.973, and 57.981, concerning the Statewide Recreational and Commercial Fishing Proclamations.

The proposed amendment to §57.972, concerning General Rules, would implement the provisions of House Bill (H.B.) 1579, enacted by the 84th Texas Legislature (2015), which amended Parks and Wildlife Code, §66.216, to provide that no person may possess a finfish of any species taken from coastal water, except broadbill swordfish, shark, or king mackerel, that has the head removed unless the fish has been finally processed and delivered to the final destination or to a certified wholesale or retail dealer; and that no person may possess a finfish of any species taken from coastal water, except broadbill swordfish or king mackerel, that has the tail removed unless the fish has been finally processed and delivered to the final destination or to a certified wholesale or retail dealer.

The proposed amendment to §57.973, concerning Devices, Means, and Methods, would clarify regulations governing gear restrictions on pole-and-line. The department has received several comments to the effect that the current wording of

paragraph (13)(A) is confusing and does not make it clear that "snagging" and "jerking" are unlawful acts included in the provision. The proposed amendment would make that clear.

The proposed amendment to §57.981, concerning Bag, Possession, and Length Limits, would consist of several components.

The proposed amendment to §57.981 would alter harvest regulations for smallmouth bass on Lake Meredith in Hutchinson, Moore, and Potter counties, replacing the current 12 - 15 inch slot length limit and three-fish daily bag to the statewide standard (14-inch minimum length limit and a daily bag limit of five fish). Lake Meredith contained a smallmouth bass population until approximately 2011, when golden alga blooms extirpated the population in the reservoir. Drought has also had an impact as the reservoir was below 1% capacity from 2011 to 2014. Restocking of smallmouth bass is being evaluated, and the 14-inch limit would be an appropriate regulation for managing a newly stocked population.

The proposed amendment to §57.981 also would eliminate the current statewide standard regulation for saugeye and merge saugeye with the current statewide standard regulation for walleye. The current harvest regulations for saugeye (18-inch minimum and three-fish daily bag limit) would be replaced with no minimum length limit and a five-fish daily bag limit of which no more than two fish less than 16 inches could be lawfully retained. The saugeye is a hybrid between walleye and sauger, stocked to prey on stunted crappie populations and provide another fishing opportunity for anglers. Stockings were not successful in achieving those goals, and the saugeye stocking program has been discontinued. Existing saugeye populations will likely be gone within the next 5-10 years. A separate regulation is not needed since saugeye will no longer be stocked.

The proposed amendment to §57.981 also would alter harvest regulations for largemouth bass on Lake Naconiche in Nacogdoches County. Current harvest regulations consist of an 18-inch minimum length limit and a five-fish daily bag limit. The proposed amendment would impose a 16-inch maximum length limit and five-fish daily bag, with only one fish 24 inches or greater lawful for live retention for immediate weighing using personal scales. Bass weighing 13 pounds or more may be donated to the ShareLunker Program; otherwise, fish must be immediately released. Lake Naconiche was opened in 2012 with an 18-inch minimum length limit. The bass population is still developing and has trophy potential. Establishing a maximum length limit of 16 inches could increase numbers of trophy-sized bass in the population by providing protection to large bass currently vulnerable to harvest (larger than 18 inches). A maximum length limit that allows retention of only ShareLunker bass (13 pounds or larger) could increase contributions to the ShareLunker program. Allowing harvest of bass less than 16 inches could decrease intraspecific competition and increase growth rates.

The proposed amendment to §57.981 also would alter harvest regulations for largemouth bass in Chambers, Galveston, Jefferson, Newton, and Orange counties. The current harvest regulations in these counties consist of a 14-inch minimum length limit and a five-fish daily bag limit. The proposed amendment would impose a 12-inch minimum length limit (the five-fish daily bag would be retained). Additionally, regulations would be changed on the Sabine River from the Toledo Bend dam to a line across Sabine Pass between Texas Point and Louisiana Point and in Chambers, Galveston, Jefferson, and Orange counties, including any waters that form boundaries with adjacent coun-

ties. There has been increased local interest in bass fishing and tournament angling in this area of Southeast Texas. Numerous professional and high school/college bass tournaments have occurred. Anglers have noted catching numerous bass over 12 inches but less than 14 inches. The department has agreed to investigate bass populations in that area and has determined that populations are abundant but slow-growing, with few fish exceeding 14 inches. These population characteristics mirror those in coastal bass populations along the Gulf. The proposed amendment would have minimal impact to the population but would allow anglers the option of weighing in 12- and 13-inch bass in catch-and-release tournaments.

The proposed amendment to §57.981 also would affect harvest regulations for channel and blue catfish on Lake Tawakoni in Hunt, Raines, and Van Zandt counties. The current harvest regulations consist of a 14-inch minimum length limit and a 25-fish daily bag limit. The proposed amendment would eliminate the minimum length limit and retain the 25-fish bag limit, but anglers would be allowed to retain only seven fish 20 inches or greater in length, and of these seven fish, only two could be 30 inches or greater. The blue catfish fishery in Tawakoni was the result of a stocking in 1989 of 366,675 blue catfish fingerlings. The harvest of large fish concerned some anglers and those anglers have expressed a desire for reduced harvest of catfish larger than 30 inches. Staff question whether the trophy fishery can be sustained at its current level into the future. Special sampling was started in 2013 to assess the blue catfish fishery. An angler survey was conducted and most anglers were satisfied with current limits but respondents did support reducing harvest of large blue catfish. Population modeling was done to assess potential impacts on 20- to 30-inch fish under various regulation scenarios. The proposed regulation was selected to best address concerns about over-harvest of large blue catfish, redirect some of the harvest, and have the potential to increase the catch of blue catfish greater than 30 inches. Blue catfish are the focus of the proposed regulation; channel catfish will be minimally impacted.

The proposed amendment to §57.981 also would correct the maximum length limit stated for black drum. Last year, the department eliminated an awkward tabular format for establishing bag, possession, and length limits. In the process, the 30-inch maximum length limit for black drum was inadvertently eliminated. The proposed amendment would correct that oversight.

The proposed amendment to §57.981 also would increase the recreational minimum length limit for amberjack to reflect recent federal actions regarding that species. The proposed amendment increases the recreational minimum size limit for amberjack from 34 inches to 38 inches (total length). The National Marine Fisheries Service (NMFS) recently issued regulations to implement management measures in the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico, one of which was to increase the recreational minimum size limit for amberjack. The change is intended to provide an opportunity for a greater number of sexually mature greater amberjack to spawn, which could assist in efforts to end overfishing and rebuild stock. The department has determined that the federal action is consistent with sound fisheries management principles and that making the state regulation identical to the federal regulation will help achieve management goals, be beneficial to the resource, and prevent angler confusion.

Ken Kurzawski, Program Director, Inland Fisheries Division, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state

or local governments as a result of administering or enforcing the rules.

Mr. Kurzawski also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be the dispensation of the agency's statutory duty to protect and conserve the fisheries resources of this state, the duty to equitably distribute opportunity for the enjoyment of those resources among the citizens, and the execution of the commission's policy to maximize recreational opportunity within the precepts of sound biological management practices.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the rules will not directly affect small businesses and/or micro-businesses. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, Government Code, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

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

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposal may be submitted to Ken Kurzawski (Inland Fisheries) at (512) 389-4591, e-mail: ken.kurzawski@tpwd.texas.gov; Jeremy Leitz (Coastal Fisheries) at (512) 389-4333, e-mail: jeremy.leitz@tpwd.texas.gov; or Brandi Reeder (Law Enforcement) at (512) 389-4853, e-mail: brandi.reeder@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

DIVISION 1. GENERAL PROVISIONS

31 TAC §57.972, §57.973

The amendments are proposed under the authority of Parks and Wildlife Code, §47.004 and §47.005, which authorize the commission to adopt rules governing the issuance and use of resident and nonresident fishing guide licenses; Chapter 61, which

requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess aquatic animal life in this state; the means, methods, and places in which it is lawful to take or possess aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the aquatic animal life authorized to be taken or possessed; and the region, county, area, body of water, or portion of a county where aquatic animal life may be taken or possessed; and §67.004, which requires the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

The proposed amendments affect Parks and Wildlife Code, Chapters 47, 61, and 67.

§57.972. *General Rules.*

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

(g) It is unlawful:

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

(6) for any person to:

(A) possess a finfish of any species, except broadbill swordfish, shark or king mackerel, taken from public water (salt water or fresh water) that has the head [or tail] removed unless the fish has been:

(i) finally processed and delivered to a final destination or to a certified wholesale or retail dealer; or

(ii) finally landed [until such person finally lands the eateh] on the mainland, a peninsula, or barrier island not including jetties or piers and is not transported afterwards [does not transport the eateh] by boat; or

(B) possess a finfish of any species taken from coastal water, except broadbill swordfish or king mackerel, that has the tail removed unless the fish has been:

(i) finally processed and delivered to a final destination or to a certified wholesale or retail dealer; or

(ii) has been finally landed on the mainland, a peninsula, or barrier island not including jetties or piers and is not transported afterwards by boat.

(7) - (13) (No change.)

(h) - (i) (No change.)

§57.973. *Devices, Means, and Methods.*

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

(g) Device restrictions. Devices legally used for taking fresh or saltwater fish or shrimp may be used to take crab as authorized by this subchapter.

(1) - (12) (No change.)

(13) Pole and line.

(A) Game and non-game fish may be taken by pole and line. It is unlawful to use a pole and line to take or attempt to take fish by foul-hooking, snagging, or jerking [with one or more hooks attached to a line or artificial lure used in a manner to foul-hook a fish (snagging or jerking)]. A fish is foul-hooked when caught by a hook in an area other than the fish's mouth.

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

(14) - (23) (No change.)

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

Filed with the Office of the Secretary of State on February 5, 2016.

TRD-201600577

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: March 20, 2016

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



DIVISION 2. STATEWIDE RECREATIONAL FISHING PROCLAMATION

31 TAC §57.981

The amendment is proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to take or possess aquatic animal life in this state; the means, methods, and places in which it is lawful to take or possess aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the aquatic animal life authorized to be taken or possessed; and the region, county, area, body of water, or portion of a county where aquatic animal life may be taken or possessed.

The proposed amendment affects Parks and Wildlife Code, Chapter 61.

§57.981. *Bag, Possession, and Length Limits.*

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

(c) There are no bag, possession, or length limits on game or non-game fish, except as provided in this subchapter.

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

(5) Except as provided in subsection (d) of this section, the statewide daily bag and length limits shall be as follows.

