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Secretary of State - Jane Nelson

Director - Je T'aime Swindell

Editor-in-Chief - Jill S. Ledbetter

Editors

Leti Benavides

Jay Davidson

Brandy M. Hammack

Belinda Kirk

Laura Levack

Joy L. Morgan

Matthew Muir

Breanna Mutschler

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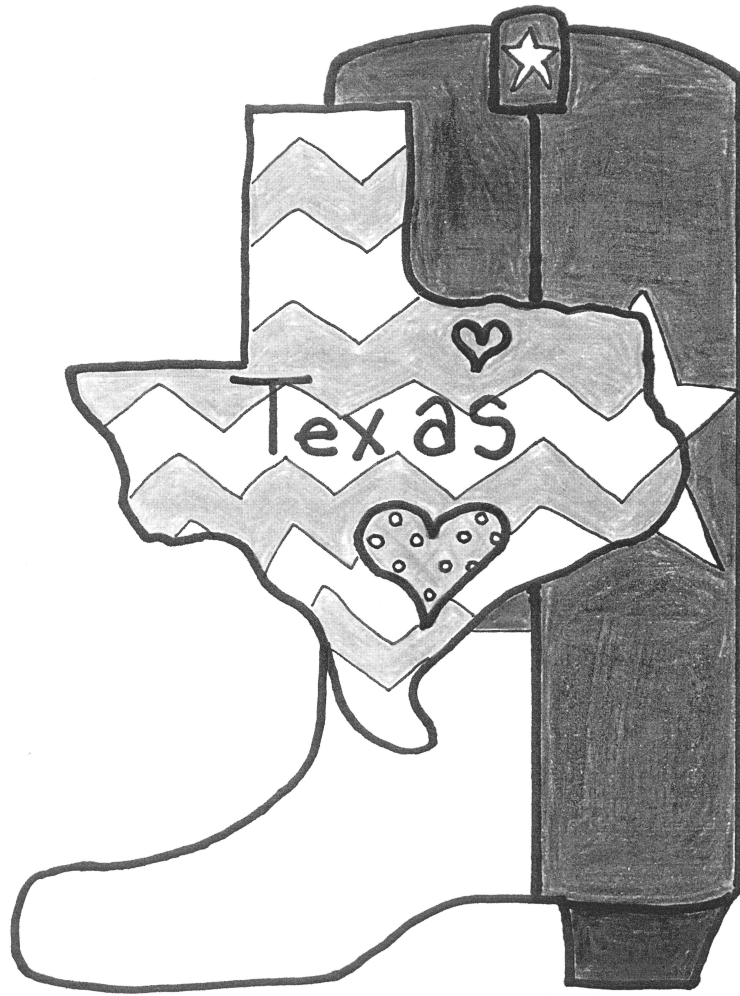
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THE GOVERNOR

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

Appointments

Appointments for April 28, 2023

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2029, Jennifer L. "Jen" Henderson of Round Rock, Texas (Ms. Henderson is being reappointed).

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2029, Moid U. "Mike" Khan of Sugar Land, Texas (replacing Alan K. Sandersen of Sugar Land, whose term expired).

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2029, Judy A. Krohn, Ph.D. of Georgetown, Texas (Dr. Krohn is being reappointed).

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2029, Traci G. LaChance of Danbury, Texas (Ms. LaChance is being reappointed).

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2029, Catherine A. "Cat" Parks of Hamilton, Texas (replacing Royce Lesley of Comanche, whose term expired).

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2029, Jarrod D. Smith of Danbury, Texas (Mr. Smith is being reappointed).

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2029, Roger "Wayne" Wilson, Jr. of Bryan, Texas (Mr. Wilson is being reappointed).

Appointments for May 2, 2023

Appointed to the Texas Board of Chiropractic Examiners for a term to expire February 1, 2029, Joshua "Josh" Hollub of La Porte, Texas (Mr. Hollub is being reappointed).

Appointed to the Texas Board of Chiropractic Examiners for a term to expire February 1, 2029, Matthew C. Mix, D.C. of Bastrop, Texas (replacing Debra L. White, D.C., whose term expired).

Appointed to the Texas Board of Chiropractic Examiners for a term to expire February 1, 2029, Mindy R. Neal, D.C. of Bovina, Texas (Dr. Neal is being reappointed).

Appointed to the Veterans' Land Board for a term to expire December 29, 2024, James R. Rothfelder of New Braunfels, Texas (replacing Grant A. Moody of San Antonio, who resigned).

Appointed to the Prepaid Higher Education Tuition Board for a term to expire February 1, 2029, Sarina Lora Davidson of Fort Worth, Texas (replacing Javier Villalobos of McAllen, whose term expired).

Greg Abbott, Governor

TRD-202301608



Proclamation 41-3968

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on July 8, 2022, as amended and renewed in a number of subsequent proclamations, certifying that exceptional drought conditions posed a threat of imminent disaster in several counties; and

WHEREAS, the Texas Division of Emergency Management has confirmed that those same drought conditions continue to exist in these and other counties in Texas, with the exception of Aransas, Bee, Bell, Brooks, Caldwell, Duval, Gonzales, Guadalupe, Jim Hogg, Jim Wells, Kenedy, Kleberg, Starr, and Zapata Counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend and renew the aforementioned proclamation and declare a disaster in Andrews, Atascosa, Austin, Bailey, Bandera, Baylor, Bexar, Blanco, Borden, Bosque, Brown, Burnet, Callahan, Cameron, Castro, Childress, Cochran, Coke, Collingsworth, Colorado, Comal, Comanche, Coryell, Cottle, Crosby, Dallam, Dawson, Deaf Smith, Dickens, Dimmit, Eastland, Ector, Edwards, Erath, Falls, Fisher, Floyd, Foard, Frio, Gaines, Garza, Gillespie, Glasscock, Grimes, Hale, Hamilton, Hansford, Hardeman, Hartley, Hays, Henderson, Hidalgo, Hockley, Howard, Hutchinson, Jones, Kendall, Kent, Kerr, Kimble, King, Kinney, La Salle, Lamb, Lampasas, Llano, Lipscomb, Lubbock, Lynn, Martin, Mason, Matagorda, Maverick, McCulloch, McLennan, Medina, Menard, Midland, Mills, Mitchell, Montgomery, Moore, Motley, Nolan, Ochiltree, Oldham, Parmer, Potter, Randall, Real, Roberts, Runnels, San Saba, Scurry, Shackelford, Sherman, Sterling, Stonewall, Sutton, Swisher, Taylor, Terry, Travis, Uvalde, Webb, Wharton, Yoakum, and Zavala Counties.

Pursuant to Section 418.017 of the Texas Government Code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

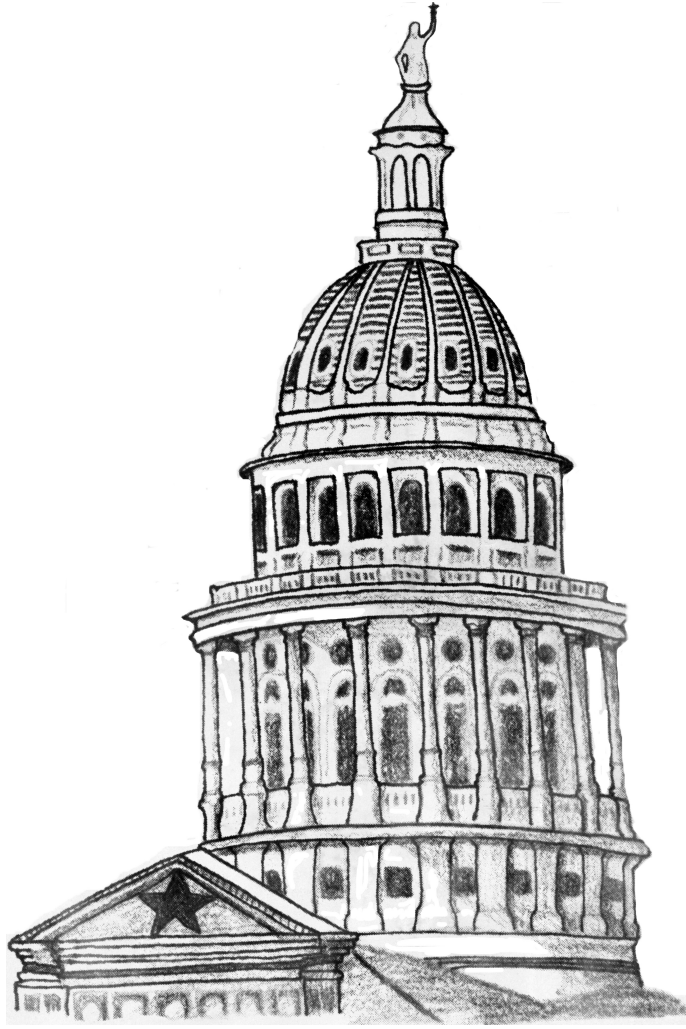
Pursuant to Section 418.016 of the Texas Government Code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written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

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 30th day of April, 2023.

Greg Abbott, Governor

TRD-202301604



THE ATTORNEY GENERAL

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

An index to the full text of these documents is available on the Attorney General's website at <https://www.texas.attorneygeneral.gov/attorney-general-opinions>. For information about pending requests for opinions, telephone (512) 463-2110.

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

Opinions

Opinion No. KP-0443

Mr. Darrel D. Spinks

Executive Director

Texas Behavioral Health Executive Council

1801 Congress Avenue, Suite 7.300

Austin, Texas 78701

Re: Authority of the Texas Behavioral Health Executive Council to amend 22 Texas Administrative Code §465.38(d) regarding the title of an individual holding a specialist in school psychology license (RQ-0483-KP)

SUMMARY

Occupations Code subsection 501.260(a) requires the Texas Behavioral Health Executive Council to "by rule . . . issue a license to a licensed

specialist in school psychology." A proposed administrative rule that permits a licensed specialist in school psychology to use the title School Psychologist or Licensed School Psychologist does not contravene specific statutory authority, is not contrary to the general objectives of Occupations Code chapter 501, and does not impose additional burdens, conditions, or restrictions. A court would likely conclude the proposed rule is in harmony with chapter 501's objectives and thus within the Council's authority to adopt.

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

TRD-202301596

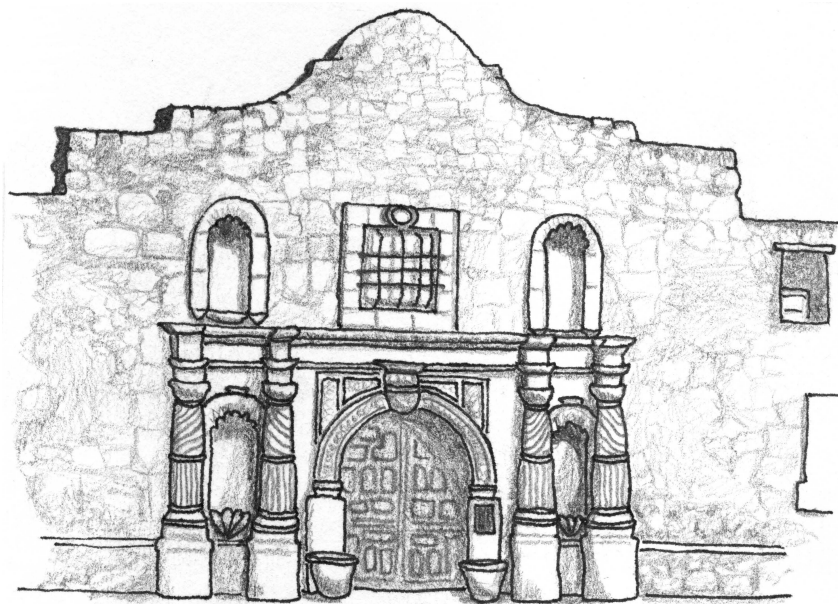
Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: May 2, 2023





PROPOSED RULES

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

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

TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 40. CHRONIC WASTING DISEASE

4 TAC §§40.1, 40.2, 40.5

The Texas Animal Health Commission (Commission) proposes amendments to Title 4, Texas Administrative Code, Chapter 40 titled "Chronic Wasting Disease." Specifically, amendments are proposed to §40.1, concerning Definitions, §40.2 concerning General Requirements, and §40.5 concerning Surveillance and Movement Requirements for Exotic CWD Susceptible Species.

BACKGROUND AND SUMMARY OF PROPOSED AMENDMENTS

The purpose of this chapter is to prevent and control the incidence of chronic wasting disease (CWD) in Texas by seeking to reduce the risk of interstate and intrastate transmission of CWD in susceptible cervid species. The Commission proposes amendments to §§40.1, 40.2, and 40.5 to clarify, correct, and update information regarding CWD management.

CWD is a degenerative and fatal neurological communicable disease recognized by the veterinary profession that affects susceptible cervid species. CWD can spread through natural movements of infected animals and transportation of live infected animals or carcass parts. Specifically, prions are shed from infected animals in saliva, urine, blood, soft-antler material, feces, or from animal decomposition, which ultimately contaminates the environment in which CWD susceptible species live. CWD has a long incubation period, so animals infected with CWD may not exhibit clinical signs of the disease for months or years after infection. The disease can be passed through contaminated environmental conditions, and may persist for a long period of time. Currently, no vaccine or treatment for CWD exists.

The purpose of the changes to §40.1 is to add, amend, and remove defined terms to provide clarity and align these rules with the federal standards regarding the management of CWD. The purpose of the changes to §40.2 is to provide clarity in the procedures for issuing hold orders and quarantines and reduce confusion for disease tracing and carcass disposal. The purpose of the changes to §40.5 is to change the testing requirements for exotic CWD susceptible species to align with federal standards and match state standards for testing native CWD susceptible species in order to increase surveillance of CWD in the state. Additionally, grammatical and editorial changes are proposed for consistency and improved readability.

SECTION-BY-SECTION DISCUSSION

Section 40.1 Definitions

The proposed amendments to §40.1, regarding definitions, add "APHIS," "Certified Herd," "CWD-Trace Herd," and "Postmortem tissue samples," to the list of definitions, amend the definitions of "Chronic Wasting Disease (CWD)," "Commingled, Commingling," "CWD-Exposed Animal," "CWD Susceptible Species," "Executive Director," "Farmed or Captive Cervids," "Herd," "Herd Plan," "Location Identification Number (LID)," "Official CWD Test," and remove the definitions for "Breeding Facility," "Farmed cervids," "Complete Physical Herd Inventory," "CWD Test Eligible," "Enrollment Date," "Enrolled Herd," "Herd Certification Program," "Herd Status," "Limited Contact," "Minimum Mortality Rate," "Release Facility," "Status Date," and "Trace Herd."

Section 40.2 General Requirements

The proposed amendments to §40.2(a)(1) improve readability and clarify that movement restriction shall remain in place until the Commission performs the epidemiologic investigation and approved laboratory testing is complete. The proposed amendments to §§40.2(a)(2), 40.2(a)(4), and 40.2(b) use the new definitions for CWD-trace herd and CWD-suspect herd found in §40.1.

In addition, the proposed amendments to §40.2(b)(1) through (3) clarify the agency or individual to whom CWD-suspect animals shall be presented and reported. The amendments to §40.2(b)(2)(C) clarify that all mortalities of all CWD susceptible species shall be immediately reported to a TAHC or USDA veterinarian to collect appropriate test samples. The amendments to §40.2(b)(2)(D) clarify what shall happen to CWD-exposed animals, how they shall be postmortem tested, or how long the CWD-exposed animals should be maintained. The amendments to §40.2(b)(3) clarify what happens to CWD-trace herds and mirror the amendments to §40.2(b)(2) for CWD-suspect animals and mortality reporting. The amendments to §40.2(c) clarify the disposal of CWD-suspect animal and CWD-exposed animal carcasses. The amendments to §40.2(d) improve readability.

Section 40.5 Surveillance and Movement Requirements for Exotic CWD Susceptible Species

The amendment to §40.5(a)(1) changes the definition of Eligible Mortality to lower the age of death that would qualify as an eligible mortality from 16 months to 12 months of age. The amendment to §40.5(a)(2) adds muntjac (*Muntiacus*) to the definition of Exotic CWD Susceptible Species.

The amendments to §40.5(b) specify that all eligible mortalities be tested for CWD within seven days using an official CWD test in accordance with the requirements in §40.5. The amendments also remove the limit to test only three animals a year. The amendments to §40.5(c) remove unnecessary additional

language to explain the defined term "official animal identification" and to add information on where to report annual inventories. The amendments to §§40.5(d) and (e) clarify testing requirements and reporting and change the time to submit test results and reports from 30 days to 14 days. The amendments to §40.5(f) improve readability.

FISCAL NOTE

Ms. Myra Sines, Chief of Staff for the Texas Animal Health Commission, determined for each year of the first five years the rules are in effect, there are no estimated additional costs or reductions in costs to state or local governments as a result of enforcing or administering the proposed rules. Commission employees will administer and enforce these rules as part of their regular job duties and resources. Ms. Sines also determined for the same period that there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules, and the proposed rules do not have foreseeable implications relating to costs or revenues of state governments.

PUBLIC BENEFIT

Ms. Sines determined that for each year of the first five years the proposed rules are in effect, the anticipated public benefits will be the protection of CWD susceptible species by increasing the surveillance of CWD susceptible species which will reduce the inadvertent spread of the disease from CWD susceptible species.

LOCAL EMPLOYMENT IMPACT STATEMENT

The Commission determined that the proposed rules will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

MAJOR ENVIRONMENTAL RULE

The Commission determined that Texas Government Code §2001.0225 does not apply to the proposed rules because the specific intent of these rules is not primarily to protect the environment or reduce risks to human health from environmental exposure, and therefore, is not a major environmental rule.

TAKINGS ASSESSMENT

The Commission determined that the proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. Therefore, the proposed rules are compliant with the Private Real Property Preservation Act in Texas Government Code §2007.043 and do not constitute a taking.

ECONOMIC IMPACT STATEMENT

The Commission determined that the proposed amendments to §§40.1, 40.2, and 40.5 may impact animal agricultural industries, which may meet the definition of a small business or microbusiness pursuant to Texas Government Code, Chapter 2006. Specifically, the Commission determined that the proposed rules may affect herd owners of CWD susceptible species or exotic CWD susceptible species.

The Commission determined that the proposed amendments would not adversely affect herd owners of CWD susceptible species because the amendments do not substantially change the movement, testing, and reporting requirements. The removal of the limit to test only three animal mortalities a year and the lowering of mortality test age for CWD may increase the

cost to some herd owners, but the tradeoff in disease surveillance outweighs the potential cost to the herd owner. As such, these amendments to the movement, testing, and reporting requirements will allow the Commission to better monitor CWD in Texas. As a result, the application of the rule will help prevent adverse economic impacts associated with CWD.

Although the Commission does not predict adverse economic impacts to those directly regulated by the Commission, the Commission considered the businesses that may be impacted and regulatory alternatives as part of its rule proposal process. Texas has an unknown number of exotic cervid species that are free-ranging and also maintained on high-fenced premises. Many of those premises are hunting ranches, which are not subject to the seasonal and regulatory hunting restrictions of TPWD. The clarity provided by these amendments should reduce or eliminate any confusion those directly regulated by the Commission may have in reading and interpreting the rules.

REGULATORY FLEXIBILITY ANALYSIS

The Commission considered several alternative methods for achieving the proposed rules' purpose while minimizing adverse economic impacts on small businesses, microbusinesses, and rural communities, as applicable, pursuant to Texas Government Code, Chapter 2006. The following sections analyze the substantive proposed changes that may have direct, adverse economic impacts on regulated parties in the order they are presented in Chapter 40.

The Commission considered an alternative method for achieving the proposed rules' purpose--by not changing the mortality testing requirements--but rejected the alternative because it would frustrate the Commission's ability to carry out Texas Agriculture Code §161.041 and eradicate or control any disease or agent of transmission, even if the agent of transmission is an animal species that is not subject to the jurisdiction of the Commission. This change also aligns the Commission's regulations with other federal and state regulations over CWD susceptible species. The Commission determined these proposals are necessary to follow the legislative requirement that the Commission protect exotic livestock from certain diseases, specifically CWD.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, for each year of the first five years the proposed rules would be in effect, the Commission determined the following:

1. The proposed rules will not create or eliminate a government program;
2. Implementation of the proposed rules will not require the creation of new employee positions or the elimination of existing employee positions;
3. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the Commission;
4. The proposed rules will not require an increase or decrease in fees paid to the Commission;
5. The proposed rules will not create a new regulation;
6. The proposed rules will expand existing rules, but will not otherwise limit or repeal an existing regulation;
7. The proposed rules may increase the number of individuals subject to the regulation; and

8. The proposed rules will not adversely affect this state's economy.

COST TO REGULATED PERSONS

The proposed amendments to §40.1 and §40.2 do not impose an additional cost to a regulated person. The proposed amendments to §40.5 may impose a cost on a regulated person by increasing the number of animals that may be required to be tested. The Commission determined these proposals are necessary to follow the legislative requirement that the Commission protect exotic livestock from certain diseases, specifically chronic wasting disease. The proposed rules do not otherwise impose a direct cost on a regulated person, state agency, a special district, or a local government within the state. Pursuant to Section 161.041 of the Texas Agriculture Code, Section 2001.0045 of the Texas Government Code does not apply to rules adopted under Section 161.041; therefore, it is unnecessary to amend or repeal any other existing rule.

REQUEST FOR COMMENT

Written comments regarding the proposed amendments may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by e-mail to comments@tahc.texas.gov. To be considered, comments must be received no later than thirty (30) days from the date of publication of this proposal in the *Texas Register*. When faxing or emailing comments, please indicate "Comments on Chapter 40-CWD Rules" in the subject line.

STATUTORY AUTHORITY

The amendments to §§40.1, 40.2, and 40.5 within Chapter 40 of the Texas Administrative Code are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code.

The Commission is vested by statute, §161.041(a), titled "Disease Control," to protect all livestock, exotic livestock, domestic fowl, and exotic fowl from disease. The Commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl, even if the agent of transmission is an animal species that is not subject to the jurisdiction of the Commission.

Pursuant to §161.0415, titled "Disposal of Diseased or Exposed Livestock or Fowl," the Commission may require by order the slaughter of livestock, domestic fowl, or exotic fowl exposed to or infected with certain diseases.

Pursuant to §161.0417, titled "Authorized Personnel for Disease Control," the Commission must authorize a person, including a veterinarian, to engage in an activity that is part of a state or federal disease control or eradication program for animals.

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

Pursuant to §161.047, titled "Entry Power," Commission personnel are permitted to enter public or private property for the performance of an authorized duty.

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

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

Pursuant to §161.049, titled "Dealer Records," the Commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer. The Commission may also inspect and copy the records of a livestock, exotic livestock, domestic fowl, or exotic fowl dealer that relate to the buying and selling of those animals. The Commission, by rule, shall adopt the form and content of the records maintained by a dealer.

Pursuant to §161.054, titled "Regulation of Movement of Animals; Exception," the Commission, by rule, may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. The Commission is authorized, through §161.054(b), to prohibit or regulate the movement of animals into a quarantined herd, premises, or area. The Executive Director of the Commission is authorized, through §161.054(d), to modify a restriction on animal movement, and may consider economic hardship.

Pursuant to §161.0541, titled "Elk Disease Surveillance Program," the Commission, by rule, may establish a disease surveillance program for elk. Such rules include the requirement for persons moving elk in interstate commerce to test the elk for chronic wasting disease. Additionally, provisions must include testing, identification, transportation, and inspection under the disease surveillance program.

Pursuant to §161.0545, titled "Movement of Animal Products," the Commission may adopt rules that require the certification of persons who transport or dispose of inedible animal products, including carcasses, body parts, and waste material. The Commission, by rule, may provide terms and conditions for the issuance, renewal, and revocation of a certification under this section.

Pursuant to §161.056(a), titled "Animal Identification Program," the Commission may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease. Section 161.056(d) authorizes the Commission to adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.057, titled "Classification of Areas," the Commission may prescribe criteria for classifying areas in the state for disease control based on sound epidemiological principals and may prescribe control measures for classification areas.

Pursuant to §161.058, titled "Compensation of Livestock or Fowl Owner," the Commission may pay indemnity to the owner of livestock or fowl, if necessary, to eradicate the disease.

Pursuant to §161.060, titled "Authority to Set and Collect Fees," the Commission may charge a fee for an inspection made by the Commission as provided by Commission rule.

Pursuant to §161.061, titled "Establishment," if the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or any agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. The quarantine of an affected place may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen. The Commission may, through §161.061(c), establish a quarantine to prohibit or regulate the movement of any article or animal the Commission designates to be a carrier of a disease listed in Section 161.041 or a potential carrier of one of those diseases, if movement is not otherwise regulated or prohibited for an animal into an affected area, including a county district, pasture, lot, ranch, field, range, thoroughfare, building, stable, or stockyard pen.

Pursuant to §161.0615, titled "Statewide or Widespread Quarantine," the Commission may quarantine livestock, exotic livestock, domestic fowl, or exotic fowl in all or any part of this state as a means of immediately restricting the movement of animals potentially infected with disease and shall clearly describe the territory included in a quarantine area.

Pursuant to §161.065, titled "Movement from Quarantined Area; Movement of Quarantined Animals," the Commission may provide a written certificate or written permit authorizing the movement of animals from quarantined places. If the Commission finds animals have been moved in violation of an established quarantine or in violation of any other livestock sanitary law, the Commission shall quarantine the animals until they have been properly treated, vaccinated, tested, dipped, or disposed of in accordance with the rules of the Commission.

Pursuant to §161.081, titled "Importation of Animals," the Commission may regulate the movement of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country. The Commission, by rule, may provide the method for inspecting and testing animals before and after entry into this state, and for the issuance and form of health certificates and entry permits.

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

Pursuant to §161.148, titled "Administrative Penalty," the Commission may impose an administrative penalty on a person who violates Chapter 161 or a rule or order adopted under Chapter 161. The penalty for a violation may be in an amount not to exceed \$5,000.

The proposed rules in this chapter for adoption do not affect other statutes, sections, or codes.

§40.1. Definitions.

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

(1) APHIS--The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

(2) [(4)] Approved Laboratory--A diagnostic laboratory approved by the United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) Administrator to conduct official tests for CWD in accordance with 9 CFR §55.8.

[(2) Breeding Facility--Privately owned, high-fenced pens where a cervid herd is managed for breeding purposes. The breeding facility must be registered with and assigned a facility identification number (FID) by the Texas Parks and Wildlife Department for white-tailed deer and mule deer.]

(3) Certified CWD Postmortem Sample Collector--An individual who has completed appropriate training recognized by the commission on the collection, preservation, laboratory submission, and proper recordkeeping of samples for postmortem CWD testing, and who has been certified by the commission to perform these activities.

(4) Certified Herd--A herd that has reached certified status in the CWD Herd Certification Program in §40.3 of this chapter (relating to CWD Herd Certification Program) or an equivalent state or federal program authorized under 9 CFR Part 55.

(5) [(4)] Chronic Wasting Disease (CWD)--A transmissible spongiform encephalopathy [(TSE)] of susceptible species. Clinical signs include, but are not limited to, loss of body condition, loss of appetite, incoordination, blank stares, tremors, listlessness, excessive salivation, difficulty swallowing, increased drinking and urination, depression, and other behavioral changes and eventual death.

(6) [(5)] Commingled, Commingling--Cervids [Farmed cervids] of any age are commingled when [if] they have [are housed or penned together having] direct physical contact with each other, have less than 10 feet of physical separation or share [except in cases of limited contact, or any activity where uninhibited contact occurs such as sharing an enclosure, a section of a transport vehicle, or sharing] equipment, pens or stalls, pasture, or water sources/watershed, including contact with bodily fluids or excrement from other farmed or captive cervids (i.e., indirect contact). [such as cervids housed in a pen that receives runoff or shares a natural or man-made body of water with another pen. Commingling includes contact with bodily fluids or excrement from other farmed or captive animals.] Animals are [also] considered to have commingled if they have had such direct or indirect contact with a CWD-positive animal [herd] or CWD contaminated premises within the last five [5] years. [Farmed cervids commingled with other farmed cervids assume the status of the lowest program status animal in the group.]

(7) [(6)] Commission--The Texas Animal Health Commission (TAHC).

[(7) Complete Physical Herd Inventory--A visual verification of all animals and identifications to reconcile records maintained by the owner.]

(8) CWD-Exposed Animal--A CWD susceptible species that is part of a CWD-positive herd, or that has been commingled with or been exposed to a CWD-positive animal or resided on a CWD contaminated premises within [the] five years of the discovery of CWD. [before diagnosis.]

[(9) CWD-Exposed Herd--A herd in which a CWD-positive animal has resided within 5 years prior to that animal's diagnosis as CWD-positive, as determined by a commission or USDA representative.]

(9) [(10)] CWD-Positive Animal--An animal that has had a diagnosis of CWD established through official confirmatory testing conducted by the National Veterinary Services Laboratories.

(10) [(11)] CWD-Positive Herd--A herd in which a CWD-positive animal resided at the time of CWD diagnosis.

(11) [(12)] CWD Susceptible Species--All species in the Cervidae family that have had a CWD diagnosis confirmed by an official test conducted by an approved laboratory. Including but not limited to [This includes] white-tailed deer (*Odocoileus virginianus*), mule deer (*Odocoileus hemionus*), black-tailed deer (*Odocoileus columbianus*), North American elk or wapiti (*Cervus canadensis*), red deer (*Cervus elaphus*), sika [Sika] deer (*Cervus nippon*), moose (*Alces alces*), reindeer and caribou (*Rangifer tarandus*), (*Muntiacus*) and any associated subspecies and hybrids.

(12) [(13)] CWD-Suspect Animal--A CWD susceptible species with unofficial CWD test results, laboratory evidence or clinical signs that suggest a diagnosis of CWD, as determined by a commission representative, but for which official laboratory results are inconclusive or not yet conducted.

(13) [(14)] CWD-Suspect Herd--A herd with unofficial CWD test results, laboratory evidence, or clinical signs that suggest a diagnosis of CWD, as determined by a commission representative, but for which official laboratory results are inconclusive or not yet conducted.

(14) CWD-Trace Herd--The term includes trace-back, trace-forward, and otherwise epidemiologically linked herds. A trace-back herd is any herd that contributed an animal to a CWD-positive herd within the five years prior to the diagnosis of CWD in the positive herd or is otherwise epidemiologically linked to a CWD-positive herd. A trace-forward herd is any herd which has received animals from a CWD-positive herd during a five-year period prior to the diagnosis of CWD in the positive herd or from the identified date of entry of CWD into the positive herd or is otherwise epidemiologically linked to a CWD-positive herd.

[(15) CWD Test Eligible--Unless otherwise specifically provided in these rules, all Cervidae 12 months of age and over.]

[(16) Enrollment Date--The day, month, and year when a herd that joins the CWD Herd Certification Program receives a satisfactory initial inspection.]

[(17) Enrolled Herd--A herd that has enrolled in the commission's Herd Certification Program and has met the minimum requirements defined in 9 CFR Part 55. Upon initial enrollment, all herds will be placed in First Year status unless the herd is assembled from other herds already participating in the program, and in such case will assume the status of the lowest herd.]

(15) [(18)] Executive Director--The Executive Director of the Texas Animal Health Commission[, or any individual authorized to act for the Executive Director].

(16) [(19)] Farmed or Captive Cervids--Privately or publicly maintained or held cervids for economic or other purposes within a perimeter fence or confined area, or captured from a free-ranging population for interstate or intrastate movement and release.

(17) [(20)] Herd--A group of cervids that is under common ownership, control, or supervision and is grouped on one or more parts of any single premises or on two or more geographically separated premises where cervids are commingled or have direct or indirect contact with one another. [An animal or group of animals that is:

[(A) Under common ownership, control, or supervision and are grouped on one or more parts of any single premises, including a lot, farm, or ranch where commingling of animals occurs; or]

[(B) All animals under common ownership, control, or supervision on two or more geographically-separated premises where animals are commingled or had direct contact with one another.]

[(21) Herd Certification Program--The program operated by the commission for the certification of CWD status cervid herds that meets the requirements of 9 CFR Part 55, subpart B.]

(18) [(22)] Herd Plan--A written herd or premises management agreement developed by the commission, the herd owner, and other affected parties. A herd plan sets forth the steps to take to control the spread of CWD from a CWD-positive herd, to control the risk of CWD in a CWD-exposed herd or CWD-suspect herd, or to prevent introduction of CWD into that herd or any other herd. [Requirements to prevent or control the possible spread of CWD, depending on the particular circumstances of the herd and its premises, including but not limited to depopulation of the herd, specifying the time when a premises must not contain cervids after CWD-positive, CWD-exposed, or CWD-suspect animals are removed from the premises, fencing requirements, selective culling of animals, restrictions on sharing and movement of possibly contaminated livestock equipment, premises cleaning and disinfection requirements, and other requirements may also be included in a herd plan. A herd plan requires the following: specified means of identification for each animal in the herd; regular examination of animals in the herd by a veterinarian for clinical signs of CWD; reporting to a commission representative any clinical signs of CWD; and recordkeeping.]

[(23) Herd Status--The status of a herd assigned under the commission CWD Herd Certification Program in compliance with Section 40.3 indicating a herd's relative risk for CWD. Herd status is the number of years of monitoring without evidence of the disease and any specific determinations that the herd has contained or has been exposed to a CWD-positive, CWD-exposed, or CWD-suspect animal. When a herd is first enrolled in the CWD Herd Certification Program, it will be placed in First Year status; except that, if the herd is composed solely of animals obtained from herds already enrolled in the program, the newly enrolled herd will have the same status as the lowest status of any herd that provided animals for the new herd. If the herd continues to meet the requirements of the program, each year, on the anniversary of the enrollment date the herd status will be upgraded by one year. One year from the date a herd is placed in Fifth Year status, the herd status will be changed to Certified, and the herd will remain in Certified Status as long as it is enrolled in the program, provided its status is not lowered, suspended, or revoked.]

(19) [(24)] High-risk area or county--An area or county that is epidemiologically determined to have a high probability for species susceptible for having, developing or being exposed to CWD.

(20) [(25)] Hold Order--A written commission order and action restricting movement of a herd, animal, or animal product pending the determination of CWD status.

[(26) Limited Contact--Any brief, incidental contact between cervids from different herds such as in sale or show rings and alleyways at fairs, livestock auctions, sales, shows, and exhibitions. Limited contact does not include penned animals having less than ten feet of physical separation or contact through a fence, or any activity where uninhibited contact occurs such as sharing an enclosure, a section of a transport vehicle, equipment, food, or water sources, or contact with bodily fluids or excrement. Pens at fairs, livestock auctions, sales, shows, and exhibitions must be thoroughly cleaned and all organic material removed after use and before holding another animal.]

(21) [(27)] Location Identification Number (LID)--A nationally unique number assigned by the commission to a premises starting with the state postal abbreviation (TX) followed by six random al-

phanumeric characters. Each LID is a geographically distinct location associated with a verifiable physical address, geospatial coordinates, or other location descriptors. ~~[All herds in the CWD Herd Certification Program will be assigned a LID or PIN.]~~

~~[(28) Minimum Mortality Rate--Death loss from natural causes is expected to be five percent for white-tailed deer 12 months of age and older averaged over a three-year period, unless epidemiologically determined otherwise.]~~

~~(22) [(29)] Official Animal Identification--A device or means of animal identification approved by USDA to uniquely identify individual animals. The official animal identification must include a nationally unique animal identification number that adheres to one of the following numbering systems:~~

~~(A) - (D) (No change.)~~

~~(23) [(30)] Official CWD Test--A USDA-validated immunohistochemistry (IHC) test of appropriate tissue samples for the diagnosis of CWD conducted in an approved laboratory.~~

~~(24) Postmortem tissue samples--Means the obex, both medial retropharyngeal lymph nodes, and an official animal identification device attached to ear or skin tissue collected and prepared under USDA APHIS guidelines for CWD postmortem sample collection.~~

~~(25) [(31)] Premises Identification Number (PIN)--A nationally unique number assigned by the commission or USDA to a premises. Each PIN is a geographically distinct location associated with a verifiable physical address, geospatial coordinate, or other location descriptors.~~

~~(26) [(32)] Quarantine--A written commission order and [the] action of restricting animal or animal product movement from or onto a premises because of the existence of or exposure to CWD.~~

~~[(33) Release Facility--A privately owned, high-fenced premises where white-tailed deer or mule deer from a breeding facility are released for management as free-ranging animals. A release facility must be registered with and assigned a facility identification number (FID) by the Texas Parks and Wildlife Department.]~~

~~[(34) Status Date--The day, month, and year the commission approves a change in herd status.]~~

~~(27) [(35)] TAHC Authorized Veterinarian--A veterinarian who is licensed to practice medicine in Texas, Category II accredited by USDA APHIS VS, and has satisfactorily completed TAHC disease control or eradication program training pursuant to 4 TAC Chapter 47, concerning Authorized Personnel.~~

~~[(36) Trace Herd--The term includes both trace-back and trace-forward herds. A trace-back herd is any herd that contributed an animal to a CWD-positive herd within the 5 years prior to the diagnosis of CWD in the positive herd. A trace-forward herd is any herd which has received animals from a CWD-positive herd during a 5-year period prior to the diagnosis of CWD in the positive herd or from the identified date of entry of CWD into the positive herd.]~~

~~(28) USDA--The United States Department of Agriculture.~~

~~§40.2. General Requirements.~~

~~(a) Procedures for issuing hold orders and quarantines.~~

~~(1) Any CWD-suspect herd shall be immediately reported to a [representative of the] commission representative. The herd shall be restricted by hold order until the commission's epidemiologic investigation and approved laboratory testing [diagnosis] are complete.~~

~~(2) A CWD-trace herd shall be restricted by hold order until an epidemiologic investigation by the commission is complete and the herd meets all herd plan requirements.~~

~~(3) A CWD-positive herd shall be restricted by quarantine until the herd meets all herd plan requirements.~~

~~(4) Any CWD-suspect herd, CWD-trace, and CWD-positive herd [CWD-positive herds] not complying with the epidemiologic investigation or herd plan requirements shall be restricted by quarantine.~~

~~(b) Requirements for CWD-suspect herds, CWD-trace herds, or CWD-positive herds.~~

~~(1) CWD-suspect animals shall be presented to a [representative of the] commission representative for the purpose of collection and submission of appropriate samples to an approved laboratory for diagnosis.~~

~~(2) Disposition of a CWD-positive herd as determined by a commission [TAHC] or USDA epidemiologist following completion of the investigation. A herd plan will be developed by a commission or USDA epidemiologist in consultation with the herd owner, and, if requested, their veterinarian. Unless otherwise determined by a commission epidemiologist and approved by the executive director [Executive Director], the herd plan shall include the following requirements for a period of five years:~~

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

~~(C) All [Mandatory reporting of all] CWD-suspect animals and all mortalities of all CWD susceptible species [death losses. Mortality in animals of any age] shall be immediately reported to a commission or USDA veterinarian for the purpose of collection of appropriate samples for submission to an approved laboratory for CWD surveillance.~~

~~(D) CWD-exposed animals must be [removed from the herd and]:~~

~~(i) Humanely euthanized, tested for CWD by official CWD test, and disposed of as specified in subsection (c) of this section; or~~

~~(ii) Maintained under the terms of the herd plan until all requirements of the herd plan are met. [hold order for 5 years from the last exposure to a CWD-positive animal.]~~

~~(E) The herd shall remain under quarantine for five [5] years from the last exposure to a CWD-positive animal or a CWD-exposed animal and until such time that all herd plan requirements are met.~~

~~(3) Disposition of CWD-trace herds. A herd plan will be developed by a commission or USDA epidemiologist in consultation with the owner, and, if requested, their veterinarian. Unless otherwise determined by a commission epidemiologist and approved by the executive director [Executive Director], [the herd plan shall require the following for 5 years] the herd plan shall include the following requirements for a period of five years:~~

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

~~(C) All [Mandatory reporting of all] CWD-suspect animals and all mortalities of all CWD susceptible species [death losses. Mortality in animals of any age] shall be immediately reported to a commission or USDA veterinarian for the purpose of collection of appropriate samples for submission to an approved laboratory for CWD surveillance.~~

(D) CWD-exposed animals must be ~~[removed from the herd and];~~

(i) Humanely euthanized, tested for CWD by official CWD test, and disposed of as specified in subsection (c) of this section; or

(ii) Maintained under the terms of the herd plan until all requirements of the herd plan are met. ~~[hold order for 5 years from the last potential exposure.]~~

(c) Disposal of CWD-suspect animal and CWD-exposed animal carcasses. After all required postmortem tissue samples are collected, carcasses or remaining parts of CWD-suspect animals and CWD-exposed animals, including all animal products, by-products, and contaminated materials, shall be disposed of by deep burial or incineration on the premises where the animal was located or at a facility approved by the executive director. ~~[CWD-exposed animals. Animals euthanized due to a presumptive positive of CWD, including CWD-exposed animals in CWD-positive and trace herds, shall be humanely euthanized and appropriate samples collected to confirm the diagnosis, and disposed of by deep burial or incineration, including all animal products, by-products, and contaminated materials:]~~

~~[(1) on the premises where a CWD diagnosis was disclosed; or]~~

~~[(2) at a facility approved by the Executive Director.]~~

(d) Payment of indemnity. The commission may participate in paying indemnity to purchase and dispose of CWD-positive animals, CWD-exposed animals, and CWD-suspect animals. Subject to available funding, the amount of the state payment for any such animals will be five percent of the appraised value established in accordance with 9 CFR §55.3. This payment is in participation with any federal ~~[Federal]~~ indemnity payments made in accordance with 9 CFR §55.2.

§40.5. Surveillance and Movement Requirements for Exotic CWD Susceptible Species.

(a) Definitions. In addition to the definitions in §40.1 of this chapter (relating to Definitions), the following words and terms, when used in this section, shall have the following meanings:

(1) Eligible Mortality--The death from any cause of an exotic CWD susceptible species that is 12 ~~[16]~~ months of age or older on any and all premises which raise and/or contain any exotic CWD susceptible species, whether a premises engages in live transport of these animals or not. This includes hunter harvest or herd culling on the premises, natural mortalities on the premises, and animals moved directly to slaughter.

(2) Exotic CWD Susceptible Species--A non-native cervid species determined to be susceptible to CWD, which means a species that has had a diagnosis of CWD confirmed by an official test conducted by an approved laboratory. This includes but is not limited to North American elk or wapiti (*Cervus canadensis*), red deer (*Cervus elaphus*), sika ~~[Sika]~~ deer (*Cervus nippon*), moose (*Alces alces*), reindeer and caribou (*Rangifer tarandus*), muntjac (*Muntiacus*), and any associated subspecies and hybrids. All mule deer, white-tailed deer, and other native species under the jurisdiction of the Texas Parks and Wildlife Department are excluded from this definition and application of this section.

(3) - (4) (No change.)

(b) Surveillance Requirements. ~~The~~ ~~[Each calendar year, the]~~ owner of a premises shall have all eligible mortalities tested for CWD within seven days using an official CWD test in accordance with subsection (d) of this section and shall report all results in accordance with subsection (e) of this section. ~~[until such time that three animals are~~

tested and valid test results are obtained. The owner of the premises shall ensure that the CWD samples are properly collected and submitted in compliance with the requirements for collection. The owner must report the test results to the commission within 30 days of receiving the test results.] This requirement applies to any premises where exotic CWD susceptible species are located and is not dependent on the live movement of any of these species or fence height.

(c) Movement Reporting and Identification Requirements.

(1) Live exotic CWD susceptible species moved or transported within the state shall be identified with an official animal identification ~~[device, which may include an eartag that conforms to the USDA alphanumeric National Uniform Eartagging System (NUES), a visible and legible animal identification number (AIN) or other identification methods approved by the commission, including a RFID device].~~

(2) (No change.)

(3) An owner of a premises where exotic CWD susceptible species are located within a high fence shall keep herd records that include an annual inventory and mortality records for all exotic CWD susceptible species. The inventory shall be reconciled and submitted to the commission on or before April 1 of each year by mail to Texas Animal Health Commission, CWD Susceptible Species Reporting, P.O. Box 12966, Austin, Texas 78711-2966; by fax to (512) 719-0729; or by email to CWD_reports@tahc.texas.gov. Annual inventory records shall be retained for five years ~~[one year]~~ following submission to the commission.

(4) (No change.)

(d) Testing Requirements. All eligible mortalities shall be tested for CWD using an official CWD test. Unless the whole head is submitted for testing, postmortem tissue samples must be collected and prepared by a state or federal animal health official, an accredited veterinarian, or a certified CWD postmortem sample collector. ~~[CWD test samples shall be collected and submitted to an approved laboratory for CWD diagnosis using an official CWD test for all eligible mortalities. Test reporting shall be directed to the appropriate TAHC Region Office. The samples may be collected by a state or federal animal health official, an accredited veterinarian, or a Certified CWD Postmortem Sample Collector. Tissue samples shall be the obex and one retropharyngeal lymph node from each test-eligible animal mortality.]~~

(e) Test Result Reporting. The owner shall ~~submit~~ ~~[report]~~ all test results and laboratory reports to the commission within 14 ~~[30]~~ days of receiving the test results by mail ~~[writing]~~ to Texas Animal Health Commission, CWD Susceptible Species Reporting, P.O. Box 12966, Austin, Texas 78711-2966; by fax to (512) 719-0729; or by email to CWD_reports@tahc.texas.gov.

(f) Mortality Recordkeeping.

(1) The owner of a premises where an exotic CWD susceptible species eligible mortality occurs shall maintain the following mortality records:

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

(C) all official animal identification ~~[any RFID or NUES tag number affixed to the animal];~~ and

(D) (No change.)

(2) The mortality records shall be made available upon request to any commission representative ~~[acting in the performance of official duties].~~

(3) - (4) (No change.)

(g) Inspection. To ensure compliance with these rules, a premises where exotic CWD susceptible species are located may be inspected by the commission or authorized agents of the commission.

(h) (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 April 27, 2023.

TRD-202301531

Jeanine Coggeshall

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: June 11, 2023

For further information, please call: (512) 719-0718



4 TAC §40.3

The Texas Animal Health Commission (Commission) proposes the repeal of existing §40.3, concerning Herd Certification Program for Cervidae in the Texas Administrative Code, Title 4, Part 2, Chapter 40. This repeal is proposed in conjunction with the proposal of a new §40.3, concerning CWD Herd Certification Program, which is also published simultaneously in this issue of the *Texas Register*.

BACKGROUND AND PURPOSE

The Commission has determined that due to the extensive reorganization of the new §40.3, concerning CWD Herd Certification Program, repeal of the entire section and replacement with a new section is more efficient than proposing multiple amendments to make the required changes.

The Commission's goals in proposing the new section are to align the Commission's CWD Herd Certification Program with federal standards, provide clear guidance to participants in the program, and improve the administration of the program.

SECTION-BY-SECTION SUMMARY

The proposed repeal will repeal the existing §40.3 in order to replace it with a new proposed §40.3.

FISCAL NOTE

Ms. Myra Sines, Chief of Staff for the Texas Animal Health Commission, has determined that for each of the first five years the proposed repeal is in effect, enforcing or administering the repeal will have no foreseeable implications relating to costs or revenues of state or local governments.

PUBLIC BENEFIT NOTE

Ms. Sines determined that for each year of the first five years the proposed repeal is in effect, the anticipated public benefit will be the adoption of new rules which improve administration and provide clarity and guidance for participants in the CWD Herd Certification Program.

TAKINGS IMPACT ASSESSMENT

The Commission determined that the proposed repeal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. Therefore, the proposed rules

are compliant with the Private Real Property Preservation Act in Texas Government Code §2007.043 and do not constitute a taking.

LOCAL EMPLOYMENT IMPACT STATEMENT

The Commission determined that the proposed repeal would not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission pursuant to Texas Government Code §2001.022.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

The Commission determined that this proposed repeal is not a "major environmental rule" as defined by Government Code §2001.0225.

GOVERNMENT GROWTH IMPACT STATEMENT

The Commission has determined that during the first five years the repeal will be in effect:

1. the proposed repeal will not create or eliminate a government program;
2. implementation of the proposed repeal will not require the creation of new employee positions or the elimination of existing employee positions;
3. implementation of the proposed repeal will not require an increase or decrease in future legislative appropriations to the Commission;
4. the proposed repeal will not increase or decrease fees paid to the Commission;
5. the proposed repeal will not create a new regulation;
6. the proposed repeal will repeal an existing regulation, but the repealed regulations will be replaced with revised regulations;
7. the proposed repeal does not increase or decrease the number of individuals subject to the rule's applicability; and
8. the proposed repeal will not positively or adversely affect the state's economy.

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

The Commission determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed repeal. As such, the Commission is not required to prepare a regulatory flexibility analysis.

COSTS TO REGULATED PERSONS

The Commission determined there are no increase of costs to a regulated person by this proposed repeal. The proposed rules do not otherwise impose a direct cost on a regulated person, state agency, a special district, or a local government within the state. Pursuant to Section 2001.0045 of the Texas Government Code, therefore, it is unnecessary to amend or repeal any other existing rule.

REQUEST FOR COMMENT

Written comments regarding the proposed repeal may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by e-mail to comments@tahc.texas.gov. To be considered, comments must be received no later than thirty (30) days from the date of publication of this proposal in the *Texas Register*.

When faxing or emailing comments, please indicate "Comments on Chapter 40-CWD Rules" in the subject line.

STATUTORY AUTHORITY

The repeal is proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code.

The Commission is vested by statute, §161.041(a), titled "Disease Control," to protect all livestock, exotic livestock, domestic fowl, and exotic fowl from disease. The Commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl, even if the agent of transmission is an animal species that is not subject to the jurisdiction of the Commission.

Pursuant to §161.0415, titled "Disposal of Diseased or Exposed Livestock or Fowl," the Commission may require by order the slaughter of livestock, domestic fowl, or exotic fowl exposed to or infected with certain diseases.

Pursuant to §161.0417, titled "Authorized Personnel for Disease Control," the Commission must authorize a person, including a veterinarian, to engage in an activity that is part of a state or federal disease control or eradication program for animals.

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

Pursuant to §161.047, titled "Entry Power," Commission personnel are permitted to enter public or private property for the performance of an authorized duty.

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

Pursuant to §161.049, titled "Dealer Records," the Commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer. The Commission may also inspect and copy the records of a livestock, exotic livestock, domestic fowl, or exotic fowl dealer that relate to the buying and selling of those animals. The Commission, by rule, shall adopt the form and content of the records maintained by a dealer.

Pursuant to §161.054, titled "Regulation of Movement of Animals; Exception," the Commission, by rule, may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. The Commission is authorized, through §161.054(b), to prohibit or regulate the movement of animals into a quarantined herd, premises, or area. The Executive Director of the Commission is authorized, through §161.054(d), to modify a restriction on animal movement, and may consider economic hardship.

Pursuant to §161.0541, titled "Elk Disease Surveillance Program," the Commission, by rule, may establish a disease surveillance program for elk. Such rules include the requirement for persons moving elk in interstate commerce to test the elk for chronic wasting disease. Additionally, provisions must include testing, identification, transportation, and inspection under the disease surveillance program.

Pursuant to §161.0545, titled "Movement of Animal Products," the Commission may adopt rules that require the certification of persons who transport or dispose of inedible animal products, including carcasses, body parts, and waste material. The Commission, by rule, may provide terms and conditions for the issuance, renewal, and revocation of a certification under this section.

Pursuant to §161.056(a), titled "Animal Identification Program," the Commission may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease. Section 161.056(d) authorizes the Commission to adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.057, titled "Classification of Areas," the Commission may prescribe criteria for classifying areas in the state for disease control based on sound epidemiological principals and may prescribe control measures for classification areas.

Pursuant to §161.060, titled "Authority to Set and Collect Fees," the Commission may charge a fee for an inspection made by the Commission as provided by Commission rule.

Pursuant to §161.061, titled "Establishment," if the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or any agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. The quarantine of an affected place may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen. The Commission may, through §161.061(c), establish a quarantine to prohibit or regulate the movement of any article or animal the Commission designates to be a carrier of a disease listed in Section 161.041 or a potential carrier of one of those diseases, if movement is not otherwise regulated or prohibited for an animal into an affected area, including a county district, pasture, lot, ranch, field, range, thoroughfare, building, stable, or stockyard pen.

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

The proposed repeal of the rules does not affect other statutes, sections, or codes.

§40.3. *Herd Certification Program for Cervidae.*

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 April 28, 2023.

TRD-202301532

Jeanine Coggeshall

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: June 11, 2023

For further information, please call: (512) 719-0718



4 TAC §40.3

The Texas Animal Health Commission ("Commission") proposes a new §40.3, concerning CWD Herd Certification Program to add to Title 4, Texas Administrative Code, Chapter 40 "Chronic Wasting Disease." The new section is proposed in conjunction with the repeal of existing §40.3 concerning Herd Certification Program for Cervidae.

BACKGROUND AND PURPOSE

The Commission has determined that due to the extensive reorganization of the new §40.3, concerning CWD Herd Certification Program, repeal of the entire section and replacement with a new section is more efficient than proposing multiple amendments to make the required changes.

CWD is a degenerative and fatal neurological communicable disease recognized by the veterinary profession that affects susceptible cervid species. CWD can spread through natural movements of infected animals and transportation of live infected animals or carcass parts. Specifically, prions are shed from infected animals in saliva, urine, blood, soft-antler material, feces, or from animal decomposition, which ultimately contaminates the environment in which CWD susceptible species live. CWD has a long incubation period, so animals infected with CWD may not exhibit clinical signs of the disease for months or years after infection. The disease can be passed through contaminated environmental conditions, and may persist for a long period of time. Currently, no vaccine or treatment for CWD exists.

The CWD Herd Certification Program is a voluntary, cooperative surveillance and certification program between the Commission, United States Department of Agriculture, herd owners, and other affected parties. The purpose of the program is to promote a consistent, national approach in controlling CWD in farmed and captive cervids and preventing the interstate spread of CWD. Participating herds that meet program requirements and have no evidence of CWD advance in status each year for five years, then are certified as low risk for CWD. Certified herd status permits interstate animal movement.

The United States Department of Agriculture publishes Chronic Wasting Disease Program Standards ("federal standards") to clarify and update acceptable methods for complying with the legal requirements in Title 9 of the Code of Federal Regulations Parts 55 and 81. The Commission's CWD Herd Certification Program is currently an approved program under the federal standards; to maintain its approved status, the Commission is required to follow the legal requirements of the federal regulations and continue to align the program with federal standards.

The Commission's goals in proposing the new section are to align the Commission's CWD Herd Certification Program with

federal standards, provide clear guidance to participants in the program, improve readability, and improve the administration of the program.

SECTION-BY-SECTION SUMMARY

Structurally, the new rule is divided into several subsections to provide clear guidance to participants. These new subsections include clear topics, including: definitions, program enrollment requirements, program requirements, herd status advancement and herd certification, effect of new animals on a herd, detection of CWD in an enrolled herd, and actions affecting enrollment.

Section 40.3(a) defines terms that are used within this section. Definitions for the terms "animal," "annual inspection window," "application and agreement," "eligible mortality," "enrolled herd," "enrollment date," "local TAHC region office," "program," "status," and "TWIMS" have been added to provide clarity to the program requirements.

Section 40.3(b) specifies the program enrollment process. This subsection lists all the prerequisites for enrollment into the program and includes all the steps a herd owner must take to have a herd enrolled in the program.

Section 40.3(c) specifies the program requirements. With the goal of clarity in mind, this section explicitly lists the requirements for participation in the program under a single subsection. While these program requirements existed in the previous rule, they were contained under multiple sections and required participants to navigate throughout the rule to determine requirements. In the new form, the requirements are enumerated with additional descriptions of the requirements for each component of the program.

This section also includes some substantive changes to eliminate ambiguity, improve the administration of the program, and align program requirements with federal standards.

Section 40.3(c)(3) modifies the former rule by specifying what reporting is required and the methods by which information is reported. This includes the requirement that immediate reporting be done by phone or email and that herds that have white-tailed deer or mule deer use the Texas Parks and Wildlife Department TWIMS system.

Section 40.3(c)(4) is amended to clarify that testing samples include postmortem tissue samples, as defined by §40.1(24) to mean the obex, both medial retropharyngeal lymph nodes, and an official animal identification device attached to ear or skin tissue collected and prepared under federal guidelines for CWD postmortem sample collection. The rule also specifies that the postmortem tissue samples must be prepared and collected by a state or federal health official, an accredited veterinarian or a CWD postmortem sample collector. The rule does not change the requirement that it be submitted within seven days or the requirement to report test results. The rule is amended to provide additional information regarding what will be considered missed or poor-quality samples and to provide guidelines for replacement testing.

Section 40.3(c)(5), regarding recordkeeping, maintains the same requirements as the previous rule but adds the requirement that herd owners with white-tailed deer and mule deer utilize TWIMS.

Section 40.3(c)(6) is amended to specify that annual inspections will take place during the annual inspection window, which is: "The period of time each year for an enrolled herd to complete

an annual inspection. Unless a specific period is set by a commission representative in writing, the annual inspection window begins 30 days before the month and day of the enrollment date and ends 30 days after the month and day of the enrollment date." Previously, the inspection was to occur 11-13 months from the last inspection. That rule created confusion for participants and was difficult to administer. This proposed change would mandate that the annual inspection occur during the annual inspection window which will simplify this requirement for participants and for the Commission. This modification also allows for some flexibility for participants to request an adjustment to their inspection window to meet the needs of their herd. This should help eliminate and reduce missed or late annual inspections to keep participating herds in compliance with the regulations. This subsection also amends the visual verification requirement to require that every animal in the herd have one required identification visually verified. The prior rule required visual verification on 50 percent of the animals. This change is made to align with federal standards and ensure inventories are annually reconciled.

Section 40.3(c)(7), regarding a complete physical herd inventory, is amended to add additional flexibility for participants to complete physical herd inventory in accordance with federal standards. In order to visually verify both forms of identification, animals may need to be temporarily gathered in pens or by other means. During previous rule proposals, public comments indicated that it is safer to gather animals at certain times of the year, or complete a physical inventory on groups of animals while the animals are already penned. Participants indicated that performing a physical inventory at the three-year mark did not suit herd management. Based on public comments, observations of Commission staff, and consultation with the United States Department of Agriculture, this rule is modified to allow owners flexibility to complete the inventory at a time that best suits their herd.

Section 40.3(d) restructures the herd status advancement and herd certification standards. This portion of the rule is amended to mirror the federal regulations regarding herd status advancement and herd certification and follow the year-for-year advancement in the federal standards.

Section 40.3(e) relates to the effect of new animals on herd status. This amendment follows the previous rule in that, if new animals are acquired from a herd from a lower status, the herd will be lowered to match the status of the new animals. Where the amendment differs from the previous version, is that it specifies that the herd must be held in the lower status for at least 12 months, and can only advance status at the next anniversary of the enrollment date. This change is made to improve administration of the program. Because many of the requirements of the program follow a yearly cycle, it was administratively unwieldy to track and ensure all requirements for status advancement are met when the status date shifted due to the introduction of a new animal. This new rule will streamline that process and reduce confusion for participants regarding when their herds are eligible for status advancement.

Section 40.3(f) is a newly added section that explicitly addresses situations where CWD is detected or is suspected in an enrolled herd to comply with federal standards. This amendment is made to clarify the steps that the Commission will take once there is a CWD-positive animal or CWD-suspect animal and to align with federal standards.

The last subsection, §40.3(h) makes minor changes to clarify the actions affecting enrollment and the administrative appeal process. Because the program is voluntary and requires com-

pliance with the program requirements and the rules contained in Chapter 40, the Commission is authorized to lower a herd status, suspend enrollment, or revoke program enrollment entirely. This rule specifies the process that a participant may challenge an action that affects herd enrollment.

FISCAL NOTE

Ms. Myra Sines, Chief of Staff for the Texas Animal Health Commission, determined that for each year of the first five years the rules are in effect, there are no estimated additional costs or reductions in costs to state or local governments as a result of enforcing or administering the proposed rules. Commission employees will administer and enforce these rules as part of their regular job duties and resources. Ms. Sines also determined for the same period that there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules, and the proposed rules do not have foreseeable implications relating to costs or revenues of state governments.

PUBLIC BENEFIT

Ms. Sines determined that for each year of the first five years the proposed rules are in effect, the anticipated public benefits are to provide clarity and guidance for participants in the CWD Herd Certification Program and improve program administration. Ultimately, the program provides protection for herds with CWD susceptible species through biosecurity practices and surveillance measures.

LOCAL EMPLOYMENT IMPACT STATEMENT

The Commission determined that the proposed rules will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

MAJOR ENVIRONMENTAL RULE

The Commission determined that Texas Government Code §2001.0225 does not apply to the proposed rules because the specific intent of these rules is not primarily to protect the environment or reduce risks to human health from environmental exposure, and therefore, is not a major environmental rule.

TAKINGS ASSESSMENT

The Commission determined that the proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. Therefore, the proposed rules are compliant with the Private Real Property Preservation Act in Texas Government Code §2007.043 and do not constitute a taking.

ECONOMIC IMPACT STATEMENT

The Commission determined that the proposed amendments to §40.3 do not impose any additional requirements that would impact a small business or microbusiness pursuant to Texas Government Code, Chapter 2006.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, the Commission prepared the following Government Growth Impact Statement (GGIS). For each year of the first five years the proposed rules would be in effect, the Commission determined the following:

1. The proposed rules will not create or eliminate a government program;

2. Implementation of the proposed rules will not require the creation of new employee positions or the elimination of existing employee positions;
3. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the Commission;
4. The proposed rules will not require an increase or decrease in fees paid to the Commission;
5. The proposed rules will not create a new regulation;
6. The proposed rules will expand existing rules, but will not otherwise limit or repeal an existing regulation;
7. The proposed rules may increase the number of individuals subject to the regulation; and
8. The proposed rules will not adversely affect this state's economy.

COST TO REGULATED PERSONS

The proposed amendments to §40.3 do not impose additional costs on regulated persons and are designed to provide flexibility to reduce the administrative burden of participants under the program. The proposed rules do not otherwise impose a direct cost on a regulated person, state agency, a special district, or a local government within the state. Section 2001.0045 of the Texas Government Code does not apply to rules adopted under Section 161.041.

REQUEST FOR COMMENT

Comments regarding the proposed amendments may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by e-mail to comments@tahc.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal in the *Texas Register*. When faxing or emailing comments, please indicate "Comments on Chapter 40-CWD Rules" in the subject line.

STATUTORY AUTHORITY

The new proposed §40.3 within Chapter 40 of the Texas Administrative Code is proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code.

The Commission is vested by statute, §161.041(a), titled "Disease Control," to protect all livestock, exotic livestock, domestic fowl, and exotic fowl from disease. The Commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl, even if the agent of transmission is an animal species that is not subject to the jurisdiction of the Commission.

Pursuant to §161.0415, titled "Disposal of Diseased or Exposed Livestock or Fowl," the Commission may require, by order, the slaughter of livestock, domestic fowl, or exotic fowl exposed to or infected with certain diseases.

Pursuant to §161.0417, titled "Authorized Personnel for Disease Control," the Commission must authorize a person, including a veterinarian, to engage in an activity that is part of a state or federal disease control or eradication program for animals.

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

Pursuant to §161.047, titled "Entry Power," Commission personnel are permitted to enter public or private property for the performance of an authorized duty.

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

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Pursuant to §161.0541, titled "Elk Disease Surveillance Program," the Commission, by rule, may establish a disease surveillance program for elk. Such rules include the requirement for persons moving elk in interstate commerce to test the elk for chronic wasting disease. Additionally, provisions must include testing, identification, transportation, and inspection under the disease surveillance program.

Pursuant to §161.0545, titled "Movement of Animal Products," the Commission may adopt rules that require the certification of persons who transport or dispose of inedible animal products, including carcasses, body parts, and waste material. The Commission, by rule, may provide terms and conditions for the issuance, renewal, and revocation of a certification under this section.

Pursuant to §161.056(a), titled "Animal Identification Program," the Commission may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease. Section 161.056(d) authorizes the Commission to adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.057, titled "Classification of Areas," the Commission may prescribe criteria for classifying areas in the state

for disease control based on sound epidemiological principals and may prescribe control measures for classification areas.

Pursuant to §161.060, titled "Authority to Set and Collect Fees," the Commission may charge a fee for an inspection made by the Commission as provided by Commission rule.

Pursuant to §161.061, titled "Establishment," if the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or any agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. The quarantine of an affected place may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen. The Commission may, through §161.061(c), establish a quarantine to prohibit or regulate the movement of any article or animal the Commission designates to be a carrier of a disease listed in Section 161.041 or a potential carrier of one of those diseases, if movement is not otherwise regulated or prohibited for an animal into an affected area, including a county district, pasture, lot, ranch, field, range, thoroughfare, building, stable, or stockyard pen.

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

The proposed rules in this chapter for adoption do not affect other statutes, sections or codes.

§40.3. CWD Herd Certification Program.

(a) Definitions. In addition to the definitions in Section 40.1, the following words and terms, when used in this section, shall have the following meanings:

- (1) Animal--An animal in the Cervidae family.
- (2) Annual inspection window--The period of time each year for an enrolled herd to complete an annual inspection. Unless a specific period is set by a commission representative in writing, the annual inspection window begins 30 days before the month and day of the enrollment date and ends 30 days after the month and day of the enrollment date.
- (3) Application and Agreement--The *CWD Herd Certification Application and Agreement*, a form published by the commission that is available on the commission website and available at TAHC region offices.
- (4) Eligible Mortality--The death from any cause of an animal 12 months of age or older, including hunter harvests and animals slaughtered at a slaughter facility or processing facility.
- (5) Enrolled herd--A herd that has been approved for enrollment in the program.
- (6) Enrollment Date--The day, month, and year in which an owner's herd is officially enrolled in the Program.
- (7) Local TAHC Region Office--The TAHC Region Office that covers the county in which the herd's premises is located.
- (8) Program--The CWD Herd Certification Program administered by the commission.

(9) Status--The status of a herd assigned under the program that follows the requirements in 9 CFR Part 55. Herd status is based on the number of years of compliance with the requirements of the program without evidence of the disease and without any specific determinations that the herd has contained or has been exposed to CWD.

(10) TWIMS--Texas Wildlife Information Management Services database operated by the Texas Parks and Wildlife Department's wildlife division

(b) Program Enrollment Process.

(1) Application and Agreement. For each herd, an owner shall submit a signed application and agreement to the local TAHC region office. An owner may enroll multiple herds but is required to submit an application and agreement for each herd and maintain each herd separately in accordance with this section.

(2) Enrollment Inspection. After application submission, a commission representative will schedule and conduct an enrollment inspection. For each herd, a commission representative will:

(A) visually observe each animal in the herd and the herd as a whole, for clinical signs of CWD;

(B) verify and record the two unique animal identification numbers for each individual animal, one of which is a nationally unique official animal identification, all required identification devices will be visually verified and reconciled with the herd owner's records;

(C) perform a herd inventory not more than 60 days prior to the herd's date of enrollment, unless an alternative timeframe is suggested by a commission representative and approved by the executive director; and

(D) identify the premises with a premise-based number system using a Premises Identification Number (PIN) or Location Identification Number (LID) and confirm perimeter fencing is adequate to prevent ingress and egress of cervids, structurally sound, in good repair, and meets any applicable height requirements.

(3) Fees. The commission will assess a fee of \$100 per hour for the enrollment inspection performed by a commission representative. The herd owner is responsible for the fees assessed.

(4) Enrollment approval by a commission representative. After the enrollment inspection is complete, a commission representative will approve or deny the application. The date the application is approved is the enrollment date.

(c) Program Requirements. Herd owners who enroll in the program must comply with the following requirements:

(1) Premises.

(A) Maintain the enrolled herd on the identified premises.

(B) Premises must have perimeter fencing adequate to prevent ingress and or egress of cervids. For herds established after October 15, 2021, the fence must be a minimum of eight feet high.

(C) To maintain separate herds, a herd owner shall maintain herds on separate identified premises that have:

(i) separate herd inventories and records;

(ii) separate working facilities;

(iii) separate water sources;

(iv) separate equipment; and

(v) at least 30 feet between the perimeter fencing around separate herds, and no commingling of animals may occur.

(D) Movement of animals between separate herds by the same owner must be recorded as if they were separately owned herds.

(2) Animal Identification.

(A) Each animal is required to be identified by two forms of animal identification attached to the animal.

(i) One of the identifications must be a nationally unique official animal identification number linked to that animal in the CWD National Database or a commission approved database.

(ii) The second identification must be unique for the individual animal within the herd and linked to the CWD National Database or a commission approved database.

(B) Identify all animals born in the herd.

(i) Each animal born must be identified no later than March 31 of the year following the year the animal is born with the required identification.

(ii) Each animal born that changes ownership or is moved from the premises of origin before 12 months of age shall be identified with required identification prior to change of ownership or movement from the premises of origin.

(3) Reporting requirements.

(A) Required reporting. The herd owner shall:

(i) immediately report upon discovery all herd animals that escape or disappear;

(ii) immediately report upon discovery all free-ranging cervids that enter the facility;

(iii) immediately report a CWD-suspect animal;

(iv) report test results and provide laboratory reports within 14 days of receiving the results of an official CWD test;

(v) report all animals added to the herd within five business days of the acquisition, the report should include the official identification, species, age, and sex of the animal, date of acquisition, and name and identification of the herd of origin;

(vi) report all incidences of commingled animals within five business days, the report should include the official identification, species, age, and sex of the animal, when the commingling occurred, the length of time the commingling occurred, and name and identification of the herd of origin of the commingled animal; and

(vii) report all results from annual inspections and complete physical herd inventories performed by a TAHC authorized veterinarian within 14 days.

(B) Methods of reporting.

(i) Immediate reporting must be by phone or email to a local TAHC region office.

(ii) Enrolled herds with white-tailed deer and mule deer must use TWIMS to track births, deaths, CWD test results, and animal movement.

(iii) All other reporting must be made to the local TAHC region office in writing. Reporting may be submitted by email, fax, mail, or hand delivery during business hours. Reporting must be transmitted or postmarked by the reporting deadline.

(4) Testing.

(A) The herd owner must test all eligible mortalities for CWD via immunohistochemistry (IHC) testing with an official CWD test.

(B) Postmortem tissue samples must be collected and prepared by a state or federal animal health official, an accredited veterinarian, or a certified CWD postmortem sample collector and submitted to an approved laboratory within seven days.

(C) Test results must be reported in accordance this section.

(D) If samples are missed or poor-quality samples are submitted, a commission representative will review the circumstances and determine if replacement testing is needed and set the replacement testing requirements. Missing samples occur when any animal 12 months of age or older dies, is harvested, slaughtered, escapes, or is otherwise lost and samples are not submitted for an official CWD test. Poor quality samples include samples that are severely autolyzed, from the wrong portion of the brain, the wrong tissue, or not testable for other reasons.

(E) If the number of eligible mortalities is less than five percent of the herd when averaged over a three-year period, a commission representative will review the circumstances and determine if replacement testing is needed and set the replacement testing requirements.

(F) Approval for replacement testing must be obtained prior to performing the replacement testing. Animals eligible to be tested as replacements will be determined by a commission representative. If approved, replacement testing using postmortem samples will use a one to one replacement rate. If approved and antemortem testing is available for the species at an approved laboratory, replacement testing using antemortem testing will use a five to one replacement rate.

(5) Recordkeeping.

(A) The herd owner shall maintain herd records that include a complete inventory of animals with documents showing all births, deaths, acquisitions, dispositions, and escaped or disappeared animals.

(B) Herd owner inventory records, maintained outside of TWIMS, should indicate natural additions with "NA," purchased additions with "PA," and retagged animals with "RT."

(C) The herd owner shall maintain all test result records for those animals that died and be able to produce the full laboratory results upon request.

(D) For white-tailed deer and mule deer, all required animal information must be entered into TWIMS, including uploading full laboratory results.

(E) For animals that have left the herd or have died, the owner must maintain the following information for five years:

(i) All identifications (tags, tattoos, electronic implants, etc.);

(ii) Birth date;

(iii) Species;

(iv) Sex;

(v) Date of acquisition and source of each animal that was not born into the herd, including name and address;

(vi) Date of removal and destination of any animal removed from the herd, including name and address;

(vii) Date of death and cause, if known, for animals dying within the herd;

(viii) Date of CWD sample submission, submitter, owner, premises, animal information, and official CWD test results; and

(ix) Age.

(F) Records will be verified for completeness and accuracy at each annual inspection and complete physical inventory.

(G) Records must be made available to a commission or USDA representative upon request.

(6) Annual Inspection.

(A) Each year an annual inspection must be conducted by a commission representative or a TAHC Authorized Veterinarian.

(B) Unless authorized in writing by a commission representative, the annual inspection must occur during the herd's annual inspection window.

(C) At each annual inspection, a commission representative or TAHC Authorized Veterinarian will:

(i) inventory the herd by visually verifying one required identification on every animal;

(ii) reconcile the previous inventory and verify all dispositions and acquisitions are documented;

(iii) visually observe the herd for clinical signs of CWD;

(iv) verify records are complete and accurate;

(v) verify that CWD sampling requirements are met, test records are complete, and verify that all deficient, missed, or poor-quality samples were documented; and

(vi) inspect perimeter fencing for minimum standards and document needed repairs.

(D) A commission representative or TAHC Authorized Veterinarian will certify by signature that all annual inspection requirements are met and that the herd complies with the program.

(E) Results from the complete physical herd inventory must be reported to the commission within 14 days, unless the complete physical herd inventory is performed by a commission representative.

(F) The herd owner is responsible for assembling, handling, and restraining the animals and for all costs incurred to present the animals for inspection.

(G) If the herd owner requests the annual inspection be conducted by a commission employee, the commission will assess a fee of \$100 per hour for the annual inspection performed by a commission representative. The herd owner is responsible for the fees assessed.

(H) If the annual inspection will be conducted by a TAHC Authorized Veterinarian, the herd owner must notify the local TAHC region office by phone or email at least 72 hours prior to any inspection performed by a TAHC Authorized Veterinarian.

(7) Complete Physical Herd Inventory.

(A) Every three years, a complete physical herd inventory must be conducted by a commission representative or a TAHC Authorized Veterinarian.

(B) Each complete physical herd inventory may occur any time before 36 months from the enrollment date or last complete physical herd inventory. Discrete groups of animals (e.g. does, bucks) may be physically inventoried at separate times as long as all animals are inventoried during the same status year. A complete physical herd inventory may be combined with an annual inspection or may occur at a separate time.

(C) During the complete physical herd inventory a commission representative or TAHC Authorized Veterinarian will:

(i) conduct a physical inventory of the herd by visually verifying both forms of required identification on every animal and match the identifications to the herd's written or electronic records;

(ii) reconcile the previous inventory and verify all dispositions and acquisitions are documented;

(iii) visually observe the herd for clinical signs of CWD;

(iv) verify records are complete and accurate;

(v) verify that CWD sampling requirements are met, test records are complete, and verify that all deficient, missed, or poor-quality samples were documented; and

(vi) inspect perimeter fencing for minimum standards and document needed repairs.

(D) A commission representative or TAHC Authorized Veterinarian will certify by signature that all complete physical herd inventory requirements are met and the herd complies with the program.

(E) Results from the complete physical herd inventory must be reported to the commission within 14 days, unless the complete physical herd inventory is performed by a commission representative.

(F) The herd owner is responsible for assembling, handling, and restraining the animals and for all costs incurred to present the animals for the complete physical herd inventory.

(G) If the herd owner requests the complete physical herd inventory be conducted by a commission employee, the commission will assess a fee of \$100 per hour for the complete physical herd inventory performed by a commission representative. The herd owner is responsible for the fees assessed.

(H) If the complete physical herd inventory will be conducted by a TAHC Authorized Veterinarian, the herd owner must notify the local TAHC region office by phone or email at least 72 hours prior to any complete physical herd inventory performed by a TAHC Authorized Veterinarian.

(8) Compliance Inspections. A herd owner must allow a commission representative to inspect premises where a herd is located or any animal at any time to determine compliance with the program and the requirements of this chapter. The herd owner is responsible for assembling, handling, and restraining the animals and for all costs incurred to present the animals for inspection.

(d) Herd Status Advancement and Herd Certification.

(1) Initial status.

(A) When a herd is first enrolled in the program, it will be placed in first year status.

(B) When a herd is first enrolled in the program and the herd is composed solely of animals obtained from herds already enrolled in the program, the newly enrolled herd may be assigned the same status as the lowest status of any herd that provided animals for the new herd.

(C) When a herd is first enrolled in the program and the herd is composed of animals obtained solely from other certified herds, the newly enrolled herd may be assigned the status of a certified herd.

(2) Status Advancement. If the herd continues to meet the requirements of the CWD Herd Certification Program, each year, no sooner than the anniversary of the enrollment date, the herd status will be upgraded by one year; i.e., second year status, third year status, fourth year status, and fifth year status.

(3) Certified herd status. If the herd continues to meet the requirements of the CWD Herd Certification Program, no sooner than one year from the date a herd is placed in fifth year status, the herd status will be changed to certified, and the herd will remain in certified status as long as it is enrolled in the program, continues to meet the requirements under the program, and its status is not suspended or revoked.

(e) Effect of new animals on herd status.

(1) A herd may add animals from herds with the same or a higher herd status in the program with no negative impact on the certification status of the receiving herd.

(2) If animals are acquired from a herd with a lower herd status, the receiving herd reverts to the program status of the source herd. Following the addition, the herd will be held at that lower status for at least 12 months. After 12 months have elapsed since the addition, the herd may advance status at the next anniversary of the enrollment date.

(3) If an enrolled herd adds animals from a nonparticipating herd, the receiving herd reverts to first year status. Following the addition, the herd will be held at first year status for at least 12 months. After 12 months have elapsed since the addition, the herd may advance status at the next anniversary of the enrollment date.

(4) If any animals in the herd are commingled with animals from native ingress or from a nonparticipating herd, the herd will revert to first year status. If any animals in the herd are commingled with an animal from a herd with a lower program status, the herd with the higher program status will be reduced to the status of the herd with which its animals commingled. After 12 months have elapsed since the addition, the herd may advance status at the next anniversary of the enrollment date.

(f) Detection of CWD in an enrolled herd.

(1) If a herd is designated as a CWD-positive herd or a CWD-exposed herd, its program enrollment will be revoked and the herd may only reenroll after entering into a herd plan and meeting the requirements of the herd plan.

(2) If a herd is designated a CWD-suspect herd or a CWD-trace herd, it will immediately be placed in suspended status pending an epidemiologic investigation by the commission.

(A) If the epidemiologic investigation determines that the herd was not commingled with a CWD-positive animal, the herd will be reinstated to its former program status, and the time spent in suspended status will count toward its promotion to the next herd status level.

(B) If the epidemiologic investigation determines that the herd was commingled with a CWD-positive animal, its program enrollment will be revoked and it will be designated a CWD-exposed herd.

(g) Actions affecting enrollment.

(1) If a herd owner does not comply with the requirements of this chapter, after notice is given, a commission representative may lower herd status, suspend enrollment, or revoke program enrollment.

(2) Protest of an action affecting enrollment.

(A) The herd owner may protest an action affecting enrollment by writing to the executive director within 15 days after receipt of notice of the action. The owner must include all of the facts and supportive evidence which the herd owner relies upon to show that the reasons for the action were incorrect.

(B) The herd owner may request a meeting with the executive director. The request for meeting must be in writing and accompany the protest. If needed, the meeting will be set by a commission representative no later than 21 days from the receipt of the request. The meeting will be held in Austin.

(C) The executive director shall render a written decision regarding the action within 30 days after receipt of the protest of the action or 30 days after the meeting with the herd owner, whichever is later. The executive director may affirm, rescind, or modify the action.

(3) Appeal of the executive director's decision.

(A) To appeal the decision of the executive director, the herd owner must file a notice of appeal within 15 days of the decision in writing with the executive director at the commission's office in Austin. The notice of appeal must specifically state the issues for consideration on appeal.

(B) A subsequent hearing on the specific issues appealed will be held in Austin, pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, the rules for the State Office of Administrative Hearings, and Chapter 32 of this title (relating to Hearing and Appeal Procedures).

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

Filed with the Office of the Secretary of State on April 28, 2023.

TRD-202301533

Jeanine Coggeshall

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: June 11, 2023

For further information, please call: (512) 719-0718



TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PROCEDURAL RULES

The Public Utility Commission of Texas (commission) proposes amendments to §22.51 relating to Notice for Public Utility Regulatory Act, Chapter 36, Subchapters C - E; Chapter 51, §51.009; and Chapter 53, Subchapters C - E, Proceedings; §22.52, relating to Notice in Licensing Proceedings; and §22.142 relating to Limitations on Discovery and Protective Orders. The proposed amendments are administrative in nature to update contact resources used by individuals with hearing or speech difficulties and also make other minor and conforming amendments.