(A) Amberjack, greater.

(i) Daily bag limit: 1.

(ii) Minimum length limit: 38 [34] inches.

(iii) Maximum length limit: No limit.

(B) - (E) (No change.)

(F) Drum, black.

(i) - (ii) (No change.)

(iii) Maximum length limit: 30 inches [No maximum length limit].

(iv) (No change.)

(G) - (N) (No change.)

~~[(O) Saugeye.]~~

~~[(i) Daily bag limit: 3.]~~

~~[(ii) Minimum length limit: 18 inches.]~~

~~[(iii) No maximum length limit.]~~

~~[(O) [(P)] Seatrout, spotted.~~

~~(i) Daily bag limit:~~

~~(I) for all waters south of F.M. 457 in Matagorda~~

County: 5;

~~(II) for all waters north of F.M. 457 in Matagorda~~

County: 10.

~~(ii) Minimum length limit: 15 inches.~~

~~(iii) Maximum length limit: 25 inches.~~

~~(iv) Only one spotted seatrout greater than 25 inches may be retained per day. A spotted seatrout retained under this subclause counts as part of the daily bag and possession limit.~~

~~[(P) [(Q)] Shark: all species (including hybrids and subspecies).~~

~~(i) all species other than Atlantic sharpnose, blacktip, and bonnethead and the species listed in item (ii)(IV) of this subparagraph:~~

~~(I) Daily bag limit: 1.~~

~~(II) Minimum length limit: 64 inches.~~

~~(III) No maximum length limit.~~

~~(ii) Atlantic sharpnose, blacktip, and bonnethead:~~

~~(I) Daily bag limit: 1.~~

~~(II) Minimum length limit: 24 inches.~~

~~(III) No maximum length limit.~~

~~(IV) The take of the following species of sharks from the waters of this state is prohibited and they may not be possessed on board a vessel at any time:~~

~~(-a-) Atlantic angel;~~

~~(-b-) Basking;~~

~~(-c-) Bigeye sand tiger;~~

~~(-d-) Bigeye sixgill;~~

~~(-e-) Bigeye thresher;~~

~~(-f-) Bignose;~~

~~(-g-) Caribbean reef;~~

~~(-h-) Caribbean sharpnose;~~

~~(-i-) Dusky;~~

~~(-j-) Galapagos;~~

~~(-k-) Longfin mako;~~

~~(-l-) Narrowtooth;~~

~~(-m-) Night;~~

~~(-n-) Sandbar;~~

~~(-o-) Sand tiger;~~

~~(-p-) Sevengill;~~

~~(-q-) Silky;~~

~~(-r-) Sixgill;~~

~~(-s-) Smalltail;~~

~~(-t-) Whale; and~~

~~(-u-) White.~~

~~[(Q) [(R)] Sheepshead.~~

~~(i) Daily bag limit: 5.~~

~~(ii) Minimum length limit: 15 inches.~~

~~(iii) No maximum length limit.~~

~~[(R) [(S)] Snapper.~~

~~(i) Lane.~~

- (I) Daily bag limit: None.
- (II) Minimum length limit: 8 inches.
- (III) No maximum length limit.
- (ii) Red.
 - (I) Daily bag limit: 4.
 - (II) Minimum length limit: 15 inches.
 - (III) No maximum length limit.
 - (IV) Red snapper may be taken using pole and line, but it is unlawful to use any kind of hook other than a circle hook baited with natural bait.

- (iii) Vermilion.
 - (I) Daily bag limit: None.
 - (II) Minimum length limit: 10 inches.
 - (III) No maximum length limit.

- (S) [(F)] Snook.
 - (i) Daily bag limit: 1.
 - (ii) Minimum length limit: 24 inches.
 - (iii) Maximum length limit: 28 inches.

- (T) [(U)] Tarpon.
 - (i) Daily bag limit: 1.
 - (ii) Minimum length limit: 85 inches.
 - (iii) No maximum length limit.

- (U) [(V)] Triggerfish, gray.
 - (i) Daily bag limit: 20.
 - (ii) Minimum length limit: 16 inches.
 - (iii) No maximum length limit.

- (V) [(W)] Tripletail.
 - (i) Daily bag limit: 3.
 - (ii) Minimum length limit: 17 inches.
 - (iii) No maximum length limit.

(W) [(X)] Trout (rainbow and brown trout, including their hybrids and subspecies).

- (i) Daily bag limit: 5 (in any combination).
- (ii) No minimum length limit.
- (iii) No maximum length limit.

(X) [(Y)] Walleye and Saugeye.

- (i) Daily bag limit: 5.
- (ii) No minimum length limit.
- (iii) No maximum length limit.
- (iv) Two walleye or saugeye of less than 16 inches may be retained per day.

(d) Exceptions to statewide daily bag, possession, and length limits shall be as follows:

- (1) Freshwater species.
 - (A) (No change.)

(B) Bass: largemouth and spotted.

(i) - (ii) (No change.)

(iii) Sabine River (Newton and Orange counties) from Toledo Bend dam to the I.H. 40 bridge and] Toledo Bend Reservoir (Newton, Sabine, and Shelby counties).

(I) - (II) (No change.)

(iv) Sabine River (Newton and Orange counties) from Toledo Bend dam to a line across Sabine Pass between Texas Point and Louisiana Point.

(I) Daily bag limit: 8 (in any combination with spotted bass).

(II) Minimum length limit: 12 inches (largemouth bass); no limit for spotted bass. Possession limit is 10.

(C) Bass: largemouth.

(i) Chambers, Galveston, Jefferson, and Orange counties including any public waters that form boundaries with adjacent counties.

(I) Daily bag limit: 5.

(II) Minimum length limit: 12 inches.

(ii) [(+)] Conroe (Montgomery and Walker counties), Granbury (Hood County), Possum Kingdom (Palo Pinto, Stephens, and Young counties), and Ratcliff (Houston County).

(I) Daily bag limit: 5.

(II) Minimum length limit: 16 inches.

(iii) [(+)] Lakes Kurth (Angelina County), [and] Nacogdoches (Nacogdoches County), and Naconiche (Nacogdoches County).

(I) Daily bag limit: 5.

(II) Minimum length limit: It is unlawful to retain largemouth bass of 16 inches or greater in length. Largemouth bass 24 inches or greater in length may be retained in a live well or other aerated holding device for purposes of weighing but may not be removed from the immediate vicinity of the lake. After weighing the bass must be released immediately back into the lake unless the department has instructed that the bass be kept for donation to the ShareLunker Program.

(iv) [(+)] Lakes Bellwood (Smith County), Bright (Williamson County), Brushy Creek (Williamson County), Bryan (Brazos County), Casa Blanca (Webb County), Cleburne State Park (Johnson County), Cooper (Delta and Hopkins counties), Fairfield (Freestone County), Gilmer (Upshur County), Marine Creek Reservoir (Tarrant County), Meridian State Park (Bosque County), [Naconiche (Nacogdoches County),] Old Mount Pleasant City (Titus County), Pflugerville (Travis County), Rusk State Park (Cherokee County), and Welsh (Titus County).

(I) Daily bag limit: 5.

(II) Minimum length limit: 18 inches.

(v) [(+)] Buck Lake (Kimble County), Lake Kyle (Hays County), and Nelson Park Lake (Taylor County).

(I) Daily bag limit: 0.

(II) Minimum length limit: No limit.

(III) Catch and release only.

~~(vi)~~ [(v)] Lake Jacksonville (Cherokee County) and O.H. Ivie Reservoir (Coleman, Concho, and Runnels counties).

(I) Daily bag limit: 5.

(II) Minimum length limit: No limit.

(III) It is unlawful to retain more than two bass of less than 18 inches in length.

~~(vii)~~ [(vii)] Purtis Creek State Park Lake (Henderson and Van Zandt counties) and Raven (Walker County).

(I) Daily bag limit: 0.

(II) Minimum length limit: No limit.

(III) Catch and release only, except that any bass 24 inches or greater in length may be retained in a live well or other aerated holding device for purposes of weighing but may not be removed from the immediate vicinity of the lake. After weighing the bass must be released immediately back into the lake unless the department has instructed that the bass be kept for donation to the ShareLunker Program.

~~(viii)~~ [(viii)] Lakes Bridgeport (Jack and Wise counties), Burke-Crenshaw (Harris County), Davy Crockett (Fannin County), Georgetown (Williamson County), Grapevine (Denton and Tarrant counties), Madisonville (Madison County), Nasworthy (Tom Green), San Augustine City (San Augustine County), and Sweetwater (Nolan County).

(I) Daily bag limit: 5.

(II) Minimum length limit: 14 - 18 inch slot limit.

(III) It is unlawful to retain largemouth bass between 14 and 18 inches in length.

~~(ix)~~ [(ix)] Lakes Athens (Henderson County), Bastrop (Bastrop County), Buescher State Park (Bastrop County), Houston County (Houston County), Joe Pool (Dallas, Ellis, and Tarrant counties), Lady Bird (Travis County), Mill Creek (Van Zandt County), Murvaul (Panola County), Pinkston (Shelby County), Timpson (Shelby County), Walter E. Long (Travis County), and Wheeler Branch (Somervell County).

(I) Daily bag limit: 5.

(II) Minimum length limit: 14 - 21 inch slot limit.

(III) It is unlawful to retain largemouth bass between 14 and 21 inches in length. No more than 1 bass 21 inches or greater in length may be retained each day.

~~(x)~~ [(x)] Lakes Fayette County (Fayette County), Gibbons Creek Reservoir (Grimes County), and Monticello (Titus County).

(I) Daily bag limit: 5.

(II) Minimum length limit: 14 - 24 inch slot limit.

(III) It is unlawful to retain largemouth bass between 14 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.

~~(xi)~~ [(xi)] Lake Fork (Wood Rains and Hopkins counties).

(I) Daily bag limit: 5.

(II) Minimum length limit: 16 - 24 inch slot limit.

(III) It is unlawful to retain largemouth bass between 16 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.

(D) Bass: smallmouth.

(i) Devil's River (Val Verde County) from State Highway 163 bridge crossing near Juno downstream to Dolan Falls [and Wheeler Branch (Somervell County)].

~~(ii)~~ [(ii)] Daily bag limit: 3.

~~(iii)~~ [(iii)] Minimum length limit: 18 inches.

~~(iii)~~ Lake Meredith (Hutchinson, Moore, and Potter counties).

~~(i)~~ Daily bag limit: 3.

~~(ii)~~ Minimum length limit: 12 - 15 inch slot limit.