Growth Impact Statement

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

- (1) the proposed rules will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed rules will not require the creation of new employee positions and will not require the elimination of existing employee positions;
- (3) implementation of the proposed rules will not require an increase and will not require a decrease in future legislative appropriations to the agency;
- (4) the proposed rules will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed rules will not, in effect, create a new regulation, because it is replacing a similar regulation;
- (6) the proposed rules will repeal an existing regulation, but it will replace that regulation with a similar regulation;
- (7) the same number of individuals will be subject to the proposed rules' applicability as were subject to the applicability of the rule it is being proposed to replace; and
- (8) the proposed rules will not affect this state's economy.

Takings Impact Analysis

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

Public Benefits

Iliana De La Fuente, Attorney, Rules and Projects Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Iliana De La Fuente has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the section will be to provide individuals with hearing or speech difficulties with accurate agency contact resources. There will be no adverse economic effect on small businesses, micro-businesses or rural communities as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with these sections as proposed. Any economic costs would vary from person to person and are difficult to ascertain. However, it is believed that the benefits accruing from implementation of the proposed sections will outweigh these costs.

Iliana De La Fuente has also determined that for each year of the first five years the proposed sections are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

Costs to Regulated Persons

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

Public Hearing

The commission staff will conduct a public hearing on this rule-making if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by May 26, 2023. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by May 26, 2023. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rules. All comments should refer to Project Number 54844, Chapter 22.

SUBCHAPTER D. NOTICE

16 TAC §22.51, §22.52

Statutory Authority

These amendments are proposed under the Public Utility Regulatory Act §14.002 and §14.052, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

§22.51. *Notice for Public Utility Regulatory Act, Chapter 36, Subchapters C - E; Chapter 51, §51.009; and Chapter 53, Subchapters C - E, Proceedings.*

(a) Notice in a proceeding seeking a rate increase. In proceedings under PURA, Chapter 36, Subchapters C and E; Chapter 51, §51.009; or Chapter 53, Subchapters C and E involving the commission's original jurisdiction over a utility's proposed increase in rates, the applicant must [shah] give notice in the following manner:

(1) Publication of notice. The applicant must [shah] publish notice of its statement of intent to change rates in a conspicuous form and place at least once a week for four consecutive weeks prior to the effective date of the proposed rate change, in a newspaper having general circulation in each county containing territory affected by the proposed rate change. The published notice must [shah] contain the following information:

(A) - (E) (No change.)

(F) the following language: "Persons who wish to intervene in or comment upon these proceedings should notify the Public Utility Commission of Texas (commission) as soon as possible, as an intervention deadline will be imposed. A request to intervene or for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals [with text telephones (TTY)] may contact the commission through Relay Texas at 1-800-735-2989 [at (512) 936-7136]. The deadline for intervention in the proceeding is 45 days after the date the application was filed with the commission."

(2) Notice by mail. The applicant must [shah] mail notice of its statement of intent to change rates to all of the applicant's affected customers. This notice may be mailed separately or may be mailed with customer billings. At the top of this notice, the following language must [shah] be printed in prominent lettering: "Notice of Rate

Change Request." The notice must meet the requirements of paragraph (1) of this subsection. Whenever possible, the established intervention deadline must [shall] be included in the notice.

(3) Notice to municipalities. The applicant must [shall] mail or deliver a copy of the statement of intent to the appropriate officer of each affected municipality at least 35 days prior to the effective date of the proposed rate change.

(b) Notice in PURA, Chapter 36, Subchapters C and E; Chapter 51, §51.009; or Chapter 53, Subchapters C and E proceeding seeking a rate decrease. In proceedings initiated pursuant to PURA, Chapter 36, Subchapters C and E; Chapter 51, §51.009; or Chapter 53, Subchapters C and E in which a rate reduction that does not involve a rate increase for any customer is sought, the applicant must [shall] give notice in the following manner:

(1) (No change.)

(2) Notice by mail to affected customers. The applicant must [shall] mail notice of the proposed rate decrease to all of the applicant's affected customers. This notice may be mailed separately or may be mailed with customer billings. At the top of this notice, the following language must [shall] be printed in prominent lettering: "Notice of Rate Decrease Request." The notice must [shall] contain the following information:

(A) - (E) (No change.)

(F) the following language: "Persons who wish to intervene in or comment upon these proceedings should notify the Public Utility Commission of Texas (commission) as soon as possible, as an intervention deadline will be imposed. A request to intervene or for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals [with text telephones (TTY)] may contact the commission through Relay Texas at 1-800-735-2989 [at (512) 936-7136]. The deadline for intervention in the proceeding is 45 days after the date the application was filed with the commission."

(3) Notice to municipalities. The applicant must [shall] mail or deliver a copy of the statement of intent to the appropriate officer of each affected municipality at least 35 days prior to the effective date of the proposed rate decrease.

(c) (No change.)

(d) Affidavits regarding notice. The applicant must [shall] submit affidavits attesting to the provision of the notice required or ordered pursuant to this section within a reasonable time and by such date as may be established by the presiding officer.

(1) Publisher's affidavits. Proof of publication of notice must [shall] be made in the form of a publisher's affidavit which must [shall] specify the newspaper(s) in which the notice was published; the county or counties in which the newspaper(s) is or are of general circulation; and the dates upon which the notice was published.

(2) Affidavit for notice to affected customers. If notice to affected customers has been provided, an affidavit attesting to the provision of notice to affected customers must [shall] specify the dates of the provision of such notice; the means by which such notice was provided; and the affected customer classes to which such notice was provided.

(3) Affidavit for notice to municipality. An affidavit attesting to the provision of notice to municipalities must [shall] specify the

dates of the provision of notice and the identity of the individual cities to which such notice was provided.

§22.52. *Notice in Licensing Proceedings.*

(a) Notice in electric licensing proceedings. In all electric licensing proceedings except minor boundary changes, the applicant must [shall] give notice in the following ways:

(1) Applicant must [shall] publish notice once of the applicant's intent to secure a certificate of convenience and necessity in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, no later than the week after the application is filed with the commission. This notice must [shall] identify the commission's docket number and the style assigned to the case by Central Records. In electric transmission line cases, the applicant must [shall] obtain the docket number and style no earlier than 25 days prior to making the application by filing a preliminary pleading requesting a docket assignment. The notice must [shall] identify in general terms the type of facility if applicable, and the estimated expense associated with the project. The notice must [shall] describe all routes without designating a preferred route or otherwise suggesting that a particular route is more or less likely to be selected than one of the other routes.

(A) The notice must [shall] include all the information required by the standard format established by the commission for published notice in electric licensing proceedings. The notice must [shall] state the date established for the deadline for intervention in the proceeding (date 45 days after the date the formal application was filed with the commission; or date 30 days after the date the formal application was filed with the commission for an application for certificate of convenience and necessity filed under PURA §39.203(e)) and that a letter requesting intervention should be received by the commission by that date.

(B) The notice must [shall] describe in clear, precise language the geographic area for which the certificate is being requested and the location of all alternative routes of the proposed facility. This description must [shall] refer to area landmarks, including but not limited to geographic landmarks, municipal and county boundary lines, streets, roads, highways, railroad tracks, and any other readily identifiable points of reference, unless no such references exist for the geographic area. In addition, the notice must [shall] include a map that identifies all of the alternative locations of the proposed routes and all major roads, transmission lines, and other features of significance to the areas that are used in the utility's written notice description.

(C) The notice must [shall] state a location where a detailed routing map may be reviewed. The map must [shall] clearly and conspicuously illustrate the location of the area for which the certificate is being requested including all the alternative locations of the proposed routes, and must [shall] reflect area landmarks, including but not limited to geographic landmarks, municipal and county boundary lines, streets, roads, highways, railroad tracks, and any other readily identifiable points of reference, unless no such references exist for the geographic area.

(D) Proof of publication of notice must [shall] be in the form of a publisher's affidavit which must [shall] specify the newspaper(s) in which the notice was published, the county or counties in which the newspaper(s) is or are of general circulation, the dates upon which the notice was published, and a copy of the notice as published. Proof of publication must [shall] be submitted to the commission as soon as available.

(E) The applicant must [shall] provide a copy of each environmental impact study and/or assessment for the project to the

Texas Parks and Wildlife Department (TPWD) for its review within seven days of filing the application. Proof of submission of the information to TPWD must [shall] be provided in the form of an affidavit to the commission, which must [shall] specify the date the information was mailed or otherwise provided to TPWD, and must [shall] provide a copy of the cover letter or other documentation that confirms that the information was provided to TPWD.

(2) Applicant must [shall], upon filing an application, also mail notice of its application to municipalities within five miles of the requested territory or facility, neighboring utilities providing the same utility service within five miles of the requested territory or facility, the county government(s) of all counties in which any portion of the proposed facility or requested territory is located, and the Department of Defense Siting Clearinghouse. In addition, the applicant must [shall], upon filing the application, serve the notice on the Office of Public Utility Counsel using a method specified in §22.74(b) of this title (relating to Service of Pleadings and Documents). The notice must [shall] contain the information as set out in paragraph (1) of this subsection and a map as described in paragraph (1)(C) of this subsection. An affidavit attesting to the provision of notice to municipalities, utilities, counties, the Department of Defense Siting Clearinghouse, and the Office of Public Utility Counsel must [shall] specify the dates of the provision of notice and the identity of the individual municipalities, utilities, and counties to which such notice was provided. Before final approval of any modification in the applicant's proposed route(s), applicant must [shall] provide notice as required under this paragraph to municipalities, utilities, and counties affected by the modification which have not previously received notice. The notice of modification must [shall] state such entities will have 20 days to intervene.

(3) Applicant must [shall], on the date it files an application, mail notice of its application to the owners of land, as stated on the current county tax roll(s), who would be directly affected by the requested certificate. For purposes of this paragraph, land is directly affected if an easement or other property interest would be obtained over all or any portion of it, or if it contains a habitable structure that would be within 300 feet of the centerline of a transmission project of 230kV or less, or within 500 feet of the centerline of a transmission project greater than 230kV.

(A) The notice must contain all information required in paragraph (1) of this subsection and must [shall] include all the information required by the standard notice letter to landowners prescribed by the commission. The commission's docket number pertaining to the application must be stated in all notices. The notice must also include a copy of the "Landowners and Transmission Line Cases at the PUC" brochure prescribed by the commission.

(B) The notice must include a map as described in paragraph (1)(C) of this subsection.

(C) Before final approval of any modification in the applicant's proposed route(s), applicant must [shall] provide notice as required under subparagraphs (A) and (B) of this paragraph to all directly affected landowners who have not already received such notice.

(D) Proof of notice may be established by an affidavit affirming that the applicant sent notice by first-class mail to each of the persons listed as an owner of directly affected land on the current county tax roll(s). The proof of notice must [shall] include a list of all landowners to whom notice was sent and a statement of whether any formal contact related to the proceeding between the utility and the landowner other than the notice has occurred. This proof of notice must [shall] be filed with the commission no later than 20 days after the filing of the application.

(E) Upon the filing of proof of notice as described in subparagraph (D) of this paragraph, the lack of actual notice to any individual landowner will not in and of itself support a finding that the requirements of this paragraph have not been satisfied. If, however, the utility finds that an owner of directly affected land has not received notice, it must [shall] immediately advise the commission by written pleading and must [shall] provide notice to such landowner(s) by priority mail, with delivery confirmation, in the same form described in subparagraphs (A) and (B) of this paragraph, except that the notice must [shall] state that the person has fifteen days from the date of delivery to intervene. The utility must [shall] immediately file a supplemental affidavit of notice with the commission.

(4) The utility must [shall] hold at least one public meeting prior to the filing of its licensing application if 25 or more persons would be entitled to receive direct mail notice of the application. Direct mail notice of the public meeting must [shall] be sent by first-class mail to each of the persons listed on the current county tax rolls as an owner of land within 300 feet of the centerline of a transmission project of 230kV or less, or within 500 feet of the centerline of a transmission project greater than 230kV. The utility must [shall] also provide written notice to the Department of Defense Siting Clearinghouse of the public meeting. In the notice for the public meeting, at the public meeting, and in other communications with a potentially affected person, the utility must [shall] not describe routes as preferred routes or otherwise suggest that a particular route is more or less likely to be selected than one of the other routes. In the event that no public meeting is held, the utility must [shall] provide written notice to the Department of Defense Siting Clearinghouse of the planned filing of an application prior to completion of the routing study.

(5) Failure to provide notice in accordance with this section will [shall] be cause for day-for-day extension of deadlines for intervention and for commission action on the application.

(6) Upon entry of a final, appealable order by the commission approving an application, the utility must [shall] provide notice to all owners of land who previously received direct notice. Proof of notice under this subsection must [shall] be provided to the commission's staff.

(A) If the owner's land is directly affected by the approved route, the notice must [shall] consist of a copy of the final order.

(B) If the owner's land is not directly affected by the approved route, the notice must [shall] consist of a brief statement that the land is no longer the subject of a pending proceeding and will not be directly affected by the facility.

(7) All notices of an applicant's intent to secure a certificate of convenience and necessity whether provided by publication or direct mail must [shall] include the following language: "All routes and route segments included in this notice are available for selection and approval by the Public Utility Commission of Texas."

(b) Notice in telephone licensing proceedings. In all telephone licensing proceedings, except minor boundary changes, applications for a certificate of operating authority, or applications for a service provider certificate of operating authority, the applicant must [shall] give notice in the following ways:

(1) Applicants must [shall] publish in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, once each week for two consecutive weeks, beginning the week after the application is filed, notice of the applicant's intent to secure a certificate of convenience and necessity. This notice must [shall] identify in general terms the types of facilities, if applicable, the area for which the certificate is be-

ing requested, and the estimated expense associated with the project. Whenever possible, the notice should state the established intervention deadline. The notice must [shall] also include the following statement: "Persons with questions about this project should contact (name of utility contact) at (utility contact telephone number). Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals [with text telephones (TTY)] may contact the commission through Relay Texas at 1-800-735-2989 [at (512) 936-7136]. The deadline for intervention in the proceeding is (date 70 days after the date the application was filed with the commission) and you must send a letter requesting intervention to the commission which is received by that date." Proof of publication of notice must [shall] be in the form of a publisher's affidavit, which must [shall] specify the newspaper or newspapers in which the notice was published; the county or counties in which the newspaper or newspapers is or are of general circulation; the dates upon which the notice was published and a copy of the notice as published. Proof of publication must [shall] be submitted to the commission as soon as available.

(2) Applicant must [shall] also mail notice of its application, which must [shall] contain the information as set out in paragraph (1) of this subsection, to cities and to neighboring utilities providing the same service within five miles of the requested territory or facility. Applicant must [shall] also provide notice to the county government of all counties in which any portion of the proposed facility or territory is located. The notice provided to county governments must [shall] be identical to that provided to cities and to neighboring utilities. An affidavit attesting to the provision of notice to counties must [shall] specify the dates of the provision of notice and the identity of the individual counties to which such notice was provided.

(3) Failure to provide notice in accordance with this section will [shall] be cause for day-for-day extension of deadlines for intervention.

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

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Adriana Gonzales

Rules Coordinator

Public Utility Commission

Earliest possible date of adoption: June 11, 2023

For further information, please call: (512) 936-7322



SUBCHAPTER H. PROCEDURAL RULES

16 TAC §22.142

Statutory Authority

These amendments are proposed under the Public Utility Regulatory Act §14.002 and §14.052, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

§22.142. Limitations on Discovery and Protective Orders.

(a) Limitation of discovery requests. The presiding officer may limit discovery, by order, to protect a party against unreasonable or unwarranted discovery requests.

(1) (No change.)

(2) Any person from whom discovery is sought may file a motion for a protective order, specifying the grounds on which a protective order is justified. Motions or responses must [shall] include affidavits, discovery pleadings, or other pertinent documents to support the allegations made therein.

(3) - (4) (No change.)

(b) (No change.)

(c) Protection of confidential or proprietary information. The presiding officer may issue a protective order governing the production of confidential or proprietary information as is appropriate in each proceeding before the commission. The order must [shall] be in the form adopted by the commission as the standard protective order. In addition, the parties may enter into agreements regarding protection of confidential or proprietary information. Entry of a protective order is not a determination that any documents produced under the protective order are proprietary or confidential.

(d) Limitations on requests for information.

(1) Before setting limitations on RFIs, the presiding officer must [shall] consider the factors set out in subparagraphs (A)-(K) of this paragraph.

(A) - (K) (No change.)

(2) For purposes of calculating the number of RFIs, each answer is [shall be] considered a separate request for information.

(3) If a party is not required to answer a question, that question may not be included in the calculation of whether the propounding party has reached its limit. However, if the presiding officer determines that a party is intentionally propounding frivolous, irrelevant, or otherwise objectionable requests, the question will [shall] be included in the calculation of a propounding party's limit.

(4) To discourage duplicate RFIs, any party that does not use its entire allotment of RFIs directed toward another party may transfer, by written notice to the presiding officer, that portion of its allotment to any other party in the proceeding. The requirements of this paragraph do not apply to RFIs originating from commission staff [the Office of Regulatory Affairs] or directed to commission staff [the Office of Regulatory Affairs].

(5) The presiding officer may use discretion in determining whether to limit the number of RFIs that may be propounded upon commission staff [the Office of Regulatory Affairs] or the Office of Public Utility Counsel by another party. In making this determination, the presiding officer must [shall] consider the limited resources available to each agency, and specifically that commission staff [the Office of Regulatory Affairs] is required by law to represent the public interest in all proceedings before the commission.

(6) The presiding officer may limit or expand the number of RFIs that commission staff [the Office of Regulatory Affairs] may propound upon any other party, and must [shall] consider that commission staff [the Office of Regulatory Affairs] is required by law to represent the public interest in all proceedings before the commission, and thus may require more questions than other parties to ensure that it adequately explores all of the issues presented in the case.

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

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Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 936-7322



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

SUBCHAPTER H. CERTIFICATES OF CONVENIENCE AND NECESSITY

16 TAC §24.235

The Public Utility Commission of Texas (commission) proposes §24.235, relating to Notice Requirements for Certificate of Convenience and Necessity Applications. The proposed amendment is administrative in nature to update contact resources used by individuals with hearing or speech difficulties and also to make other minor and conforming amendments.

Growth Impact Statement

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

- (1) the proposed rule will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;
- (3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;
- (4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed rule will not, in effect, create a new regulation, because it is replacing a similar regulation;
- (6) the proposed rule will repeal an existing regulation, but it will replace that regulation with a similar regulation;
- (7) the same number of individuals will be subject to the proposed rule's applicability as were subject to the applicability of the rule it is being proposed to replace; and
- (8) the proposed rule will not affect this state's economy.

Takings Impact Analysis

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

Public Benefits

Iliana De La Fuente, Attorney, Rules and Projects Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Iliana De La Fuente has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be to provide individuals with hearing or speech difficulties with accurate agency contact resources. There will be no adverse economic effect on small businesses, micro-businesses or rural communities as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed. Any economic costs would vary from person to person and are difficult to ascertain. However, it is believed that the benefits accruing from implementation of the proposed section will outweigh these costs.

Iliana De La Fuente has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

Costs to Regulated Persons

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

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by May 26, 2023. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by May 26, 2023. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. All comments should refer to Project Number 54844, Chapter 24.

Statutory Authority

This amendment is proposed under the Texas Water Code §13.041(b), which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: Texas Water Code §13.041(b).

§24.235. *Notice Requirements for Certificate of Convenience and Necessity Applications.*

(a) If an application to obtain or amend a certificate of convenience and necessity (CCN) is filed, the applicant will prepare the notice prescribed in the commission's application form, which will include the following:

(1) - (2) (No change.)

(3) the following statement: "Persons who wish to intervene in the proceeding or comment upon action sought should con-

tact the Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals [with text telephones (TTY)] may contact the commission through Relay Texas at 1-800-735-2989 [at (512) 936-7136]. The deadline for intervention in the proceeding is (30 days from the mailing or publication of notice, whichever occurs later, unless otherwise provided by the presiding officer). You must send a letter requesting intervention to the commission which is received by that date."; and

(4) (No change.)

(b) After reviewing and, if necessary, modifying the proposed notice, the commission will provide the notice to the applicant for publication and/or mailing.

(1) (No change.)

(2) Except as otherwise provided by this subsection, in addition to the notice required by subsection (a) of this section, the applicant must [shall] mail notice to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the requested area. Notice required under this subsection must be mailed by first class mail to the owner of the tract of land according to the most current tax appraisal rolls of the applicable central appraisal district at the time the commission received the application for the CCN. Good faith efforts to comply with the requirements of this subsection may [shall] be considered adequate mailed notice to landowners. Notice under this subsection is not required for a matter filed with the commission under:

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

(3) (No change.)

(4) Within 30 days of the date of the notice, the applicant must [shall] file in the docket an affidavit specifying every person and entity to whom notice was provided and the date that the notice was provided.

(c) The applicant must [shall] publish the notice in a newspaper having general circulation in the county where a CCN is being requested, once each week for two consecutive weeks beginning with the week after the proposed notice is approved by the commission. Proof of publication in the form of a publisher's affidavit must [shall] be filed with the commission within 30 days of the last publication date. The affidavit must [shall] state with specificity each county in which the newspaper is of general circulation.

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

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

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CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes amendments to §25.31 relating to Information to Applicants and Customers, §25.231, relating to Cost of Service; §25.238, relating to Purchased Power Capacity Cost Recovery Factor (PCRf); §25.240, relating to Contribution Disclosure Statements in Appeals of Municipal Utility Rates, §25.271, relating to Foreign Utility Company Ownership by Exempt Holding Companies, §25.301, relating to Nuclear Decommissioning Trusts; §25.483, relating to Disconnection of Service, and §25.486, relating to Customer Protections for Brokerage Services. The proposed amendments are administrative in nature to update contact resources used by persons with hearing or speech difficulties and also to make other minor and conforming amendments.

Growth Impact Statement

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

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

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

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

(4) the proposed rules will not require an increase and will not require a decrease in fees paid to the agency;

(5) the proposed rules will not, in effect, create a new regulation, because it is replacing a similar regulation;

(6) the proposed rules will repeal an existing regulation, but it will replace that regulation with a similar regulation;

(7) the same number of individuals will be subject to the proposed rules' applicability as were subject to the applicability of the rules they are being proposed to replace; and

(8) the proposed rules will not affect this state's economy.

Takings Impact Analysis

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

Public Benefits

Iliana De La Fuente, Attorney, Rules and Projects Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Iliana De La Fuente has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the section will be to provide individuals with hearing or speech difficulties with accurate agency contact resources. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. Any economic costs would vary from person to person and are difficult to ascertain. However, it is believed that the ben-

efits accruing from implementation of the proposed sections will outweigh these costs.

Iliana De La Fuente has also determined that for each year of the first five years the proposed sections are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

Costs to Regulated Persons

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

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by May 26, 2023. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by May 26, 2023. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rules. All comments should refer to Project Number 54844, Chapter 25.

SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

16 TAC §25.31

Statutory Authority

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002.

§25.31. *Information to Applicants and Customers.*

(a) Information to applicants. Each electric utility must [shall] provide this information to applicants when they request new service or transfer existing service to a new location:

(1) the electric utility's lowest-priced alternatives available at the applicant's location. [] The information must [shall] begin with the lowest-priced alternative and give full consideration to applicable equipment options and installation charges;

(2) - (3) (No change.)

(b) Information regarding rate schedules and classifications and electric utility facilities.

(1) Each utility must [shall] notify customers affected by a change in rates or schedule of classifications.

(2) Each electric utility must [shall] maintain copies of its rate schedules and rules in each office where applications are received.

(3) Each electric utility must [shall] post a notice in a conspicuous place in each office where applications are received, inform-

ing the public that copies of the rate schedules and rules relating to the service of the electric utility, as filed with the commission, are available for inspection.

(4) Each electric utility must [shall] maintain a current set of maps showing the physical locations of its facilities that includes an accurate description of all facilities (substations, transmission lines, etc.). These maps must [shall] be kept by the electric utility in a central location and will be available for commission inspection during normal working hours. Each business office or service center must [shall] have available up-to-date maps, plans, or records of its immediate service area, with other information as may be necessary to enable the electric utility to advise applicants, and others entitled to the information, about the facilities serving that locality.

(c) Customer information packets.

(1) The information packet must [shall] be entitled "Your Rights as a Customer". Cooperatives may use the title, "Your Rights as a Member".

(2) The information packet, containing the information required by this section, must [shall] be mailed to all customers on at least every other year at no charge to the customer.

(3) The information must [shall] be written in plain, non-technical language.

(4) The information must [shall] be provided in English and Spanish; however, an electric utility is exempt from the Spanish language requirement if 10% or fewer of its customers are exclusively Spanish-speaking. If the utility is exempt from the Spanish language requirement, it must [shall] notify all customers through a statement in both English and Spanish, in the packet, that the information is available in Spanish from the electric utility, both by mail and at the electric utility's offices.

(5) The information packet must [shall] include all of the following:

(A) - (H) (No change.)

(I) the customer's right to file a complaint with the electric utility, the procedures for a supervisory review, and right to file a complaint with the commission, regarding any matter concerning the electric utility's service. The commission's contact information: Public Utility Commission of Texas, Office of Customer Protection, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512) 936-7003, e-mail address: customer@puc.state.tx.us, internet address: www.puc.state.tx.us, [] (512) 936-7136,] and Relay Texas (toll-free) 1-800-735-2989, must [shall] accompany this information;

(J) - (P) (No change.)

(Q) a statement that funded financial assistance may be available for persons in need of assistance with their electric utility payments, and that additional information may be obtained by contacting the local office of the electric utility, Texas Department of Housing and Community Affairs, or the Public Utility Commission of Texas. The main office telephone number (toll-free number, if available) and address for each state agency must [shall] also be provided; and

(R) information that explains how a residential customer can be recognized as a critical load customer, the benefits of being a critical load customer in an emergency situation, and the process for being placed on the critical load list. For the purposes of this section a "critical load residential customer" is [shall be] defined as a residential customer who has a critical need for electric service

because a resident on the premises requires electric service to maintain life.

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

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SUBCHAPTER J. COSTS, RATES AND TARIFFS

DIVISION 1. RETAIL RATES

16 TAC §§25.231, 25.238, 25.240

Statutory Authority

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002.

§25.231. *Cost of Service.*

(a) (No change.)

(b) Allowable expenses. Only those expenses which are reasonable and necessary to provide service to the public will [shall] be included in allowable expenses. In computing an electric utility's allowable expenses, only the electric utility's historical test year expenses as adjusted for known and measurable changes will be considered, except as provided for in any section of these rules dealing with fuel expenses.

(1) Components of allowable expenses. Allowable expenses, to the extent they are reasonable and necessary, and subject to this section, may include, but are not limited to the following general categories:

(A) Operations and maintenance expense incurred in furnishing normal electric utility service and in maintaining electric utility plant used by and useful to the electric utility in providing such service to the public. Payments to affiliated interests for costs of service, or any property, right or thing, or for interest expense will [shall] not be allowed as an expense for cost of service except as provided in the Public Utility Regulatory Act §36.058.

(B) Depreciation expense based on original cost and computed on a straight line basis as approved by the commission. Other methods of depreciation may be used when it is determined that such depreciation methodology is a more equitable means of recovering the cost of the plant.

(C) Assessments and taxes other than income taxes.

(D) Federal income taxes on a normalized basis. Federal income taxes must [shall] be computed according to the provisions of the Public Utility Regulatory Act §36.060.

(E) Advertising, contributions and donations. The actual expenditures for ordinary advertising, contributions, and donations may be allowed as a cost of service provided that the total sum of all such items allowed in the cost of service must [shall] not exceed three-tenths of 1.0% (0.3%) of the gross receipts of the electric utility for services rendered to the public. The following expenses must [shall] be included in the calculation of the three-tenths of 1.0% (0.3%) maximum:

(i) - (iv) (No change.)

(F) Nuclear decommissioning expense. The following restrictions must [shall] apply to the inclusion of nuclear decommissioning costs that are placed in an electric utility's cost of service.

(i) An electric utility owning or leasing an interest in a nuclear-fueled generating unit must [shall] include its cost of nuclear decommissioning in its cost of service. Funds collected from ratepayers for decommissioning must [shall] be deposited monthly in irrevocable trusts external to the electric utility, in accordance with §25.301 of this title (relating to Nuclear Decommissioning Trusts). All funds held in short-term investments must bear interest. The level of the annual cost of decommissioning for ratemaking purposes will be determined in each rate case based on an allowance for contingencies of 10% of the cost of decommissioning, the most current information reasonably available regarding the cost of decommissioning, the balance of funds in the decommissioning trust, anticipated escalation rates, the anticipated return on the funds in the decommissioning trust, and other relevant factors. The annual amount for the cost of decommissioning determined pursuant to the preceding sentence must [shall] be expressly included in the cost of service established by the commission's order.

(ii) In the event that an electric utility implements an interim rate increase, including an increase filed under bond, an incremental change in decommissioning funding must [shall] be included in the increase.

(iii) An electric utility's decommissioning fund and trust balances will be reviewed in general rate cases. In the event that an electric utility does not have a rate case within a five-year period, the commission, on its own motion or on the motion of commission staff [the commission's Office of Regulatory Affairs], the Office of Public Utility Counsel, or any affected person, may initiate a proceeding to review the electric utility's decommissioning cost study and plan, and the balance of the trust.

(iv) An electric utility must [shall] perform, or cause to be performed, a study of the decommissioning costs of each nuclear generating unit that it owns or in which it leases an interest. A study or a redetermination of the previous study must [shall] be performed at least every five years. The study or redetermination should consider the most current information reasonably available on the cost of decommissioning. A copy of the study or redetermination must [shall] be filed with the commission and a copy [copies] provided to [the commission's Office of Regulatory Affairs and] the Office of Public Utility Counsel. An electric utility's most recent decommissioning study or redeterminations must [shall] be filed with the commission within 30 days of the effective date of this subsection. The five-year requirement for a new study or redetermination must [shall] begin from the date of the last study or redetermination.

(G) Accruals credited to reserve accounts for self-insurance under a plan requested by an electric utility and approved by the commission. The commission may [shall] consider approval of a self insurance plan in a rate case in which expenses or rate base treatment are requested for a such a plan. For the purposes of this section, a self insurance plan is a plan providing for accruals to be credited to reserve accounts. The reserve accounts are to be charged with property and li-

ability losses which occur, and which could not have been reasonably anticipated and included in operating and maintenance expenses, and are not paid or reimbursed by commercial insurance. The commission will approve a self insurance plan to the extent it finds it to be in the public interest. In order to establish that the plan is in the public interest, the electric utility must present a cost benefit analysis performed by a qualified independent insurance consultant who demonstrates that, with consideration of all costs, self-insurance is a lower-cost alternative than commercial insurance and the ratepayers will receive the benefits of the self insurance plan. The cost benefit analysis must [shall] present a detailed analysis of the appropriate limits of self insurance, an analysis of the appropriate annual accruals to build a reserve account for self insurance, and the level at which further accruals should be decreased or terminated.

(H) Postretirement benefits other than pensions (known in the electric utility industry as "OPEB"). For ratemaking purposes, expense associated postretirement benefits other than pensions (OPEB) must [shall] be treated as follows:

(i) OPEB expense must [shall] be included in an electric utility's cost of service for ratemaking purposes based on actual payments made.

(ii) An electric utility may request a one-time conversion to inclusion of current OPEB expense in cost of service for ratemaking purposes on an accrual basis in accordance with generally accepted accounting principles (GAAP). Rate recognition of OPEB expense on an accrual basis must [shall] be made only in the context of a full rate case.

(iii) An electric utility will [shall] not be allowed to recover current OPEB expense on an accrual basis until GAAP requires that electric utility to report OPEB expense on an accrual basis.

(iv) For ratemaking purposes, the transition obligation must [shall] be amortized over 20 years.

(v) OPEB amounts included in rates must [shall] be placed in an irrevocable external trust fund dedicated to the payment of OPEB expenses. The trust must [shall] be established no later than six months after the order establishing the OPEB expense amount included in rates. The electric utility must [shall] make deposits to the fund at least once per year. Deposits on the fund must [shall] include, in addition to the amount included in rates, an amount equal to fund earnings that would have accrued if deposits had been made monthly. The funding requirement can be met with deposits made in advance of the recognition of the expense for ratemaking purposes. The electric utility must [shall], to the extent permitted by the Internal Revenue Code, establish a postretirement benefit plan that allows for current federal income tax deductions for contributions and allows earnings on the trust funds to accumulate tax free.

(vi) When an electric utility terminates an OPEB trust fund established pursuant to clause (v) of this subparagraph, it must [shall] notify the commission in writing. If excess assets remain after the OPEB trust fund is terminated and all trust related liabilities are satisfied, the electric utility must [shall] file, for commission approval, a proposed plan for the distribution of the excess assets. The electric utility must [shall] not distribute any excess assets until the commission approves the disbursement plan.

(2) Expenses not allowed. The following expenses must [shall] never be allowed as a component of cost of service:

(A) - (J) (No change.)

(c) Return on invested capital. The return on invested capital is the rate of return times invested capital.

(1) Rate of return. The commission will [shall] allow each electric utility a reasonable opportunity to earn a reasonable rate of return, which is expressed as a percentage of invested capital, and will [shall] fix the rate of return in accordance with the following principles.

(A) The return should be reasonably sufficient to assure confidence in the financial soundness of the electric utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low because of changes affecting opportunities for investment, the money market, and business conditions generally.

(B) The commission may [shall] consider efforts by the electric utility to comply with the statewide integrated resource plan, the efforts and achievements of the electric utility in the conservation of resources, the quality of the electric utility's services, the efficiency of the electric utility's operations, and the quality of the electric utility's management, along with other applicable conditions and practices.

(C) The commission may, in addition, consider inflation, deflation, the growth rate of the service area, and the need for the electric utility to attract new capital. The rate of return must be high enough to attract necessary capital but need not go beyond that. In each case, the commission will [shall] consider the electric utility's cost of capital, which is the weighted average of the costs of the various classes of capital used by the electric utility.

(i) (No change.)

(ii) Equity capital. For companies with ownership expressed in terms of shares of stock, equity capital commonly consists of the following classes of stock.

(I) Common stock capital. The cost of common stock capital must [shall] be based upon a fair return on its market value.

(II) Preferred stock capital. The cost of preferred stock capital is the actual cost of preferred stock at the time of issuance, plus an adjustment for premiums, discounts, and refunding and issuance costs.

(2) Invested capital; rate base. The rate of return is applied to the rate base. The rate base, sometimes referred to as invested capital, includes as a major component the original cost of plant, property, and equipment, less accumulated depreciation, used and useful in rendering service to the public. Components to be included in determining the overall rate base are as set out in subparagraphs (A)-(F) of this paragraph.

(A) Original cost, less accumulated depreciation, of electric utility plant used by and useful to the electric utility in providing service.

(i) Original cost must [shall] be the actual money cost, or the actual money value of any consideration paid other than money, of the property at the time it would [shall] have been dedicated to public use, whether by the electric utility which is the present owner or by a predecessor.

(ii) Reserve for depreciation is the accumulation of recognized allocations of original cost, representing recovery of initial investment, over the estimated useful life of the asset. Depreciation must [shall] be computed on a straight line basis or by such other method approved under subsection (b)(1)(B) of this section over the expected useful life of the item or facility.

(iii) Payments to affiliated interests must [shall] not be allowed as a capital cost except as provided in the Public Utility Regulatory Act §36.058.

(B) Working capital allowance to be composed of, but not limited to the following:

(i) (No change.)

(ii) Reasonable prepayments for operating expenses. Prepayments to affiliated interests will [shall] be subject to the standards set forth in the Public Utility Regulatory §36.058.

(iii) A reasonable allowance for cash working capital. The following applies [shall apply] in determining the amount to be included in invested capital for cash working capital:

(I) Cash working capital for electric utilities must [shall] in no event be greater than one-eighth of total annual operations and maintenance expense, excluding amounts charged to operations and maintenance expense for materials, supplies, fuel, and prepayments.

(II) - (III) (No change.)

(IV) For all investor-owned electric utilities a reasonable allowance for cash working capital, including a request of zero, will be determined by the use of a lead-lag study. A lead-lag study will be performed in accordance with the following criteria:

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

(-d-) All funds received by the electric utility except electronic transfers must [shall] be considered available for use no later than the business day following the receipt of the funds in any repository of the electric utility (e.g. lockbox, post office box, branch office). All funds received by electronic transfer will be considered available the day of receipt.

(-e-) For electric utilities the balance of cash and working funds included in the working cash allowance calculation must [shall] consist of the average daily bank balance of all non-interest bearing demand deposits and working cash funds.

(-f-) The lead on federal income tax expense must [shall] be calculated by measurement of the interval between the mid-point of the annual service period and the actual payment date of the electric utility.

(-g-) If the cash working capital calculation results in a negative amount, the negative amount must [shall] be included in rate base.

(V) (No change.)

(C) (No change.)

(D) Construction work in progress (CWIP). The inclusion of construction work in progress is an exceptional form of rate relief. Under ordinary circumstances the rate base must [shall] consist only of those items which are used and useful in providing service to the public. Under exceptional circumstances, the commission will include construction work in progress in rate base to the extent that:

(i) the electric utility has proven that:

(I) (No change.)

(II) major projects under construction have been efficiently and prudently planned and managed. However, construction work in progress must [shall] not be allowed for any portion of a major project which the electric utility has failed to prove was efficiently and prudently planned and managed; or

(ii) (No change.)

(E) Self-insurance reserve accounts. If a self insurance plan is approved by the commission, any shortages to the reserve account will be an increase to the rate base and any surpluses will be a decrease to the rate base. The electric utility must [shall] maintain appropriate books and records to permit the commission to properly review all charges to the reserve account and determine whether the charges being booked to the reserve account are reasonable and correct.

(F) (No change.)

§25.238. *Purchased Power Capacity Cost Recovery Factor (PCRF).*

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

(c) Establishment, adjustment, and termination of a PCRF.

(1) (No change.)

(2) The application in which the utility applies for the establishment, adjustment, or termination of a PCRF rider must [shall] be limited to issues related to the establishment, adjustment, or termination of the PCRF rider.

(3) The PCRF must [shall] not include:

(A) - (D) (No change.)

(4) Upon the establishment of a utility's PCRF, the utility must [shall] annually file an application for an adjustment of the PCRF. The cost year used in an annual PCRF adjustment must [shall] be the 12-month period that immediately follows the cost year used to set the existing PCRF. In addition, the utility must [shall] file the application to adjust the PCRF promptly after the relevant cost-year data become available. The commission may establish a schedule for the filing of such applications.

(5) A utility may terminate its PCRF as part of any annual PCRF adjustment proceeding. The final order including the termination of a PCRF must [shall] specify the date by which the utility must [shall] be required to file an application for the final reconciliation of the costs and revenues associated with the terminated PCRF.

(6) (No change.)

(7) A utility's request to establish, adjust, terminate, or reconcile a PCRF must [shall] include the utility's direct testimony supporting the request.

(d) Pre-approval of purchased power agreements.

(1) - (3) No change.)

(4) An application in which the utility applies for pre-approval of purchased power capacity agreements under this subsection must [shall] be limited to issues related to the pre-approval of such agreements.

(5) A utility may apply for pre-approval of purchased power agreements under this subsection no more than once per year, and no more than three times between comprehensive base-rate proceedings.

(e) Notice of PCRF proceeding.

(1) Within one commission working day of filing an application limited to establishing, adjusting, or terminating a PCRF, a utility must [shall] provide notice of the application in accordance with the following:

(A) Method of notice.

(i) The utility must [shall] serve notice of the application on the parties to the utility's last PCRF reconciliation proceeding

or, if there has been no PCRf reconciliation proceeding, on the parties to the utility's last comprehensive base-rate proceeding.

(ii) The utility must [shall] issue a news release and post the news release on its website.

(B) Content of notice. Notice provided pursuant to paragraph (1) of this subsection must [shall] include the following:

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

(iii) The date of the intervention and hearing request deadline. The date of the intervention and hearing request deadline must [shall] be 30 days after the application was filed, except that if the date would fall on a day that is not a commission working day, the intervention and hearing request deadline must [shall] be the first commission working day after the 30th day after the application was filed;

(iv) - (vi) (No change.)

(vii) The statement, "Persons who wish to intervene in the proceeding for this application, or who wish to provide their comments concerning this application, should contact the Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326, or call (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals may [with text telephones (TTY) may call (512) 936-7136 or] use Relay Texas (toll-free) 1-800-735-2989."