~~(iii)~~ It is unlawful to retain smallmouth bass between 12 and 15 inches in length.

(E) - (H) (No change.)

(I) Catfish: channel and blue catfish, their hybrids and subspecies.

(i) - (ix) (No change.)

~~(x)~~ Lake Tawakoni (Hunt, Rains, and Van Zandt counties).

(I) Daily bag limit: 25 (in any combination).

(II) Minimum length limit: No limit.

~~(III)~~ No more than seven blue or channel catfish 20 inches or greater may be retained each day, and of these, no more than two can be 30 inches or greater in length.

(J) - (Q) (No change.)

(2) (No change.)

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

Filed with the Office of the Secretary of State on February 5, 2016.

TRD-201600578

Ann Bright
General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: March 20, 2016

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



CHAPTER 65. WILDLIFE SUBCHAPTER A. STATEWIDE HUNTING PROCLAMATION

The Texas Parks and Wildlife Department (the department, or TPWD) proposes the repeal of §65.27 and amendments to

§§65.3, 65.7, 65.9, 65.10, 65.24, 65.25, and 65.42, concerning the Statewide Hunting Proclamation.

The proposed repeal of §65.27, concerning Antlerless and Spike-buck Deer Control Permits (control permits), is necessary because the department is eliminating that permit program. Participation has diminished to the point that fewer than five permits per year are issued, which does not justify the administrative costs to the department, especially considering that the department's Managed Lands Deer Permit (MLDP) program (and its successor program, scheduled to take effect September 1, 2017) allows landowners and land managers to achieve the same goals without having to purchase a permit. As a result of the proposed elimination of the program, the proposed amendments to §65.7, concerning Harvest Log; §65.10, concerning Possession of Wildlife Resources; §65.24, concerning Permits; §65.25, concerning Wildlife Management Plan (WMP); and §65.42, concerning Deer are necessary to remove references to the control permit.

The proposed amendment to §65.3, concerning Definitions, would add a new definition for "unbranched antlered deer," defined as "a buck deer having at least one unbranched antler." The new definition is necessary because the proposed amendment to §65.42, concerning Deer, would, among other things, eliminate the current late antlerless and spike buck season and replace it with a special late season during which harvest would be restricted to antlerless and unbranched antlered deer.

The proposed amendment to §65.9, concerning Open Seasons: General Rules, would add language to subsection (b) to clarify that the provision applies only to white-tailed deer. The provisions of §65.42(c) specify the permit requirements for the harvest of antlerless mule deer during archery-only open seasons and thus there is an unintentional conflict with the current provisions of §65.9(b). The proposed amendment would eliminate that conflict.

The proposed amendment to §65.42, concerning Deer, consists of several actions.

As mentioned previously in this preamble, the department proposes to eliminate the current Late Antlerless and Spike Buck Season and replace it with a special late season during which harvest is restricted to antlerless and unbranched antlered deer. In another rulemaking, the department adopted new §65.29 (41 TexReg 806) to create a Managed Lands Deer Program (MLDP) beginning September 1, 2017. In order to provide greater management flexibility to program participants, new §65.29 in certain situations allows for the harvest of unbranched antlered deer. The department considers that in those counties where the "antler restriction rule" (defining a legal buck as a buck with at least one unbranched antler or an inside spread of 13 inches or greater and limiting the harvest to no more than one buck with an inside spread of 13 inches or greater) is in place, the new MLDP rule could cause confusion with respect to which buck deer are lawful to take. Therefore, the proposed amendment would create a single standard (the unbranched antlered deer) to facilitate compliance and enforcement.

The proposed amendment to §65.42 would also expand the number of "doe days" (time periods in when antlerless deer may be taken without a permit in parts of the state where antlerless harvest regulations are conservative) in 23 counties. The current deer harvest regulations in Bell (east of IH35), Burleson, Ellis, Falls, Freestone, Kaufman, Limestone, Milam, Navarro, and Williamson (east of IH35) counties have allowed the harvest

of antlerless deer only by permit. Deer population trends in this area have experienced a 23% population increase during the past six years. The doe/buck ratio of 3.5 is considered relatively high and likely extends both the breeding and fawning seasons, thus resulting in poor recruitment (33-42%). The implementation of antler-restriction regulations in these counties has helped improve the adult sex ratio, but current antlerless deer harvest regulations are a barrier to successful management of the increasing deer population. The fifteen-year average hunter success in the Post Oak region is 45.2% and trends suggest an increasing hunter success, but antlerless harvest comprises only 34.5% of total harvest (15-year avg.). Increased doe harvest during the general season is needed to reduce the impact of the deer herd upon the habitat, improve the sex ratio, shorten the breeding season, and improve fawning success. Therefore, the department is proposing four "doe days" in these counties, during which hunters may harvest antlerless deer without a permit. The proposed amendment would have the additional benefit of increasing hunting opportunity.

The proposed amendment would also expand "doe days" in Anderson, Brazos, Camp, Gregg, Grimes, Henderson, Lamar, Leon, Madison, Morris, Red River, Robertson, and Upshur counties, from the current four days to 16 days. These counties span the eastern edge of the Post Oak Savannah and the western edge of the Pineywoods ecoregions. Deer populations in this group of counties appear to be on an increasing trend (based on survey results), and data indicate that populations are currently at or slightly above desired densities. At current population and harvest levels, habitat quality and quantity will be degraded, affecting all species on the landscape. The doe/buck ratio is skewed towards does (6.3:1), and the reduced number of bucks creates increased hunting pressure on the buck segment of the deer herd. Buck harvest in these counties appears to have increased slightly, while antlerless deer harvest has remained stable based on age/weight/antler data collection efforts. All four counties are experiencing suboptimal antlerless harvest, which is indicated by an increasing trend in the age structure of the doe population. Antlerless harvest remains well below 50% of the total harvest, which is undesirable. Overall, the deer herd in these counties appears to be above carrying capacity and not responding satisfactorily to the current number of "doe days." The proposed expansion from four "doe days" to 16 "doe days" is expected to provide additional hunting opportunity while reducing the number of deer to benefit the deer population and the native habitat. The additional doe harvest may also alleviate some of the harvest pressure on the buck segment of the herd and result in a more balanced sex ratio, ultimately increasing the number of bucks in the population.

The department has received requests to open a white-tailed deer season in several counties in the western panhandle. This area of the state encompasses the western edge of the white-tailed deer range in Texas. The department has confirmed that white-tailed deer populations have expanded westward towards the New Mexico border and continued westward expansion is expected. Therefore, the proposed amendment to §65.42 would also implement both general and special archery-only seasons for white-tailed deer in Andrews, Bailey, Castro, Cochran, Gaines, Hale, Hockley, Lamb, Lubbock, Lynn, Parmer, Terry and Yoakum counties, with a bag limit of three deer (no more than one buck and no more than two antlerless), which is identical to adjoining/nearby counties that currently have a season. The proposed amendment would also implement both a general and special archery-only season for

white-tailed deer in Winkler County, with a bag limit of three deer (no more than one buck and no more than two antlerless, with the take of antlerless deer restricted to MLD Permit only). The proposed new season is identical to adjoining/nearby counties that currently have a season. The proposed new seasons, if adopted, are not expected to result in negative population impacts but will provide additional hunting opportunity where white-tailed deer populations are expanding.

The proposed amendment to §65.42 also would implement a muzzleloader-only late season in Anderson, Bell (East of IH 35), Brazos, Burleson, Comal (East of IH 35), Delta, Ellis, Fannin, Falls, Franklin, Freestone, Grimes, Hays (East of IH 35), Henderson, Hopkins, Hunt, Kaufman, Lamar, Leon, Limestone, Madison, Milam, Navarro, Rains, Red River, Robertson, Smith, Titus, Travis (East of IH 35), Van Zandt, Williamson (East of IH 35), and Wood counties. The department has determined that additional conservative harvest in these counties will provide increased hunting opportunity while potentially helping achieve antlerless deer harvest goals, which is necessary to stabilize deer populations and reduce adverse habitat impacts.

The department has received several requests from the U.S. Forest Service (USFS) to allow youth on USFS lands to harvest antlerless deer without a permit during youth-only seasons. The department does not believe the resulting harvest would exert any negative impacts on deer populations in any county where USFS lands are located and would have the benefit of providing additional youth hunting opportunity. Therefore, the proposed amendment to §65.42 would authorize the take of antlerless deer by youth without a permit during youth-only seasons. Additionally, the proposed amendment would clarify that the harvest of antlerless deer during youth seasons is restricted to persons 16 years of age and younger, except on properties where Level 2 or Level 3 MLDPs have been issued. Under the provisions of §65.26 of this subchapter, concerning Managed Lands Deer Permits, Harvest of deer on Level 2 and Level 3 MLDP properties is authorized during the period of validity of the permits, not by the season and bag limit established for counties in §65.42; however, harvest on Level 1 MLDP properties is lawful during any open season. The department seeks to clarify that Level 1 MLDPs cannot be used by adults to harvest deer during the youth-only season.

Mr. Clayton Wolf, Wildlife Division Director, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the rules.

Mr. Wolf also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the dispensation of the agency's statutory duty to protect and conserve the wildlife resources of this state, the duty to equitably distribute opportunity for the enjoyment of those resources among the citizens, and the execution of the commission's policy to maximize recreational opportunities within the precepts of sound biological management practices.

There will be no adverse economic effect on persons required to comply with the rule as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the

Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rule will not directly affect small businesses or micro-businesses. Therefore, the department therefore has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, Government Code, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

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

Comments on the proposed rules may be submitted by phone or e-mail to Robert Macdonald (512) 389-4775; e-mail: robert.macdonald@tpwd.state.tx.us, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744. Comments also may be submitted via the department's website at http://www.tpwd.state.tx.us/business/feedback/public_comment/.

DIVISION 1. GENERAL PROVISIONS

31 TAC §§65.3, 65.7, 65.9, 65.10, 65.24, 65.25

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 42, which allows the department to issue tags for deer during each year or season; and Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed amendments affect Parks and Wildlife Code, Chapters 42 and 61.

§65.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms in this chapter shall have the meanings assigned in the Texas Parks and Wildlife Code.

(1) Alligator gig--A pole or staff equipped with at least one of the following:

(A) immovable prongs;

- (B) two or more spring-loaded grasping arms; or
- (C) a detachable head.

(2) Alligator hide tag (hide tag)--A department-issued tag required by federal law pursuant to the Convention on International Trade in Endangered Species (CITES) to be affixed to all alligators taken in the state. All alligator hide tags issued by the department are CITES tags.