(C) Proof of notice. Within five commission working days from the filing of the application limited to establishing or adjusting a PCRf, the utility must [shall] file proof in the form of an affidavit that it complied with this paragraph.

(2) If a utility applies to reconcile a PCRf in a base-rate proceeding, the appropriate method and proof of notice set forth in §22.51 of this title (relating to Notice for Public Utility Regulatory Act, Chapter 36, Subchapters C-E; Chapter 51, §51.009; and Chapter 53, Subchapters C-E Proceedings) must [shall] apply. The notice must [shall] include a description of the requested change to the PCRf.

(3) If a utility applies to reconcile a PCRf outside of a base-rate proceeding, the method of notice set forth in §25.235(b)(1)(B) of this title (relating to Fuel Costs-General) applies [shall apply]. The proof of notice set forth in §25.235(b)(3) of this title must [shall] apply. The notice must [shall] include a description of the requested reconciliation of the PCRf.

(f) Procedural schedule. Upon the filing of an application limited to the annual adjustment of a PCRf pursuant to this section, the presiding officer must [shall] set a procedural schedule that will enable the commission to issue a final order in the proceeding as follows, except where good cause supports a different procedural schedule:

(1) - (2) (No change.)

(g) Exclusion from fuel factor. Costs that are recovered through a PCRf must [shall] be excluded in calculating the utility's fixed fuel factor as defined in §25.237 of this title (relating to Fuel Factors).

(h) PCRf formula.

(1) The PCRf for each rate class must [shall] be calculated using the following formula:

Figure: 16 TAC §25.238(h)(1) (No change.)

(2) Where the cost year used in setting a PCRf includes a change in base rates due to a comprehensive base-rate proceeding, parameters in the PCRf formula that refer to values from the utility's last comprehensive base-rate proceeding must [shall] be calculated by

prorating the values from the relevant base rate-proceedings across the cost-year.

(i) True-up. After establishment of an initial PCRf, a subsequent PCRf cost year is expected to contain portions of two different PCRf rate years. Therefore, for purposes of calculating class over- or under-recoveries for use in a proceeding to adjust the PCRf, previous PCRf revenue requirements from PCRf rate years in effect during the cost year must [shall] be prorated across the cost year. For each rate class, the difference between the prorated cost-year PCRf revenue requirement that previous PCRfs were set to recover from that class and the actual cost-year PCRf revenues recovered from that class, with interest on the balance calculated at the rate established annually by the commission pursuant to §25.28(c) and (d) of this title (relating to Bill Payment and Adjustments), must [shall] be credited or charged to that class when calculating the adjusted PCRf. In the event that a PCRf rider is terminated, any over- or under-recovery amounts, with interest applied, must [shall] be included in a separate rider.

(j) Reconciliation of PCRf expenses.

(1) The reasonableness and necessity of expenses recovered through the PCRf must [shall] be reviewed, and such costs and corresponding PCRf revenues must [shall] be reconciled, as part of any proceeding initiated under §25.236(b) of this title. Upon motion and showing of good cause, a PCRf reconciliation proceeding may be severed from or consolidated with other proceedings.

(2) (No change.)

(3) Any refunds or surcharges resulting from a PCRf reconciliation, with interest applied, must [shall], in the annual PCRf proceeding immediately subsequent to the filing of the final order in the reconciliation proceeding, be incorporated into the true-up balances described in subsection (i) of this section. In the event that no PCRf rider is in effect subsequent to a PCRf reconciliation, such refunds or surcharges, with interest applied, must [shall] be included in a separate rider.

(k) Transition Issues. For a utility subject to a commission order to transition to retail competition as of the effective date of this section, the utility's existing power cost recovery factor in its tariff approved under the prior rule continues [shall continue] to be effective until the effective date of new unbundled retail delivery tariffs for the utility, at which time the power cost recovery factor must [shall] be terminated. Any over- or under-recovery amounts, with interest applied, must [shall] be included in a separate rider to the utility's retail delivery tariffs to be established in the proceeding that approves such tariffs and must [shall] be credited or charged to customers as appropriate. The utility must [shall] file monthly reports with the commission showing all such amounts until no remaining amounts remain to be credited or charged, at which time the utility must [shall] file a final report with the commission.

§25.240. *Contribution Disclosure Statements in Appeals of Municipal Utility Rates.*

(a) Pursuant to Chapter 33, Subchapter D. Each party to an appeal proceeding under the Public Utility Regulatory Act (PURA), Chapter 33, Subchapter D must file a statement with the commission disclosing all expenditures made by that party and all contributions made to that party, whether the expenditures or contributions are financial or in-kind, related to preparation of and filing of a petition for appeal, the preparation of expert testimony, and legal representation in the proceeding. The municipality whose rates are the subject of the appeal, commission staff [the Office of Regulatory Affairs], and the Office of Public Utility Counsel are not required to file a statement. The statement must list with particularity the name and address of each contributor and provide a description of each contribution. The state-

ment will be available to the public. The statement must be filed within 30 days after a final appealable order is entered by the commission or the petition of appeal is withdrawn.

(b) - (c) (No change.)

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SUBCHAPTER K. RELATIONSHIPS WITH AFFILIATES

16 TAC §25.271

Statutory Authority

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002.

§25.271. *Foreign Utility Company Ownership by Exempt Holding Companies.*

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

(c) Safe harbor investments. The following safe harbor provisions apply ~~[shall be applicable]~~ to investments in FUCOs by exempt holding companies that are affiliated with electric utilities subject to the regulatory jurisdiction of the commission:

(1) The commission must ~~[shall]~~ certify to the SEC that the commission has the authority and resources to protect ratepayers subject to its jurisdiction and that it intends to exercise its authority, provided that all holding companies of electric utilities that are subject to the regulatory jurisdiction of this commission must ~~[shall]~~ have filed with the commission corporate undertakings, signed under oath by an authorized executive officer of the holding company agreeing to adhere to the covenants and to make the filings specified in paragraph (2) of this subsection.

(2) The holding company must ~~[shall]~~ adhere to the following covenants:

(A) - (F) (No change.)

(G) That the holding company will file with the commission quarterly a report listing the total amount of the aggregate investments by the holding company and its subsidiaries and the percentage of the holding company's consolidated net worth, from the company's most recent SEC form 10-Q, represented by such investments;

(i) "Aggregate investment" means all amounts invested, or committed to be invested, in exempt wholesale generators located outside the United States (foreign EWGs) and FUCOs, for which there is recourse, directly or indirectly, to the holding company. Among

other things, the term must ~~[shall]~~ include preliminary development expenses that culminate in the acquisition of a foreign EWG or a FUCO.

(ii) Such report must ~~[shall]~~ be filed no later than ten days following the filing of the 10-Q for the quarter.

(H) That in the event the holding company anticipates making any investment in a FUCO that would result in the aggregate investment as defined in subparagraph (G) of this paragraph of such holding company exceeding 30% of the consolidated net worth of such holding company, the holding company must ~~[shall]~~ so advise the commission before a final commitment to ownership of such FUCO is made;

(I) - (L) (No change.)

(d) Other investments. For any occasion for which a holding company has undertaken to notify the commission of an event specified in subsection (c)(2)(H) or (K) of this section, the following provisions apply:

(1) The holding company must ~~[shall]~~ provide the following information, to the extent such information is reasonably available at the time of submission of the filing, at least 30 days before the date when it anticipates making a final commitment to ownership of a FUCO not already covered by a certification letter:

(A) - (D) (No change.)

(E) A statement that the electric utility has effective written policies and accounting procedures which insure that any use by the FUCO of assets or personnel of an affiliate of the electric utility, or other transactions between the FUCO and an affiliate of the electric utility will ~~[shall]~~ not negatively affect Texas ratepayers; and a statement that the electric utility will demonstrate in each subsequent rate proceeding before the commission, and each subsequent audit, that no FUCO investment increased the cost of capital or revenue requirement of the electric utility;

(F) - (H) (No change.)

(2) The notification prescribed in this subsection may be submitted less than 30 days before the date when the holding company anticipates making a final commitment to ownership of a FUCO not already covered by a certification letter upon a showing of good cause. Good cause for purposes of the preceding sentence must ~~[shall]~~ be deemed to include, without limitation, a representation that the holding company lacked the information required to make a submission at an earlier date or a representation that making the submission at an earlier date would have unreasonably jeopardized the ability of the holding company to go forward with the contemplated investment.

(3) (No change.)

(e) Post-investment reporting. The electric utility must ~~[shall]~~ comply with the following post-investment reporting obligations:

(1) With respect to any investment in a FUCO for which an informational filing was made pursuant to subsection (d)(1) of this section, the electric utility or holding company must ~~[shall]~~ notify the commission no later than ten days after the holding company makes a final commitment to ownership of a FUCO that such a commitment has been made. Such notice must ~~[shall]~~ include any material corrections, additions, and supplementation of previously-provided information; and

(2) For any FUCO investment covered by a certification, the electric utility or holding company must ~~[shall]~~ notify the commission no later than 30 days after any material change in the circumstances or nature of an investment in a FUCO. Such notice must ~~[shall]~~ include all appropriate corrections, additions, and supplementation of

previously-provided information. A material change would include, but is not limited to, any change that would have an adverse impact of greater than 1.0% of consolidated net worth most recently reported; full or partial divestiture of the investment; a catastrophic event that destroys a significant amount of FUCO property or results in loss of life that could result in a significant liability claim; a change in the laws or government policy having a material impact on the FUCO; or an event which would place a significant restriction on the repatriation of earnings of the FUCO.

(3) Unless included in SEC reports, each exempt utility holding company which directly or indirectly holds an interest in FUCOs or foreign EWGs must [shall] provide the following information: A consolidating statement of income of the exempt holding company and its subsidiary companies for the last calendar year, together with a consolidating balance sheet of the exempt holding company and its subsidiary companies as of the close of such calendar year.

(A) The information must [shall] be provided in English, monetary amounts in U.S. dollars, and according to generally accepted accounting principles.

(B) Such information must be received by the commission annually no later than March 15.

(f) Commission standards for granting or maintaining certification.

(1) (No change.)

(2) With respect to any investment in a FUCO for which an informational filing was made pursuant to subsection (d)(1) of this section, the commission must [shall] determine on a case-by-case [ease by ease] basis whether to issue a certification to the SEC or maintain a previously issued certification. The commission must [shall] endeavor to make such a determination prior to the date when the holding company anticipates having to make a final commitment to ownership of the FUCO. If the commission determines that it does not intend to continue certification, it may inform the SEC that maintaining a previously-issued certification would be inappropriate.

(3) The commission must [shall] notify the holding company requesting the certification or retention of certification of its decision within 45 days of receiving the request. If no action is taken by the commission within 45 days of receiving the request, the certification is [shall be] deemed granted or affirmed.

(4) Any information submitted by a holding company pursuant to this section may be submitted by the holding company under seal. Each page tendered under seal must [shall] have the words "Confidential Information" typed or stamped on its face. The holding company must [shall] clearly identify each portion of the application alleged to be Confidential Information; identify the exemption to the Public Information Act, Texas Government Code Annotated, Chapter 552 (Vernon Supp. 1998), applicable to the alleged Confidential Information; and provide a detailed explanation of why the alleged Confidential Information is exempt from public disclosure under the Public Information Act. If the commission receives a Public Information Act request for disclosure of Confidential Information, then the Executive Director must [shall] promptly so notify the holding company. The Executive Director must [shall] timely request an Attorney General's opinion as to whether the information falls within any of the exemptions identified in Subchapter C of the Public Information Act. The Executive Director must [shall] promptly provide to the holding company a copy of an Attorney General opinion regarding the claim of confidentiality. If an Attorney General opinion recommends disclosure of Confidential Information, either in whole or in part, then the Executive Director must [shall] not release such information for ten calendar

days, in order to allow the holding company time to pursue any legal remedies that it may have. The holding company may require the execution of an appropriate confidentiality agreement prior to providing access to such confidential information to commission staff [the Legal Division of the Office of Regulatory Affairs] or any other interested party. The form of any such confidentiality agreement must [shall] be approved by commission staff legal counsel [the Legal Division] prior to filing and included with the informational filing.

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SUBCHAPTER L. NUCLEAR DECOMMISSIONING

16 TAC §25.301

Statutory Authority

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002.

§25.301. *Nuclear Decommissioning Trusts.*

(a) Duties of electric utilities.

(1) Each electric utility collecting funds for a nuclear decommissioning trust must [shall] assure that the nuclear decommissioning trust is managed so that the funds are secure and earn a reasonable return; and, that the funds provided from the utility's cost of service, plus the amounts earned from investment of the funds, will be available at the time of decommissioning.

(2) Each electric utility collecting funds for a nuclear decommissioning trust must [shall] place the funds in an external, irrevocable trust fund. The utility must [shall] appoint an institutional trustee and may appoint an investment manager(s). Unless otherwise specified in subsection (b) of this section, the Texas Trust Code controls the administration and management of the nuclear decommissioning trusts, except that the appointed trustee(s) need not be qualified to exercise trust powers in Texas.

(3) The utility must [shall] retain the right to replace the trustee with or without cause. In appointing a trustee, the electric utility must [shall] have the following duties, which will be of a continuing nature:

(A) - (E) (No change.)

(4) The utility must [shall] retain the right to replace the investment manager with or without cause. In appointing an investment manager, the utility must [shall] have the following duties, which will be of a continuing nature:

(A) - (E) (No change.)

(b) Agreements between the electric utility and the institutional trustee or investment manager.

(1) The utility must [shall] execute an agreement with the institutional trustee. The agreement must [shall] include the restrictions in subparagraphs (A) - (E) of this paragraph and may include additional restrictions on the trustee. An electric utility must [shall] not grant the trustee powers that are greater than those provided to trustees under the Texas Trust Code or that are inconsistent with the limitations of this section.

(A) (No change.)

(B) A trustee must [shall] have a continuing duty to review the trust portfolio for compliance with investment guidelines and governing regulations.

(C) A trustee must [shall] not lend funds from the decommissioning trust with itself, its officers, or its directors.

(D) A trustee must [shall] not invest or reinvest decommissioning trust funds in instruments issued by the trustee, except for time deposits, demand deposits, or money market accounts of the trustee. However, investments of a decommissioning trust may include mutual funds that contain securities issued by the trustee if the securities of the trustee constitute no more than five percent of the fair market value of the assets of such mutual funds at the time of the investment.

(E) The agreement must [shall] comply with all applicable requirements of the Nuclear Regulatory Commission.

(2) The utility must [shall] execute an agreement with the investment manager. (If the trustee performs investment management functions, the contractual provisions governing those functions must be included in either the trust agreement or a separate investment management agreement.) The agreement must [shall] include the restrictions set forth in subparagraphs (A) - (E) of this paragraph and may include additional restrictions on the manager. An electric utility must [shall] not grant the manager powers that are greater than those provided to trustees under the Texas Trust Code or that are inconsistent with the limitations of this section.

(A) An investment manager must [shall], in investing and reinvesting the funds in the trust, comply with subsection (c) of this section.

(B) (No change.)

(C) An investment manager must [shall] have a continuing duty to review the trust portfolio to determine the appropriateness of the investments.

(D) An investment manager must [shall] not invest funds from the decommissioning trust with itself, its officers, or its directors.

(E) The agreement must [shall] comply with all applicable requirements of the Nuclear Regulatory Commission.

(3) A copy of the trust agreement, any investment management agreement, and any amendments must [shall] be filed with the commission within 30 days after the execution or modification of the agreement, and copies provided to the commission's [Office of Regulatory Affairs'] Legal Division and Rate Regulation [Financial Review] Division and the Office of Public Utility Counsel. All previously executed agreements and amendments must be filed within 30 days of the effective date of this section.

(4) Within 90 days after the effective date of this section, a utility that is a party to a trust agreement or an investment management agreement that is not in compliance with this section must [shall] revise the agreement to comply with this section.

(c) Trust investments.

(1) Investment portfolio goals. The funds should be invested consistent with the following goals. The utility may apply additional prudent investment goals to the funds so long as they are not inconsistent with the stated goals of this subsection.

(A) (No change.)

(B) In keeping with prudent investment practices, the portfolio of securities held in the decommissioning trust must [shall] be diversified to the extent reasonably feasible given the size of the trust.

(C) - (D) (No change.)

(2) General requirements. The following requirements must [shall] apply to all decommissioning trusts. Where a utility has multiple trusts for a single generating unit, the restrictions contained in this subsection apply to all trusts in the aggregate for that generating unit. For purposes of this section, a commingled fund is defined as a professionally managed investment fund of fixed-income or equity securities established by an investment company regulated by the Securities Exchange Commission or a bank regulated by the Office of the Comptroller of the Currency.

(A) Fees limitation. The total trustee and investment manager fees paid on an annual basis by the utility for the entire portfolio including commingled funds must [shall] not exceed 0.7% of the entire portfolio's average annual balance.

(B) Diversification. For the purpose of this subparagraph, a commingled or mutual fund is not considered a security; rather, the diversification standard applies to all securities, including the individual securities held in commingled or mutual funds. Once the portfolio of securities (including commingled funds) held in the decommissioning trust(s) contains securities with an aggregate value in excess of \$20 million, it must [shall] be diversified such that:

(i) no more than 5.0 % of the securities held may be issued by one entity, with the exception of the federal government, its agencies and instrumentalities, and;

(ii) the portfolio must [shall] contain at least 20 different issues of securities. Municipal securities and real estate investments must [shall] be diversified as to geographic region.

(C) Qualified trusts. The utility may invest the decommissioning funds by means of qualified or unqualified nuclear decommissioning trusts; however, the utility must [shall], to the extent permitted by the Internal Revenue Service, invest its decommissioning funds in "qualified" nuclear decommissioning trusts, in accordance with the Internal Revenue Service Code §468A.

(D) - (E) (No change.)

(F) Investment limits in equity securities. The following investment limits must [shall] apply to the percentage of the aggregate market value of all non-fixed income investments relative to the total portfolio market value.

(i) (No change.)

(ii) When the weighted average remaining life of the liability ranges between 5 years and 2.5 years, the equity cap must [shall] be 30%. Additionally, during all years in which expenditures for

decommissioning the nuclear units occur, the equity cap must [shall] also be 30%;

(iii) When the weighted average remaining life of the liability is less than 2.5 years, the equity cap must [shall] be 0%;

(iv) (No change.)

(v) Should the market value of non-fixed income investments, measured monthly, exceed the appropriate cap due to market fluctuations, the utility must [shall], as soon as practicable, reduce the market value of the non-fixed income investments below the cap. Such reductions may be accomplished by investing all future contributions to the fund in debt securities as is necessary to reduce the market value of the non-fixed income investments below the cap, or if prudent, by the sale of equity securities.

(G) A decommissioning trust must [shall] not invest in securities issued by the electric utility collecting the funds or any of its affiliates; however, investments of a decommissioning trust may include commingled funds that contain securities issued by the electric utility if the securities of the utility constitute no more than 5.0% of the fair market value of the assets of such commingled funds at the time of the investment.

(3) Specific investment restrictions. The following restrictions must [shall] apply to all decommissioning trusts. Where a utility has multiple trusts for a single generating unit, the restrictions contained in this subsection apply to all trusts in the aggregate for that generating unit.

(A) Fixed-income investments. A decommissioning trust must [shall] not invest trust funds in corporate or municipal debt securities that have a bond rating below investment grade (below "BBB-" by Standard and Poor's Corporation or "Baa3" by Moody's Investor's Service) at the time that the securities are purchased and must [shall] reexamine the appropriateness of continuing to hold a particular debt security if the debt rating of the company in question falls below investment grade at some time after the debt security has been purchased. Commingled funds may contain some below investment grade bonds; however, the overall portfolio of debt instruments must [shall] have a quality level, measured quarterly, not below a "AA" grade by Standard and Poor's Corporation or "Aa2" by Moody's Investor's Service. In calculating the quality of the overall portfolio, debt securities issued by the federal government must [shall] be considered as having a "AAA" rating.

(B) Equity investments.

(i) At least 70% of the aggregate market value of the equity portfolio, including the individual securities in commingled funds, must [shall] have a quality ranking from a major rating service such as the earnings and dividend ranking for common stock by Standard and Poor's or the quality rating of Ford Investor Services. Further, the overall portfolio of ranked equities must [shall] have a weighted average quality rating equivalent to the composite rating of the Standard and Poor's 500 index assuming equal weighting of each ranked security in the index. If the quality rating, measured quarterly, falls below the minimum quality standard, the utility must [shall] as soon as practicable and prudent to do so, increase the quality level of the equity portfolio to the required level.

(ii) A decommissioning trust must [shall] not invest in equity securities where the issuer has a capitalization of less than \$100 million.

(C) Commingled funds. The following guidelines must [shall] apply to the investments made through commingled funds. Examples of commingled funds appropriate for investment by nuclear de-

commissioning trust funds include United States equity-indexed funds, actively managed United States equity funds, balanced funds, bond funds, real estate investment trusts, and international funds.

(i) (No change.)

(ii) In evaluating the appropriateness of a particular commingled fund, the utility has the following duties, which must [shall] be of a continuing nature:

(I) - (III) (No change.)

(iii) The payment of load fees must [shall] be avoided.

(iv) Commingled funds focused on specific market sectors or concentrated in a few holdings must [shall] be used only as necessary to balance the trust's overall investment portfolio mix.

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SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE PROVIDERS

16 TAC §25.483, §25.486

Statutory Authority

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002.

§25.483. *Disconnection of Service.*

(a) Disconnection and reconnection policy. Only a transmission and distribution utility (TDU), municipally owned utility, or electric cooperative may [shall] perform physical disconnections and reconnections. Unless otherwise stated, it is the responsibility of a retail electric provider (REP) to request such action from the appropriate TDU, municipally owned utility, or electric cooperative in accordance with that entity's relevant tariffs, in accordance with the protocols established by the registration agent, and in compliance with the requirements of this section. If a REP chooses to have a customer's electric service disconnected, it must [shall] comply with the requirements in this section. Nothing in this section requires a REP to request that a customer's service be disconnected.

(b) Disconnection authority.

(1) (No change.)

(2) Except as provided in subsection (d) of this section, all REPs may [shall have the authority to] authorize the disconnection of

residential and small non-residential customers pursuant to commission rules. Prior to authorizing disconnections for non-payment in accordance with this paragraph, a REP must [shall]:

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

(c) (No change.)

(d) Disconnection without prior notice. Any REP or TDU may, at any time, authorize disconnection of a customer's electric service without prior notice for any of the following reasons:

(1) Where a known dangerous condition exists for as long as the condition exists. Where reasonable, given the nature of the hazardous condition, the REP [s] or its agent [s] must [shall] post a notice of disconnection and the reason for the disconnection at the place of common entry or upon the front door of each affected residential unit as soon as possible after service has been disconnected;

(2) - (5) (No change.)

(e) Disconnection prohibited. A REP having disconnection authority under the provisions of subsection (b) of this section must [shall] not authorize a disconnection for nonpayment of a customer's electric service for any of the following reasons:

(1) - (7) (No change.)

(f) Disconnection on holidays or weekends.

(1) A REP having disconnection authority under the provisions of subsection (b) of this section must [shall] not request disconnection of a customer's electric service for nonpayment on a holiday or weekend, or the day immediately preceding a holiday or weekend, unless the REP's personnel are available on those days to take payments, make payment arrangements with the customer, and request reconnection of service.

(2) Unless a dangerous condition exists or the customer requests disconnection, a TDU must [shall] not disconnect a customer's electric service on a holiday or weekend, or the day immediately preceding a holiday or weekend, unless the personnel of the TDU are available to reconnect service on all of those days.

(g) Disconnection of Critical Care Residential Customers. A REP having disconnection authority under the provisions of subsection (b) of this section must [shall] not authorize a disconnection for nonpayment of electric service at a permanent, individually metered dwelling unit of a delinquent Critical Care Residential Customer when that customer establishes that disconnection of service will cause some person at that residence to become seriously ill or more seriously ill.

(1) Each time a Critical Care Residential Customer seeks to avoid disconnection of service under this subsection, the customer must [shall] accomplish all of the following by the stated date of disconnection:

(A) Have the person's attending physician (for purposes of this subsection, the "physician" means [shall mean] any public health official, including medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar medical professional) contact the REP to confirm that the customer is a Critical Care Residential Customer;

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

(2) The prohibition against service disconnection of a Critical Care Residential Customer provided by this subsection lasts [shall last] 63 days from the issuance of the bill for electric service or a shorter period agreed upon by the REP and the customer, emergency (secondary) contact listed on the commission-approved application form,

or attending physician. If the Critical Care Residential Customer does not accomplish the requirements of paragraph (1) of this subsection:

(A) The REP must [shall] provide written notice to the Critical Care Residential Customer and the emergency contact listed on the commission-approved application form of its intention to disconnect service not later than 21 days prior to the date that service would be disconnected. Such notice must [shall] be a separate mailing or hand delivered notice with a stated date of disconnection with the words "disconnection notice" or similar language prominently displayed. If the REP has offered and the customer has agreed for the customer and/or emergency contact to receive disconnection notices from the REP by email, a separate email with the words "disconnection notice" or similar language in the subject line must [shall] be sent in addition to the separate mailing or hand delivered notice. Except as provided in this subsection, the notice must [shall] comply with the requirements of subsections (l) and (m) of this section; and

(B) Prior to disconnecting a Critical Care Residential Customer, a TDU must [shall] contact the customer and the emergency contact listed on the commission-approved application form. If the TDU does not reach the customer and emergency contact by phone, the TDU must [shall] visit the premises, and, if there is no response, must [shall] leave a door hanger containing the pending disconnection information and information on how to contact the REP and TDU.

(3) If, in the normal performance of its duties, a TDU obtains information that a customer scheduled for disconnection may qualify for delay of disconnection pursuant to this subsection, and the TDU reasonably believes that the information may be unknown to the REP, the TDU must [shall] delay the disconnection and promptly communicate the information to the REP. The TDU must [shall] disconnect such customer if it subsequently receives a confirmation of the disconnect notice from the REP. Nothing herein should be interpreted as requiring a TDU to assess or to inquire as to the customer's status before performing a disconnection when not otherwise required.

(4) If a TDU refuses to disconnect a Critical Care Residential Customer pursuant to this subsection, it must [shall] cease charging all transmission and distribution charges and surcharges, except securitization-related charges, for that premises to the REP.

(h) Disconnection of Chronic Condition Residential Customers. A REP having disconnection authority under the provisions of subsection (b) of this section must [shall] not authorize a disconnection for nonpayment of electric service at a permanent, individually metered dwelling unit of a delinquent customer when that customer has been designated as a Chronic Condition Residential Customer pursuant to §25.497 of this title (relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers), except as provided in this subsection. The REP must [shall] notify the Chronic Condition Residential Customer and the emergency contact listed on the commission-approved application form with a written notice of its intention to disconnect service not later than 21 days prior to the date that service would be disconnected. Such notice must [shall] be a separate mailing or hand delivered notice with a stated date of disconnection with the words "disconnection notice" or similar language prominently displayed. If the REP has offered and the customer has agreed for the customer and/or emergency contact to receive disconnection notices from the REP by email, a separate email with the words "disconnection notice" or similar language in the subject line must [shall be] also be sent in addition to the separate mailing or hand delivered notice. Except as provided in this subsection, the notice must [shall] comply with the requirements of subsections (l) and (m) of this section.

(i) Disconnection of energy assistance clients.

(1) A REP having disconnection authority under the provisions of subsection (b) of this section must [shall] not authorize a disconnection for nonpayment of electric service to a delinquent residential customer for a billing period in which the REP receives a pledge, letter of intent, purchase order, or other notification that the energy assistance provider is forwarding sufficient payment to continue service provided that such pledge, letter of intent, purchase order, or other notification is received by the due date stated on the disconnection notice, and the customer, by the due date on the disconnection notice, either pays or makes payment arrangements to pay any outstanding debt not covered by the energy assistance provider.

(2) If an energy assistance provider has requested monthly usage data pursuant to §25.472(b)(4) of this title (relating to Privacy of Customer Information), the REP must [shall] extend the final due date on the disconnection notice, day for day, from the date the usage data was requested until it is provided.

(3) A REP must [shall] allow at least 45 days for an energy assistance provider to honor a pledge, letter of intent, purchase order, or other notification before submitting the disconnection request to the TDU.

(4) (No change.)

(j) Disconnection during extreme weather. A REP having disconnection authority under the provisions of subsection (b) of this section must [shall] not authorize a disconnection for nonpayment of electric service for any customer in a county in which an extreme weather emergency occurs. A REP must [shall] offer residential customers a deferred payment plan upon request by the customer that complies with the requirements of §25.480 of this title (relating to Bill Payment and Adjustments) for bills that become due during the weather emergency.

(1) The term "extreme weather emergency" means [shall mean] a day when:

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

(2) A TDU must [shall] notify the commission of an extreme weather emergency in a method prescribed by the commission, on each day that the TDU has determined that an extreme weather emergency has been issued for a county in its service area. The initial notice must [shall] include the county in which the extreme weather emergency occurred and the name and telephone number of the utility contact person.

(k) Disconnection of master-metered apartments. When a bill for electric service is delinquent for a master-metered apartment complex:

(1) The REP having disconnection authority under the provisions of subsection (b) of this section must [shall] send a notice to the customer as required by this subsection. At the time such notice is issued, the REP, or its agents, must [shall] also inform the customer that notice of possible disconnection will be provided to the tenants of the apartment complex in six days if payment is not made before that time.

(2) At least six days after providing notice to the customer and at least four days before disconnecting, the REP must [shall] post a minimum of five notices in English and Spanish in conspicuous areas in the corridors or other public places of the apartment complex. Language in the notice must [shall] be in large type and must [shall] read: "Notice to residents of (name and address of apartment complex): Electric service to this apartment complex is scheduled for disconnection on (date), because (reason for disconnection)."

(l) Disconnection notices. A disconnection notice for nonpayment must [shall]:

(1) - (3) (No change.)

(4) include a statement notifying the customer that if the customer needs assistance paying the bill by the due date, or is ill and unable to pay the bill, the customer may be able to make some alternate payment arrangement, establish a deferred payment plan, or possibly secure payment assistance. The notice must [shall] also advise the customer to contact the provider for more information.

(m) Contents of disconnection notice. Any disconnection notice must [shall] include the following information:

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

(5) A toll-free telephone number that the customer can use to contact the REP to discuss the notice of disconnection or to file a complaint with the REP, and the following statement: "If you are not satisfied with our response to your inquiry or complaint, you may file a complaint by calling or writing the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas, 78711-3326; Telephone: (512) 936-7120 or toll-free in Texas at (888) 782-8477. Hearing and speech impaired individuals [with text telephones (TTY)] may contact the commission through Relay Texas at 1-800-735-2989 [at (512) 936-7136]. Complaints may also be filed electronically at www.puc.texas.gov/ocp/complaints/complain.cfm;"

(6) - (8) (No change.)

(n) Reconnection of service. Upon a customer's satisfactory correction of the reasons for disconnection, the REP must [shall] request the TDU, municipally owned utility, or electric cooperative to reconnect the customer's electric service as quickly as possible. The REP must [shall] inform the customer when reconnection is expected to occur in accordance with the timelines set forth in this subsection and in §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities). For premises without a provisioned advanced meter with remote disconnect/reconnect capabilities, if a REP submits a standard reconnect request and the TDU completes the reconnect the same day, the TDU may [shall] assess a standard reconnect fee. A TDU may assess a same-day reconnect fee only when the REP expressly requests a same-day reconnect and a REP may pass through a same-day reconnect fee to the customer only when the customer expressly requests a same-day reconnect. A REP must [shall] send a reconnection request no later than the timelines in this subsection. The TDU must [shall] complete the reconnection in accordance with the timelines in §25.214 of this title.

(1) For payments made before 12:00 p.m. on a business day, a REP must [shall] send a reconnection request to the TDU no later than 2:00 p.m. on the same day.

(2) For payments made after 12:00 p.m. but before 5:00 p.m. on a business day, a REP must [shall] send a reconnection request to the TDU by 7:00 p.m. on the same day.

(3) For payments made after 5:00 p.m. but before 7:00 p.m. on a business day, a REP must [shall] send a reconnection request to the TDU by 9:00 p.m. on the same day.

(4) For payments made after 7:00 p.m. on a business day, a REP must [shall] send a reconnection request to the TDU by 2:00 p.m. on the next business day.

(5) For payments made on a weekend day or a holiday, a REP must [shall] send a reconnection request to the TDU by 2:00 p.m. on the first business day after the payment was made.

(6) In no event must [shall] a REP fail to send a reconnection notice within 48 hours after the customer's satisfactory correction of the reasons for disconnection as specified in the disconnection notice.

(o) Electric service disconnection of a non-submetered master metered multifamily property.

(1) (No change.)

(2) A REP must [shall] send a written notice of service disconnection to a municipality before authorizing disconnection of service to a non-submetered master metered multifamily property for non-payment if:

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

(3) No later than January 1st of every year, a municipality wishing to receive notice of disconnection of electric service to a non-submetered master metered multifamily property must [shall] provide the commission with the contact information for the municipality's authorized representative referenced by paragraph (2) of this subsection by submitting that person's name, title, direct mailing address, telephone number, and email address in a P.U.C. Project Number to be established annually for that purpose. The email address provided by the municipality may be for a general mailbox accessible by the authorized representative established for the purpose of receiving such notices.

(4) After January 1st, but no later than January 15th of every year, the commission must [shall] post on its public website the contact information received from every municipality pursuant to paragraph (3) of this subsection. The contact information posted by the commission must [shall] remain in effect during the subsequent 12-month period of February 1 through January 31 for the purpose of the written notice of disconnection required by paragraph (2) of this subsection.

(5) The retail electric provider must [shall] email the written notice required by this subsection to the municipality's authorized representative not later than the 10th day before the date electric service is scheduled for disconnection. Additional notice may be provided by third-party commercial carrier delivery or certified mail.

(6) - (7) (No change.)

§25.486 *Customer Protections for Brokerage Services.*

(a) - (j) (No change.)

(k) Client Access and Complaint Handling.

(1) Client Access. Each broker must ensure that clients have reasonable access to its service representatives to make inquiries and complaints, discuss charges on bills or any other aspect of the brokerage services provided to the client by the broker, terminate an agreement to provide services, and transact any other pertinent business. A broker must promptly investigate client complaints and advise the complainant of the results. A broker must inform the complainant of the commission's informal complaint resolution process and the following contact information for the commission within 21 days of receiving the complaint: Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326; (512) 936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512) 936-7003, e-mail address: customer@puc.texas.gov, Internet website address: www.puc.texas.gov, [TTY (512) 936-7136,] and Relay Texas (toll-free) 1-800-735-2989.

(2) (No change.)

(3) Informal Complaints.

(A) A person may file an informal complaint with the commission by contacting the commission at: Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326; (512) 936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512) 936-7003, e-mail address: customer@puc.texas.gov, Internet website address: www.puc.texas.gov, [TTY (512) 936-7136,] and Relay Texas (toll-free) 1-800-735-2989.

(B) - (G) (No change.)

(4) (No change.)

(l) (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 April 27, 2023.

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Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: June 11, 2023

For further information, please call: (512) 936-7322



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 127. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER DEVELOPMENT AND CAREER AND TECHNICAL EDUCATION

SUBCHAPTER B. HIGH SCHOOL

19 TAC §127.17, §127.18

The State Board of Education (SBOE) proposes new §127.17 and §127.18, concerning Texas Essential Knowledge and Skills (TEKS) for career development and career and technical education (CTE). The proposed new sections would provide two options for TEKS in workplace safety and health. One option would establish a one-credit standalone high school course and a second option would establish a set of standards to be imbedded within each CTE principles course. The SBOE is soliciting feedback on the two options to inform a final decision for its approach to occupational health and safety standards.

BACKGROUND INFORMATION AND JUSTIFICATION: In response to proposed updates to the state accountability system, Texas Education Agency (TEA) received feedback regarding the potential addition of industry-based certifications and/or additional courses to various CTE programs of study. Specifically, TEA received feedback recommending the development and adoption of a new TEKS-based course related to training standards established by the Occupational Safety and Health Administration, which could be included in a variety of relevant programs of study. TEA staff provided this feedback to the SBOE at the November 2022 meeting, and the SBOE agreed to move forward with development of TEKS for a course in occupational safety and health for implementation beginning in the 2023-2024 school year.

TEA staff developed a draft of TEKS for a new occupational safety and health course, and the draft was shared with board members in January 2023. A discussion item was presented to the board at the January-February 2023 SBOE meeting. In March 2023, the draft TEKS were presented to two CTE work groups for their review and feedback. Some work group members expressed interest in the standalone course while others expressed a preference for embedding occupational safety and health standards into existing CTE principles courses.

The proposed new rules present two options for adding standards in occupational safety and health into the CTE TEKS. Proposed new §127.17, Career and Technical Education Standards in Occupational Safety and Health, Adopted 2023, presents standards that would be embedded into the content for relevant CTE principles courses. Proposed new §127.18, Occupational Safety and Health (One Credit), Adopted 2023, presents standards for a one-credit standalone course in occupational safety and health. The SBOE is seeking feedback from the public on the two proposals to help inform a decision that would be made at second reading and final adoption. The board may select one or both options.

The SBOE approved the proposed new sections for first reading and filing authorization at its April 14, 2023 meeting.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and programs, has determined that for the first five years the proposal is in effect, there are no additional costs to state government. There may be fiscal implications for school districts and charter schools to implement the proposed new TEKS, which may include the need for professional development and revisions to district-developed databases, curriculum, and scope and sequence documents. Since curriculum and instruction decisions are made at the local district level, it is difficult to estimate the fiscal impact on any given district.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create new regulations by requiring school districts that wish to offer occupational safety and health standards to implement the new TEKS.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or

decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be supporting student learning in workplace safety as part of select programs of study. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins May 12, 2023, and ends at 5:00 p.m. on June 16, 2023. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_\(TAC\)/Proposed_State_Board_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/). The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in June 2023 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on May 12, 2023.

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to determine by rule the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c), and 28.025(a).

§127.17. Career and Technical Education Standards in Occupational Safety and Health, Adopted 2023.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2023-2024 school year.

(b) General requirements. These standards may not be offered as a standalone course. These standards shall be offered together with the essential knowledge and skills for the following career and technical education (CTE) principles courses:

- (1) Principles of Education and Training;
- (2) Principles of Health Science;
- (3) Principles of Hospitality and Tourism;

(4) Principles of Law, Public Safety, Corrections, and Security;

(5) Principles of Applied Engineering;

(6) Principles of Biosciences;

(7) Principles of Agriculture, Food, and Natural Resources;

(8) Principles of Architecture;

(9) Principles of Construction;

(10) Principles of Information Technology;

(11) Principles of Cosmetology Design and Color Theory;

(12) Principles of Manufacturing;

(13) Principles of Transportation Systems; and

(14) Principles of Distribution and Logistics.

(c) Introduction.

(1) CTE instruction provides content aligned with challenging academic standards, industry-relevant technical knowledge, and college and career readiness skills for students to further their education and succeed in current and emerging professions.

(2) The goal of the occupational safety and health standards is to ensure that students develop safety consciousness in the workplace. Students build a strong foundation in the occupational safety and health concepts that are critical to protecting individuals in the workplace, increasing safety and health, and reducing the occurrence of job-related injuries and fatalities.

(3) These standards are required to be addressed in their entirety as part of each of the CTE principles courses identified in subsection (b) of this section.

(4) Successful completion of the standards may lead to a student earning a ten-hour general industry Occupational Safety and Health Administration (OSHA) card. To earn the ten-hour OSHA card, the content must be taught by an authorized OSHA outreach training program trainer.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills. The student understands the foundations of occupational safety and health. The student is expected to:

(1) explain and discuss the responsibilities of workers and employers to promote safety and health in the workplace and the rights of workers to a secure workplace;

(2) explain and discuss the importance of OSHA standards and OSHA requirements for organizations, how OSHA inspections are conducted, and the role of national and state regulatory entities such as the National Institute of Occupational Safety and Health, Centers for Disease Control and Prevention, National Center for Construction Education and Research, Texas Workforce Commission, and Texas Department of Insurance;

(3) explain the role industrial hygiene plays in occupational safety and explain various types of industrial hygiene hazards, including physical, chemical, biological, and ergonomic;

(4) identify and explain the appropriate use of types of personal protective equipment used in general industry;

(5) discuss the importance of safe walking and working surfaces in the workplace and best practices for preventing or reducing slips, trips, and falls in the workplace;

(6) describe types of electrical hazards in the workplace and the risks associated with these hazards and describe control methods to prevent electrical hazards in the workplace;

(7) analyze the hazards of handling, storing, using, and transporting hazardous materials and identify and discuss ways to reduce exposure to hazardous materials in the workplace;

(8) identify workplace health and safety resources, including emergency plans and Safety Data Sheets, and discuss how these resources are used to make decisions in the workplace;

(9) describe the elements of a safety and health program, including management leadership, worker participation, and education and training;

(10) explain the purpose and importance of written emergency action plans and fire protection plans and describe key components of each such as evacuation plans and emergency exit routes, list of fire hazards, and identification of emergency personnel;

(11) explain the components of a hazard communication program; and

(12) explain and give examples of safety and health training requirements specified by standard setting organizations.