(3) Annual bag limit--The quantity of a species of a wildlife resource that may be taken from September 1 of one year to August 31 of the following year.

(4) Antlerless deer--A deer having no hardened antler protruding through the skin.

(5) Antler point--A projection that extends at least one inch from the edge of a main beam or another tine. The tip of a main beam is also a point.

(6) Bait--Something used to lure any wildlife resource.

(7) Baited area--Any area where minerals, vegetative material or any other food substances are placed so as to lure a wildlife resource to, on, or over that area.

(8) Bearded hen--A female turkey possessing a clearly visible beard protruding through the feathers of the breast.

(9) Buck deer--A deer having a hardened antler protruding through the skin.

(10) Daily bag limit--The quantity of a species of a wildlife resource that may be lawfully taken in one day.

(11) Day--A 24-hour period of time that begins at midnight and ends at midnight.

(12) Deer population data--Results derived from deer population surveys and/or from systematic data analysis of density or herd health indicators, such as browse surveys or other scientifically acceptable data, that function as direct or indirect indicators of population density.

(13) Final processing--The cleaning of a dead wildlife resource for cooking or storage purposes. For a deer or antelope carcass, the term includes the processing of the animal more than by quartering.

(14) Fully automatic firearm--Any firearm that is capable of firing more than one cartridge in succession by a single function of the trigger.

(15) Gig--Any hand-held shaft with single or multiple points.

(16) Landowner--Any person who has an ownership interest in a tract of land, and includes a person authorized by the landowner to act on behalf of the landowner as the landowner's agent.

(17) Lawful archery equipment--Longbow, recurved bow, and compound bow.

(18) License year--The period of time for which an annual hunting license is valid.

(19) Muzzleloader--Any firearm that is loaded only through the muzzle.

(20) Permanent residence--One's domicile. This does not include a temporary abode or dwelling such as a hunting/fishing club, or any club house, cabin, tent, or trailer house used as a hunting/fishing club, or any hotel, motel, or rooming house used during a hunting, fishing, pleasure, or business trip.

(21) Possession limit--The maximum number of a wildlife resource that may be lawfully possessed at one time.

(22) Silencer or sound-suppressing device--Any device that reduces the normal noise level created when the firearm is discharged or fired.

(23) Spike-buck deer--A buck deer with no antler having more than one point.

(24) Unbranched antler--An antler having no more than one antler point.

(25) Unbranched antlered deer--A buck deer having at least one unbranched antler.

~~(26) [(25)]~~ Upper-limb disability--A permanent loss of the use of fingers, hand or arm in a manner that renders a person incapable of using a longbow, compound bow or recurved bow.

~~(27) [(26)]~~ Wildlife resources--Alligators, all game animals, and all game birds.

~~(28) [(27)]~~ Wounded deer--A deer leaving a blood trail.

§65.7. Harvest Log.

(a) The provisions of this subsection apply only to a person in possession of a license purchased through an automated point-of-sale system.

(1) A person who kills a white-tailed deer shall complete, in ink, the harvest log on the back of the hunting license immediately upon kill.

(2) Completion of the harvest log is not required for deer taken:

(A) under the provisions of §65.26 of this title (relating to Managed Lands Deer (MLD) Permits);

(B) under the provisions of §65.28 of this title (relating to Landowner Assisted Management Permits (LAMPS));

(C) by special permit under the provisions of Subchapter H of this chapter (relating to Public Lands Proclamation) on department lands;

(D) on department-leased lands under the provisions of Parks and Wildlife Code, §11.0272; or

(E) by special antlerless permit issued by the U.S. Forest Service (USFS) for use on USFS lands that are part of the department's public hunting program. ~~;~~ ~~or~~

~~[(F) under the provisions of §65.27 of this title (relating to Antlerless and Spike-Buck Deer Control Permits).]~~

(b) (No change.)

§65.9. Open Seasons: General Rules.

(a) Except as provided under Parks and Wildlife Code, §62.003, no person may hunt a wild animal or bird when the person is on a public road or right-of-way.

(b) No antlerless deer permit is required to take an antlerless white-tailed deer during the archery-only open season, except on lands for which Managed Lands Deer permits have been issued.

(c) The hunting of roosting turkey is unlawful.

§65.10. Possession of Wildlife Resources.

(a) For all wildlife resources taken for personal consumption and for which there is a possession limit, the possession limit shall not apply after the wildlife resource has reached the possessor's permanent residence and is finally processed.

(b) Under authority of Parks and Wildlife Code, §42.0177, the tagging requirements of Parks and Wildlife Code, §42.018, are modified as follows.

(1) At a final destination other than a cold storage or processing facility required to maintain a cold storage record book under the provisions of Parks and Wildlife Code, §62.029, tagging requirements for a carcass cease when the forequarters, hindquarters, and back straps have been completely severed from the carcass.

(2) At a cold storage or processing facility required to maintain a cold storage record book under the provisions of Parks and Wildlife Code, §62.029, tagging requirements for a carcass cease when:

(A) the forequarters, hindquarters, and back straps have been completely severed from the carcass; and

(B) the information required under Parks and Wildlife Code, §62.029, has been entered into the cold storage record book that the cold storage or processing facility is required to maintain.

(3) The provisions of this subsection do not modify or eliminate any requirement of this subchapter or the Parks and Wildlife Code applicable to a carcass before it is at a final destination.

(c) A person who lawfully takes a deer is exempt from the tagging requirements of Parks and Wildlife Code, §42.018 if the deer is taken:

(1) under the provisions of §65.26 of this title (relating to Managed Lands Deer Permits (MLDP)--White-tailed Deer);

(2) under the provisions of §65.34 of this title (relating to Managed Lands Deer Permits (MLDP)--Mule Deer);

(3) under the provisions of §65.28 of this title (relating to Landowner Assisted Management Permits (LAMPS));

(4) under an antlerless mule deer permit issued under §65.32 of this title (relating to Antlerless Mule Deer Permits);

(5) by special permit under the provisions of Subchapter H of this chapter (relating to Public Lands Proclamation);

(6) on department-leased lands under the provisions of Parks and Wildlife Code, §11.0271; or

(7) by special antlerless permit issued by the U.S. Forest Service (USFS) for use on USFS lands that are part of the department's public hunting program. ~~;~~ ~~or~~

~~[(8) under the provisions of §65.27 of this title (relating to Antlerless and Spike-Buck Deer Control Permits).]~~

(d) A person who kills a bird or animal under circumstances that require the bird or animal to be tagged with a tag from the person's hunting license shall immediately attach a properly executed tag to the bird or animal.

(e) Proof of sex for deer and antelope must remain with the carcass until tagging requirements cease.

(1) Proof of sex for deer consists of:

(A) buck: the head, with antlers still attached; and

(B) antlerless: the head.

(2) Proof of sex for antelope consists of the unskinned head.

(f) In a county where the bag composition for turkey is restricted to gobblers and/or bearded hens, proof of sex must remain with

a turkey until it reaches either the possessor's permanent residence or a cold storage/processing facility and is finally processed. Proof of sex for turkey is as follows:

(1) male turkey:

(A) one leg, including the spur, attached to the bird; or

(B) the bird, accompanied by a patch of skin with breast feathers and beard attached.

(2) female turkey taken during the fall season: the bird, accompanied by a patch of skin with breast feathers and beard attached.

(g) Proof of sex for pheasant consists of: one leg, including the spur, attached to the bird or the entire plumage attached to the bird.

(h) No additional proof of sex is required for a deer that is lawfully tagged in accordance with:

(1) the provisions of §65.26 of this title;

(2) the provisions of §65.34 of this title;

(3) the provisions of §65.28 of this title;

(4) the provisions of §65.32 of this title; or

(5) on department-leased lands under the provisions of Parks and Wildlife Code, §11.0271. ~~;~~ ~~or~~

~~[(6) under the provisions of §65.27 of this title.]~~

(i) In lieu of proof of sex, the person who killed the wildlife resource may:

(1) obtain a receipt from a taxidermist or a signed statement from the landowner, containing the following information:

(A) the name of person who killed the wildlife resource;

(B) the date the wildlife resource was killed;

(C) one of the following, as applicable:

(i) whether the deer was antlered or antlerless;

(ii) the sex of the antelope;

(iii) the sex of the turkey and whether a beard was attached; or

(iv) the sex of the pheasant; or

(2) if the deer is to be tested by the department for chronic wasting disease, obtain a department-issued receipt (PWD 905).

(j) A person may give, leave, receive, or possess any species of legally taken wildlife resource, or a part of the resource, that is required to have a tag or permit attached or is protected by a bag or possession limit, if the wildlife resource is accompanied by a wildlife resource document from the person who killed or caught the wildlife resource. A wildlife resource may be possessed without a WRD by the person who took the wildlife resource, provided the person is in compliance with all other applicable provisions of this subchapter and the Parks and Wildlife Code.

(1) For deer and antelope, a properly executed wildlife resource document shall accompany the carcass or part of a carcass until tagging requirements cease.

(2) For turkey, a properly executed wildlife resource document shall accompany the wildlife resource until it reaches the possessor's permanent residence or a cold storage/processing facility and is finally processed.

(3) For all other wildlife resources, a properly executed wildlife resource document shall accompany the wildlife resource until it reaches the possessor's permanent residence and is finally processed.

(4) The wildlife resource document must contain the following information:

(A) the name, signature, address, and hunting license number, as required, of the person who killed or caught the wildlife resource;

(B) the name of the person receiving the wildlife resource;

(C) a description of the wildlife resource (number and type of species or parts);

(D) the date the wildlife resource was killed or caught; and

(E) the location where the wildlife resource was killed or caught (name of ranch; area; county).

(5) A taxidermist who accepts a deer or turkey shall retain the wildlife resource document or tag accompanying each deer or turkey for a period of two years following the return of the resource to the owner or the sale of the resource under the provisions of Parks and Wildlife Code, §62.023.

(k) It is a defense to prosecution if the person receiving the wildlife resource does not exceed any possession limit or possesses a wildlife resource or a part of a wildlife resource that is required to be tagged if the wildlife resource or part of the wildlife resource is tagged

(l) The identification requirements for desert bighorn sheep skulls are as follows.

(1) No person may possess the skull of a desert bighorn ram in this state unless:

(A) one horn has been marked with a department identification plug by a department representative; or

(B) the person also possesses evidence of lawful take in the state or country where the ram was killed.

(2) A person may possess the skull and horns of a desert bighorn ram found dead in the wild, provided:

(A) the person did not cause or participate in the death of the ram; and

(B) the person notifies a department biologist or game warden within 48 hours of discovering the dead ram and arranges for marking with a department identification plug by a department representative.

(3) Individual horns may be possessed without any identification or documentation.

(4) This subsection does not apply to skulls possessed prior to July 11, 2004.

§65.24. Permits.

(a) Permits shall be issued only to the landowner.

(b) Except as provided in §65.26 of this title (relating to Managed Lands Deer Permits (MLDP)--White-tailed Deer and §65.34 of this title (relating to Managed Lands Deer Permits (MLDP)--Mule Deer, no person may hunt white-tailed deer, mule deer, desert bighorn sheep, or antelope when permits are required unless that person has received from the landowner and has in possession a valid permit issued by the department.

(c) When permits are required to hunt or possess the wildlife resources listed in subsection (b) of this section, it is unlawful to:

(1) use a permit more than once;

(2) use a permit on a tract of land other than the tract for which the permit was issued;

(3) falsify or fail to fully complete any information required by a permit application; or

(4) possess the wildlife resource without attaching a valid, properly executed permit, except as provided in §65.26 and §65.34 of this title, which shall remain attached until the wildlife resource reaches its final destination.

(d) No state-issued permit is required to hunt antlerless white-tailed deer on a National Wildlife Refuge.

(e) An applicant for a permit issued under §65.26 of this title[, §65.27 of this title (relating to Antlerless and Spike Buck Control Permits (control permits));] or §65.34 of this title may request a review of a decision by the department to deny issuance of those permits.

(1) An applicant seeking review of a decision of the department under this subsection shall contact the department within ten working days of being notified by the department of permit denial.

(2) The department shall conduct the review and notify the applicant of the results within ten working days of receiving a request for a review.

(3) The request for review shall be presented to a review panel. The review panel shall consist of the following:

(A) the Director of the Wildlife Division;

(B) the Regional Director with jurisdiction;

(C) the Big Game Program Director; and

(D) the White-tailed Deer or Mule Deer program leader, as appropriate.

(4) The decision of the review panel is final.

(5) The department shall report on an annual basis to the White-tailed Deer Advisory Committee the number and disposition of all reviews under this subsection that involve white-tailed deer.

§65.25. Wildlife Management Plan (WMP).

(a) Deer.

(1) An approved WMP, specifying a harvest quota for antlerless deer or both buck and antlerless deer, is required for the issuance of Managed Lands Deer Permits [and Antlerless/Spike Buck Deer Control Permits].

(2) MLD permit issuance shall be determined by the WMP as follows.

(A) Level 1 MLD permits shall be issued to a landowner whose WMP includes current deer population data.

(B) Level 2 MLD permits shall be issued to a landowner whose WMP includes:

(i) deer population data for both the current year and the immediately preceding year;

(ii) deer harvest data from the immediately preceding year; and

(iii) at least two recommended habitat management practices.

(C) Level 3 MLD permits shall be issued to a landowner whose WMP includes:

(i) deer population data for the current year and the immediately preceding two years;

(ii) deer harvest data from the immediately preceding two years; and

(iii) at least four recommended habitat management practices.

(3) A WMP is not valid unless it is:

(A) consistent with Parks and Wildlife Code, §61.053 and §61.056; and

(B) signed by a Wildlife Division biologist or technician. A WMP is valid for one year following the date of such signature.

(b) Javelina.

(1) An approved WMP, specifying an annual harvest quota for javelina, is required for the issuance of an annual harvest quota for javelina on a property. The WMP shall include:

(A) javelina population data for both the current year and the immediately preceding year;

(B) javelina harvest data from the immediately preceding year; and

(C) at least two recommended habitat management practices. Recommended habitat management practices already being performed under an existing department-approved WMP may be used to satisfy the requirements of this subparagraph on a one-for-one basis.

(2) A WMP is not valid unless it is:

(A) consistent with Parks and Wildlife Code, §61.053; and

(B) signed by a Wildlife Division biologist or technician authorized to approve management plans. A WMP is valid for one year following the date of such signature.

(3) The landowner agrees, by signing the WMP, to perform data collection for the purposes of meeting the requirements of paragraph (1) of this subsection.

(4) The department may refuse to approve a WMP if the landowner has not complied with the provisions of this subsection.

(5) No person may possess a javelina harvested under a quota issued under this section anywhere other than the property on which the javelina was harvested unless that person also possesses a completed, department-supplied affidavit signed by the landowner of the property where the person harvested the javelina.

(6) Each javelina harvested on a property for which the department has issued a quota under this subsection shall be recorded in a harvest log. The harvest log shall contain the name of each person who killed a javelina, the date, and the number of javelina the person killed. The harvest log shall be maintained on the property, shall be kept current, and shall be made available for inspection at the request of a department employee acting within the scope of official duties.

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

Filed with the Office of the Secretary of State on February 5, 2016.

TRD-201600581

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: March 20, 2016

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



31 TAC §65.27

The repeal is proposed under the authority of Parks and Wildlife Code, Chapter 42, which allows the department to issue tags for animals during each year or season; and Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed repeal affects Parks and Wildlife Code, Chapters 42 and 61.

§65.27. *Antlerless and Spike-buck Deer Control Permits (control permits).*

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

Filed with the Office of the Secretary of State on February 5, 2016.

TRD-201600580

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: March 20, 2016

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



DIVISION 2. OPEN SEASONS AND BAG LIMITS

31 TAC §65.42

The amendment is proposed under the authority of Parks and Wildlife Code, Chapter 42, which allows the department to issue tags for deer during each year or season; and Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed amendment affects Parks and Wildlife Code, Chapters 42 and 61.

§65.42. *Deer.*

(a) No person may exceed the applicable county bag limit or the annual bag limit of five white-tailed deer (no more than three bucks) and two mule deer (no more than one buck), except as provided by:

(1) §65.26 of this title (relating to Managed Lands Deer Permits (MLDP)--White-tailed Deer);

(2) §65.34 of this title (relating to Managed Lands Deer Permits (MLDP)--Mule Deer);

~~(3) §65.27 of this title (relating to Antlerless and Spike-Buck Deer Control Permits);~~

(3) ~~(4)~~ §65.28 of this title (relating to Landowner Assisted Management Permits (LAMPS));

(4) ~~(5)~~ an antlerless mule deer permit issued under §65.32 of this title (relating to Antlerless Mule Deer Permits);

(5) ~~(6)~~ special permits under the provisions of Subchapter H of this chapter (relating to Public Lands Proclamation); or

(6) ~~(7)~~ special antlerless permit issued by the U.S. Forest Service (USFS) for use on USFS lands that are part of the department's public hunting program.

(b) White-tailed deer. The open seasons, annual bag limits, and special provisions for white-tailed deer shall be as follows. If Managed Lands Deer Permits (MLDPs) have been issued for a tract of land in any county, they must be attached to all deer harvested on the tract of land, regardless of season. An MLDP buck permit may not be used to harvest or tag an antlerless deer. An MLDP antlerless permit may not be used to tag a buck deer. The counties and parts of counties listed in paragraphs (1) and (2) of this subsection section are in the South Zone. All other counties and parts of counties listed in this subsection are in the North Zone.

(1) In Aransas, Bee, Brooks, Calhoun, Cameron, Dimmit, Duval, Frio, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kinney (south of U.S. Highway 90), Kleberg, LaSalle, Live Oak, Maverick, McMullen, Medina (south of U.S. Highway 90), Nueces, Refugio, San Patricio, Starr, Uvalde (south of U.S. Highway 90), Val Verde (that southeastern portion located both south of U.S. Highway 90 and east of Spur 239), Webb, Willacy, Zapata, and Zavala counties, there is a general open season.

(A) Open season: from the first Saturday in November through the third Sunday in January.

(B) Bag limit: five deer, no more than three bucks.

(C) Special late general season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and unbranched antlered ~~[spike-buck]~~ deer only. Open season: 14 consecutive days starting the first Monday following the third Sunday in January.

(D) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(2) In Atascosa County there is a general open season.

(A) Open season: from the first Saturday in November through the third Sunday in January.

(B) Bag limit: five deer, no more than two bucks.

(C) Special late general season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and unbranched antlered ~~[spike-buck]~~ deer only. Open season: 14 consecutive days starting the first Monday following the third Sunday in January.

(D) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(3) In Bandera, Baylor, Bexar, Blanco, Burnet, Callahan, Coke, Coleman, Comal (west of Interstate 35), Concho, Crockett, Edwards, Gillespie, Glasscock, Haskell, Hays (west of Interstate 35), Howard, Irion, Jones, Kendall, Kerr, Kimble, Kinney (north of U.S. Highway 90), Knox, Llano, Mason, McCulloch, Medina (north of U.S. Highway 90), Menard, Mitchell, Nolan, Pecos, Real, Reagan, Runnels, San Saba, Schleicher, Shackelford, Sterling, Sutton, Taylor, Terrell, Throckmorton, Tom Green, Travis (west of Interstate 35), Upton, Uvalde (north of U.S. Highway 90), Val Verde (north of U.S. Highway 90; and that portion located both south of U.S. 90 and west of Spur 239), and Wilbarger counties, there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: five deer, no more than two bucks.

(C) Special late general season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and unbranched antlered ~~[spike-buck]~~ deer only. Open season: 14 consecutive days starting the first Monday following the first Sunday in January.

(D) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(4) In Archer, Bell (west of IH 35), Bosque, Brown, Clay, Coryell, Hamilton, Hill, Jack, Lampasas, McLennan, Mills, Palo Pinto, Somervell, Stephens, Wichita, Williamson (west of IH 35) and Young counties, there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: five deer, no more than two bucks.

(C) Special late general season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and unbranched antlered ~~[spike-buck]~~ deer only. Open season: 14 consecutive days starting the first Monday following the first Sunday in January.

(D) Special provisions.

(i) Buck deer. The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(I) at least one unbranched antler; or

(II) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler. Not more than one buck with an inside spread of 13 inches or greater may be taken.

(ii) Antlerless deer. No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(5) In Armstrong, Borden, Briscoe, Carson, Childress, Collingsworth, Cottle, Crosby, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hardeman, Hemphill, Hutchinson, Kent, King, Lipscomb, Motley, Ochiltree, Roberts, Scurry, Stonewall, and Wheeler counties, there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: five deer, no more than one buck.

(C) Special late general season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and unbranched antlered [~~spike-buck~~] deer only. Open season: 14 consecutive days starting the first Monday following the first Sunday in January.