§127.18. Occupational Safety and Health (One Credit), Adopted 2023.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2023-2024 school year.

(b) General requirements. This course is recommended for students in Grades 9-12. Students shall be awarded one credit for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards, industry-relevant technical knowledge, and college and career readiness skills for students to further their education and succeed in current and emerging professions.

(2) In Occupational Safety and Health, students gain a strong foundation of safety consciousness in the workplace to increase safety and health and reduce the occurrence of job-related injuries and fatalities.

(3) Occupational safety and health concepts are critical and should be applied across all programs of studies and career clusters as appropriate. Students are encouraged to apply their experiences on a jobsite to the knowledge and skills taught in this course.

(4) Successful completion of the standards in this course may lead to a student earning a ten-hour general industry Occupational Safety and Health Administration (OSHA) card. To earn the ten-hour OSHA card, the course must be taught by an authorized OSHA outreach training program trainer.

(5) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(6) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student applies professional standards and employability skills as required by business and industry. The student is expected to:

(A) model ethical conduct in complex situations;

(B) model a respectful and professional attitude when interacting with diverse populations, colleagues, and professionals;

(C) apply self-management skills such as stress and change management;

(D) apply interpersonal skills, including negotiation skills, conflict resolution, customer service, and teamwork;

(E) practice problem-solving skills in respect to complex ethical decision making; and

(F) compare unethical and illegal conduct in the workplace.

(2) The student evaluates the roles and responsibilities of occupational safety and health professions. The student is expected to:

(A) explain the role of occupational safety and health professionals in various occupational settings;

(B) identify career development and entrepreneurship opportunities in occupational safety and health; and

(C) investigate and discuss opportunities to earn a credential and certification in the field of occupational safety and health.

(3) The student understands the foundations of occupational safety and health. The student is expected to:

(A) identify and discuss workers' rights to participate in activities that support a safe and healthy workplace such as having access to appropriate training and the ability to communicate safety concerns;

(B) explain and discuss the roles and responsibilities of workers and employers in creating a safe workplace;

(C) give examples of responsibilities of workers and employers that promote safety and health in the workplace;

(D) explain and discuss the importance of Occupational Safety and Health Act (OSHA) standards and OSHA requirements for organizations as well as national and state regulatory entities such as the National Institute of Occupational Safety and Health, Center for Disease Control, National Center for Construction Education and Research, Texas Workforce Commission, and Texas Department of Insurance;

(E) identify and discuss how workplace health and safety resources, including emergency plans and Safety Data Sheets (SDS), are used to make decisions in the workplace; and

(F) apply OSHA's General Duty Clause to various workplace situations and common citations.

(4) The student understands industrial hygiene and how it applies to improving occupational safety. The student is expected to:

(A) define industrial hygiene in the workplace;

(B) identify warning signs of exposure to types of occupational health hazards, including physical, chemical, biological, and ergonomic;

(C) evaluate types of occupational health hazards, including physical, chemical, biological, and ergonomic;

(D) differentiate between health issues caused by workplace factors and those caused from pre-existing conditions; and

(E) identify ways to reduce, remove, and control different types of health hazards at work.

(5) The student analyzes and interprets workplace safety and health programs to identify elements, project costs, and propose solutions that benefit employers and employees. The student is expected to:

(A) compare accident types such as those caused by human error like poor judgement or memory lapse;

(B) describe how injury, illness, and accidents can potentially impact an organization or workplace;

(C) describe the elements of a safety and health program, including management leadership, worker participation, hazard identification and assessment, hazard prevention and control, education and training, and program evaluation and improvement;

(D) identify some of the direct and indirect costs of work-related hazards; and

(E) discuss the benefits of implementing an effective safety and health program.

(6) The student knows the importance of personal protective equipment (PPE). The student is expected to:

(A) explain the purpose and benefits of protection of the body, including the eyes, face, head, feet, arms, hands, and torso;

(B) explain and discuss the role an employer plays in practicing proper maintenance and sanitation of protective devices and in training employees to properly use PPE;

(C) explain the employee's responsibility in choosing and using PPE; and

(D) identify and explain the appropriate use of types of PPE used in general industry.

(7) The student describes the science of ergonomics, identifies ergonomic problems in a variety of workplace settings, and applies control methods to reduce work-related musculoskeletal disorders (WMSDs). The student is expected to:

(A) summarize and discuss the science and history of ergonomics;

(B) describe the three organizational domains of ergonomics, including physical, cognitive, and organizational, and identify the primary body systems involved in the three domains;

(C) identify common WMSDs and evaluate risk factors associated with WMSDs;

(D) identify and discuss control methods for reducing WMSDs; and

(E) develop an ergonomic workplace design based on OSHA standards.

(8) The student analyzes walking and working surfaces and fall hazards and applies prevention and protection strategies to create safer working environments. The student is expected to:

(A) research and analyze hazards in the workplace associated with walking and working surfaces and falling;

(B) identify and discuss best practices for preventing or reducing slips, trips, and falls in the workplace; and

(C) investigate and explain employer requirements to protect workers from walking and working surface hazards and fall hazards.

(9) The student understands the properties of hazardous materials and the fundamental principles of hazardous material safety and management. The student is expected to:

(A) research and analyze hazardous materials commonly found in workplace settings and the materials' physical properties;

(B) describe ways in which hazardous materials can enter the body;

(C) identify physical and health hazards associated with exposure to hazardous materials and compare hazards based on level of exposure; and

(D) identify and discuss ways to reduce exposure to hazardous materials in the workplace.

(10) The student knows how to locate and communicate pertinent information about hazardous materials using the Hazard Communication Standard (HCS) and Globally Harmonized System of Classification and Labeling of Chemicals (GHS). The student is expected to:

(A) compare the HCS and GHS and analyze employer responsibilities under each system;

(B) locate and communicate pertinent information on chemical labels and SDS to ensure "right to understanding" provisions of the GHS requirements;

(C) explain the components of a hazard communication program, including requirements of hazard communication labels;

(D) explain the role of a workplace hazard control committee and its contributions to the success of hazard control in the workplace; and

(E) compare effective and ineffective hazard control methods.

(11) The student understands the processes and precautions for handling hazardous materials. The student is expected to:

(A) analyze the hazards of handling, storing, using, and transporting hazardous materials;

(B) identify and discuss the proper use of different types of tools, supplies, and equipment used for material handling;

(C) research and analyze the regulations that govern handling, storing, using, disposing of, and transporting hazardous materials; and

(D) identify key elements of material handling, storage, use, and disposal safety plans and discuss how they relate to an employer's responsibilities to protect workers from material handling hazards.

(12) The student knows and applies bloodborne pathogen safety and control methods. The student is expected to:

(A) investigate and describe bloodborne pathogens and risks of exposure and identify workers most at risk;

(B) describe methods for controlling exposure to bloodborne pathogens;

(C) evaluate key aspects of a bloodborne pathogen exposure control plan; and

(D) describe the steps to take when exposed to a bloodborne pathogen.

(13) The student understands the risks associated with electrical hazards found on a jobsite and applies control methods to increase safety and health. The student is expected to:

(A) describe types of electrical hazards in the workplace and associated risks;

(B) evaluate methods to prevent electrical hazards, including lockout and tagout procedures; and

(C) research and discuss OSHA standards regarding electrical hazards.

(14) The student evaluates tool and machine guarding as part of a safety and health plan. The student is expected to:

(A) identify the tools and machines commonly used by workers on a hazardous worksite and describe the machinery parts that expose workers to hazards;

(B) describe and analyze the main causes of machinery accidents and situations that require machine guarding;

(C) identify and describe steps to reduce tool and machine hazards; and

(D) research and discuss OSHA standards for tool and machine safeguards in the workplace and an employer's related responsibilities.

(15) The student understands general powered industrial truck safety operations and applies the information to employer safety and health programs. The student is expected to:

(A) compare characteristics of powered industrial trucks and the risks associated with these machines;

(B) describe general powered industrial truck operation safety using OSHA information and checklists; and

(C) research examples of employer safety and health programs to discuss steps to reduce hazards related to powered industrial trucks.

(16) The student explains the relationship between fire behavior, fire extinguishing and protection systems, and fire protection plans. The student is expected to:

(A) identify and describe heat energy sources such as chemical, electrical, mechanical, and nuclear and heat transfer methods;

(B) describe the classes and stages of fires;

(C) describe possible deficiencies in fire safety;

(D) evaluate methods for extinguishing fires; and

(E) identify and describe the elements of a fire protection plan based on OSHA standards.

(17) The student applies industrial hygiene and safety and health management to welding, cutting, and brazing industries. The student is expected to:

(A) analyze different types of hazards related to welding, cutting, and brazing and explain the concept of hot work;

(B) research and evaluate the OSHA standards for welding, cutting, and brazing;

(C) compare standards for welding, cutting, and brazing with fire prevention and protection standards; and

(D) describe how welding, cutting, and brazing standards are incorporated into employer safety programs to improve industrial hygiene.

(18) The student examines the positive impact of emergency management in the workplace. The student is expected to:

(A) identify and discuss types of emergencies that should be addressed in emergency plans, including fire, toxic chemical release, weather, and workplace violence;

(B) describe strategies to enhance workplace security and prevent workplace violence;

(C) compare conditions under which evacuation and shelter-in-place actions may be necessary in an emergency situation;

(D) explain the importance of emergency exits and emergency lighting;

(E) describe the purpose and importance of a written emergency action plan in the workplace; and

(F) assess emergency plans using information gathered through mock emergency drills.

(19) The student understands the importance of inspections and accident prevention and reporting. The student is expected to:

(A) identify the components of an OSHA inspection;

(B) compare reasons and methods for conducting internal inspections and OSHA inspections;

(C) identify hazards, injuries, and accidents to be tracked and evaluate the importance of maintaining records of these incidents;

(D) describe the roles of an accident log, accident form, and accident report in accident investigation;

(E) complete an accident report form and discuss processes businesses use for submitting accident report forms;

(F) research and discuss examples of corrective actions taken for common OSHA violations;

(G) define organizational culture and its impact on accident prevention efforts;

(H) discuss the processes for reporting a hazard to appropriate parties such as supervisor, union, or advisory committee; and

(I) research and discuss whistleblower labor laws, what qualifies an employee for whistleblower protection, and what employee rights whistleblower laws provide and create a whistleblower process for filing a complaint in a simulated workplace.

(20) The student understands how the purposeful engineering of the workplace can reduce work-related risks. The student is expected to:

(A) discuss and explain the significance of safety engineering to the hierarchy of controls;

(B) evaluate common workplace design flaws that lead to reduced safety and health; and

(C) investigate and describe how engineering for safety has improved industrial hygiene and created a safer workplace over time.

(21) The student researches best practices in occupational safety and health training within specific industries. The student is expected to:

(A) explain safety and health training requirements specified by standard setting organizations;

(B) research and identify best practices in safety and health training; and

(C) describe strategies for communicating safety and health training in the workplace.

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

Filed with the Office of the Secretary of State on May 1, 2023.

TRD-202301572

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: June 11, 2023

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



CHAPTER 127. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER DEVELOPMENT AND CAREER AND TECHNICAL EDUCATION

The State Board of Education (SBOE) proposes the repeal of §§127.411, 127.633, 127.744, 127.756, 127.757, 127.765, 127.769, and 127.770, concerning Texas Essential Knowledge and Skills (TEKS) for career development and career and technical education (CTE). The proposed repeals would remove the TEKS for ten CTE courses that will be superseded by 19 TAC §§127.428, 127.652, 127.778, 127.779, 127.780, 127.788, 127.791, 127.792, 127.793, and 127.794 beginning with the 2023-2024 school year.

BACKGROUND INFORMATION AND JUSTIFICATION: The TEKS for courses associated with 17 CTE career clusters are codified by subchapter in 19 TAC Chapters 127 and 130. In December 2020, the SBOE began initial steps to prepare for the review and revision of CTE courses in programs of study for the education and training, health science, and science, technology, engineering, and mathematics career clusters. Two additional courses eligible to satisfy a graduation requirement in science were also part of the review. The board approved for second reading and final adoption new TEKS for these courses in November 2021 and January, April, and June 2022.

Due to the current structure of Chapter 130, there were not enough sections to add the new CTE courses under consideration in their assigned subchapters. To accommodate the addition of proposed new courses, the CTE TEKS in Chapter 130 are being moved to existing 19 TAC Chapter 127, which was renamed "Texas Essential Knowledge and Skills for Career Development and Career and Technical Education."

The proposed repeal would remove the TEKS for ten CTE courses that will be superseded by new TEKS in 19 TAC §§127.428, 127.652, 127.778, 127.779, 127.780, 127.788, 127.791, 127.792, 127.793, and 127.794, beginning with the 2023-2024 school year.

The SBOE approved the proposed repeal for first reading and filing authorization at its April 14, 2023 meeting.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and programs, has determined that for the first five years the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: Texas Education Agency (TEA) staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would repeal existing regulations by removing CTE TEKS that will be superseded by a newly adopted set of TEKS.

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

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be removing the TEKS for ten CTE courses that will be superseded by 19 TAC §§127.428, 127.652, 127.778, 127.779, 127.780, 127.788, 127.791, 127.792, 127.793, and 127.794 beginning with the 2023-2024 school year. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins May 12, 2023, and ends at 5:00 p.m. on June 16, 2023. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_\(TAC\)/Proposed_State_Board_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/). The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in June 2023 in accordance with the SBOE board operating

policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on May 12, 2023.

SUBCHAPTER I. HEALTH SCIENCE

19 TAC §127.411

STATUTORY AUTHORITY. The repeal is proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

§127.411. *Pharmacology (One Credit), Adopted 2015.*

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

Filed with the Office of the Secretary of State on May 1, 2023.

TRD-202301573

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: June 11, 2023

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



SUBCHAPTER M. LAW AND PUBLIC SERVICE

19 TAC §127.633

STATUTORY AUTHORITY. The repeal is proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

§127.633. *Forensic Science (One Credit), Adopted 2015.*

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

Filed with the Office of the Secretary of State on May 1, 2023.

TRD-202301574

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



SUBCHAPTER O. SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS

19 TAC §§127.744, 127.756, 127.757, 127.765, 127.769, 127.770

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

§127.744. *Principles of Biosciences (One Credit), Adopted 2015.*

§127.756. *Biotechnology I (One Credit), Adopted 2015.*

§127.757. *Biotechnology II (One Credit), Adopted 2015.*

§127.765. *Digital Forensics (One Credit), Beginning with School Year 2019-2020.*

§127.769. *Foundations of Cybersecurity (One Credit).*

§127.770. *Cybersecurity Capstone (One Credit).*

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

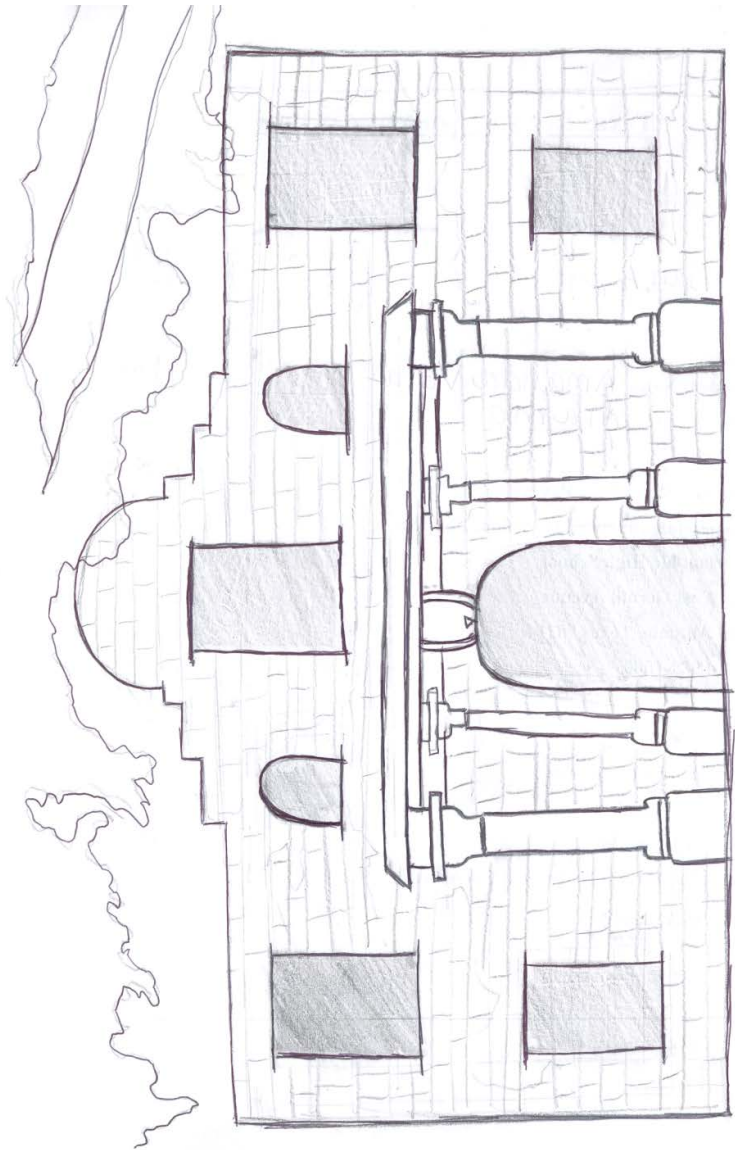
Filed with the Office of the Secretary of State on May 1, 2023.

TRD-202301575

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency

Earliest possible date of adoption: June 11, 2023
For further information, please call: (512) 475-1497





WITHDRAWN RULES

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

TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 121. BEHAVIOR ANALYST

16 TAC §§121.23, 121.24, 121.26, 121.50, 121.70, 121.80

The Texas Department of Licensing and Regulation withdraws the proposed repeal of §§121.23, 121.24, 121.26, 121.50, 121.70, and 121.80, which appeared in the January 6, 2023, issue of the *Texas Register* (48 TexReg 9).

Filed with the Office of the Secretary of State on April 28, 2023.

TRD-202301569
Della Lindquist
Interim General Counsel
Texas Department of Licensing and Regulation
Effective date: April 28, 2023
For further information, please call:(512) 475-4879



SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §121.10

The Texas Department of Licensing and Regulation withdraws the proposed amendment to §121.10, which appeared in the January 6, 2023, issue of the *Texas Register* (48 TexReg 9).

Filed with the Office of the Secretary of State on April 28, 2023.

TRD-202301560
Della Lindquist
Interim General Counsel
Texas Department of Licensing and Regulation
Effective date: April 28, 2023
For further information, please call: (512) 475-4879



SUBCHAPTER B. LICENSING REQUIREMENTS

16 TAC §§121.20 - 121.22, 121.27, 121.30

The Texas Department of Licensing and Regulation withdraws the proposed amendment to §§121.20 - 121.22, 121.27, 121.30, which appeared in the January 6, 2023, issue of the *Texas Register* (48 TexReg 9).

Filed with the Office of the Secretary of State on April 28, 2023.

TRD-202301561
Della Lindquist
Interim General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 475-4879



16 TAC §121.26

The Texas Department of Licensing and Regulation withdraws proposed new §121.26, which appeared in the January 6, 2023, issue of the *Texas Register* (48 TexReg 9).

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TRD-202301565
Della Lindquist
Interim General Counsel
Texas Department of Licensing and Regulation
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For further information, please call:(512) 475-4879



SUBCHAPTER D. RESPONSIBILITIES OF LICENSE HOLDERS

16 TAC §§121.70, 121.72 - 121.74

The Texas Department of Licensing and Regulation withdraws new §§121.70, 121.72 - 121.74, which appeared in the January 6, 2023, issue of the *Texas Register* (48 TexReg 9).

Filed with the Office of the Secretary of State on April 28, 2023.

TRD-202301566
Della Lindquist
Interim General Counsel
Texas Department of Licensing and Regulation
Effective date: April 28, 2023
For further information, please call: (512) 475-4879



16 TAC §121.71, §121.75

The Texas Department of Licensing and Regulation withdraws the proposed amendments to §121.71 and §121.75, which appeared in the January 6, 2023, issue of the *Texas Register* (48 TexReg 9).

Filed with the Office of the Secretary of State on April 28, 2023.

TRD-202301563

Della Lindquist
Interim General Counsel
Texas Department of Licensing and Regulation
Effective date: April 28, 2023
For further information, please call:(512) 475-4879



SUBCHAPTER E. TELEHEALTH

16 TAC §§121.76 - 121.81

The Texas Department of Licensing and Regulation withdraws proposed new §§121.76 - 121.81, which appeared in the January 6, 2023, issue of the *Texas Register* (48 TexReg 9).

Filed with the Office of the Secretary of State on April 28, 2023.

TRD-202301567
Della Lindquist
Interim General Counsel
Texas Department of Licensing and Regulation
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For further information, please call:(512) 475-4879



SUBCHAPTER F. FEES

16 TAC §121.85

The Texas Department of Licensing and Regulation withdraws new §121.85, which appeared in the January 6, 2023, issue of the *Texas Register* (48 TexReg 9).

Filed with the Office of the Secretary of State on April 28, 2023.

TRD-202301568
Della Lindquist
Interim General Counsel
Texas Department of Licensing and Regulation
Effective date: April 28, 2023
For further information, please call: (512) 475-4879



SUBCHAPTER G. ENFORCEMENT

16 TAC §121.90, §121.95

The Texas Department of Licensing and Regulation withdraws the proposed amendments to §121.90 and §121.95 which appeared in the January 6, 2023, issue of the *Texas Register* (48 TexReg 9).

Filed with the Office of the Secretary of State on April 28, 2023.

TRD-202301564
Della Lindquist
Interim General Counsel
Texas Department of Licensing and Regulation
Effective date: April 28, 2023
For further information, please call: (512) 475-4879



TITLE 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 279. INTERPRETATIONS

22 TAC §279.1

The Texas Optometry Board withdraws the proposed amendment to §279.1, which appeared in the November 25, 2022, issue of the *Texas Register* (47 TexReg 7843).

Filed with the Office of the Secretary of State on April 28, 2023.

TRD-202301558
Janice McCoy
Executive Director
Texas Optometry Board
Effective date: April 28, 2023
For further information, please call:(512) 305-8500



22 TAC §279.3

The Texas Optometry Board withdraws the proposed amendment to §279.3, which appeared in the November 25, 2022, issue of the *Texas Register* (47 TexReg 7847).

Filed with the Office of the Secretary of State on April 28, 2023.

TRD-202301559
Janice McCoy
Executive Director
Texas Optometry Board
Effective date: April 28, 2023
For further information, please call:(512) 305-8500



ADOPTED RULES

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

TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 35. BRUCELLOSIS

SUBCHAPTER A. ERADICATION OF BRUCELLOSIS IN CATTLE

4 TAC §35.4

The Texas Animal Health Commission (Commission) in a duly noticed meeting on April 4, 2023, adopted amendments to §35.4, concerning Entry, Movement, and Change of Ownership. Section 35.4 is adopted without changes to the proposed text published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8386) and will not be republished.

JUSTIFICATION FOR RULE ACTION

The Commission adopts amendments to Chapter 35 to remove additional brucellosis entry requirements created by the Commission in 2013 for sexually intact cattle entering Texas from the Designated Surveillance Area (DSA) comprised of the states of Idaho, Montana, and Wyoming, established by the United States Department of Agriculture (USDA), Animal and Plant Health Inspection Services (APHIS) Veterinary Services (VS).

The amendments are adopted pursuant to Agriculture Code Chapter 161 and 163. Section 161.041(a) and (b) authorizes the Commission to adopt any rules necessary to eradicate or control any disease or agent of transmission for any disease that affects livestock, which includes Brucellosis. Section 163.066 authorizes the Commission, as a control measure, to regulate the movement of cattle. The elimination of the entry requirements for cattle imported from the Idaho, Montana, or Wyoming DSA follows nine (9) years of testing without any detection of brucellosis-infected cattle, and in the absence of significant program deficits found during the USDA-APHIS-VS triennial review of the state brucellosis programs in the DSA states.

HOW THE RULES WILL FUNCTION

The amendments to §35.4, concerning Entry, Movement, and Change of Ownership, removes the DSA-specific entry requirements for cattle originating from Idaho, Montana, or Wyoming and eliminates §35.4(b)(3)-(5).

SUMMARY OF COMMENTS RECEIVED AND COMMISSION RESPONSE

The 30-day comment period ended January 22, 2023.

During this period, the Commission received comments regarding the proposed rules from four commenters, including the Montana Stockgrowers Association, Montana Board of Livestock,

Wyoming Livestock Board, and one individual. A summary of comments relating to the rules and Commission's responses follows.

Comment: The Montana Stockgrowers Association, Montana Board of Livestock, Wyoming Livestock Board, and one individual are in support of the rule amendment.

Response: The Commission thanks the commenters for the feedback. No changes were made as a result of these comments.

STATUTORY AUTHORITY

The amendment is authorized by Texas Agriculture Code, Chapter 161.

Pursuant to §161.041, titled "Disease Control," the Commission shall protect all livestock, exotic livestock, domestic fowl, and exotic fowl from diseases the Commission determines require control or eradication. Pursuant to §161.041(b), the Commission may act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl. The Commission may adopt any rules necessary to carry out the purposes of this subsection, including rules concerning testing, movement, inspection, and treatment.

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

Pursuant to §161.047, titled "Entry Power," a commissioner or veterinarian or inspector employed by the Commission may enter public or private property for the exercise of an authority or performance of a duty under Chapter 161.

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

Pursuant to §161.054, titled "Regulation of Movement of Animals; Exception," the Commission may, by rule, regulate the movement of animals, and may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved.

Pursuant to §161.056(a), titled "Animal Identification Program," the Commission, to provide for disease control and enhance the

ability to trace disease-infected animals or animals that have been exposed to disease, may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program. Section 161.056(d) authorizes the Commission to adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.081, titled "Importation of Animals," the Commission, by rule, may provide the method for inspecting and testing animals before and after entry into the state of Texas. The Commission may create rules requiring health certificates and entry permits.

Pursuant to §163.002, titled "Cooperative Program," the Commission, in order to bring about effective control of bovine brucellosis, to allow Texas cattle to move in interstate and international commerce with the fewest possible restrictions, and to accomplish those purposes in the most effective, practical, and expeditious manner, the Commission may enforce this chapter and enter into cooperative agreements with the United States Department of Agriculture.

Pursuant to §163.066, titled "Regulation of Movement of Cattle; Exception," the Commission, by rule, may regulate the movement of cattle and may restrict intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved.

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

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

Filed with the Office of the Secretary of State on April 27, 2023.

TRD-202301534

Jeanine Coggeshall

General Counsel

Texas Animal Health Commission

Effective date: May 17, 2023

Proposal publication date: December 23, 2022

For further information, please call: (512) 719-0718



CHAPTER 40. CHRONIC WASTING DISEASE

4 TAC §40.6

The Texas Animal Health Commission (Commission) in a duly noticed meeting on April 4, 2023, adopted amendments to §40.6, concerning CWD Movement Restriction Zones. Section 40.6 is adopted without changes to the proposed text published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8388) and will not be republished.

JUSTIFICATION FOR RULE ACTION

The Commission adopts amendments to §40.6 to establish new containment zone (CZ) 5, expand existing CZ 2 and CZ 3, create a new surveillance zone (SZ) 8, and modify existing SZ 5 to either implement or improve surveillance efforts as part of the agency's effort to manage chronic wasting disease (CWD).

CWD is a degenerative and fatal neurological communicable disease recognized by the veterinary profession that affects susceptible cervid species. CWD can spread through natural movements of infected animals and transportation of live infected animals or carcass parts. The disease can be passed through contaminated environmental conditions, and may persist for a long period of time. Currently, no vaccine or treatment for CWD exists.

Expansion and creation of these containment zones follows detection of CWD. Each amended zone aligns with zones developed in consultation with the Texas Parks and Wildlife Department. The purpose of the restriction zones is to both increase surveillance and reduce the risk of CWD being spread from areas where it may exist.

HOW THE RULES WILL FUNCTION

The amendment to §40.6(b)(1)(B) enlarges current containment zone (CZ) 2 in Hartley County.

The amendment to §40.6(b)(1)(C) enlarges current CZ 3 in Medina County in order to comport with existing parameters for containment zones and is necessary to provide for additional surveillance within the recalculated parameters.

The amendment to §40.6(b)(1)(E) creates new CZ 5 in Kimble County in response to the detection of CWD in another deer within the county.

The amendment creates §40.6(b)(1)(F) and moves current §40.6(b)(1)(E), which describes CZ 6, to this new subsection for continuity of numbering of the containment zones.

The amendment to §40.6(b)(2)(E) enlarges surveillance zone (SZ) 5 in Kimble County to include the city of Junction, which allows hunters to transport carcasses to processors and taxidermists in Junction without carcass movement restrictions.

The amendment to create §40.6(b)(2)(H) would create new SZ 8 in Duval County in response to the detection of CWD in a deer breeding facility at the end of 2021 and to allow hunters to transport carcasses to processors and taxidermists in Alice and Freer without carcass movement restrictions.

SUMMARY OF COMMENTS RECEIVED AND COMMISSION RESPONSE

The 30-day comment period ended January 22, 2023.

During this period, the Commission received no comments regarding the proposed rules.

STATUTORY AUTHORITY

The amendments to §40.6 within Chapter 40 of the Texas Administrative Code are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code.

The Texas Animal Health Commission is vested by statute, §161.041(a), titled "Disease Control," to protect all livestock, exotic livestock, domestic fowl, and exotic fowl from disease. The Commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl.

Pursuant to §161.0415, titled "Disposal of Diseased or Exposed Livestock or Fowl," the Commission may require, by order, the slaughter of livestock, domestic fowl, or exotic fowl exposed to or infected with certain diseases.

Pursuant to §161.0417, titled "Authorized Personnel for Disease Control," the Commission must authorize a person, including a veterinarian, to engage in an activity that is part of a state or federal disease control or eradication program for animals.

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

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

Pursuant to §161.049, titled "Dealer Records," the Commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer. The Commission may also inspect and copy the records of a livestock, exotic livestock, domestic fowl, or exotic fowl dealer that relate to the buying and selling of those animals. The Commission, by rule, shall adopt the form and content of the records maintained by a dealer.

Pursuant to §161.054, titled "Regulation of Movement of Animals; Exception," the Commission, by rule, may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. The Commission is authorized, through §161.054(b), to prohibit or regulate the movement of animals into a quarantined herd, premises, or area. The Executive Director of the Commission is authorized, through §161.054(d), to modify a restriction on animal movement, and may consider economic hardship.

Pursuant to §161.0541, titled "Elk Disease Surveillance Program," the Commission, by rule, may establish a disease surveillance program for elk. Such rules include the requirement for persons moving elk in interstate commerce to test the elk for chronic wasting disease. Additionally, provisions must include testing, identification, transportation, and inspection under the disease surveillance program.

Pursuant to §161.0545, titled "Movement of Animal Products," the Commission may adopt rules that require the certification of persons who transport or dispose of inedible animal products, including carcasses, body parts, and waste material. The Commission, by rule, may provide terms and conditions for the issuance, renewal, and revocation of a certification under this section.

Pursuant to §161.056(a), titled "Animal Identification Program," the Commission, to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease, may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program. Section 161.056(d) authorizes the Commission to adopt rules to provide for an animal identification program more

stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.060, titled "Authority to Set and Collect Fees," the Commission may charge a fee for an inspection made by the Commission as provided by Commission rule.

Pursuant to §161.061, titled "Establishment," if the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or any agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. The quarantine of an affected place may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen. The Commission may, through §161.061(c), establish a quarantine to prohibit or regulate the movement of any article or animal the Commission designates to be a carrier of a disease listed in Section 161.041 or a potential carrier of one of those diseases, if movement is not otherwise regulated or prohibited for an animal into an affected area, including a county district, pasture, lot, ranch, field, range, thoroughfare, building, stable, or stockyard pen.

Pursuant to §161.0615, titled "Statewide or Widespread Quarantine," the Commission may quarantine livestock, exotic livestock, domestic fowl, or exotic fowl in all or any part of this state as a means of immediately restricting the movement of animals potentially infected with disease and shall clearly describe the territory included in a quarantine area.

Pursuant to §161.065, titled "Movement from Quarantined Area; Movement of Quarantined Animals," the Commission may provide a written certificate or written permit authorizing the movement of animals from quarantined places. If the Commission finds animals have been moved in violation of an established quarantine or in violation of any other livestock sanitary law, the Commission shall quarantine the animals until they have been properly treated, vaccinated, tested, dipped, or disposed of in accordance with the rules of the Commission.

Pursuant to §161.081, titled "Importation of Animals," the Commission may regulate the movement of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country. The Commission, by rule, may provide the method for inspecting and testing animals before and after entry into this state, and for the issuance and form of health certificates and entry permits.

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

Pursuant to §161.148, titled "Administrative Penalty," the Commission may impose an administrative penalty on a person who violates Chapter 161 or a rule or order adopted under Chapter 161. The penalty for a violation may be in an amount not to exceed \$5,000, effective September 1, 2021.

The proposed rules in this chapter for adoption do not affect other statutes, sections or codes.

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

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

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Jeanine Coggeshall

General Counsel

Texas Animal Health Commission

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For further information, please call: (512) 719-0718



CHAPTER 45. REPORTABLE AND ACTIONABLE DISEASES

4 TAC §45.3

The Texas Animal Health Commission (Commission) in a duly noticed meeting on April 4, 2023, adopted amendments to §45.3, concerning Reportable and Actionable Disease List. Section 45.3 is adopted without changes to the proposed text published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8405) and will not be republished.

JUSTIFICATION FOR RULE ACTION

The Commission adopts amendments to Chapter 45 to establish and include "Malignant Catarrhal Fever caused by a ruminant gamma herpesvirus" as a disease that is reportable to the Commission in order to address the emerging threat to susceptible species in Texas. Many of the susceptible species are economically important in the state of Texas and include bison, bongo, blackbuck, 3 species of gazelle, roan and sable antelope, and white-tailed deer. Reporting diseases is critical to managing current, and preventing future, outbreaks, and a necessary first step towards understanding disease dynamics and transmission routes.

HOW THE RULES WILL FUNCTION

The amendment to §45.3, Reportable and Actionable Disease List, adds Malignant Catarrhal Fever caused by a ruminant gamma herpesvirus to the list of reportable and actionable diseases and agents of disease transmission among multiple species and reorders the list in alphabetical order.

SUMMARY OF COMMENTS RECEIVED AND COMMISSION RESPONSE

The 30-day comment period ended January 22, 2023.

During this period, the Commission received comments regarding the proposed rules from one individual. A summary of the comment relating to the rules and Commission's response follows.

Comment: An individual representing the Texas Bison Association commented in support of the rule amendments.

Response: The Commission thanks the commenter for the feedback. No changes were made as a result of this comment.

STATUTORY AUTHORITY

The amendments are authorized by Texas Agriculture Code, Chapter 161.

Pursuant to §161.041, titled "Disease Control," the Commission shall protect all livestock, exotic livestock, domestic fowl, and exotic fowl from diseases the Commission determines require control or eradication. Pursuant to §161.041(b) the Commission may act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl. The Commission may adopt any rules necessary to carry out the purposes of this subsection, including rules concerning testing, movement, inspection, and treatment.

Pursuant to §161.043, titled "Regulation of Exhibitions," the Commission may regulate the entry of livestock and may require certification of those animals as reasonably necessary to protect against communicable diseases.

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

Pursuant to §161.047, titled "Entry Power," a Commissioner or veterinarian or inspector employed by the Commission may enter public or private property for the exercise of an authority or performance of a duty under Chapter 161.

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

Pursuant to §161.054, titled "Regulation of Movement of Animals; Exception," the Commission may, by rule, regulate the movement of animals, and may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved.

Pursuant to §161.056(a), titled "Animal Identification Program," the Commission, to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease, may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program. Section 161.056(d) authorizes the Commission to adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.081, titled "Importation of Animals," the Commission, by rule, may provide the method for inspecting and testing animals before and after entry into the state of Texas. The Commission may create rules for the issuance and form of health certificates and entry permits.

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

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

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

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Jeanine Coggeshall

General Counsel

Texas Animal Health Commission

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CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §51.2, §51.8

The Texas Animal Health Commission (Commission) in a duly noticed meeting on April 4, 2023, adopted amendments to §51.2, concerning General Requirements, and §51.8, concerning Cattle. Section 51.2 is adopted without changes and will not be republished. Section 51.8 is adopted with changes to proposed text as published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8407) based on public comments received. The changes to §51.8 allows the entry of sexually intact dairy cattle less than six months of age without a negative tuberculosis test with an entry permit. The permitted cattle would then be required to test negative for tuberculosis between the age of two months to six months. Because the revisions to §51.8 would not impose more stringent requirements for compliance than the proposed version, this section will be republished.

JUSTIFICATION FOR RULE ACTION

The Commission adopts amendments to Chapter 51 to clarify the requirements of the certificate of veterinary inspection. Recording official identification on a certificate of veterinary inspection ensures animal(s) moved into Texas are examined by a veterinarian and found to be free of communicable or infectious diseases.

Further, the amendments to Chapter 51 change the tuberculosis test entry requirements for sexually intact dairy cattle from two months of age or older to six months of age or older. For dairy cattle less than six months of age that are permitted entry to a designated facility, the amendments require a negative tuberculosis test at age of two months to six months while they are held at the designated facility. This adequately mitigates the risk that tuberculosis, a contagious respiratory disease in cattle and other species, is not inadvertently moved into Texas. Changes in the adopted amendment respond to public comments.

HOW THE RULES WILL FUNCTION

The amendment to §51.2, General Requirements, clarifies that animals vaccinated or tested for any disease as required by the Commission be individually officially identified on a certificate of veterinary inspection, instead of just individually identified.

The amendment to §51.8, Cattle, increases the tuberculosis testing age for dairy cattle moving into Texas from two to six months of age. The amendment also requires tuberculosis testing between the age of two months to the age of six months for sex-

ually intact dairy cattle less than six months of age entering the state on an entry permit.

SUMMARY OF COMMENTS RECEIVED AND COMMISSION RESPONSE

The 30-day comment period ended January 23, 2023.

During this period, the Commission received comments regarding the proposed rules from six interested parties. A summary of comments relating to the rules and Commission's responses follows.

Comment: Two individuals submitted comments related to §51.2 requesting the Commission consider recognizing microchips as official identification for exotic bovids or for zoo animals since it is an approved form of official identification by the USDA.

Response: The Commission considers official identification any device approved for use to individually identify an animal approved by the Commission or USDA. As the commenters note, some microchips are recognized as a form of official identification by the USDA. Because USDA identification guidelines allow for the use of the USDA 840-ID microchip in some animals, the Commission considers it an official identification for those animals. The Commission thanks the commenters for the feedback. No changes were made as a result of this comment.

Comment: The Commission received comments from four individuals concerning §51.8. The comments expressed that the proposed language regarding sexually intact dairy cattle less than six months in age would detrimentally impact calf ranch operations. The comments suggested the amendment be changed to allow designated facilities holding sexually intact dairy cattle less than six months of age to test for tuberculosis between the age of two to six months rather than at the age of six months.

Response: The Commission agrees, and the adopted amendment reflects the suggested change.

STATUTORY AUTHORITY

The amendments are authorized by Texas Agriculture Code, Chapter 161.

Pursuant to §161.041, titled "Disease Control," the Commission shall protect all livestock, exotic livestock, domestic fowl, and exotic fowl from diseases the Commission determines require control or eradication. Pursuant to §161.041(b) the Commission may act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl. The Commission may adopt any rules necessary to carry out the purposes of this subsection, including rules concerning testing, movement, inspection, and treatment.

Pursuant to §161.043, titled "Regulation of Exhibitions," the Commission may regulate the entry of livestock and may require certification of those animals as reasonably necessary to protect against communicable diseases.