(D) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(6) In Brewster, Culberson, Jeff Davis, Presidio, and Reeves counties, there is a general open season.

(A) Open season: from first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two bucks.

(C) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(7) In Comanche, Cooke, Denton, Eastland, Erath, Hood, Johnson, Montague, Parker, Tarrant, and Wise counties, there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two bucks and no more than two antlerless.

(C) Special late general season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and unbranched antlered [~~spike-buck~~] deer only. Open season: 14 consecutive days starting the first Monday following the first Sunday in January.

(D) Special provisions.

(i) Buck deer. The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(I) at least one unbranched antler; or

(II) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler. Not more than one buck with an inside spread of 13 inches or greater may be taken.

(ii) Antlerless deer.

(I) On USFS, Corps of Engineers, and river authority lands in the counties listed in this paragraph, the take of antlerless deer shall be by permit only, except on USFS lands in Montague and Wise counties, where antlerless deer may be taken without permits from Thanksgiving Day through the Sunday immediately following Thanksgiving Day.

(II) On all tracts of land other than those listed in subclause (I) of this clause, no permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(8) In Angelina, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Goliad (south of U.S. Highway 59), Hardin, Harris, Houston, Jackson (south of U.S. Highway 59), Jasper, Jefferson, Liberty, Matagorda, Montgomery, Newton, Orange, Polk, San Jacinto, Trinity, Tyler, Victoria (south of U.S. Highway 59), Walker, and Wharton (south of U.S. Highway 59) counties, there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: Four deer, no more than two bucks and no more than two antlerless.

(C) Special provisions.

(i) Buck deer. The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck having:

(I) at least one unbranched antler; or

(II) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler. Not more than one buck with an inside spread of 13 inches or greater may be taken.

(ii) Antlerless deer. If permits have been issued for the harvest of antlerless deer, they must be attached to all antlerless deer harvested on the tract of land.

(I) On USFS, Corps of Engineers, and river authority lands in the counties listed in this paragraph, the take of antlerless deer shall be by permit only.

(II) On all other tracts of land in the counties listed in this paragraph, antlerless deer may be taken without permits from opening day through the Sunday immediately following Thanksgiving Day. From the Monday immediately following Thanksgiving Day until the end of the season, antlerless deer may be taken by antlerless MLD permit or LAMPS permit only.

(III) On tracts of land for which LAMPS permits have been issued, no LAMPS permit is required for the harvest of antlerless deer during the archery-only or muzzleloader-only open season.

(9) In Anderson, Bowie, Brazos, Camp, Cass, Gregg, Grimes, Harrison, Henderson, Lamar, Leon, Madison, Marion, Morris, Nacogdoches, Panola, Red River, Robertson, Rusk, Sabine, San Augustine, [~~and~~] Shelby, and Upshur counties, there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two bucks and no more two antlerless.

(C) Special provisions.

(i) Buck deer. The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(I) at least one unbranched antler; or

(II) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler. Not more than one buck with an inside spread of 13 inches or greater may be taken.

(ii) Antlerless deer. If permits have been issued for the harvest of antlerless deer, they must be attached to all antlerless deer harvested on the tract of land.

(I) On USFS, Corps of Engineers, and river authority lands in the counties listed in this paragraph, the take of antlerless deer shall be by permit only.

(II) On all other tracts of land in the counties listed in this paragraph, antlerless deer may be taken without permits

during the first 16 days of the season. After the first 16 days of the season, antlerless deer may be taken by antlerless MLD permit or LAMPS permit only.

(III) On tracts of land for which LAMPS permits have been issued, no LAMPS permit is required for the harvest of antlerless deer during the archery-only or muzzleloader-only open season.

(10) In Bell (East of IH 35), Burleson, [Anderson, Brazos, Camp,] Delta, Ellis, Falls, Fannin, Franklin, Freestone, [Gregg, Grimes, Henderson,] Hopkins, Hunt, Kauffman, Limestone, Milam, Navarro [Lamar, Leon, Madison, Morris,] Rains, [Red River, Robertson,] Smith, Titus, [Upshur,] Van Zandt, Williamson (East of IH 35), and Wood counties, there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two antlerless and no more than two bucks.

(C) Special provisions.

(i) Buck deer. The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(I) at least one unbranched antler; or

(II) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler. Not more than one buck with an inside spread of 13 inches or greater may be taken.

(ii) Antlerless deer. If permits have been issued for the harvest of antlerless deer, they must be attached to all antlerless deer harvested on the tract of land.

(I) On USFS, Corps of Engineers, and river authority lands in the counties listed in this paragraph, the take of antlerless deer shall be by permit only, except in Fannin County.

(II) On all other tracts of land in the counties listed in this paragraph, antlerless deer may be taken without permits from Thanksgiving Day through the Sunday immediately following Thanksgiving Day. At all other times, antlerless deer may be taken by antlerless MLD permit or LAMPS permit only.

(III) On tracts of land for which LAMPS permits have been issued, no LAMPS permit is required for the harvest of antlerless deer during the archery-only or muzzleloader-only open season.

(11) In Collin, Dallas, Grayson, and Rockwall counties there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two antlerless and no more than two bucks.

(C) Special provisions. Lawful means are restricted to lawful archery equipment and crossbows only, including MLDP properties.

(i) Buck deer. The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(I) at least one unbranched antler; or

(II) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler. Not more than one buck with an inside spread of 13 inches or greater may be taken.

(ii) Antlerless deer. No permit is required to hunt antlerless deer unless MLD antlerless permits have been issued for the tract of land.

(12) In Austin, Bastrop, [Bell (east of IH 35), Burleson,] Caldwell, Colorado, Comal (east of IH 35), DeWitt, [Ellis, Falls,] Fayette, [Freestone,] Goliad (north of U.S. Highway 59), Gonzales, Guadalupe, Hays (east of IH 35), Jackson (north of U.S. Highway 59), Karnes, [Kaufman,] Lavaca, Lee, [Limestone, Milam, Navarro,] Travis (east of IH 35), Victoria (north of U.S. Highway 59), Waller, Washington, Wharton (north of U.S. Highway 59), [Williamson (east of IH 35)] and Wilson counties, there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two antlerless and no more than two bucks.

(C) Special provisions.

(i) Buck deer. The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(I) at least one unbranched antler; or

(II) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler. Not more than one buck with an inside spread of 13 inches or greater may be taken.

(ii) Antlerless deer.

(I) Antlerless deer may be taken by MLD antlerless or LAMPS permits only.

(II) On tracts of land for which LAMPS permits have been issued, no LAMPS permit is required for the harvest of antlerless deer during the archery-only or muzzleloader-only open season.

(13) In Andrews, Bailey Castro, Cochran, Dallam, Dawson, Deaf Smith, Gaines, Hale, Hansford, Hartley, Hockley, Lamb, Lubbock, Lynn, Martin, Moore, Oldham, Parmer, Potter, Randall, Sherman, [and] Swisher, Terry, and Yoakum counties, there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: three deer, no more than one buck and no more than two antlerless.

(C) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(14) In Crane, Ector, Loving, Midland, [and] Ward, and Winkler counties, there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: three deer, no more than one buck and no more than two antlerless.

(C) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(15) In all other counties, there is no general open season.

(16) Archery-only open seasons. In all counties where there is a general open season for white-tailed deer, there is an archery-only open season during which either sex of white-tailed deer may be taken as provided for in §65.11(2) and (3) of this title (relating to Means and Methods).

(A) Open season: from the Saturday closest to September 30 for 35 consecutive days.

(B) Bag limit: the bag limit in any given county is as provided for that county during the general open season.

(C) No permit is required to hunt antlerless deer unless MLDP permits have been issued for the property.

(17) Muzzleloader-only open seasons, and bag and possession limits shall be as follows. In Anderson, Angelina, Austin, Bastrop, Bell (East of IH 35), Bowie, Brazoria, Brazos, Brewster, Burleson, Caldwell, Camp, Cass, Chambers, Cherokee, Colorado, Comal (East of IH 35), Culberson, Delta, DeWitt, Ellis, Fannin, Falls, Fayette, Fort Bend, Franklin, Freestone, Galveston, Goliad, Gonzales, Gregg, Grimes, Guadalupe, Hardin, Harris, Harrison, Hays (East of IH 35), Henderson, Hopkins, Houston, Hunt, Jackson, Jasper, Jeff Davis, Jefferson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Liberty, Limestone, Madison, Marion, Matagorda, Milam, Montgomery, Morris, Nacogdoches, Navarro, Newton, Orange, Panola, Polk, Presidio, Rains, Red River, Reeves, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Titus, Travis (East of IH 35), Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Waller, Washington, Wharton, Williamson (East of IH 35), [and] Wilson and Wood counties, there is an open season during which deer may be taken only with a muzzleloader.

(A) Open Season: 14 consecutive days starting the first Monday following the first Sunday in January.

(B) Bag limit: as specified in this section for the general season in the county in which take occurs.

(C) Special provisions:

(i) Buck deer. In any given county, all restrictions established in this subsection for the take of buck deer during the general season remain in effect.

(ii) Antlerless deer. No permit is required for the take of antlerless deer, except:

(I) on properties for which antlerless MLDPs have been issued; and

(II) in the counties that are also listed in paragraph (12) of this section.

(18) Special Youth-Only Seasons. There shall be special youth-only general hunting seasons in all counties where there is a general open season for white-tailed deer.

(A) early open season: the Saturday and Sunday immediately before the first Saturday in November.

(B) late open season: 14 consecutive days starting the first Monday following the first Sunday in January.

(C) Bag limits, provisions for the take of antlerless deer, and special requirements in the individual counties listed in paragraphs (1) - (14) of this subsection shall be as specified for the first two days

of the general open season in those counties, except as provided in subparagraph (D) of this paragraph.

(D) Provisions for the take of antlerless deer in the individual counties listed in paragraph (10) of this subsection shall be as specified in those counties for the period of time from Thanksgiving Day through the Sunday immediately following Thanksgiving Day.

(E) Other than properties where Level 2 or Level 3 MLDPs have been issued, only licensed [Licensed] hunters 16 years of age or younger may hunt deer [by any lawful means] during the seasons established by subparagraphs (A) and (B) of this paragraph, and any lawful means may be used.

(F) The stamp requirement of Parks and Wildlife Code, Chapter 43, Subchapter I, does not apply during the seasons established by this paragraph.

(G) Antlerless deer may be taken without an antlerless deer permit on USFS lands.