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

Pursuant to §161.047, titled "Entry Power," a commissioner or veterinarian or inspector employed by the Commission may enter public or private property for the exercise of an authority or performance of a duty under Chapter 161.

Pursuant to §161.048, titled "Inspection of Shipment of Animals or Animal Products," the Commission may require testing, vacci-

nation, or another epidemiologically sound procedure before or after animals are moved. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or non-communicable disease.

Pursuant to §161.054, titled "Regulation of Movement of Animals; Exception," the Commission may, by rule, regulate the movement of animals, and may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved.

Pursuant to §161.056(a), titled "Animal Identification Program," the Commission, to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease, may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program. Section 161.056(d) authorizes the Commission to adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.081, titled "Importation of Animals," the Commission, by rule, may provide the method for inspecting and testing animals before and after entry into the state of Texas. The Commission may create rules for the issuance and form of health certificates and entry permits.

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

§51.8. Cattle.

(a) Brucellosis requirements. All cattle must meet the requirements contained in §35.4 of this title (relating to Entry, Movement, and Change of Ownership). Cattle which are parturient, postparturient or 18 months of age and over (as evidenced by the loss of the first pair of temporary incisor teeth), except steers and spayed heifers being shipped to a feedyard prior to slaughter, shall be officially individually identified with a permanent identification device prior to leaving the state of origin.

(b) Tuberculosis requirements.

(1) All beef cattle, bison and sexually neutered dairy cattle originating from a federally recognized accredited tuberculosis free state, or zone, as provided by Title 9 of the Code of Federal Regulations, Part 77, Section 77.8, or from a tuberculosis accredited herd are exempt from tuberculosis testing requirements.

(2) All beef cattle, bison and sexually neutered dairy cattle originating from a state or zone with anything less than a tuberculosis free state status and having an identified wildlife reservoir for tuberculosis or that have never been declared free from tuberculosis shall be tested negative for tuberculosis in accordance with the appropriate status requirements as contained in Title 9 of the Code of Federal Regulations, Part 77, Sections 77.10 through 77.19, prior to entry with results of this test recorded on the certificate of veterinary inspection. All beef cattle, bison and sexually neutered dairy cattle originating from

any other states or zones with anything less than free from tuberculosis shall be accompanied by a certificate of veterinary inspection.

(3) All dairy breed animals, including steers and spayed heifers, shall be officially identified prior to entry into the state. All sexually intact dairy cattle, that are six months of age or older may enter provided that they are officially identified, and are accompanied by a certificate of veterinary inspection stating that they were negative to an official tuberculosis test conducted within 60 days prior to the date of entry. All sexually intact dairy cattle that are less than six months of age must obtain an entry permit from the commission, as provided in §51.2(a) of this title (relating to General Requirements), to a designated facility where the animals will be held until they are tested negative at the age of two months to six months. Animals which originate from a tuberculosis accredited herd, and/or animals moving directly to an approved slaughtering establishment are exempt from the test requirement. Dairy cattle delivered to an approved feedlot for feeding for slaughter by the owner or consigned there and accompanied by certificate of veterinary inspection with an entry permit issued by the commission are exempt from testing unless from a restricted herd. In addition, all sexually intact dairy cattle originating from a state or area with anything less than a tuberculosis free state status shall be tested negative for tuberculosis in accordance with the appropriate requirements for states or zones with a status as provided by Title 9 of the Code of Federal Regulations, Part 77, Sections 77.10 through 77.19, for that status, prior to entry with results of the test recorded on the certificate of veterinary inspection.

(4) All "M" brand steers, which are recognized as potential rodeo and/or roping stock, being imported into Texas from another state shall obtain a permit, prior to entry into the state, in accordance with §51.2(a) of this title and be accompanied by a certificate of veterinary inspection which indicates that the animal(s) were tested negative for tuberculosis within 12 months prior to entry into the state.

(5) All other cattle from foreign countries, foreign states, or areas within foreign countries defined by the Commission, with comparable tuberculosis status, would enter by meeting the requirements for a state with similar status as stated in paragraphs (1), (2), and (3) of this subsection.

(6) All sexually intact cattle, from any foreign country or part thereof with no recognized comparable Tuberculosis status.

(A) To be held for purposes other than for immediate slaughter or feeding for slaughter in an approved feedyard or approved pen, must be tested at the port of entry into Texas under the supervision of the port veterinarian, and shall be under quarantine on the first premise of destination in Texas pending a negative tuberculosis test no earlier than 120 days and no later than 180 days after arrival. The test will be performed by a veterinarian employed by the commission or APHIS/VIS.

(B) When destined for feeding for slaughter in an approved feedyard, cattle must be tested at the port-of-entry into Texas under the supervision of the port veterinarian; moved directly to the approved feedyard only in sealed trucks; accompanied with a VS 1-27 permit issued by commission or USDA personnel; and "S" branded prior to or upon arrival at the feedlot.

(7) Cattle originating from Mexico.

(A) All sexually intact cattle shall meet the requirements provided for in paragraph (6) of this subsection.

(B) Steers and spayed heifers from Mexico shall meet the federal importation requirements as provided in Title 9 of the Code of Federal Regulations, Part 93, Section 93.427, regarding importation of cattle from Mexico. In addition to the federal requirements, steers

and spayed heifers must be moved under permit to an approved pasture, approved feedlot, or approved pens.

(C) Cattle utilized as rodeo and/or roping stock shall meet the requirements set out in paragraph (6)(A) of this subsection and the applicable requirement listed in clauses (i) and (ii) of this subparagraph:

(i) All sexually intact cattle shall be retested annually for tuberculosis at the owner's expense and the test records shall be maintained with the animal and available for review.

(ii) All sexually neutered horned cattle imported from Mexico are recognized as potential rodeo and/or roping stock and must:

(I) be tested for tuberculosis at the port of entry under the supervision of the USDA port veterinarian;

(II) be moved by permit to a premise of destination and remain under Hold Order, which restricts movement, until permanently identified by methods approved by the commission, and retested for tuberculosis between 60 and 120 days after entry at the owner's expense. The cattle may be allowed movement to and from events/activities in which commingling with other cattle will not occur and with specific permission by the TAHC until confirmation of the negative post entry retest for tuberculosis can be conducted; and

(III) be retested for tuberculosis annually at the owner's expense and the test records shall be maintained with the animal and available for review.

(D) Regardless of reproductive status, test history, or Mexican State of origin, Holstein and Holstein cross cattle are prohibited from entering Texas.

(E) All cattle moved into Texas from Mexico shall be identified with an "M" brand prior to moving to a destination in Texas.

(F) A copy of the certificate issued by an authorized inspector of the United States Department of Agriculture, Animal and Plant Health Inspection Service, for the movement of Mexico cattle into Texas must accompany such animals to their final destination in Texas, or so long as they are moving through Texas.

(G) Any certificate, form, record, report, or chart issued by an accredited veterinarian for cattle that originate from Mexico, have resided in Mexico or are "M" branded shall include the statement, "the cattle represented on this document are of Mexican origin."

(c) Trichomoniasis Requirements:

(1) A breeding bull that is 12 months of age or older may enter the state provided the bull is officially identified as provided by §38.1 of this title (relating to Definitions) and accompanied by a certificate of veterinary inspection stating the bull tested negative for Trichomoniasis with an official Real Time Polymerase Chain Reaction (RT-PCR) test as provided by §38.6 of this title (relating to Official Trichomoniasis Tests) within 60 days prior to the date of entry.

(2) A breeding bull that is 12 months of age or older is exempt from the testing requirement of paragraph (1) of this subsection if the bull meets one of the following requirements:

(A) The bull enters on and is moved by a permit, issued prior to entry, from the commission, in accordance with §51.2(a) of this title, for the purpose of participating at a fair, show, exhibition or rodeo, remains in the state for less than 60 days from the date of entry, and is isolated from female cattle at all times. The certificate of veterinary inspection shall include the entry permit number. A bull that is in this

state on or after the 60th day from the date of entry shall test negative for Trichomoniasis with an official RT-PCR test.

(B) The bull enters on and is moved by a permit, issued prior to entry, from the commission, in accordance with §51.2(a) of this title, directly to a feedyard that has executed a Trichomoniasis Certified Facility Agreement. The certificate of veterinary inspection shall include the entry permit number.

(C) The bull enters on and is moved by a permit, issued prior to entry from the commission, in accordance with §51.2(a) of this title, directly to a facility that tests the gain and feed conversion of cattle (bull test station) that isolates the bull from female cattle at all times. The certificate of veterinary inspection shall include the entry permit number. The bull shall return to the out-of-state premises destination directly from the bull test station or test negative for Trichomoniasis with an official RT-PCR test.

(D) A Texas bull that is enrolled in an out-of-state facility that tests the gain and feed conversion of cattle (bull test station) and isolates the bull from female cattle at all times may move directly to the Texas premises of origin. The certificate of veterinary inspection shall state the bull was enrolled in a bull test station and was isolated from female cattle.

(E) The bull is enrolled at an out-of-state semen collection facility, which complies with Certified Semen Services Minimum Requirements for Disease Control of Semen Produced for Artificial Insemination, that isolates the bull from female cattle at all times and the bull is moved directly from a semen collection facility into the state. The certificate of veterinary inspection shall state the bull was enrolled in a semen collection facility and was isolated from female cattle.

(F) The bull originates from a herd that is enrolled in a Certified Trichomoniasis Free Herd Program or other certification program that is substantially similar, as determined by the Executive Director, to the program requirements provided by §38.8 of this title (relating to Herd Certification Program--Breeding Bulls).

(G) The bull enters from a premises of origin (farm, ranch, or dairy where the bull has been raised or maintained for breeding purposes) and moves directly to a federally approved livestock market with an owner shipper statement and does not require an entry permit or CVI.

(H) The bull enters from other than a premises of origin and is moved by a permit, issued prior to entry from the commission, in accordance with §51.2(a) of this title, directly to a federally approved livestock market that isolates the bull from female cattle at all times and the bull is Trichomoniasis tested as required by §38.2 of this title (relating to General Requirements). The certificate of veterinary inspection shall include the entry permit number.

(3) Female cattle 12 months of age or older that originate from a known Trichomoniasis positive herd, or exposed to a known Trichomoniasis positive bull, may not enter the state unless the animal is officially identified and enters on and is moved by a permit, issued prior to entry from the commission, in accordance with §51.2(a) of this title, directly to an approved slaughtering establishment. The certificate of veterinary inspection shall include the entry permit number and a statement that the animal is Trichomoniasis exposed.

(4) All breeding bulls entering from a foreign country shall enter on and be moved by a permit, issued prior to entry from the commission, in accordance with §51.2(a) of this title, to a premises of destination in Texas and shall be placed under Hold Order and officially tested for Trichomoniasis with not less than three official culture tests conducted not less than seven days apart, or an official RT-PCR test, within 30 days after entry into the state. All bulls shall be isolated from

female cattle at all times until tested negative for Trichomoniasis. The Hold Order shall not be released until all other post entry disease testing requirements have been completed. All bulls tested for Trichomoniasis shall be officially identified at the time the initial test sample is collected. The identification shall be recorded on the test documents.

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

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Jeanine Coggeshall

General Counsel

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For further information, please call: (512) 719-0718



TITLE 13. CULTURAL RESOURCES

PART 8. TEXAS FILM COMMISSION

CHAPTER 121. TEXAS MOVING IMAGE INDUSTRY INCENTIVE PROGRAM

The Texas Film Commission within the Economic Development and Tourism Office of the Office of the Governor (the "OOG") adopts the repeal of 13 TAC §121.16, concerning Texas-Based National Network Project. The repeal of 13 TAC §121.16 is adopted without changes to the proposed text as published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8412) and will not be republished.

Amended 13 TAC §121.2, concerning Definitions, §121.6, concerning Grant Awards and §121.7 concerning Underutilized and Economically Distressed Areas are adopted with changes to the proposed text as published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8412) and will be republished.

The OOG also adopts amendments 13 TAC §121.1, concerning Background and Purpose, §121.3, concerning Eligible Projects, §121.4, concerning Ineligible Projects, §121.5, concerning Eligible and Ineligible In-State Spending, §121.8, concerning Grant Application, §121.9, concerning Processing and Review of Applications, §121.10, concerning Disqualification of an Application, §121.11, concerning Confirmation and Verification of Texas Expenditures, §121.12, concerning Disbursement of Funds, §121.13, concerning Texas Heritage Project, §121.14, concerning Revocation and Recapture of Incentives. These amendments are adopted without changes to the proposed text as published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8412). These rules will not be republished.

REASONED JUSTIFICATION:

The adopted rules relate to Texas Moving Image Industry Incentive Program ("TMIIP"), which was implemented to increase employment opportunities for Texas industry professionals, encourage tourism to the state, and boost economic activity in Texas cities and the overall Texas economy.

The adopted amendments to §121.1 update outdated language and make non-substantive updates to style and grammar.

The adopted amendments to §121.2 update definitions to better align with the purpose of the program and based on changes in the industry, add a definition for the term "Man Hours," remove an unnecessary definition for the term "Qualifying Application," update outdated language, and make non-substantive updates to style and grammar.

The adopted amendments to §121.3 clarify and update how an Applicant may meet the statutory eligibility requirements, including new ways to satisfy the requirement that at least 60 percent of the moving image project must be filmed in Texas. The adopted amendments also make non-substantive updates to style and grammar.

The adopted amendments to §121.4 update the types of projects that are ineligible for grants under this program by removing the exception to award shows for broadcast on national network television to a national audience and adding interactive digital media experiences used in gambling devices. The adopted amendments also make non-substantive updates to style and grammar.

The adopted amendments to §121.5 clarify the lists of eligible and ineligible in-state expenditures under the program. The adopted amendments also make non-substantive updates to style and grammar.

The adopted amendments to §121.6 make non-substantive updates to style and grammar. In response to comments, as discussed later in this rulemaking, the adopted rulemaking will not make the changes proposed to §121.6(c) and (d) in the proposed rulemaking. In that proposal, the OOG considered revising the potential grant amounts for reality television projects and commercials to only allow for the receipt of a grant equal to five percent of eligible in-state spending when a production met a single in-state spending threshold. The OOG has determined the program will retain the current practice of allowing a grant equal to five percent or ten percent of eligible in-state spending. This adopted rule will be republished.

The adopted amendments to §121.7 add two new options to the existing option for Applicants to receive a single additional grant equal to two-and-a-half percent of total in-state spending. The additional options relate to: (1) demonstrating that five percent of the combined total of paid Crew and paid Cast, including extras, who are paid by the Applicant are Texas Resident "Veterans"; and (2) expending ten percent of the total eligible in-state spending on eligible expenditures during Postproduction, including labor, vendors, and music costs. The adopted amendments also establish that an Applicant may only qualify for one of the options and may not receive multiple additional two-and-a-half percent additional grants. The adopted amendments also make non-substantive updates to style and grammar. In response to comments, as discussed later in this rulemaking, the OOG added "Man Hours" as an eligible metric for the additional 2.5 percent grant based on labor undertaken in UEDAs. The OOG determined the adopted rules will not add two additional options for Applicants to receive a single additional grant equal to two-and-a-half percent of total in-state spending, as proposed. The two options that will not be added relate to training events and the creation of public service announcements. Finally, for the option related to hiring veterans, the OOG lowered the threshold to qualify under that option from ten percent of the combined paid Cast and Crew to five percent. This adopted rule will be republished.

The adopted amendments to §121.8 update the methods by which applicants may obtain application forms from the Texas

Film Commission to include telephone, Internet, or other means if additional special needs facilitation is required, instead of directing Applicants to a specific website. The adopted amendments extend the window to submit an application from up to 120 calendar days prior to a project's Principal Start Date to up to 180 calendar days prior to a project's Principal Start Date. For a delay to the start of a project, the consequence is changed from mandating re-application to allowing the Texas Film Commission to require re-application at its discretion. The adopted amendments also revise the actions the OOG will take if it receives a request for information submitted by an Applicant, as well as make non-substantive updates to style and grammar.

The adopted amendments to §121.9 clarify the factors the Texas Film Commission shall consider when determining, in its sole discretion, whether to approve a Qualifying Application. The adopted amendments specify that periodic tracking and review of a grant agreement can include requesting reports on a quarterly basis and remove instructions for completion of the Declaration of Texas Residency Forms so that those instructions may be provided on the form itself. The adopted amendments also make non-substantive updates to style and grammar.

The adopted amendments to §121.10 update the citation for inappropriate content as described in the Texas Penal Code and make non-substantive updates to style and grammar.

The adopted amendments to §121.11 add and clarify certain items that the Expended Budget must include in providing the final verifying documentation. The adopted amendments also make non-substantive updates to style and grammar.

The adopted amendments to §121.12 remove the provisions relating to assignment of a grant payment to a third party and make non-substantive updates to style and grammar.

The adopted amendments to §121.13 make non-substantive updates to style and grammar.

The adopted amendments to §121.14 make non-substantive updates to style and grammar.

The adopted repeal of §121.16 removes provisions that are not necessary because they relate to a designation no longer offered under TMIIP.

The remaining adopted amendments clarify or remove outdated or unnecessary language from the rules, including using the word "shall" or "must" when provisions require certain behaviors or actions.

SUMMARY OF COMMENTS AND AGENCY RESPONSES

The public comment period for these rules began on December 23, 2022, and closed on January 22, 2023. The OOG received two comments. The following provides summaries of the comments and the OOG's responses.

Comment 1: The first commenter, a trade organization, expressed its appreciation for the rule changes and provided five suggested changes. The OOG is grateful for the commenter's expression of appreciation and its participation in the rulemaking process.

Suggested Change 1: Retain the usage of Underutilized or Economically Distressed Areas (UEDA) as a stand-alone 2.5 percent additional rebate grant separate from and in addition to the new options for a 2.5 percent rebate grant that are proposed in the amendments to §121.7. The commenter asserts that other options to qualify for a 2.5 percent additional rebate grant are

potentially easier to fulfill, and by making the UEDA-based grant as one of several options, rather than an additional grant, it will result in fewer UEDAs being utilized.

OOG response: Section 485.025 of the Texas Government Code establishes that a production company is eligible for an additional 2.5 percent grant if it spends 25 percent or more of its filming days in a UEDA. The proposed amendments to §121.7 retain this option in compliance with the statute. The OOG has seen that the circumstances of certain productions, however, precluded the production from spending any filming days in a UEDA. For those productions, the proposed amendments to §121.7 offer alternative ways to benefit the state and qualify for a 2.5 percent additional rebate grant. While some productions may choose one of these new alternative methods over utilizing an available UEDA, more productions will have the opportunity to provide additional benefits to Texans and get rewarded for doing so. Accordingly, the OOG declines to make this suggested change.

Suggested Change 2: Lower the threshold in §121.7 to qualify for an additional 2.5 percent rebate grant based on paid cast and crew that are Texas resident veterans from ten percent to five percent. The commenter states that stakeholders have indicated the ten percent requirement will be hard to meet, and so will primarily utilize veterans as "extras," rather than providing veterans a pathway into media production as a profession. The commenter suggests that an initial threshold of five percent would encourage veterans entering the media production industry, so as the pool of Texas veterans grows, the threshold can be revisited and possibly increased in the future.

OOG response: The OOG appreciates the commenter providing feedback on behalf of its stakeholders. The OOG agrees with the comment. Accordingly, the OOG will lower the threshold to qualify for an additional 2.5 percent rebate grant based on total paid Cast and paid Crew that are Texas resident veterans from ten percent to five percent of total paid Cast and paid Crew.

Suggested Change 3: Retain the ten percent grant for reality and commercial projects that have an in-state spending total of more than \$1 million. The commenter states that no economic impact disparity exists between a reality television project and a film project that spends over \$1 million in-state on eligible expenses. The commenter further states that this proposed rule change provides an advantage to one segment of the media production industry over another based on content. The commenter believes this would be problematic precedent and would unfairly impact production companies making unscripted content and commercials.

OOG response: The proposed amendments to §121.6 were based on historical data of TMIIP participants, which have rarely included reality television or commercial projects with in-state spending totals of more than \$1 million. The limited funding for TMIIP requires tailoring the available grants to the expected number and scope of projects. Notwithstanding the foregoing, after further deliberation in response to the comment and an additional assessment of TMIIP grant funding, due to the limited number of reality television projects and commercials that exceed \$1 million eligible in-state spending, the OOG will remove this change and retain the ten percent grant for reality and commercial projects that have in-state spending total of more than \$1 million.

Suggested Change 4: Make incentives for Postproduction spending stand-alone opportunities-"even if principal photography is not conducted in Texas. The commenter states other

states have successful standalone Postproduction incentives that have resulted in a robust in-state postproduction industry, and suggests that Texas's investment in postproduction professional crews would be a critical component to the long-term growth within the media production industry.

OOG response: The OOG has determined that the current circumstances and available resources do not justify the creation of a stand-alone grant for postproduction at this time. Accordingly, the OOG declines this change.

Suggested Change 5: Remove training events and public service announcements as options to qualify for an additional 2.5 percent rebate grant. The commenter states that only media productions with an in-state spend above \$3.5 million will have the resources for these options. The commenter further states that the 2.5 percent rebate grant would, at a minimum, be equal to \$87,500, and training events and public service announcements can be produced for far less than that amount, so large media productions will likely choose this cost-effective option at the expense of other options. Instead, the commenter suggests making training events or public service announcements a requirement for large productions without providing any additional grant funds.

OOG response: The OOG agrees with the concern raised by this comment. Accordingly, the OOG will remove training events and public service announcements as options to qualify for additional 2.5 percent.

Comment 2: The second commenter, a videogame trade association, welcomed the rule amendments, but requested further changes to the rules based on differences in the way videogames are produced; encouraged thoughtful regulation to account for the videogame production industry's ability to continuously employ people, rather than utilize project-based employment, as in the film and television production spaces; and asked that remote working opportunities be taken into account. The OOG is grateful for the second commenter's support and thoughtful feedback.

Suggested Change 1: Remove "sole discretion" requirement from 13 T.A.C. §121.3(f)(2). The commenter states that videogame productions most commonly use "Man Hours" rather than "Filming Days" to measure time, which should justify removing the Commission's discretion to determine which measurement is used.

OOG Response: The OOG disagrees with this comment. The standard, statutorily-contemplated "Filming Days" measurement is appropriate for certain Digital Interactive Media Productions, and historical data reflect that videogame productions have satisfied the requirement using that metric. As the custodian of public funds appropriated to the OOG for the TMIIP grant program, the OOG must retain discretion over when to permit measuring "Man Hours" as an alternative to the "Filming Day" approach. Retaining this discretion ensures wise allocation of public funds by providing the OOG can permit use of "Man Hours" when appropriate based on the circumstances and facts of each project. The OOG declines to make changes in response to this suggestion.

Suggested Change 2: The definition of "Digital Interactive Media Production" should be changed to include segments of a videogame production. The commenter indicates that videogame productions are often decentralized and involve multiple vendors and offices working on different segments to create a final product.

OOG Response: The OOG disagrees with this comment. The existing definitions allow a segment of a "Digital Interactive Media Production" that meets the applicable requirements to participate in TMIIP. Accordingly, the OOG declines this change.

Suggested Change 3: The rules found in §121.7 should be modified to better fit videogame productions by incorporating "Man Hours" and production segments where appropriate, clarifying the minimum requirements for qualifying training events, and incorporating videogame music production costs into allowable Postproduction activities.

OOG Response: The OOG agrees in part with this comment, has rendered part of it moot as explained in the response to Comment 1 Suggested Change 5, and disagrees with the remaining portion. The option provided by §121.7(1) is available to all projects, notwithstanding the method for measuring the percentage of the project filmed in Texas. Accordingly, the OOG will incorporate "Man Hours" into §121.7(1). The portion of the comment related to training events is no longer applicable due to its removal as an option, as discussed above. The existing definition for Postproduction already includes music costs. Accordingly, the OOG declines to make additional changes in response to the comment.

13 TAC §§121.1 - 121.14

STATUTORY AUTHORITY

The amendments are adopted pursuant to Sections 485.022 and 485.024 of the Texas Government Code, which require the Texas Film Commission to develop procedures for the administration and calculation of grant awards under TMIIP.

CROSS REFERENCE TO STATUTE

The amendments implement chapter 121 of the Texas Government Code.

§121.2. Definitions.

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

(1) Applicant--

(A) For Feature Films, Television Programs, Visual Effects Projects for Feature Films or Television Programs, Reality Television Projects or Educational or Instructional Videos: either the Production Company producing the project or the owner of the copyright.

(B) For Commercials or Visual Effects Projects for Commercials: the Production Company, advertising agency, or client; provided, however, that if an advertising agency or client applies as the Applicant, but a Production Company expends the funds in the state in connection with a project, then either a chain of downstream payment from the Applicant to the Production Company or a production services agreement must be evidenced in connection with the submission of the Expended Budget.

(C) For Digital Interactive Media Productions: the Production Company, game or content developer, or game publisher.

(2) Business Day--A day other than Saturday, Sunday, or a Federal or State of Texas holiday.

(3) Cast--Actors paid by the Applicant to perform roles in Texas, including, but not limited to, featured actors, extras, stunt performers, voice-over talent, hosts, judges, announcers and roles or performers that appear on a recurring basis, but excluding talk show guests, game or contest show contestants, and litigants and witnesses in courtroom reality programs.

(4) Commercial--A live-action or animated-production advertisement, including, but not limited to, an individual advertisement, more than one advertisement created in a contiguous production period for the same client, a music video, or an infomercial that is made for the purpose of promoting a product, service, or idea and is produced for distribution via broadcast, cable, or any digital format, including, but not limited to, cable, satellite, Internet, or mobile electronic device.

(5) Crew--Independent contractors or employees paid by the Applicant to perform work in Texas that are directly contracted and credited for a specific position. An individual may work in more than one position on a production. Executive producers and/or permanent salaried employees of an Applicant who are listed on call sheets or production reports but not paid Wages on the project other than producing services, shall not be counted in Crew calculations for Texas Residency purposes. Vendors serving a traditional crew function and providing personal services, but who are paid as independent contractors rather than through payroll, shall be counted in Crew calculations for Texas Residency purposes and must provide a Declaration of Texas Residency Form.

(6) Declaration of Texas Residency Form--A document promulgated by the Texas Film Commission (Commission) to be utilized by Applicants to prove the residency status of each Texas Resident employee, contractor, Crew, or Cast member.

(7) Digital Interactive Media Production--Software that provides a user or users with a game to play or other interactive technology experience for the purpose of entertainment or education, including for military or medical simulation training, and which is created for a game console or platform, personal computer, handheld console, or mobile electronic device used by a business or consumer solely for bona fide amusement purposes as outlined in Section 47.01 of the Texas Penal Code.

(8) Educational or Instructional Video--An individual live-action or animated production, or a contiguous series of more than one live-action or animated production created for the same client, that is produced for exhibition in an educational or instructional setting.

(9) Episodic Television Series--A Television Program consisting of multiple episodes of a single season.

(10) Expended Budget--The final verifying documentation and worksheets submitted by an Applicant to the Commission at the completion of a project that shows the total eligible in-state spending, as defined in Section 485.021(1) of the Texas Government Code, and includes all documentation considered by the Commission to be necessary to show compliance with the requirements of the Texas Moving Image Industry Incentive Program.

(11) Feature Film--Any live-action or animated for-profit production, including narrative and documentary productions, that is produced for distribution in theaters or via any digital format, including, but not limited to, DVD, Internet, or mobile electronic device.

(12) Filming Day--A day of Production as defined in paragraph (18) of this section. When calculating 60% of Filming Days for purposes of §121.3 of this Chapter, but not for purposes of calculating 25% of Filming Days for purposes of §121.7 of this Chapter, a Filming Day may include a traditional day of Production in live-action or digital media, as well as a concurrent day of Production conducted by a second unit, so long as:

(A) such second unit, is not a splinter unit, but is utilized for a bona fide, production-related purpose and would be recognized by the Directors Guild of America as a second unit; and

(B) a call sheet, and production report, for such day is circulated and executed in connection with the activities of such second unit. Any bona fide, second unit day shall be added to both the numerator of Texas days and the denominator of total days for purposes of calculating 60% of Filming Days for purposes of §121.3 of this Chapter.

(13) Man Hours--A unit of one hour's work by one person.

(14) Physical Production--The period encompassing Pre-Production, Production, and Postproduction.

(15) Postproduction--The period that occurs after the end of Production, including but not limited to, animation, bug-fixing, codebase completion, compositing, editing, lighting, music, patch-creation, sound, testing, and visual effects.

(16) Pre-Production--The period that occurs before the start of Production, including, but not limited to, casting actors, estimating budgets, mechanics, scouting locations, and testing story.

(17) Principal Start Date--

(A) For a live-action Feature Film, Television Program, Reality Television Project, Educational or Instructional Video, or Commercial project: the first day of principal photography.

(B) For a Digital Interactive Media Production, Visual Effects Project or animated project: the first day of asset creation (i.e., character or environment modeling and/or rigging).

(18) Production--

(A) For a live-action Feature Film, Television Program, Reality Television Project, Educational or Instructional Video or Commercial project: the period starting the first day of principal photography through the last day of principal photography.

(B) For a Digital Interactive Media Production, Visual Effects Project or animated project: the period starting the first day of asset creation or commencement of layout (i.e., character or environment modeling and/or rigging) through the last day of animation, code freeze, and/or final layout.

(19) Production Company--A company that engages in any of the activities included in Physical Production for a Feature Film, Television Program, Reality Television Project, Educational or Instructional Video, Commercial project, or Digital Interactive Media Production.

(20) Reality Series--A Reality Television Project consisting of multiple episodes of a single season.

(21) Reality Television Project--A live-action, for-profit production based upon unscripted content, including, but not limited to, a Reality Series, a contest or game show (to include individual episodes), or a talk show (to include individual episodes), that is produced for distribution via broadcast, cable, or any digital format, including, but not limited to, satellite, Internet, or mobile electronic device.

(22) Television Program--An episodic live-action or animated for-profit production that is produced in a narrative or documentary style, including, but not limited to, a television series, miniseries, limited series, television movie, television pilot, television episode, or a musical performance that is produced for distribution via broadcast, cable, or any digital format, including, but not limited to, satellite, Internet, or mobile electronic device (including a short narrative or documentary episode or series of episodes distributed initially as streamed content).

(23) Texas Heritage Project--A Feature Film or Television Program (excluding a Reality Television Project), that promotes or documents Texas's diverse cultural, historical, natural or man-made resources, and that meets the requirements established in §121.13 of this Chapter (relating to Texas Heritage Project).

(24) Texas Resident--An individual who is a permanent resident of Texas for at least 120 days prior to the Principal Start Date of the project and who has completed a Declaration of Texas Residency Form.

(25) Underutilized and Economically Distressed Area--

(A) Underutilized Area--An area of the state that receives less than 15% of the total moving image industry production in the state during a fiscal year, as determined by the Commission. An area of the state wherein 15% or more of the total moving image industry production takes place during a fiscal year, as determined by the Commission, includes a thirty mile radius from city hall of that area's largest municipality.

(B) Economically Distressed Area--An area within the thirty mile radius described in Subparagraph (A) of this paragraph, where the median household income does not exceed 75% of the median household income as determined by the Texas Demographic Center or its successor.

(26) Visual Effects Project--A self-contained production whereby computer generated images are created or manipulated to integrate with live-action footage of a Feature Film, Television Program, Educational or Instructional Video, or Commercial.

(27) Wages--Compensation paid to an individual for work performed. Payment methods include, but are not limited to, direct payments, payments through an agent or agency, payments through a loan-out company or payments through a payroll service. Wages include, but are not limited to, gross wages, per diems (if signed for by the recipient), employer paid Social Security (Old Age, Survivors, and Disability Insurance (OASDI)) payments, employer paid Medicare (MEDI) payments, employer paid Federal Unemployment Insurance (FUI) payments, employer paid Texas State Unemployment Insurance (SUI) payments, employer paid pension, health and welfare payments, and employer paid vacation and holiday pay. Only the first \$1,000,000 in aggregate wages and/or compensation per person shall constitute eligible Wage expenditures.

§121.6. *Grant Awards.*

(a) Feature Films, Television Programs, and Visual Effects Projects for Feature Films or Television Programs with total eligible in-state spending of:

(1) At least \$250,000 but less than \$1 million shall be eligible to receive a grant equal to 5% of eligible in-state spending.

(2) At least \$1 million but less than \$3.5 million shall be eligible to receive a grant equal to 10% of eligible in-state spending.

(3) At least \$3.5 million shall be eligible to receive a grant equal to 20% of eligible in-state spending.

(b) Digital Interactive Media Productions with total eligible in-state spending of:

(1) At least \$100,000 but less than \$1 million shall be eligible to receive a grant equal to 5% of eligible in-state spending.

(2) At least \$1 million but less than \$3.5 million shall be eligible to receive a grant equal to 10% of eligible in-state spending.

(3) At least \$3.5 million shall be eligible to receive a grant equal to 20% of eligible in-state spending.

(c) Reality Television Projects with total eligible in-state spending of:

(1) At least \$250,000 but less than \$1 million will be eligible to receive a grant equal to 5% of eligible in-state spending.

(2) At least \$1 million will be eligible to receive a grant equal to 10% of total eligible in-state spending.

(d) Commercials, Educational or Instructional Videos, and Visual Effects Projects for Commercials or Educational or Instructional Videos with total eligible in-state spending of:

(1) At least \$100,000 but less than \$1 million will be eligible to receive a grant equal to 5% of eligible in-state spending.

(2) At least \$1 million will be eligible to receive a grant equal to 10% of total eligible in-state spending.

§121.7. *Additional Grant Award.*

An applicant shall be eligible for a single additional grant equal to 2.5% of total in-state spending by meeting one of the following:

(1) Completing at least 25% of their total Filming Days or Man Hours, as applicable, in Underutilized or Economically Distressed Areas (UEDAs).

(A) In the event that multiple locations are utilized within a single Filming Day, in order to calculate the 25% of total Filming Days in UEDAs necessary to receive this additional grant, the Texas Film Commission (Commission) shall pro-rate a given Filming Day by the number of shooting locations reflected on production reports furnished by an Applicant to the Commission. For example, if eight shooting locations are utilized in a Filming Day, and five are located in UEDAs, 5/8 of that Filming Day shall count in calculating the 25% of total Filming Days necessary for this additional grant.

(B) If one or more shooting locations is not located in a UEDA, but is serviced by a basecamp located in a UEDA, such shooting locations shall be deemed to be located in a UEDA when calculating the 25% of total Filming Days necessary for this additional grant. A Production Company must have paid financial consideration to the owner/leaseholder of the basecamp location pursuant to a location agreement to be considered a "basecamp" under this subparagraph. The basecamp location must be listed on the call sheets and/or other relevant production documentation.

(C) The Commission shall identify the areas that qualify for designation as UEDAs.

(2) Demonstrating that 5% of the combined total of paid Crew and paid Cast, including extras, who are paid by the Applicant are Texas Resident "Veterans."

(A) For purposes of this Section, a "Veteran" is a person who served in and has been honorably discharged from the United States Army, Navy, Marine Corps, Air Force, or Coast Guard; the National or Air National Guard of the United States; the Texas Army National Guard; the Texas Air National Guard; a Reserve component of any of the aforementioned military organizations; or any other military service that the Commission determines to be allowable.

(B) The Applicant shall submit sufficient information confirming the Veteran's status, including military-issued discharge documentation and other information requested by the Commission to support a determination that the person qualifies as a Veteran.

(3) Expending 10% of the total eligible in-state spending on eligible expenditures during Postproduction, including labor, vendors, and music costs.

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

Filed with the Office of the Secretary of State on May 1, 2023.

TRD-202301576

Stephanie Whallon

Director

Texas Film Commission

Effective date: May 21, 2023

Proposal publication date: December 23, 2022

For further information, please call: (512) 463-2000



13 TAC §121.16

STATUTORY AUTHORITY

This repeal is adopted under sections 485.022 and 485.024 of the Texas Government Code, which require the Texas Film Commission to develop procedures for the administration and calculation of grant awards under TMIIP.

CROSS REFERENCE TO STATUTE

Chapter 121 of Texas Government Code. No other statutes, articles, or codes are affected by the adopted amendments.

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

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Stephanie Whallon

Director

Texas Film Commission

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Proposal publication date: December 23, 2022

For further information, please call: (512) 463-2000



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION

SUBCHAPTER C. STANDARDS OF CONDUCT

19 TAC §§1.80 - 1.87

The Texas Higher Education Coordinating Board (Coordinating Board) adopts repeal of Title 19, Part 1, Chapter 1, Subchapter C, Standards of Conduct, §§1.80 - 1.87, without changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 277). The rules will not be republished.

The adopted repeal of existing Subchapter C and, via separate rulemaking, the re-adoption make minor substantive amendments to the rule to set out the parameters of the agency and Board's relationship with its official non-profit partner, the Texas Higher Education Foundation. Additional minor conforming edits further explain the processes for the acceptance of gifts and

donations to the agency that align with Texas law, and re-adopt the ethical boundaries by which the Board and employees govern themselves.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Education Code, Section 61.068, which provides the Coordinating Board with the authority to accept gifts and donations. The repeal is further adopted pursuant to the authority of Texas Government Code chapters 575 and 2255.001.

The adopted repeal affects Texas Education Code, Sections 61.089, 61.5361, 61.5391, 61.609, 61.658, 61.707, 61.793, 61.867, 61.885, 61.907, 61.957, 61.9608, 61.9625, 61.9657, 61.9704, 61.9728, 61.9755, 61.9776, 61.9795, 61.9805, 61.9818, 61.9827, 61.9837, 61.9858, and 61.9965.

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

Filed with the Office of the Secretary of State on April 28, 2023.

TRD-202301539

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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Proposal publication date: January 27, 2023

For further information, please call: (512) 427-6297



SUBCHAPTER C. ACCEPTANCE OF GIFTS AND DONATIONS BY BOARD AND EMPLOYEES

19 TAC §§1.80 - 1.87

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 1, Subchapter C, Acceptance of Gifts and Donations by Board and Employees, §§1.80 - 1.87, without changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 278). The rules will not be republished.

The adopted new rules update the Board's ethics policies to reflect current agency practice, demonstrate compliance with current state law, and implement state governance best practices.

Rule 1.80 sets out the scope and purpose of the rules, which is to comply with applicable provisions of state law, ensure compliance with ethics best practices, and properly govern the relationship between the Board and its official non-profit partner organization, the Texas Higher Education Foundation, which has supported the Board's mission and initiatives since 2001.

Rule 1.81 sets out the definitions used in the rules, including updating the name of the Texas Higher Education Foundation.

Rule 1.82 governs the relationship of the Texas Higher Education Foundation (Foundation) with the board and designates it as the official nonprofit partner of the Board. This rule implements ethical best practices and specifies the control that each the Foundation and Board may have with one another.

Rule 1.83 specifies how the Board may spend gifts and donations consistent with state law.

Rule 1.84 provides for the donation of gifts to the Board from private donors. Subsection (b) also specifies that the relationship between the Board and Foundation shall be established in a Memorandum of Understanding, consistent with the current relationship.

Rule 1.85 sets out what support the Foundation may offer the Board and the support the Board may use to further the purposes of the Foundation. These limitations are specified in rule to avoid conflicts of interest, create transparency, and ensure that the relationship with the Board's official non-profit support organization remains consistent with state law. The means of support and relationship are set out in the Memorandum of Understanding, as described in the rule.

Rules 1.86 and 1.87 establish the methods by which the Board members will avoid prohibit conflicts of interest consistent with Government Code 575 and best practices.

No comments were received regarding the adoption of the new rules.

The new sections are adopted under Texas Education Code, Section 61.068, which provides the Coordinating Board with the authority to accept gifts and donations. The rule is further adopted pursuant to the authority of Texas Government Code chapters 575 and 2255.001.

The adopted new sections affect Texas Education Code, Sections 61.089, 61.5361, 61.5391, 61.609, 61.658, 61.707, 61.793, 61.867, 61.885, 61.907, 61.957, 61.9608, 61.9625, 61.9657, 61.9704, 61.9728, 61.9755, 61.9776, 61.9795, 61.9805, 61.9818, 61.9827, 61.9837, 61.9858, and 61.9965.

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

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6297



SUBCHAPTER O. LEARNING TECHNOLOGY ADVISORY COMMITTEE

19 TAC §1.188, §1.190

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 1, Subchapter O, Learning Technology Advisory Committee, §1.188 and §1.190 without changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 280). The rules will not be republished.

Texas Education Code, §61.026 authorizes the Coordinating Board to appoint advisory committees as considered necessary. The amendment extends the abolishment date of the current Learning Technology Advisory Committee and updates tasks

assigned to the Committee to align with other proposed amendments to the Texas Administrative Code relating to distance education.

Rule 1.188, Duration, contains the abolishment date of the Learning Technology Advisory Committee, which will be extended to April 27, 2028.

Rule 1.190, Tasks Assigned to the Committee, lists the responsibilities of the Learning Technology Advisory Committee. The amendments clarify how those responsibilities will shift to align with proposed changes to distance education program approval processes in Chapter 2, Subchapter J: §1.190(1) removes the responsibility of the Committee to analyze duplication of distance education programs in the state; §1.190(2) amends the Committee's scope for development of policy recommendations to the Board by including the development of affordable learning materials such as open educational resources (§1.190(2)(B)), and the review and update of the Principles of Good Practice for Distance Education (§1.190(2)(C)); and §1.190(3) adds the review and provision of recommendations on Institutional Plans for Distance Education to the responsibilities of the Committee, while removing the task of reviewing and providing recommendations on distance education doctoral programs.

No comments were received regarding the adoption of the amendments.

The amendment is adopted under Texas Education Code, Section 61.0512(g), which provides the Coordinating Board with the authority to approve distance learning courses at institutions of higher education.

The adopted amendment affects Texas Education Code Section 61.0512(g).

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

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6284



CHAPTER 2. ACADEMIC AND WORKFORCE EDUCATION

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §2.3

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 2, Subchapter A, General Provisions, §2.3, with changes to the proposed text as published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8198). The rule will be republished. Changes correct a point of grammar and include section references. The rule will be republished.

The adopted amendment inserts definitions necessary for establishing a revised approval process for associate degrees. These

definitions recognize two categories of associate degrees: *academic* associate degrees, which are associate degrees intended to prepare graduates to study for a bachelor's degree, and *applied* associate degrees, which prepare students for direct entry into the workforce. The amendment to the Texas Administrative Code has continuity with existing definitions in current rules and widespread industry usages of these terms.

No comments were received regarding the adoption of the amendments.

The amendment is adopted under Texas Education Code, §61.0512, which states that a public institution of higher education may not offer a new degree or certificate program without Coordinating Board approval, and Texas Education Code, §130.001, which provides the Coordinating Board with the authority to adopt policies and establish general rules necessary to carry out statutory duties with respect to public junior colleges.

The adopted amendment affects Texas Education Code, §61.003(12), which contains a definition of "certificate program" that also encompasses associate degrees.

§2.3. Definitions.

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

(1) Academic Associate Degree--A type of degree program generally intended to transfer to an upper-level baccalaureate program that will satisfy the lower-division requirements for a baccalaureate degree in a specific discipline. The Academic Associate Degree includes, but is not limited to, the Associate of Arts (A.A.), Associate of Science (A.S.) or Associate of Arts in Teaching (A.A.T.) degrees.

(2) Academic Course Guide Manual (ACGM)--The manual that provides the official list of approved courses for general academic transfer to public universities offered for funding by public community, state, and technical colleges in Texas.

(3) Academic Program or Programs--A type of credential primarily consisting of course content intended to prepare students for study at the bachelor's degree or higher.

(4) Administrative Unit--A department, college, school, or other unit at an institution of higher education, which has administrative authority over degree or certificate programs.

(5) Applied Associate Degree--A type of degree program designed to lead the individual directly to employment in a specific career. The Applied Associate Degree Program includes, but is not limited to, the Associate of Applied Arts (A.A.A.) or Associate of Applied Science (A.A.S.).

(6) Applied Baccalaureate Degree Program--Builds on an Associate of Applied Science (A.A.S.) degree, combined with enough additional core curriculum courses and upper-level college courses to meet the minimum semester credit hour requirements for a bachelor's degree. The degree program is designed to grow professional management skills of the learner and meet the demand for leadership of highly technical professionals in the workplace. May be called a Bachelor of Applied Arts and Science (B.A.A.S.), Bachelor of Applied Technology (B.A.T.) or Bachelor of Applied Science (B.A.S.).

(7) Board--The governing body of the agency known as the Texas Higher Education Coordinating Board.

(8) Board Staff--Staff of the Texas Higher Education Coordinating Board who perform the Texas Higher Education Coordinating Board's administrative functions and services.

(9) Career Technical/Workforce Program--An applied associate degree program or a certificate program for which semester credit hours, quarter credit hours, or continuing education units are awarded, and which is intended to prepare students for immediate employment or a job upgrade in a specific occupation.

(10) Certificate program--Unless otherwise specified in these rules for the purpose of this chapter, certificate means a grouping of subject-matter courses which, when satisfactorily completed by a student, will entitle the student to a certificate or documentary evidence, other than a degree, of completion of a course of study at the postsecondary level. Under this chapter, certificate includes a post-baccalaureate certificate, and excludes an associate degree unless otherwise provided.

(11) CIP Codes--See "Texas Classification of Instructional Programs (CIP) Coding System."

(12) Commissioner--The Commissioner of Higher Education.

(13) Contact hour--A time unit of instruction used by community, technical, and state colleges consisting of 60 minutes, of which 50 minutes must be direct instruction.

(14) Continuing Education Unit (CEU)--Basic unit for continuing education courses. One continuing education unit (CEU) is 10 contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction.

(15) Credential--A grouping of subject matter courses or demonstrated mastery of specified content which entitles a student to documentary evidence of completion. This term encompasses certificate programs, degree programs, and other kinds of formal recognitions such as short-term workforce credentials or a combination thereof.

(16) Degree Program--Any grouping of subject matter courses which, when satisfactorily completed by a student, will entitle that student to an associate's, bachelor's, master's, doctoral, or professional degree.

(17) Degree Title--Name of the degree and discipline under which one or more degree programs may be offered. A degree title usually consists of the degree designation (e.g., Bachelor of Science, Master of Arts) and the discipline specialty (e.g., History, Psychology).

(18) Doctoral Degree--An academic degree beyond the level of a master's degree that typically represents the highest level of formal study or research in a given field.

(19) Embedded Credential--A course of study enabling a student to earn a credential that is wholly embedded within a degree program.

(20) Field of Study Curriculum--A set of courses that will satisfy lower-division requirements for an academic major at a general academic teaching institution, as defined in chapter 4, subchapter B, §4.23(7) of this title (relating to Definitions).

(21) Master's Degree Program--The first graduate level degree, intermediate between a Baccalaureate degree program and Doctoral degree program.

(22) New Content--As determined by the institution, content that the institution does not currently offer at the same instructional level as the proposed program. A program with sufficient new content to constitute a 'significant departure' from existing offerings under 34 CFR §602.22(a)(1)(ii)(C) meets the 50% new content threshold.

(23) Pilot Institution--Public junior colleges initially authorized to offer baccalaureate degrees through the pilot initiative established by SB 286 (78R - 2003). Specifically, the four pilot institutions are Midland College, South Texas College, Brazosport College, and Tyler Junior College.

(24) Planning Notification--Formal notification that an institution intends to develop a plan and submit a degree program proposal or otherwise notify the Board of intent to offer a new degree program.

(25) Professional Degree--Certain degree programs that prepare students for a career as a practitioner in a particular profession, including certain credential types that are required for professional licensure. For the purpose of this chapter, the term refers specifically to the following degrees: Doctor of Medicine (M.D.), Doctor of Osteopathy (D.O.), Doctor of Dental Surgery (D.D.S.), Doctor of Podiatric Medicine (D.P.M.), Doctor of Veterinary Medicine (D.V.M.) and Juris Doctor (J.D.).

(26) Program Inventory--The official list of all degree and certificate programs offered by a public community college, university, or health-related institution, as maintained by Board Staff.

(27) Public Health-Related Institution--Public health-related institutions that are supported by state funds.

(28) Public Junior College--A public institution of higher education as defined in Tex. Educ. Code §61.003(2).

(29) Public Two-year College--Any public junior college, public community college, public technical institute, or public state college as defined in Tex. Educ. Code §61.003(16).

(30) Public University--A general academic teaching institution as defined by Tex. Educ. Code §61.003(3).

(31) Semester Credit Hour, or Credit Hour--A unit of measure of instruction consisting of 60 minutes, of which 50 minutes must be direct instruction, over a 15-week period in a semester system or a 10-week period in a quarter system.

(32) Texas Classification of Instructional Programs (CIP) Coding System--The Texas adaptation of the federal Classification of Instructional Programs taxonomy developed by the National Center for Education Statistics and used nationally to classify instructional programs and report educational data. The 8-digit CIP codes define the authorized teaching field of the specified program, based upon the occupation(s) for which the program is designed to prepare its graduates.

(33) Texas Core Curriculum--Curriculum required at each institution of higher education students are required to complete as required by 19 TAC §4.23(3).

(34) Texas Success Initiative (TSI)--A comprehensive program of assessment, advising, developmental education, and other strategies to ensure college readiness. The TSI Assessment shall be the sole assessment instrument as specified in 19 TAC §4.56 of this title (relating to Assessment Instrument). The passing standards for the authorized TSI Assessment are established in 19 TAC §4.57 of this title (relating to College Ready Standards).

(35) Tracks of Study--Specialized areas of study within a single degree program.

(36) Transcriptable Minor--A transcriptable minor is a group of courses around a specific subject matter marked on the student's transcript. The student must declare a minor for the minor to be included on the student's transcript. The student cannot declare a minor without also being enrolled in a major course of study as part of a baccalaureate degree program.

(37) Workforce Education Course Guide Manual (WECM)--An online database composed of the Board's official statewide inventory of career technical/workforce education courses available for two-year public colleges to use in certificate and associate degree programs.

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

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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19 TAC §2.9

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 2, Subchapter A, General Provisions, §2.9, without changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 281). The rules will not be republished.

Texas Education Code §61.0512(g) authorizes the Coordinating Board to approve courses offered through distance education. Board staff has developed a revised approval process that provides for conferring distance education approval at the institutional level, maintaining the requirement that institutions notify Board staff of intent to implement a new distance education program. The rules conform to this new process, and issue further clarification that this process does not apply to changes to a program's physical location or site. These amendments do not change current processes, as institutions must currently notify the Coordinating Board of changes to distance education programs.

Rule 2.9, Revisions and Modifications to an Approved Program, contains the procedures institutions must follow to request a revision or modification to a certificate or degree program that already has Coordinating Board approval. The amendments clarify how the Coordinating Board will process changes to a program's modality of delivery: subsection 2.9(a)(1) more clearly states that Assistant Commissioner approval applies to the entire relocation of a program; subsection (c)(3) notes that only requests for off-campus face-to-face programs fall within the non-substantive revisions and modifications category; and section 2.9(e) explains the change categories that qualify for Notification Only approval, including program delivery through distance education. This level of approval aligns Chapter 2, Subsection A, with proposed new changes to distance education program approval processes in Chapter 2, Subsection J.

No comments were received regarding the adoption of the amendments.

The amendment is adopted under Texas Education Code, Section 61.0512(g), which provides the Coordinating Board with the authority to approve distance learning courses at institutions of higher education.

The adopted amendment affects Texas Education Code §61.0512(g).

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

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Nichole Bunker-Henderson

General Counsel

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SUBCHAPTER J. APPROVAL OF DISTANCE EDUCATION FOR PUBLIC INSTITUTIONS

19 TAC §§2.200 - 2.207

The Texas Higher Education Coordinating Board adopts new rules in, Title 19, Part 1, Chapter 2, Subchapter J, Approval of Distance Education for Public Institutions, §§2.200 - 2.207, without changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 283). The rules will not be republished.

Texas Education Code (TEC), Section 61.0512(g), provides the Coordinating Board with the authority to approve distance learning courses at institutions of higher education. Specifically, this new section amends definitions of distance education courses and programs and revises the approval process for public institutions seeking to offer distance education. At a later date, the Coordinating Board intends to repeal existing Distance Education Rules located in TAC Chapter 4, Subchapter P, which will be superseded by these rules.

Rule 2.200, Purpose, states the intention of the subchapter to establish rules for all public institutions of higher education in Texas regarding the delivery of distance education.

Rule 2.201, Authority, established the statutory authority for the subchapter in TEC Section 61.0512(g).

Rule 2.202, Definitions, provides the meanings of terms used in the subchapter, including new definitions for 100-Percent Online Course, Hybrid Course, 100-Percent Online Program, and Hybrid Program. These definitions bring Coordinating Board rules in closer alignment with standard practices in the industry.

Rule 2.203, Applicability of Subchapter, specifies that the subchapter applies to institutions seeking to offer one or more Credit Courses and does not govern course eligibility for funding. While non-credit courses and programs offered through distance education may not be subject to the approval or notification requirements of the chapter, they will still be eligible for formula reimbursement through the proposed TAC Chapter 13, Subchapter O.

Rule 2.204, Distance Education Standards and Criteria; the Principles of Good Practice for Distance Education, explains the Principles of Good Practice for Distance Education and their relevance to distance education delivery, details the contents of the Principles of Good Practice for Distance Education, and describes the process for Board approval of the Principles of Good

Practice for Distance Education. This process ensures that the Coordinating Board will use a standard, Board-approved rubric for evaluating institutions' ability to deliver quality distance education.

Rule 2.205, Institutional Plan for Distance Education, explains the purpose of the Institutional Plan for Distance Education and its relation to Board approval for an institution to offer distance education courses. This rule also details the process to review and approve Institutional Plans for Distance Education, which includes Coordinating Board staff and Learning Technology Advisory Committee review and recommendations prior to final approval. This process ensures that each public institution of higher education will have its distance education processes and administration evaluated against the standard Principles of Good Practice for Distance Education, as adopted by the Board, on a regular basis; institutions facing a potential denial from the Commissioner have the opportunity to appeal to the Board. Institutions with an Institutional Plan for Distance Education in good standing or on provisional status with the Coordinating Board have authorization to offer distance education instruction under TEC Section 61.0512(g).

Rule 2.206, Distance Education Degree or Certificate Program Notification, describes the process for institutional notification to Board staff prior to offering an existing program via distance modality or offering a new distance education program. New programs must also follow program approval request rules as detailed in the appropriate subchapter. This provision ensures that the Coordinating Board's existing Distance Education Program Inventory will remain up-to-date, accurately reflecting the distance education program offerings across the state.

Rule 2.207, Effective Date of Rules, establishes the effective date of the subchapter as December 1, 2023, and provides for a pause in the review of distance education doctoral programs by the Learning Technology Advisory Committee.

Dr. Michelle Singh, Assistant Commissioner for Digital Learning, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

No comments were received regarding the adoption of the new rules.

The new sections are adopted under Texas Education Code, Section 61.0512(g), which provides the Coordinating Board with the authority to approve distance learning courses at institutions of higher education.

The adopted new sections affect Texas Education Code, Section 61.0512(g).

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

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CHAPTER 3. RULES APPLYING TO ALL PUBLIC AND PRIVATE OR INDEPENDENT INSTITUTIONS OF HIGHER EDUCATION IN TEXAS REGARDING ELECTRONIC REPORTING OPTION FOR CERTAIN OFFENSES; AMNESTY
SUBCHAPTER A. REQUIREMENTS FOR CERTAIN INCIDENTS OF SEXUAL HARASSMENT, SEXUAL ASSAULT, DATING VIOLENCE, OR STALKING AT CERTAIN PUBLIC AND PRIVATE INSTITUTIONS OF HIGHER EDUCATION; AUTHORIZING ADMINISTRATIVE PENALTIES

19 TAC §3.19

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 3, Subchapter A, Requirements for Certain Incidents of Sexual Harassment, Sexual Assault, Dating Violence, or Stalking at Certain Public and Private Institutions of Higher Education; Authorizing Administrative Penalties, §3.19, without changes to the proposed text as published in the February 3, 2023, issue of the *Texas Register* (48 TexReg 453). The rule will not be republished.

The prior rule only specified the statutory maximum for an administrative penalty. Adding a matrix provides clarity and guidance to Coordinating Board staff and affected institutions. Texas Education Code (TEC), Chapter 51, Sections 51.259 and 51.295 allow the Coordinating Board to adopt rules as necessary to implement and enforce TEC Chapter 51, Subchapters E-2 and E-3. The Coordinating Board used negotiated rulemaking procedures in developing the revisions.

Rule 3.19(a), Compliance, adds the specific due date for each postsecondary educational institution to annually certify in writing to the Coordinating Board that it is in substantial compliance with Texas Education Code, Chapter 51, Subchapter E-2. This revision adds clarity to the reporting requirement. The previous statutory requirement only specified annual certification. The rules initially specified a month. To ensure all postsecondary educational institutions have the same understanding of the due date, a specific date was added. This date was chosen in order for the Coordinating Board to fulfill its obligation to report on substantial compliance of postsecondary educational institutions during the preceding calendar year.

Rule 3.19(b), Compliance, is a new section stating that the Coordinating Board shall conduct a risk-based compliance monitoring of Texas Education Code, Chapter 51, Subchapters E-2 and E-3. The new section provides details on the risk factors

under which the review will be undertaken and the report template which will be provided to institutions. As the Coordinating Board was charged with reporting on substantial compliance by postsecondary educational institutions, this section was added to provide guidance on the risk factors that the Coordinating Board staff would utilize in its review for substantial compliance.

Rule 3.19(c), Compliance, is a renumbered section. The section clarifies the statutory requirements effective dates, and that the statutory penalty amount may be assessed annually. The section addresses the effect of substantial compliance and the Coordinating Board's independent evaluation of evidence on the penalty assessment. The effective dates for each statutory subchapter are listed in the statute and clarified in the rule. Specifically stating that the statutory penalty could be assessed annually was the result of the negotiated rulemaking committee's acknowledgement that ongoing or separate non-compliance should not be included in a one-time penalty that could never be assessed again. The negotiated rulemaking committee also agreed that, per the statute, if a postsecondary educational institution was found in substantial compliance, no penalty assessment would be made.

Rule 3.19(d), Compliance, is a new section detailing how the Coordinating Board will determine an institution's or system's good faith effort to remain in substantial compliance. Factors for evaluation are provided in this section. As the Coordinating Board was charged with reporting on substantial compliance by postsecondary educational institutions, this section was added to provide guidance on the factors that the Coordinating Board staff would utilize in its review to determine an institution's or system's good faith efforts to be in substantial compliance.

Rule 3.19(e), Compliance, is a renumbered section that replaces the current language with new language. The section states that failure to file the annual certification by October 31 of each year will result in a \$2000 penalty per day of violation. The section allows a one month cure period whereby the penalty will not be assessed. The penalty also allows an institution to file a good faith correction to a previously filed certification within a reasonable time. As each postsecondary educational institution is statutorily-required to file an annual certification and the due date has been clarified, this section was added to provide for a specific penalty amount within the statutory amount which would result if the annual certification was not timely filed and how the late filing could be cured, resulting in no late filing penalty.

Rule 3.19(f), Compliance, is a new section, providing a penalty matrix for the annual penalty assessment if an institution fails to maintain substantial compliance with Texas Education Code, Chapter 51, Subchapters E-2 or E-3. The section provides details on what the Coordinating Board will consider when assessing penalties, including the number of students at an institution, mitigating factors, aggravating factors, and other factors justice may require. The penalty matrix breaks down penalty amounts by sections of Subchapters E-2 and E-3. The statute allows for an administrative penalty in an amount not to exceed \$2 million in both Subchapters E-2 and E-3 but does not give additional guidance on how to make the penalty amount determination. Through the negotiated rulemaking process, this section was added to give postsecondary educational institutions a framework for the possible amounts to be administratively assessed and factors which might increase or decrease the total amount assessed.

Rule 3.19(g), Compliance, is a renumbered section that replaces the current language with new language. The section requires

the Coordinating Board to provide a written notice to an institution for its reason for assessing an administrative penalty. This requirement was moved from the existing section (c) of the rule to this section and clarifies that it refers to another section within the rule and follows the statutory requirement to provide written notice.

Rule 3.19(h), Compliance, is a renumbered section that replaces the current language with new language. The section provides for institutional appeal of an assessed administrative penalty and allows the Coordinating Board to enter a final decision and order after a contested case proceeding. The section clarifies the statutory right to appeal a penalty assessment and affirmatively states that the Coordinating Board will enter a final decision after a contested case proceeding.

Rule 3.19(i), Compliance, states that an institution may not pay an administrative penalty assessed under this rule using state-appropriated or federal money. This language was moved from another rule section and the rule prohibition follows the statutory prohibition against state or federal money.

Rule 3.19(j), Compliance, requires the Coordinating Board to deposit an assessed administrative penalty to the credit of the sexual assault program fund established under Section 420.008, Texas Government Code. This language was moved from another rule section and the requirement to deposit administrative penalty funds follows the statutory requirement to deposition to the credit of an established sexual assault program fund.

Rule 3.19(k), Compliance, provides for an annual report to the governor, lieutenant governor, the speaker of the house of representatives, and the standing legislature committees with primary jurisdiction over legislation concerning sexual assault at postsecondary educational institutions. The report is to include a summary of institutions found not to be in substantial compliance and any penalties assessed during the preceding calendar year. This language was moved from another rule section and the annual report submission follows the statutory requirement to report substantial compliance of postsecondary educational institutions to the governor, lieutenant governor, the speaker of the house of representatives, and the standing legislature committees with primary jurisdiction over legislation concerning sexual assault at postsecondary educational institutions.

No comments were received regarding the adoption of the amendments.

The amendment is adopted under Texas Education Code, Sections 51.259 and 51.295 which provide the Coordinating Board with the authority to adopt rules as necessary to implement and enforce TEC, Chapter 51, Subchapters E-2 and E-3.

The adopted amendment affects Texas Administrative Code, Title 19, Part 1, Chapter 3, §3.19.

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

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6209

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**CHAPTER 4. RULES APPLYING TO
ALL PUBLIC INSTITUTIONS OF HIGHER
EDUCATION IN TEXAS
SUBCHAPTER Q. APPROVAL OF
OFF-CAMPUS AND SELF-SUPPORTING
COURSES AND PROGRAMS FOR PUBLIC
INSTITUTIONS**

19 TAC §4.279

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 4, Subchapter Q, Approval of Off-Campus and Self-Supporting Courses and Programs for Public Institutions, §4.279(b), without changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 286). The rule will not be republished.

The amendment to Texas Administrative Code (TAC) §4.279(b) is adopted to provide an exception for courses taught as part of a Texas public community college program offered at a regional airport located no more than five miles across a state line, provided the regional airport is located in the same Metropolitan Area as the Texas college offering the program, serves Texas residents, and supports the Texas region's economy.

The following comment was received regarding adoption of the amendment:

Comment: An institution requested that the requirement for institutions to charge fees that are "equal to or greater than Texas resident tuition and fees" be stricken from Section §4.279(f) to allow an institution that is able to cover the total cost of instruction and fees for less than the applicable resident tuition and fee rates may do so in order to compete in the national online marketplace.

Response: This comment pertains to charges for certain courses not submitted for formula funding, such as self-supporting programs. The rules pertaining to self-supporting programs will be addressed in a future revision of the program approval rules.

The amendment is adopted under Texas Education Code, Section 61.0512(g), which provides the Coordinating Board with the authority to approve courses for credit and distance education programs, including off-campus programs. The amendment is also adopted under Texas Education Code, Section 130.003 which provides contact hour funding for community colleges.

The adopted amendment affects Texas Education Code § 130.003 and 19 Texas Administrative Code, Chapter 9, Subchapter F.

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

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Nichole Bunker-Henderson

General Counsel

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CHAPTER 13. FINANCIAL PLANNING SUBCHAPTER F. FORMULA FUNDING AND TUITION CHARGES FOR REPEATED AND EXCESS HOURS OF UNDERGRADUATE STUDENTS

19 TAC §§13.101 - 13.104, 13.109

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 13, Subchapter F, Formula Funding and Tuition Charges for Repeated and Excess Hours of Undergraduate Students, §§13.101 - 13.104 and 13.109, without changes to the proposed text as published in the February 3, 2023, issue of the *Texas Register* (48 TexReg 456). The rules will not be republished.

SB 1531 (87th Regular Session) amended Education Code related to excess hours limits for formula funding and the amended rule is adopted to update administrative law into compliance with statute.

Rule 13.101, Authority, is amended to make the list of authorities under which the subsequent rules are implemented to be more accurate.

Rule 13.102, Definitions, the definitions of "student" and "academic" are made more specific and clearer in response to stakeholder engagement. The definition of excess hours now refers to §13.103 rather than fully describing what excess hours are.

Rule 13.103, Limitation on Formula Funding for Excess Hours, is amended to explicitly define the excess hours limit for each cohort considering previous amendments to Education Code concerning the excess hours limit.

Rule 13.104, Exemptions for Excess Hours, is amended to establish that hours abandoned by the Fresh Start program do not count against the excess hours limit. This clarifies the requirement in rule to align with statute.

Rule 13.109, Additional Responsibilities of Institutions, contained a provision that required institutions of higher education to "assist" students approaching the excess hours limit. This was vague and unenforceable. The revised rule replaces this with a requirement that institutions provide at least one notice to students approaching the excess hours limit.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Education Code, Section 61.0595, which provides the Coordinating Board with the authority to establish rules that limit certain undergraduate hours that may be reported for formula funding.

The adopted amendments affect rules on the limitations for the reporting of hours to the Coordinating for formula funding.

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

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Nichole Bunker-Henderson

General Counsel

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For further information, please call: (512) 427-6548



SUBCHAPTER N. TEXAS RESKILLING AND UPSKILLING THROUGH EDUCATION (TRUE) GRANT PROGRAM

19 TAC §§13.400 - 13.408

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 13, Subchapter N, Texas Reskilling and Upskilling Through Education (TRUE) Grant Program, §§13.400 - 13.408, without changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 287). The rules will not be republished.

The new rules establish the TRUE Grant Program to strengthen the Texas workforce and build a stronger Texas economy. The TRUE Grant Program provides grants to eligible entities for creating, redesigning, or expanding workforce training programs and delivering education and workforce training. There are also provisions for the process of data collection and reporting undertaken by TRUE grantees and THECB, which will gauge the impact of the TRUE Grant Program on student success.

Rule 13.400, Purpose, identifies the section of the Texas Education Code that grants the Board authority over the TRUE Grant Program.

Rule 13.401, Authority, sets out the purpose of the chapter as a whole, to establish processes for the TRUE Grant Program's organization and implementation.

Rule 13.402, Definitions, lists definitions broadly applicable to all sections of Subchapter N. The definitions establish a common understanding of the meaning of key terms used in the rules.

Rule 13.403, Eligibility, identifies eligible entities that may apply for the TRUE grant as specified by statute. The TRUE Grant Program has three categories of eligible entities: (1) lower-division institution of higher education; (2) consortium of lower-division institutions of higher education; or (3) local chamber of commerce, trade association, or economic development corporation that partners with a lower-division institution of higher education or a consortium of lower-division institutions of higher education.

Rule 13.404, Application Procedures, identifies TRUE grant application procedures so that grant applicants understand high level requirements and refer to the TRUE Grant Program RFA for specifics. Grant application procedures described include the number of applications eligible entities may submit, the process

of submitting applications to the THECB, the importance of adhering to grant program requirements, and the requirement for proper authorization and timely submission of applications.

Rule 13.405, Awards, identifies the size and provision of TRUE grant awards. TRUE Grant Program available funding is dependent on the legislative appropriation for the program for each biennial state budget. Consequently, award levels and estimated number of awards will be specified in the program's RFA. This section also provides reference on the establishment of processes for application approval and award sizes.

Rule 13.406, Review Criteria, provides TRUE grant application review procedures. This section describes how the THECB will utilize specific requirements and award criteria described in a TRUE Grant Program RFA to review applications. Award criteria will include, but may not be limited to, consideration of key factors and preferred application attributes described in the RFA.

Rule 13.407, Reporting Criteria, describes TRUE grant reporting requirements. THECB will request data on TRUE Grant Program funded credential programs as well as data on students enrolled in those programs. Student level data will enable THECB to track student enrollment, credential completion, and employment data through state education and workforce databases.

Rule 13.408, General Information, indicates general information concerning the cancellation or suspension of TRUE grant solicitations and the use of the Notice of Grant Award (NOGA).

The following comments were received regarding the adoption of the new rule.

Comment: One comment received from an institution asked for clarification of Review Criteria (a)(4) concerning representation of institutions from multiple regions of the state.

Response: The Coordinating Board provides criteria (a)(4) as one of the considerations that the Coordinating Board will take into account in reviewing and making grant awards. The rule states that the board will take into consideration projects from eligible entities located in each region of the state to the extent practicable. This means that THECB will take into account the geographic spread of projects across the state when determining grant awards. It does not mean that THECB is requiring applicants to take geography into consideration or that THECB will select an applicant in each region.

Comment: One set of comments received from an institution asked for clarifications and details regarding student aid eligibility, the end date of the funding cycle, actions institutions might take if students receiving funding do not spend down those funds and deadlines for return of funds to THECB.

Response: This level of specificity regarding program guidelines is incorporated in Requests for Proposals (RFAs). Most of these topics are standard content in an RFA. The Coordinating Board will take into account these specific details in the composition of future RFAs, based on the timing and size of future rounds of the TRUE Grant Program.

The new rules are adopted under the Texas Education Code, Chapter 61, Subchapter T-2, §61.882(b), which provides the Coordinating Board with the authority to adopt rules requiring eligible entities awarded a TRUE grant to report necessary information to the THECB.

The adopted new rules affect Texas Education Code, Chapter 61, Subchapter T-2, §§61.881-61.886.

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

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Nichole Bunker-Henderson

General Counsel

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For further information, please call: (512) 427-6209

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SUBCHAPTER O. FORMULA FUNDING FOR DISTANCE EDUCATION

19 TAC §§13.450 - 13.454

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 13, Subchapter O, Formula Funding for Distance Education, §§13.450 - 13.454, as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 290). Sections 13.450 - 13.452 and §13.454 are adopted without changes to the proposed text and will not be republished. Section 13.453 is adopted with changes to the proposed text and will be republished. The change to the proposed text removes §13.453(7) as it was duplicative of §13.453(6).

The adopted new subchapter moves existing rules related to distance education formula funding from Texas Administrative Code (TAC) Chapter 4 to Chapter 13 without any substantive changes. The rules are reorganized and recodified without substantive revisions modifying any existing funding policy. This change is part of a larger reorganization and revision of the Coordinating Board's rules related to distance education. The agency is working on moving all funding rules into Chapter 13, Financial Planning, as this chapter of the TAC contains the agency's rules related to formula funding. This change will improve the agency's rule readability and help institutions navigate Title 19, Part 1, of the TAC. The authority for this rule is provided by TEC §61.059, which gives the board the authority to develop policy related to formula funding.

Rule 13.450 sets out the purpose of the subchapter, which is to establish formula funding rules for distance education instruction.

Rule 13.451 contains the statutory authority for this subchapter, which comes from TEC §61.0512(g) establishing Coordinating Board authority to approve distance education courses and §61.059 establishing the Board's role in developing formula funding policies.

Rule 13.452 directs the reader to find the appropriate definitions in Chapter 2, Subchapter J, of this title. The proposed Chapter 13, Subchapter O, uses the same definitions as the proposed subchapter that will govern agency approval of distance education more generally.

Rule 13.453 contains the substantive provisions related to formula funding. These provisions are identical to the formula funding provisions for distance education currently contained in TAC Chapter 4, Subchapter P. These provisions establish in rule several statutory restrictions on formula funding relevant for distance

education - for example, requirements to collect sufficient tuition for non-formula-supported programs under TEC §54.545 and special provisions solely applicable to Texas A&M University-Texarkana under §§54.231 and 61.059(n).

Rule 13.454 contains the effective date of the proposed rules, scheduled for December 1, 2023.

No comments were received regarding the adoption of the new rules.

The new sections are adopted under Texas Education Code, Section 61.059, which provides the Coordinating Board with the authority to devise, establish, and periodically review and revise formula funding for public institutions of higher education, and Section 61.0512(g), which provides the Coordinating Board with the authority to approve institutions' distance education offerings.

The adopted new sections affect Texas Education Code §§54.231, 54.545, and 61.059.

§13.453. *Formula Funding for Distance Education - General Provisions.*

The following provisions apply to distance education courses and programs offered with authorization under Chapter 2, Subchapter J, of this title (relating to Approval of Distance Education for Public Institutions).

(1) Institutions shall report distance education courses submitted for formula funding in accordance with the Board's uniform reporting system and the provisions of this subchapter.

(2) Institutions may submit for formula funding academic credit courses delivered by distance education to any student located in Texas or to Texas residents located out-of-state or out-of-country.

(3) Institutions, with the exception of those outlined in paragraph (5) of this section, shall not submit for formula funding 100-percent online courses taken by non-resident students who are located out-of-state or out-of-country, courses in out-of-state or out-of-country programs taken by any student, or self-supporting courses.

(4) For courses not submitted for formula funding, institutions shall charge fees that are equal to or greater than Texas resident tuition and applicable fees and that are sufficient to cover the total cost of instruction and overhead, including administrative costs, benefits, computers and equipment, and other related costs. Institutions shall report fees received for self-supporting and out-of-state/country courses in accordance with general institutional accounting practices.

(5) Pursuant to Texas Education Code §54.231(a) and (f) and §61.059(n), Texas A&M University-Texarkana may submit distance education courses for formula funding that are taken by students enrolled in the university that reside in a county contiguous to the county in which Texas A&M University-Texarkana is located and who, under Texas Education Code §54.060(a), are eligible to pay resident tuition.

(6) If a non-Texas resident student enrolls in regular, on-campus courses for at least one-half of the normal full-time course load as determined by the institution, the institution may report that student's fully distance education or hybrid/blended courses for formula funding enrollments.

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

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §22.1

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 22, Subchapter A, General Provisions, §22.1, with changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 291). The rule will be republished. The changes to the proposed text will better align the definition of "expected family contribution" with similar language in Chapter 22.

The Coordinating Board is authorized to adopt rules to effectuate the provisions of Texas Education Code, Chapter 61, including §61.051(a)(5) regarding the administration of financial aid programs. The phrase "expected family contribution" is referenced in multiple chapters relating to financial aid programs in both the Texas Education Code and Texas Administrative Code. The Coordinating adopts amendments to Texas Administrative Code §22.1 so that the administration of state financial aid programs is not adversely impacted by changes in the federal government's terminology regarding the federal methodology for financial aid.

The following comments were received regarding the adoption of the amendments.

Comment: The three comments received represented eleven institutions who all suggested the following language for the definition of EFC to better align the language with similar language in Chapter 22: "A measure utilized to calculate a student's financial need as regulated and defined by the methodology used for Federal student financial aid."

Response: The Coordinating Board agrees that the suggested language achieves the same goal as the proposed language, while doing so in a manner that is more easily understood. The suggested language is incorporated into the adopted rule.

The amendment is adopted under Texas Education Code (TEC), §61.027, which authorizes the Coordinating Board to adopt rules to effectuate the provisions of TEC Chapter 61, including §61.051(a)(5) regarding the administration of financial aid programs.

The adopted amendment affects Texas Administrative Code, Chapter 22.

§22.1. *Definitions.*

The following words and terms, when used in Chapter 22, shall have the following meanings, unless otherwise defined in a particular subchapter:

(1) Academic Year--The combination of semesters defined by a public or private institution of higher education to fulfill the federal "academic year" requirement as defined by 34 CFR 668.3.

(2) Attempted Semester Credit Hours--Every course in every semester for which a student has been registered as of the official Census Date, including but not limited to, repeated courses and courses the student drops and from which the student withdraws. For transfer students, transfer hours and hours for optional internship and cooperative education courses are included if they are accepted by the receiving institution towards the student's current program of study.

(3) Awarded--Offered to a student.

(4) Board or Coordinating Board--The Texas Higher Education Coordinating Board.

(5) Board Staff--The staff of the Texas Higher Education Coordinating Board.

(6) Categorical Aid--Gift aid that the institution does not award to the student, but that the student brings to the school from a non-governmental third party.

(7) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(8) Cost of Attendance/Total Cost of Attendance--An institution's estimate of the expenses incurred by a typical financial aid recipient in attending a particular institution of higher education. It includes direct educational costs (tuition and fees) as well as indirect costs (room and board, books and supplies, transportation, personal expenses, and other allowable costs for financial aid purposes).

(9) Degree or certificate program of four years or less--A baccalaureate degree or certificate program other than a program determined by the Board to require four years or less to complete.

(10) Degree or certificate program of more than four years--A baccalaureate degree or certificate program determined by the Board to require more than four years to complete.

(11) Encumber--Program funds that have been officially requested by an institution through procedures developed by the Coordinating Board.

(12) Entering undergraduate--A student enrolled in the first 30 semester credit hours or their equivalent, excluding hours taken during dual enrollment in high school and courses for which the student received credit through examination.

(13) Expected Family Contribution (EFC)-- A measure utilized to calculate a student's financial need as regulated and defined by the methodology used for federal student financial aid.

(14) Financial Need--The Cost of Attendance at a particular public or private institution of higher education less the Expected Family Contribution. The Cost of Attendance and Expected Family Contribution are to be determined in accordance with Board guidelines.

(15) Full-Time--For undergraduate students, enrollment or expected enrollment for the equivalent of twelve or more semester credit hours per semester. For graduate students, enrollment or expected enrollment for the normal full-time course load of the student's program of study as defined by the institution.

(16) Gift Aid--Grants, scholarships, exemptions, waivers, and other financial aid provided to a student without a requirement to repay the funding or earn the funding through work.

(17) Graduate student--A student who has been awarded a baccalaureate degree and is enrolled in coursework leading to a graduate or professional degree.

(18) Half-Time--For undergraduates, enrollment or expected enrollment for the equivalent of at least six but fewer than nine semester credit hours per regular semester. For graduate students, enrollment or expected enrollment for the equivalent of 50 percent of the normal full-time course load of the student's program of study as defined by the institution.

(19) Period of enrollment--The semester or semesters within the current state fiscal year (September 1 - August 31) for which the student was enrolled in an approved institution and met all eligibility requirements for an award through this program.

(20) Program Officer--The individual named by each participating institution's chief executive officer to serve as agent for the Board. The Program Officer has primary responsibility for all ministerial acts required by the program, including the determination of student eligibility, selection of recipients, maintenance of all records, and preparation and submission of reports reflecting program transactions. Unless otherwise indicated by the institution's chief executive officer, the director of student financial aid shall serve as Program Officer.

(21) Residency Core Questions--A set of questions developed by the Coordinating Board to be used to determine a student's eligibility for classification as a resident of Texas, available for downloading from the Coordinating Board's website, and incorporated into the ApplyTexas application for admission.

(22) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B of this title (relating to Determination of Resident Status). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

(23) Semester--A payment period, as defined by 34 CFR 668.4(a) or 34 CFR 668.4(b)(1).

(24) Three-Quarter-Time--For undergraduate students, enrollment or expected enrollment for the equivalent of at least nine but fewer than 12 semester credit hours per semester. For graduate students, enrollment or expected enrollment for the equivalent of 75 percent of the normal full-time course load of the student's program of study as defined by the institution.

(25) Timely Distribution of Funds--Activities completed by institutions of higher education related to the receipt and distribution of state financial aid funding from the Board and subsequent distribution to recipients or return to the Board.

(26) Undergraduate student--An individual who has not yet received a baccalaureate degree.

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

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Nichole Bunker-Henderson

General Counsel

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For further information, please call: (512) 427-6548



SUBCHAPTER B. PROVISIONS FOR THE TUITION EQUALIZATION GRANT PROGRAM

19 TAC §§22.22 - 22.24, 22.28, 22.29

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 22, Subchapter B, Tuition Equalization Grant Program, §§22.22 - 22.24, 22.28, and 22.29, as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 293). Sections 22.22, 22.23, 22.28, and 22.29 are adopted without changes to the proposed text and will not be republished. Section 22.24 is adopted with changes to the proposed text and will be republished.

Specifically, the amendments provide private and independent institutions with greater flexibility in supporting economically disadvantaged students through funds from the Tuition and Equalization Grant (TEG) program. The amendments also provide clarity for the allocation process and remove unnecessary language.

In §22.22, two redundant definitions are repealed since the items are explained elsewhere in the subchapter. In §22.23, the timing of data submissions is clarified to ensure that allocation activities can occur in a timely manner. In §22.24(b), eligibility criteria are provided for exceptional TEG need. In §22.28, a clarifying reference to §22.4 is added. In §22.29, outdated language is removed, with appropriate clarifying language. Section 22.29(c) is also removed, since the language is being proposed separately as a new §22.30.