(c) Mule deer. The open seasons and annual bag limits for mule deer shall be as follows:

(1) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hutchinson, Kent, King, Knox, Lipscomb, Moore, Motley, Ochiltree, Oldham, Potter, Randall, Roberts, Scurry, Sherman, Stonewall, Swisher, and Wheeler counties, there is a general open season.

(A) Open season: Saturday before Thanksgiving for 16 consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken only by Antlerless Mule Deer or MLD Permits.

(2) In Brewster, Crane, Crockett, Culberson, Ector, El Paso, Hudspeth, Jeff Davis, Loving, Midland, Pecos, Presidio, Reagan, Reeves, Terrell, Upton, Val Verde, Ward, and Winkler counties, there is a general open season.

(A) Open season: the Friday immediately following Thanksgiving for 17 consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken only by Antlerless Mule Deer or MLD Permits.

(3) In Andrews, Bailey, Castro, Cochran, Dawson, Gaines, Hale, Hockley, Lamb, Lubbock, Martin, Parmer, Terry, and Yoakum counties, there is a general open season.

(A) Open season: Saturday before Thanksgiving for nine consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken by permit only.

(4) In all other counties, there is no general open season for mule deer.

(5) Archery-only open seasons and bag and possession limits shall be as follows. During an archery-only open season, deer may be taken only as provided for in §65.11(2) and (3) of this title (relating to Lawful Means).

(A) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crane, Crockett, Crosby, Culberson,

Dallam, Deaf Smith, Dickens, Donley, Ector, El Paso, Fisher, Floyd, Foard, Garza, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hudspeth, Hutchinson, Jeff Davis, Kent, King, Knox, Lipscomb, Loving, Midland, Moore, Motley, Ochiltree, Oldham, Potter, Presidio, Randall, Reagan, Reeves, Roberts, Scurry, Sherman, Stonewall, Swisher, Upton, Val Verde, Ward, Wheeler, and Winkler counties, there is an open season.

(i) Open season: from the Saturday closest to September 30 for 35 consecutive days.

(ii) Bag limit: one buck deer.

(B) In Brewster, Pecos, and Terrell counties, there is an open season.

(i) Open season: from the Saturday closest to September 30 for 35 consecutive days.

(ii) Bag limit: two deer, no more than one buck. Antlerless deer may be harvested without a permit unless MLD antlerless permits have been issued for the property.

(C) In all other counties, there is no archery-only open season for mule deer.

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

Filed with the Office of the Secretary of State on February 5, 2016.

TRD-201600582

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: March 20, 2016

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



SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §§65.315, 65.318 - 65.321

The Texas Parks and Wildlife Department (the department) proposes amendments to §§65.315 and 65.318 - 65.321, concerning the Migratory Game Bird Proclamation.

The United States Fish and Wildlife Service (Service) issues annual frameworks for the hunting of migratory game birds in the United States. Regulations adopted by individual states may be more restrictive than the federal frameworks, but may not be less restrictive. Responsibility for establishing seasons, bag limits, means, methods, and devices for harvesting migratory game birds within Service frameworks is delegated to the Texas Parks and Wildlife Commission (Commission) under Parks and Wildlife Code, Chapter 64, Subchapter C. Parks and Wildlife Code, §64.022, authorizes the Commission to delegate rulemaking authority to the Executive Director. Department regulations (31 TAC §65.313(f)) authorize the Executive Director, after notification of the Chairman of the Commission, to engage in rule-making.

Until this year, the Service issued annual regulatory frameworks for migratory game birds at different times of the year (the preliminary early-season (dove, teal, snipe, woodcock, rails, gallinules)

frameworks in late June and the preliminary late-season (ducks, geese, cranes) frameworks in early August). Because no regular Commission meetings occur between May and August, the early-season regulations were normally adopted by the Executive Director in early July. Beginning this year, however, the Service will issue all final migratory game bird frameworks in November, which means that the Commission can adopt migratory game bird regulations as part of the regular statewide hunting proclamation process and hunters of migratory game birds will know season dates, bag limits, and other regulations much earlier than in previous years.

The proposed amendment to §65.315, concerning Open Seasons and Bag and Possession Limits--Early Season, would adjust the season dates for early-season migratory game birds to allow for calendar shift (i.e., to ensure that seasons open on the desired day of the week, since dates from a previous year do not fall on the same days in following years). With regard to dove, the proposed amendment would differ from last year in that this year the Service is allowing Texas 90 days of dove hunting opportunity within the current frameworks for all three dove zones, an increase of 20 days per zone. The proposed amendment would add 19 days of additional hunting opportunity to the end of the first segment and one day to the end of the second segment in the North Zone; 12 days to the end of the first segment and eight days to the end of the second segment in the Central Dove Zone, and 18 days to the end of the first segment and two days to the end of the second segment in the South Dove Zone. The department believes the proposed amendment appropriately distributes the additional days of hunting opportunity in each zone to coincide with hunter preference.

The proposed amendment to §65.315 also would implement a 16-day statewide teal season to run from September 10 - 25, 2016. By federal rule, the number of days in the September teal season count against the 107 days of total hunting opportunity allowed for ducks, coots, and mergansers. In addition, the proposed amendment would implement a 16-day early Canada goose season in the Eastern Zone to run from September 10 - 25, 2016.

The proposed amendment to §65.318, concerning Open Seasons and Bag and Possession Limits - Late Season, would alter season dates in both duck zones compared to last year and adjust the season dates to account for calendar shift while retaining the bag and possession limits from last year. The North Zone last year had a 12-day split starting the Monday after Thanksgiving. For the 2016-2017 season, the proposed amendment would implement a five-day split starting the Saturday after Thanksgiving. Staff intends the altered season structure to provide additional December and January weekend opportunity, allowing hunting every weekend during peak migration of December and January, which harvest data shows to be the two best months of the season for overall duck harvest in the North Zone.

In the South Duck Zone, the department proposes a season to run to the end of the federal framework, unlike last year. Last year, the department determined that running the season to the end of the framework (January 31) was undesirable because it would have resulted in a very late closure and it was more advantageous to offer more time in November, which is the best harvest month in the South Zone. This year, staff recommends returning to a season that runs to the end of framework because calendar shift offers a more reasonable closure date (January 29) that provides ample hunting opportunity both early and late in the season.

With respect to geese, the season structure (adjusted for calendar shift) and bag and possession limits from last year are retained, except that the opening date in the West Zone is delayed by one week. Department data indicate that due to continuing delayed migrations in the fall and the persistence of very large numbers of geese in west Texas in early February, opening the season one week later will result in additional hunting opportunity.

The proposed amendment to §65.319, concerning Extended Falconry Season--Early Season Species, would adjust season dates to reflect calendar shift; however the season length for doves will be reduced by 17 days because the federal frameworks allow 107 days of total opportunity for doves and the proposed amendment to §65.315 would allow 90 full days of gun-hunting opportunity for doves.

The proposed amendment to §65.320, concerning Extended Falconry Season--Late Season Species, would adjust season dates to reflect calendar shift.

The proposed amendment to §65.321, concerning Special Management Provisions, would adjust the dates for the conservation season on light geese to account for calendar shift.

The proposed amendments are generally necessary to implement commission policy to provide the greatest hunter opportunity possible, consistent with hunter and landowner preference for starting dates and segment lengths, under frameworks issued by the Service. It is the policy of the commission to adopt the most liberal provisions possible, consistent with hunter preference, under the Service frameworks in order to provide maximum hunter opportunity.

Clayton Wolf, Wildlife Division Director, has determined that for the first five years that the amendments as proposed are in effect, there will be no additional fiscal implications to state or local governments of enforcing or administering the rules as proposed.

Mr. Wolf also has determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be the department's discharge of its statutory obligation to manage and conserve the state's populations of migratory game birds for the use and enjoyment of the public, consistent with the principles of sound biological management.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rules regulate various aspects of recreational license privileges that allow individual persons to pursue and harvest migratory game

bird resources in this state and therefore do not directly affect small businesses or micro-businesses. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

There also will be no adverse economic effect on persons required to comply with the rules as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as the department has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2008, as a result of the proposed rules.

Comments on the proposed rules may be submitted via the department website at www.tpwd.texas.gov or to Robert Macdonald, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 or 1-800-792-1112 (e-mail: robert.macdonald@tpwd.state.tx.us).

The amendments are proposed under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

The proposed amendments affect Parks and Wildlife Code, Chapter 64.

§65.315. Open Seasons and Bag and Possession Limits--Early Season.

(a) Rails.

(1) Dates: September 10 - 25, 2016 and November 5 - December 28, 2016 [~~September 12 - 27, 2015 and October 31 - December 23, 2015~~].

(2) Daily bag and possession limits:

(A) king and clapper rails: 15 in the aggregate per day; 45 in the aggregate in possession.

(B) sora and Virginia rails: 25 in the aggregate per day; 75 in the aggregate in possession.

(b) Dove seasons.

(1) North Zone.

(A) Dates: September 1 - November 13, 2016 and December 17, 2016 - January 1, 2017 [~~September 1 - October 25, 2015 and December 18, 2015 - January 1, 2016~~].

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day.

(C) Possession limit: 45 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than 6 white-tipped doves in possession.

(2) Central Zone.

(A) Dates: September 1 - November 6, 2016 and December 17, 2016 - January 8, 2017 [~~September 1 - October 25, 2015 and December 18, 2015 - January 1, 2016~~].

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day.

(C) Possession limit: 45 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than 6 white-tipped doves in possession.

(3) South Zone.

(A) Dates: Except in the special white-winged dove area as defined in §65.314 of this title (relating to Zones and Boundaries for Early Season Species), September 23 - November 13, 2016 and December 17, 2016 - January 23, 2017 [~~September 18 - October 21, 2015 and December 18, 2015 - January 22, 2016~~].

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day.

(C) Possession limit: 45 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than 6 white-tipped doves in possession.

(4) Special white-winged dove area.

(A) Dates: September 3, 4, 10, and 11, 2016 [~~September 5, 6, 12, and 13, 2015~~].

(i) Daily bag limit: 15 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than two mourning doves and two white-tipped doves per day.

(ii) Possession limit: 45 white-winged doves, mourning doves, and white-tipped doves in the aggregate to include no more than 6 mourning doves and 6 white-tipped doves in possession.

(B) Dates: September 23 - November 13, 2016 and December 17, 2016 - January 19, 2017 [~~September 18 - October 21, 2015 and December 18, 2015 - January 18, 2016~~].

(i) Daily bag limit: 15 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than two white-tipped doves per day;

(ii) Possession limit: 45 white-winged doves, mourning doves, and white-tipped doves in the aggregate to include no more than 6 white-tipped doves in possession.

(c) Gallinules.

(1) Dates: September 10 - 25, 2016 and November 5 - December 28, 2016 [~~September 12 - 27, 2015 and October 31 - December 23, 2015~~].

(2) Daily bag and possession limits: 15 in the aggregate per day; 45 in the aggregate in possession.

(d) September teal-only season.

(1) Dates: September 10 - 25, 2016 [~~September 12 - 27, 2015~~].

(2) Daily bag and possession limits: six in the aggregate per day; 18 in the aggregate in possession.

(e) Red-billed pigeons, and band-tailed pigeons. No open season.

(f) Shorebirds. No open season.

(g) Woodcock: December 18, 2016 - January 31, 2017 [~~December 18, 2015 - January 31, 2016~~]. The daily bag limit is three. The possession limit is nine.

(h) Wilson's snipe (Common snipe): October 29, 2015 - February 12, 2017 [~~October 31, 2015 - February 14, 2016~~]. The daily bag limit is eight. The possession limit is 24.

(i) Canada geese: September 10 - 25, 2016 [~~September 12 - 27, 2015~~] in the Eastern Goose Zone as defined in §65.317(b) of this title (relating to Zones and Boundaries for Late Season Species). The daily bag limit is five. The possession limit is 15.

§65.318. *Open Seasons and Bag and Possession Limits--Late Season.*

Except as specifically provided in this section, the possession limit for all species listed in this section shall be three times the daily bag limit.

(1) Ducks, mergansers, and coots. The daily bag limit for ducks is six, which may include no more than five mallards (only two of which may be hens); three wood ducks; three scaup (lesser scaup and greater scaup in the aggregate); two redheads; two pintail; two canvasbacks; and one "dusky" duck (mottled duck, Mexican like duck, black duck and their hybrids) during the seasons established in subparagraphs (A)(ii), (B)(ii), and (C)(ii) of this paragraph. For all other species not listed, the bag limit shall be six. The daily bag limit for coots is 15. The daily bag limit for mergansers is five, which may include no more than two hooded mergansers.

(A) High Plains Mallard Management Unit:

(i) all species other than "dusky ducks": October 29 - 30, 2016 and November 4, 2016 - January 29, 2017 [~~October 31 - November 1, 2015 and November 6, 2015 - January 31, 2016~~].

(ii) "dusky ducks": November 7, 2016 - January 29, 2017 [~~November 9, 2015 - January 31, 2016~~].

(B) North Zone:

(i) all species other than "dusky ducks": November 12 - 27, 2016 and December 3, 2016 - January 29, 2017 [~~November 7 - 29, 2015 and December 12, 2015 - January 31, 2016~~].

(ii) "dusky ducks": November 17 - 27, 2016 and December 3, 2016 - January 29, 2017 [~~November 12 - 29, 2015 and December 12, 2015 - January 31, 2016~~].

(C) South Zone:

(i) all species other than "dusky ducks": November 5 - 27, 2016 and December 10, 2016 - January 29, 2017 [~~October 31 - November 29, 2015 and December 12, 2015 - January 24, 2016~~].

(ii) "dusky ducks": November 10 - 27, 2016 and December 10, 2016 - January 29, 2017 [~~November 5 - 29, 2015 and December 12, 2015 - January 24, 2016~~].

(2) Geese.

(A) Western Zone.

(i) Light geese: November 5, 2016 - February 5, 2017 [~~October 31, 2015 - January 31, 2016~~]. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese: November 5, 2016 - February 5, 2017 [~~October 31, 2015 - January 31, 2016~~]. The daily bag limit for dark geese is five, to include no more than two white-fronted geese.

(B) Eastern Zone.

(i) Light geese: November 5, 2016 - January 29, 2017 [~~November 7, 2015 - January 31, 2016~~]. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese:

(I) Season: November 5, 2016 - January 29, 2017 [~~November 7, 2015 - January 31, 2016~~];

(II) Bag limit: The daily bag limit for dark geese is five, to include no more than two white-fronted geese.

(3) Sandhill cranes. A free permit is required of any person to hunt sandhill cranes in areas where an open season is provided under this proclamation. Permits will be issued on an impartial basis with no limitation on the number of permits that may be issued.

(A) Zone A: October 29, 2016 - January 29, 2017 [~~October 31, 2015 - January 31, 2016~~]. The daily bag limit is three. The possession limit is nine.

(B) Zone B: November 18, 2016 - January 29, 2017 [~~November 20, 2015 - January 31, 2016~~]. The daily bag limit is three. The possession limit is nine.

(C) Zone C: December 17, 2016 - January 22, 2017 [~~December 19, 2015 - January 24, 2016~~]. The daily bag limit is two. The possession limit is six.

(4) Special Youth-Only Season. There shall be a special youth-only waterfowl season during which the hunting, taking, and possession of geese, ducks, mergansers, and coots is restricted to licensed hunters 15 years of age and younger accompanied by a person 18 years of age or older, except for persons hunting by means of falconry under the provisions of §65.320 of this chapter (relating to Extended Falconry Season--Late Season Species). Bag and possession limits in any given zone during the season established by this paragraph shall be as provided for that zone by paragraphs (1) and (2) of this section. Season dates are as follows:

(A) High Plains Mallard Management Unit: October 22 - 23, 2016 [~~October 24 - 25, 2015~~];

(B) North Zone: November 5 - 6, 2016 [~~October 31 - November 1, 2015~~]; and

(C) South Zone: October 29 - 30, 2016 [~~October 24 - 25, 2015~~].

§65.319. *Extended Falconry Season--Early Season Species.*

(a) It is lawful to take the species of migratory birds listed in this section by means of falconry during the following Extended Falconry Seasons:

(1) mourning doves, white-winged doves and white-tipped doves: November 19 - December 5, 2016 [~~November 7 - December 13, 2015~~].

(2) rails and gallinules: January 30 - February 12, 2017 [~~February 1 - 14, 2016~~].

(3) woodcock: January 30 - February 12, 2017 [~~February 1 - 14, 2016~~].

(b) The daily bag and possession limits for migratory game birds under this section shall not exceed three and nine birds respectively, singly or in the aggregate.

§65.320. *Extended Falconry Season--Late Season Species.*

It is lawful to take the species of migratory birds listed in this section by means of falconry during the following Extended Falconry Seasons.

(1) Ducks, coots, and mergansers:

(A) High Plains Mallard Management Unit: no extended season;

(B) North Duck Zone: January 30 - February 12, 2017 [~~February 1 - 14, 2016~~];

(C) South Duck Zone: January 30 - February 12, 2017 [~~February 1 - 14, 2016~~].

(2) The daily bag and possession limits for migratory game birds under this section shall not exceed three and nine birds, respectively, singly or in the aggregate.

§65.321. *Special Management Provisions.*

The provisions of paragraphs (1) - (3) of this section apply only to the hunting of light geese. All provisions of this subchapter continue in effect unless specifically provided otherwise in this section; however, where this section conflicts with the provisions of this subchapter, this section prevails.

(1) - (3) (No change.)

(4) Special Light Goose Conservation Period.

(A) From January 30 - March 19, 2017 [~~February 1 - March 20, 2016~~], the take of light geese is lawful in Eastern Zone as defined in §65.317 of this title (relating to Zones and Boundaries for Late Season Species).

(B) From February 6 - March 19, 2017 [~~February 1 - March 20, 2016~~], the take of light geese is lawful in the Western Zone as defined in §65.317 of this title.

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

Filed with the Office of the Secretary of State on February 8, 2016.

TRD-201600586

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: March 20, 2016

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



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 5. TEXAS VETERANS LAND BOARD

CHAPTER 178. TEXAS STATE VETERANS CEMETERIES

40 TAC §178.6

The Texas Veterans Land Board (VLB) proposes an amendment to §178.6, relating to Texas State Veterans Cemeteries, in Title 40, Part 5 of the Texas Administrative Code. The proposed amendment will remove language related to fees for the interment of eligible relatives of veterans.

Section 164.005 of the Texas Natural Resources Code authorizes the VLB to operate or enter into agreements with third parties for the operation of veterans cemeteries. The Veterans Land Board works in conjunction with the United States Department of Veterans Affairs on the construction of the cemeteries. The proposed amendment to §178.6 will clarify the operation of the cemeteries, particularly the fees associated with the burials of eligible relatives of veterans.

The proposed amendment to §178.6 eliminates the fees for the interment of eligible relatives of veterans. The VLB shall approve

all fees, expenses, and charges for the interment, disinterment, and related services for the Texas State Veterans cemeteries as described in the proposed §178.6 relating to Fees.

Anne L. Idsal, Chief Clerk and Deputy Land Commissioner, has determined that during the first five-year period the proposed amended rule is in effect there will be no negative fiscal implications for state or local government or small businesses.

Ms. Idsal has also determined that, during the first five-year period the proposed amended rule is in effect, the public will benefit as the rule will allow eligible relatives of veterans to be buried at the Texas State Veterans cemeteries at no charge.

Comments may be submitted to Walter Talley, Office of General Counsel, General Land Office of the State of Texas, 1700 N. Congress Avenue, Austin Texas 78701 or by facsimile (512) 463.6311, by no later than 30 days after publication.

Amendments to §178.6 are proposed under Texas Natural Resources Code §164.004, which provides the VLB with the authority to adopt rules necessary and convenient to administer Chapter 164, §§164.001 - 164.019, Texas Natural Resources Code.

Texas Natural Resources Code Chapter 164, §§164.001 - 164.019 are affected by this proposed rule.

§178.6. Fees.

(a) The Board must approve all fees, expenses and charges for interment, disinterment, and elated services for the TSVC.

(b) [~~Fees charged for the interment of eligible relatives will be the equivalent of the USDVA reimbursement for the plot allowance for veterans as established in its laws and regulations as they may be amended from time to time.~~] A TSVC shall apply no charges for disinterment or related interment services for eligible relatives of veterans.

(c) Each TSVC shall seek reimbursement from the USDVA of the plot allowance for interment of veterans. A TSVC shall apply no additional charges for interment, disinterment, or related services for veterans.

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

Filed with the Office of the Secretary of State on February 2, 2016.

TRD-201600477

Anne L. Idsal

Chief Clerk, Deputy Land Commissioner, General Land Office
Texas Veterans Land Board

Earliest possible date of adoption: March 20, 2016

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