Based on feedback from the financial aid community, the Coordinating Board initiated a review of how exceptional TEG need is defined. Since exceptional TEG need has a direct impact on the allocation methodology for the TEG program, the Coordinating Board convened negotiated rulemaking activities, as required by Texas Education Code, §61.0331, in matters relating to the allocation of funds, including financial aid. The adopted amendments were reached by consensus during negotiated rulemaking activities occurring on November 7, 2022.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Education Code, Sections 61.229 and 61.0331, which provides the Coordinating Board with the authority to make reasonable regulations, consistent with the purposes and policies of Texas Education Code, Chapter 61, Subchapter F, relating to the Tuition Equalization Grant Program, and which requires the Coordinating Board to use negotiated rulemaking in matters relating to the allocation of funds, including financial aid.

The adopted amendments affect Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter B.

§22.24. *Eligible Students.*

(a) To receive an award through the TEG Program, a student must:

- (1) be enrolled on at least a three-fourths of full-time enrollment;
- (2) show financial need;
- (3) maintain satisfactory academic progress in his or her program of study as determined by the institution at which the person is enrolled and as required by §22.25 of this title (relating to Satisfactory Academic Progress);

(4) be a resident of Texas as determined based on data collected using the Residency Core Questions and in keeping with Chapter 21, Subchapter B of this title (relating to Determination of Resident Status);

(5) be enrolled in an approved institution in an individual degree plan leading to a first associate degree, first baccalaureate degree, first master's degree, first professional degree, or first doctoral degree, but not in a degree plan that is intended to lead to religious ministry;

(6) be required to pay more tuition than is required at a comparable public college or university and be charged no less than the tuition required of all similarly situated students at the institution; and

(7) not be a recipient of any form of athletic scholarship during the semester or semesters he or she receives a TEG.

(b) To demonstrate eligibility for exceptional TEG need, a student must:

(1) be an undergraduate student; and

(2) have an expected family contribution less than or equal to fifty percent of the Federal Pell Grant eligibility cap for the year reported in the institution's Financial Aid Database submission.

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

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6365



19 TAC §22.30

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 22, Subchapter B, Provisions for the Tuition Equalization Grant Program, §22.30, without changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 296). The rule will not be republished.

Specifically, this new section establishes language currently in §22.29 as a separate rule for greater clarity. Based on feedback from the financial aid community, the Coordinating Board initiated a review of how exceptional TEG need was defined. Since exceptional TEG need has a direct impact on the allocation methodology for the TEG program, the Coordinating Board convened negotiated rulemaking activities, as required by Texas Education Code, §61.0331, in matters relating to the allocation of funds, including financial aid. The adopted new rule was reached by consensus during negotiated rulemaking activities occurring on November 7, 2022.

No comments were received regarding the adoption of the new rule.

The new section is adopted under Texas Education Code, Sections 61.229 and 61.0331, which provides the Coordinating

Board with the authority to make reasonable regulations, consistent with the purposes and policies of Texas Education Code, Chapter 61, Subchapter F, relating to the Tuition Equalization Grant Program, and which requires the Coordinating Board to use negotiated rulemaking in matters relating to the allocation of funds, including financial aid.

The adopted new section affects Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter B.

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Nichole Bunker-Henderson

General Counsel

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SUBCHAPTER C. HINSON-HAZLEWOOD COLLEGE STUDENT LOAN PROGRAM

19 TAC §22.49

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 22, Subchapter C, Hinson-Hazlewood College Student Loan Program, §22.49, with changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 297). The rule will be republished. The rule has been revised to indicate when the new calculation of loan limits will take effect.

The amendments to Texas Administrative Code (TAC) §22.49 are adopted to provide a clearer indication of the alignment between the rule regarding the amount of a loan and the limitations on the loan amount as outlined in Texas Education Code (TEC) §52.33. The adopted language in §22.49(a) aligns the statutory intent regarding what a student may reasonably be expected to pay with the Board's Long-Range Master Plan for Higher Education and the manageable debt guidelines therein. The adopted language in 22.49(b) captures the agency's interpretation of how federal student loan eligibility is considered when calculating the financial resources indicated in TEC §52.33.

No comments were received regarding the adoption of the amendments.

The amendment is adopted under Texas Education Code, Section 52.33, which provides the Coordinating Board with the authority to adopt rules regarding the amount of loan a student may borrow, and Section 52.54, which provides the Coordinating Board with the authority to adopt rules regarding the Hinson-Hazlewood College Student Loan Program.

The adopted amendment affects the College Access Loan program, as administered by the Coordinating Board under the Hinson-Hazlewood College Student Loan Program and authorized by Texas Education Code, Chapter 52.

§22.49. *Amount of Loan.*

(a) Amount of Loan. For loan applications received by the agency prior to September 1, 2023, the amount of loan shall not exceed

the amount that the student needs in order to meet reasonable expenses as a student.

(b) Annual and Aggregate Loan Limit. For loan applications received by the agency prior to September 1, 2023, the maximum annual and aggregate loan amounts for any eligible student shall be determined from time to time by the Commissioner. In no case shall the maximum annual loan amount be greater than the annual cost of attendance for the student at the eligible institution.

(c) Aggregate Loan Limit. For loan applications received by the agency on or after September 1, 2023:

(1) The maximum aggregate loan amount for an eligible undergraduate student shall be limited to an amount of debt defined as "manageable debt" under the Board's Long-Range Master Plan for Higher Education. The maximum amount of student loan debt is based on a reasonable monthly student loan payment, taking into consideration the borrower's area of study, as outlined in Figure 1. The agency may not loan a borrower an amount of College Access Loans that would cause the borrower's aggregate educational loan debt, as reported on the borrower's credit report, to exceed the maximum amount outlined in Figure 1.

(2) The maximum aggregate loan amount for an eligible graduate or professional student is the sum of the student's annual limits.

(d) Annual Loan Limit. For loan applications received by the agency on or after September 1, 2023, in no case shall the maximum annual loan amount exceed the difference between the cost of attendance and the financial resources available to the applicant, including the applicant's scholarships, gifts, grants, and other financial aid. The student's maximum eligibility for Federal Direct Loans, except for Federal Plus loans, must be considered by the institution as other financial aid, whether or not the student actually receives such assistance. Figure: 19 TAC §22.49(d)

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

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6365



PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER GG. COMMISSIONER'S RULES CONCERNING COUNSELING PUBLIC SCHOOL STUDENTS

19 TAC §61.1073

The Texas Education Agency (TEA) adopts new §61.1073, concerning counseling public school students. The new section is adopted with changes to the proposed text as published in the November 4, 2022, issue of the *Texas Register* (47 TexReg

7387) and will be republished. The adopted new section implements the statutory requirement for school districts to annually assess compliance with the district policy requiring a school counselor to spend at least 80% of the school counselor's total work time on duties that are components of a counseling program as required by Senate Bill (SB) 179, 87th Texas Legislature, Regular Session, 2021.

REASONED JUSTIFICATION: Texas Education Code (TEC), §33.006(d), as added by SB 179, 87th Texas Legislature, Regular Session, 2021, requires school districts to adopt a policy that requires a school counselor to spend at least 80% of the school counselor's total work time on duties that are components of a counseling program developed under TEC, §33.005. TEC, §33.006(h), requires each school district to annually assess the district's compliance with the policy regarding school counselors' work time, and, on request by the commissioner, provide a written copy of the assessment to TEA on or before a date specified by the commissioner.

Adopted new §61.1073 implements TEC, §33.006(h). The new rule requires each district school counselor to track and document, using a district-standardized tracking tool, the time spent on work duties performed by the school counselor throughout a school year. The new rule also identifies the elements that district assessments must include and the documentation to be included in annual requests by TEA for district assessments.

The following changes were made to the rule since published as proposed.

In response to public comment, §61.1073(b) was amended to clarify that the standardized tracking tool would be selected by each school district. In addition, §61.1073(b)(1)(B) was amended to require that the tracking tool include reporting of the total time spent on all duties that are components of a counseling program as opposed to time spent on each component.

In response to public comment, §61.1073(b)(1)(C) was clarified by adding "including time spent in administering assessment instruments or providing other assistance in connection with assessment instruments (except time spent in interpreting data from assessment instruments)" to the requirement for tracking of the total time spent on duties that are not components of a counseling program.

In response to public comment, §61.1073(b)(1)(D) that would have required a calculation of the percentage of work time spent on each component of a counseling program was stricken in acknowledgment that this calculation is unnecessary.

In response to public comment, §61.1073(c) was amended to require the assessment of compliance with the number rather than the percentage of school counselors in the district whose work was not in compliance with the district policy adopted under TEC, §33.006(d), to better reflect the level of compliance with state law.

In response to public comment, proposed §61.1073(e)(2) and (4) were stricken. The provisions would have required randomly selected school districts to submit all completed district-standardized tracking tools from the previous school year and the number of school counselors whose work is determined by the district to be in compliance with the district policy adopted under TEC, §33.006(d). New subsection (e)(2) was added to require the randomly selected school districts to submit a copy of the district annual assessment required by subsection (c) to streamline the reporting requirement.

The assessment of data and reporting impact has been updated since the rule was published as proposed. The new rule will have a data and reporting impact for school districts randomly selected to submit information to TEA annually. In response to public comment, the information required to be reported by randomly selected districts would no longer include all completed district-standardized tracking tools from the previous school year or the number of school counselors whose work is determined by the district to be in compliance with the district policy adopted under TEC, §33.006(d). Under the adopted rule, selected school districts will still be required to provide a copy of the school district policy adopted under TEC, §33.006(d); a copy of the district annual assessment; the number of school counselors in the school district from the previous school year; the number of school counselors in the school district whose work is determined by the district to be out of compliance with the school district policy adopted under TEC, §33.006(d); and any other findings, conclusions, or analysis included in the annual assessment, including proposed strategies to address any lack of compliance with the district policy adopted under TEC, §33.006(d).

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began November 4, 2022, and ended December 5, 2022. Following is a summary of public comments received and agency responses.

Comment: Sixty school counselors expressed support for the proposed rule, noting that the rule would allow them to support students and counsel according to TEC, §33.005, while limiting non-counseling duties.

Response: The agency agrees that the rule will permit school counselors to support students while limiting non-counseling duties.

Comment: Thirty-six school counselors expressed support for the proposed rule, noting that the rule would hold districts more accountable for allowing counselors to spend at least 80% of their time on duties established in TEC, §33.005. The commenters noted that some districts require counselors to test students despite testing being listed as a non-counseling duty in TEC, §33.006.

Response: The agency agrees that the rule supports compliance with TEC, §33.005 and §33.006.

Comment: Nineteen school counselors expressed support for the rule, stating that a mental health crisis has followed the pandemic, leading to emotional and behavioral concerns that require school counselors to spend at least 80% of their time on counseling duties.

Response: The agency agrees that counselors spending 80% of their time on counseling duties supports students with emotional and behavioral concerns.

Comment: Twenty-four school counselors expressed support for the rule but indicated a preference to track time and effort in larger time frames such as weekly or monthly instead of daily. They recommended only reporting time on non-counseling duties and requested that education service centers (ESCs) provide a time tracker for districts that do not develop their own.

Response: The agency disagrees that only non-counseling duties should be tracked. TEC, §33.005, describes a comprehensive counseling program and each of its components. Data on time spent in each category provides information on what services are being provided to students. Regarding time trackers, the agency provides the following clarification. TEC,

§33.006, requires an annual assessment of compliance; however, districts have the flexibility to develop or adopt appropriate time trackers and/or work time analysis procedures. The *Texas Model for Comprehensive School Counseling Programs* and the *ASCA National Model: Implementation Guide* provide various templates for work time analysis. The comment regarding ESC development of tools is outside the scope of the proposed rulemaking.

Comment: Ten school counselors expressed support for the rule but raised concerns about current counselor-to-student ratios.

Response: Counselor-to-student ratios are outside the scope of the proposed rulemaking.

Comment: Seven school counselors and one administrator expressed support for the rule but recommended clearer definitions of counseling duties and clearer guidance for districts to follow regarding counseling as compared to non-counseling duties.

Response: The agency disagrees that the duties should be defined in administrative rule. TEC, §33.006, defines counseling duties and does not give the commissioner of education authority to provide further guidance.

Comment: Two teachers and one retired teacher expressed support for the rule, noting that counselors are too often assigned non-counseling duties and that the rule will allow counselors more time to serve students.

Response: The agency agrees that the rule supports counselors in serving students as described in TEC, §33.005 and §33.006.

Comment: One student expressed support for the rule, specifically noting that the student's local school board adopted a policy aligned to the language in SB 179 with no modifications but did not alter the time counselors spend on non-counseling duties like testing. The student requested that counselors be more available to students.

Response: The agency agrees that the rule supports counselors spending more time with students on counseling duties described in TEC, §33.005 and §33.006.

Comment: Six community members, including two parents, expressed support for the rule to allow counselors more time on counseling duties and better support students by limiting non-counseling duties.

Response: The agency agrees that the rule supports counselors spending more time with students on counseling duties described in TEC, §33.005 and §33.006.

Comment: One community member expressed a belief that tracking hours is an undue burden and not necessary to help students.

Response: The agency disagrees. Tracking time and effort is a practice used in many fields and can be done efficiently. The rule supports counselors spending more time with students on counseling duties described in TEC, §33.005 and §33.006.

Comment: One school administrator expressed support for the rule but recommended that only districts out of compliance with counselors spending 80% of their time on counseling duties report their time.

Response: The agency disagrees that only districts whose counselors are not spending 80% of their time on counseling duties should report their time. In order for a district to ensure it is in compliance with the law, time must be reported for all counselors.

Comment: One school administrator expressed agreement with the rule and stated that without it, no district would comply with TEC, §33.006.

Response: The agency provides the following clarification. School districts are required to comply with statute regardless of agency administrative rules. However, the rule is intended to provide support and accountability for districts for their compliance.

Comment: One school administrator proposed reporting time spent on counseling duties and time spent on non-counseling duties as opposed to time spent within each category of comprehensive school counseling.

Response: The agency disagrees that only counseling and non-counseling duties should be tracked as opposed to time spent within each category. TEC, §33.005, describes a comprehensive counseling program and each of its components. Data on time spent in each category provides information on what services are being provided to students. The data helps ensure that students are receiving appropriate services.

Comment: Four school administrators expressed support for the rule but expressed concern that the tracking of time will be an additional burden. The commenters also asked for lower counselor-to-student ratios.

Response: The agency disagrees that the tracking of time will be an additional burden and provides the following clarification. Districts have the flexibility to develop or adopt appropriate time trackers and/or work time analysis procedures. The *Texas Model for Comprehensive School Counseling Programs* and the *ASCA National Model: Implementation Guide* provide various templates for work time analysis. The data gathered provides districts with valuable information to support counselors in meeting the needs of their students. The comment regarding counselor-to-student ratios is outside the scope of the proposed rulemaking.

Comment: Two school administrators expressed support for the rule as a way to meet the needs of students.

Response: The agency agrees that the rule supports counselors spending more time with students on counseling duties described in TEC, §33.005 and §33.006.

Comment: Four school administrators disagreed with the determination that the rule does not have a fiscal impact.

Response: The agency offers the following clarification: There are no additional costs resulting from the proposed rule. TEC, §33.005, requires the implementation of a comprehensive counseling program. System support, a component of the comprehensive counseling program, establishes work time analysis as an appropriate counseling duty. State law also requires school districts to adopt a policy that requires a school counselor to spend at least 80% of the school counselor's total work time on duties that are components of a counseling program and annually assess the district's compliance with the policy.

Comment: One school administrator asked if a draft could be sent out, if a standardized tracker could be provided, how districts will be measured, and how the random districts would be chosen.

Response: The agency provides the following clarification. Both the *Texas Model for Comprehensive School Counseling Programs* and the *ASCA National Model: Implementation Guide* provide various templates for work time analysis, including stan-

standardized time trackers. The rule will require school districts to annually assess the work time tracking documentation for each school counselor in the district; the number of school counselors whose work was in compliance with a district policy adopted under TEC, §33.006(d); and the number of school counselors in the district whose work was not in compliance with the district policy adopted under TEC, §33.006(d). Finally, districts will be randomly selected to provide documentation to TEA each year.

Comment: Eighteen school administrators disagreed with the rule and expressed concern that counselors are too busy to add another clerical task to their plate.

Response: The agency disagrees that work time analysis is a clerical task and offers the following clarification. Tracking time and effort is a practice used in many fields and can be done efficiently. Counselors should spend at least 80% of their work time on appropriate counseling duties described in TEC, §33.006. A comprehensive counseling program described in TEC, §33.005, includes the component of system support, under which work time analysis (time tracking) falls. Work time analysis is a necessary and appropriate counseling duty.

Comment: Nederland Independent School District (ISD) disagreed with the rule and stated it will only add another layer of bureaucracy between teaching and learning.

Response: The agency disagrees that the rule adds a layer of bureaucracy and offers the following clarification. A comprehensive counseling program described in TEC, §33.005, includes the component of system support, under which work time analysis (time tracking) falls. Work time analysis is a necessary and appropriate counseling duty. Work time analysis will ensure that districts demonstrate compliance with the statutory requirement that 80% of school counselors' total work time is spent on duties described in TEC, §33.005 and §33.006. In this way, the rule supports counselors spending more time with students on counseling duties described in TEC, §33.005 and §33.006.

Comment: Kaufman ISD expressed disagreement with the proposed rule and stated that the rule would increase the paperwork burden while ostensibly acting to decrease it. The district further commented that counselors in the district are not in favor of the rule and that the commissioner's distrust of public-school personnel is made evident in rules of this nature.

Response: The agency disagrees that work time analysis will increase paperwork. A comprehensive counseling program described in TEC, §33.005, includes the component of system support, under which work time analysis (time tracking) falls. Work time analysis is a necessary and appropriate counseling duty. The agency provides the following clarification. State law requires the commissioner to adopt a rule to implement the requirement that each school district annually assess the district's compliance with the policy that requires a school counselor to spend at least 80% of the school counselor's total work time on duties that are components of a counseling program and on request by the commissioner, provide a written copy of the assessment to the agency on or before the date specified by the commissioner.

Comment: Lumberton ISD expressed disagreement with the rule and stated that the district's counselors are already swamped with counseling students experiencing mental health situations. The district further stated that adding time and effort log requirements will do nothing to assist students.

Response: The agency disagrees that the rule does nothing to assist students and offers the following clarification. Counselors

should spend at least 80% of their work time on appropriate counseling duties described in TEC, §33.006. A comprehensive counseling program described in TEC, §33.005, includes the component of system support, under which work time analysis falls. Work time analysis is a necessary and appropriate counseling duty.

Comment: Cisco ISD stated that the proposal has a cost to districts--and, more importantly, counselors--who will have to spend valuable man-hours on completing these reports. The district expressed understanding that there are counselors who feel they are not able to provide counseling because they are required to manage assessments or perform other non-counseling duties but that punishing every counselor in the state to complete a time and effort sheet is counterintuitive. The district stated that, if TEC, §33.006(h), must be monitored, it would be much easier to simply have the counselors sign a statement that is submitted annually stating that 80% of their work time is spent on duties that are components of a counseling program developed under TEC, §33.005.

Response: The agency disagrees that signing a statement is sufficient evidence of compliance with TEC, §33.006. The agency disagrees that the rule punishes counselors and adds additional cost because counselors should spend at least 80% of their work time on appropriate counseling duties described in TEC, §33.006. A comprehensive counseling program described in TEC, §33.005, includes the component of system support, under which work time analysis falls. Work time analysis is a necessary and appropriate counseling duty.

Comment: Big Sandy ISD expressed agreement with the 80% rule but stated a concern that the additional paperwork and time tracking will be overwhelming and demeaning.

Response: The agency disagrees that the tracking of time will be demeaning and overwhelming. Tracking time and effort is a practice used in many fields and can be done efficiently. Counselors should spend at least 80% of their work time on appropriate counseling duties described in TEC, §33.006. A comprehensive counseling program described in TEC, §33.005, includes the component of system support, under which work time analysis falls. Work time analysis is a necessary and appropriate counseling duty.

Comment: The Texas Counseling Association (TCA), Texas School Counselor Association (TSCA), two professors, and two school administrators expressed support for the rule but requested that the agency consider amending §61.1073(a)(1) to specifically cite the *Texas Model for Comprehensive School Counseling Programs* and to expand the reference in this subsection to include all of TEC, §33.005, rather than just one subsection to provide a clearer reference for school districts.

Response: The agency disagrees that specifically citing the *Texas Model for Comprehensive School Counseling Programs* or expanding the statutory reference will provide additional clarity.

Comment: TCA, TSCA, two professors, and two school administrators expressed support for the rule but requested that the agency consider amending §61.1073(b) to allow each school district to adopt its own tracking tool; change the reporting requirements to focus on time spent on the entire school counseling program, rather than each of the four components; and add language to explicitly state that testing duties are not components of a counseling program.

Response: The agency disagrees that reporting on the counseling program as a whole will be sufficient. TEC, §33.005, describes a comprehensive counseling program and each of its components. Data on time spent in each category provides information on what services are being provided to students. The data helps ensure that students are receiving appropriate services.

Comment: TCA, TSCA, two professors, and two school administrators expressed support for the rule but requested that the agency consider amending §61.1073(c) for consistency in reporting numbers rather than percentages of school counselors whose work complies or does not comply with the district's policy.

Response: The agency agrees and has adjusted §61.1073(c)(3) at adoption to read, "the number of school counselors in the district whose work was not in compliance with the district policy adopted under TEC, §33.006(d)."

Comment: TCA, TSCA, two professors, and two school administrators expressed support for the rule but requested that the agency consider amending §61.1073(e) to reduce reporting requirements by allowing districts to simply submit their annual assessments upon request since the data requested in this subsection is required to be included in each district's annual assessment.

Response: The agency agrees and has deleted §61.1073(e)(2) and (4), as proposed, and added new paragraph (2) to read, "a copy of the district annual assessment as required by subsection (c) of this section" at adoption. The agency has also amended renumbered §61.1073(e)(4) to read, "the number of school counselors in the district whose work is determined by the district to be out of compliance with the district policy adopted under TEC, §33.006(d)."

Comment: Texas State Teachers Association (TSTA) commented that the rule as drafted increases counselors' workloads in ways unrelated to a comprehensive counseling program. TSTA proposed revisions to §61.1073(b).

Response: The agency disagrees that reporting on each component of the school counseling program will increase workloads in ways unrelated to a comprehensive counseling program. TEC, §33.005, describes a comprehensive counseling program and each of its components. Data on time spent in each category provides information on what services are being provided to students. The data helps ensure that students are receiving appropriate services. In response to other comments, the agency revised §61.1073(b)(1)(B), (c), and (e) at adoption.

Comment: Texas Classroom Teachers Association (TCTA) commented that the proposal to track specific amounts of time spent on components of TEC, §33.005, is unnecessarily burdensome and proposed striking "each of" from §61.1073(b)(1)(B).

Response: The agency agrees that requiring the reporting of each component is unnecessary and deleted "each of" from §61.1073(b)(1)(B) at adoption.

Comment: TCTA proposed amending §61.1073(b)(1)(B)(iv) to read, "system support to support the efforts of teachers, staff, parents, and other members of the community in promoting the educational, career, personal, and social development of students."

Response: The agency disagrees that the additional language is necessary.

Comment: TCTA proposed amending §61.1073(b)(1)(C) to read, "the total time spent on duties that are not components of a counseling program developed under TEC, §33.005, including time spent in administering assessment instruments or providing other assistance in connection with assessment instruments (except time spent in interpreting data from assessment instruments)."

Response: The agency agrees and amended §61.1073(b)(1)(C) at adoption to reflect the commenter's suggested language.

Comment: TCTA proposed striking §61.1073(b)(1)(D).

Response: The agency agrees and deleted proposed §61.1073(b)(1)(D) at adoption.

Comment: TCTA proposed that the rule address potential attempts at coercion by adding specific language to prohibit coercion and adding new subsection (f) to require districts to submit their annual reports if there are allegations of coercion.

Response: The agency disagrees that the rule should address coercion. The agency has determined that the statute does not provide authority to address coercion in the rule.

Comment: Texas American Federation of Teachers (AFT) commented that tracking time is overburdensome and that districts should track only the 20% of time not spent on counseling duties. Texas AFT also commented that a clearer definition of which schools will be randomly selected is necessary.

Response: The agency disagrees that reporting only on the 20% of time not spent on school counseling duties is sufficient and that tracking each component of a school counseling program will be overburdensome. TEC, §33.005, describes a comprehensive counseling program and each of its components. Data on time spent in each category provides information on what services are being provided to students. The data helps ensure that students are receiving appropriate services. The agency also disagrees that there should be a clearer definition of which schools will be randomly selected. If the agency provided information regarding which districts were going to be selected, the process would no longer be random.

Comment: One school administrator asked if the rule applies to charter schools.

Response: The agency offers the following clarification. The rule does not apply to charter schools.

Comment: The Association of Texas Professional Educators expressed support for TEC, §33.006, and limiting time spent on testing and other non-counseling duties, but they advocated for changes to §61.1073(b) and (c) and proposed adding the option for a principal or designee to affirm the school has posted and is following the policy. The commenter expressed the belief that the current rule is over burdensome.

Response: The agency agrees that changes to §61.1073(b) and (c) are warranted. Section 61.1073(b) was amended at adoption to clarify that the standardized tracking tool would be selected by each school district. Section 61.1073(b)(1)(B) was amended at adoption to require that the tracking tool include reporting of the total time spent on all duties that are components of a counseling program as opposed to time spent on each component. In addition, §61.1073(c) was amended at adoption to require the assessment of compliance with the number rather than the percentage of school counselors in the district whose work was not in compliance with the district policy adopted under TEC, §33.006(d). The agency disagrees that affirmation of

compliance is sufficient. The agency also disagrees that the rule is overburdensome. Counselors should spend at least 80% of their work time on appropriate counseling duties described in TEC, §33.006. A comprehensive counseling program described in TEC, §33.005, includes the component of system support, under which work time analysis falls. Work time analysis is a necessary and appropriate counseling duty.

Comment: One school counselor recommended that counselors only have duties that are in the rubric of the School Counselor Appraisal Instrument and that counselors should get paid more for what they do.

Response: The agency provides the following clarification. Appropriate school counseling duties are described in TEC, §33.005 and §33.006. The comment about higher pay is outside the scope of the proposed rulemaking.

Comment: Four school counselors commented that they are against tracking time because the added documentation takes away from students' mental health, but they support additional investment in more counselors.

Response: The agency disagrees that the documentation will take away from student services. Counselors should spend at least 80% of their work time on appropriate counseling duties described in TEC, §33.006. A comprehensive counseling program described in TEC, §33.005, includes the component of system support, under which work time analysis falls. Work time analysis is a necessary and appropriate counseling duty.

Comment: Sixty-eight school counselors expressed opposition to the rule because they believe it is overburdensome and will require additional time that counselors do not have in addition to all of their current duties. The commenters further stated that other educational personnel, including administrators, teachers, and TEA employees do not track their time.

Response: The agency disagrees that tracking time is overburdensome. Time and effort is a practice used in many fields and can be done efficiently. Counselors should spend at least 80% of their work time on appropriate counseling duties described in TEC, §33.006. A comprehensive counseling program described in TEC, §33.005, includes the component of system support, under which work time analysis falls. Work time analysis is a necessary and appropriate counseling duty.

Comment: Two school counselors commented that data collection is very important but that the rule should be optional.

Response: The agency disagrees that the rule should be optional. The school counseling component of system support under TEC, §33.005, which requires work time analysis, is a necessary, required, and appropriate counseling duty.

Comment: Four school counselors commented that tracking time is unrealistic, a punishment, and a lack of professional trust. The commenters stated that currently, small/rural campus administrators and counselors wear many hats to support students and this rule adds to the duties and takes time away from students and that additional funding would be needed for new positions.

Response: The agency disagrees that tracking time is unrealistic, a punishment, or a lack of professional trust. Tracking time and effort is a practice used in many fields and can be done efficiently. Counselors should spend at least 80% of their work time on appropriate counseling duties described in TEC, §33.006. A comprehensive counseling program described in TEC, §33.005,

includes the component of system support, under which work time analysis falls. Work time analysis is a necessary and appropriate counseling duty. Additional funding for positions is outside the scope of the proposed rulemaking.

Comment: Three school counselors stated that tracking time takes time away from supporting students and that the data could be used by administrators against counselors.

Response: The agency disagrees that the documentation will take time away from supporting students. Counselors should spend at least 80% of their work time on appropriate counseling duties described in TEC, §33.006. A comprehensive counseling program described in TEC, §33.005, includes the component of system support, under which work time analysis falls. Work time analysis is a necessary and appropriate counseling duty.

Comment: One school counselor commented that rules cannot just be changed and that new laws create deficiencies. The commenter also stated that children are no longer the priority; compliance is.

Response: The agency disagrees that the new rule does not prioritize children. New §61.1073 supports counselors in serving students as described in TEC, §33.005 and §33.006.

Comment: One school counselor commented that rural schools have no one to do the non-counseling duties and recommended a noncompetitive grant of \$75,000 for small districts to hire someone to do the non-counseling duties.

Response: This comment is outside the scope of the proposed rulemaking.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §33.005, which provides that a school counselor shall plan, implement, and evaluate a comprehensive school counseling program that meets the requirements of the section; TEC, §33.006(d), as added by Senate Bill (SB) 179, 87th Texas Legislature, Regular Session, 2021, which requires, except as provided by subsection (e) of the section, school districts to adopt a policy that requires a school counselor to spend at least 80% of the school counselor's total work time on duties that are components of a counseling program developed under TEC, §33.005; TEC, §33.006(e), as added by SB 179, 87th Texas Legislature, Regular Session, 2021, which requires school district boards of trustees that determine that staffing needs require school counselors to spend less than 80% of their work time on duties that are components of counseling programs developed under TEC, §33.005, to change the policy adopted under subsection (d) of the section to reflect the reasons why counselors need to spend less than 80% of their work time on components of the counseling program, list those non-component duties, and set the required percentage of work time to be spent on components of the counseling program; and TEC, §33.006(h), as added by SB 179, 87th Texas Legislature, Regular Session, 2021, which requires each school district to annually assess the district's compliance with the policy adopted under TEC, §33.006(d), and, on request by the commissioner, provide a written copy of the assessment to Texas Education Agency on or before a date specified by the commissioner. This section requires the commissioner to adopt rules to implement these requirements.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §33.005 and §33.006, as amended by Senate Bill 179, 87th Texas Legislature, Regular Session, 2021.

§61.1073. *Annual Assessment of School District Compliance.*

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

(1) Comprehensive school counseling program--provision of a guidance curriculum, responsive services, individual planning, and system support as described in Texas Education Code (TEC), §33.005(b).

(2) Duties that are components of a counseling program--work activities related to the development, implementation, and evaluation of a comprehensive school counseling program as described in TEC, §33.005(b).

(3) School counselor--the position described by TEC, §21.003, and Chapter 239, Subchapter A, of this title (relating to School Counselor Certificate).

(4) School counselor's total work time--the amount of time, reported in hours, that a school counselor is contracted to work as a school counselor for a school district during a school year.

(b) School districts shall require each district school counselor to track and document, using a standardized tracking tool, as established by each district, the time spent on work duties performed by the school counselor throughout a school year. This tracking tool shall:

(1) include the following components:

(A) the total work time worked by the school counselor for the year;

(B) the total time spent on the following duties that are components of a counseling program developed under TEC, §33.005:

- (i) provision of a guidance curriculum;
- (ii) responsive services for students;
- (iii) individual planning for students; and
- (iv) system support; and

(C) the total time spent on duties that are not components of a counseling program developed under TEC, §33.005, including time spent in administering assessment instruments or providing other assistance in connection with assessment instruments (except time spent in interpreting data from assessment instruments); and

(2) be maintained by the district in a format that can be made available to Texas Education Agency (TEA) upon request.

(c) School districts shall annually assess the district's compliance with the policy adopted under TEC, §33.006(d). The assessment shall include:

(1) work time tracking documentation as described in subsection (b) of this section for each school counselor in the district;

(2) the number of school counselors whose work was in compliance with the district policy adopted under TEC, §33.006(d); and

(3) the number of school counselors in the district whose work was not in compliance with the district policy adopted under TEC, §33.006(d).

(d) The assessment described in subsection (c) of this section shall be maintained by the school district in a format that can be made available to TEA upon request.

(e) Not later than October 15 of each year, TEA will request the following information from a randomly selected sample of school

districts, with district responses required to be submitted to TEA not later than November 15 of each year in the format requested by TEA:

(1) a copy of the district policy adopted under TEC, §33.006(d);

(2) a copy of the district annual assessment as required by subsection (c) of this section;

(3) the number of school counselors in the district from the previous school year;

(4) the number of school counselors in the district whose work is determined by the district to be out of compliance with the district policy adopted under TEC, §33.006(d); and

(5) any other findings, conclusions, or analysis included in the annual assessment required by subsection (c) of this section, including proposed strategies to address any lack of compliance with the district policy adopted under TEC, §33.006(d).

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

Filed with the Office of the Secretary of State on May 1, 2023.

TRD-202301578

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: May 21, 2023

Proposal publication date: November 4, 2022

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

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER B. PAYMENT PROCESSING--ELECTRONIC FUNDS TRANSFERS

34 TAC §5.12, §5.15

The Comptroller of Public Accounts adopts amendments to §5.12 concerning processing payments through electronic funds transfers and §5.15 concerning electronic funds transfers - paycards, without changes to the proposed text as published in the March 10, 2023, issue of the *Texas Register* (48 TexReg 1426). The rules will not be republished.

The amendments to §5.12 delete the definition of "comptroller approved EFTS form" in subsection (b)(4) because this term is no longer used in this subchapter and renumber the subsequent definitions accordingly; add the term "travel reimbursement" in subsection (b)(19) to acknowledge that pay cards issued to state employees may also provide access to travel reimbursement payments; change "funds" to "payments" in subsection (b)(19) to ensure the consistent use of the term in this subchapter; change "paycard" to "pay card" in subsections (b)(19) and (c)(2)(B) to correct the spelling of this term; change "and" to "or" in subsection (b)(26)(C) to correct a typographical error; update the room

number to which any questions, comments, or complaints may be addressed in subsection (g)(1); and change "are" to "is" in subsection (h) to correct a grammatical error.

The amendments to §5.15 change "funds" to "payments" in subsection (a)(2) to ensure the consistent use of the term in this subchapter; add the term "travel reimbursement" throughout subsection (a) to acknowledge that pay cards issued to state employees may also provide access to travel reimbursement payments; delete subsection (c) to allow greater flexibility regarding the use of pay cards to the extent allowed by Regulation E, 12 C.F.R. Part 1005; and change "paycard" to "pay card" and "paycards" to "pay cards" throughout §5.15 to correct the spelling of this term.

The comptroller did not receive any comments regarding adoption of the amendments.

The amendments are adopted under Government Code, §403.016(j), which requires the comptroller to adopt rules to administer Government Code, §403.016 regarding electronic funds transfer.

The amendments implement Government Code, §403.016.

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

Filed with the Office of the Secretary of State on April 28, 2023.

TRD-202301570

Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

Effective date: May 18, 2023

Proposal publication date: March 10, 2023

For further information, please call: (512) 475-2220



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 145. PAROLE

SUBCHAPTER A. PAROLE PROCESS

37 TAC §§145.3, 145.12, 145.15, 145.18

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 145, Subchapter A, §§145.3, 145.12, 145.15, and 145.18 concerning parole process. Board rule §145.12 is adopted with a change to correct the style of a word for uniformity and consistency throughout the rules. Board rules §§145.3, 145.15, and 145.18 are adopted without changes to the proposed text as published in the February 3, 2023 issue of the *Texas Register* (48 TexReg 493). Board rule §145.12 will be republished, while Board rules §§145.3, 145.15, and 145.18 will not be republished.

The amendments are adopted to provide edits for uniformity and consistency throughout the rules; to correct grammatical errors; to reflect current rehabilitation programs; and to accurately re-

fect the statutory requirements for the reconsideration for release of offenders sentenced to certain offenses.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under Texas Government Code §508.036, §508.0441, §508.045, §508.141, and §508.149. Section 508.036 requires the Board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and §508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.141 provides the Board authority to adopt policy establishing the date on which the Board may reconsider for release an inmate who has previously been denied release. Section 508.149 provides authority for the discretionary release of offenders on mandatory supervision.

§145.12. *Action upon Review.*

A case reviewed by a parole panel for parole consideration may be:

- (1) deferred for request and receipt of further information;
- (2) denied a favorable parole action at this time and set for review on a future specific month and year (Set-Off). The next review date (Month/Year) for an offender serving a sentence listed in Section 508.149(a), Government Code, or serving a sentence for second or third degree felony under Section 22.04, Penal Code may be set at any date after the first anniversary of the date of denial and end before the fifth anniversary of the date of denial, unless the inmate is serving a sentence for an offense under Section 22.021, Penal Code, or a life sentence for a capital felony, in which event the designated month must begin after the first anniversary of the date of the denial and end before the 10th anniversary of the date of the denial. The next review date for an offender serving a sentence not listed in Section 508.149(a), Government Code shall be as soon as practicable after the first anniversary of the denial;
- (3) denied parole and ordered serve-all, but in no event shall this be utilized if the offender's projected release date is greater than five (5) years for offenders serving sentences listed in Section 508.149(a), Government Code, or serving a sentence for second or third degree felony under Section 22.04, Penal Code; or greater than one (1) year for offenders not serving sentences listed in Section 508.149(a), Government Code. If the serve-all date in effect on the date of the panel decision is extended by more than 180 days, the case shall be placed in regular parole review;
- (4) determined the totality of the circumstances favor the offender's release on parole, further investigation (FI) is ordered with the following available voting options; and, impose all conditions of parole or release to mandatory supervision that the parole panel is required or authorized by law to impose as a condition of parole or release to mandatory supervision;
 - (A) FI-1--Release the offender when eligible;
 - (B) FI-2 (Month/Year)--Release on a specified future date;
 - (C) FI-3 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than three (3) months from specified date. Such TDCJ program may include either CHANGES, Voyager, Pre-Release Center (PRC), or any other approved program;
 - (D) FI-4 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and

not earlier than four (4) months from specified date. Such TDCJ program shall be the Sex Offender Education Program (SOEP);

(E) FI-5--Transfer to TDCJ In-Prison Therapeutic Community Program (IPTC). Release to aftercare component only after completion of IPTC;

(F) FI-6--Transfer to a TDCJ DWI Program. Release to continuum of care program as required by paragraph (5) of this section;

(G) FI-6 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and no earlier than six (6) months from specified date. Such TDCJ program may include the Pre-Release Therapeutic Community (PRTC), Pre-Release Substance Abuse Program (PRSAP), or In-Prison Therapeutic Community Program, or any other approved program;

(H) FI-7 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than seven (7) months from the specified date. Such TDCJ program shall be the Serious and Violent Offender Reentry Initiative (SVORI);

(I) FI-9 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than nine (9) months from specified date. Such TDCJ program shall be the Sex Offender Treatment Program (SOTP-9);

(J) FI-18 R (Month/Year)--Transfer to a TDCJ rehabilitation treatment program. Release to parole only after program completion and no earlier than 18 months from specified date. Such TDCJ program shall be the Sex Offender Treatment Program (SOTP-18);

(5) any person released to parole after completing a TDCJ rehabilitation program as a prerequisite for parole, must participate in and complete any required post-release program. A parole panel shall require as a condition of release on parole or release to mandatory supervision that an offender who immediately before release is a participant in the program established under Section 501.0931, Government Code, participate as a releasee in a drug or alcohol abuse continuum of care treatment program; or

(6) any offender receiving an FI vote, as listed in paragraph (4)(A) - (J) of this section, shall be placed in a program consistent with the vote. If treatment program managers recommend a different program for an offender, a transmittal shall be forwarded to the parole panel requesting approval to place the offender in a different program.

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

Filed with the Office of the Secretary of State on April 28, 2023.

TRD-202301544

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Effective date: May 18, 2023

Proposal publication date: February 3, 2023

For further information, please call: (512) 406-5478



SUBCHAPTER B. TERMS AND CONDITIONS OF PAROLE

37 TAC §145.27

The Texas Board of Pardons and Paroles (Board) adopts the repeal Title 37, Chapter 145, Subchapter B, §145.27 without changes to the proposed text as published in the February 3, 2023, issue of the *Texas Register* (48 TexReg 497). The rule will not be republished. The proposed repeal is the result of a review of the subchapter pursuant to the four-year rule review prescribed by §2001.039 Government Code.

The repeal of §145.27 is warranted because the pilot program, which is the subject of §521.1421 Transportation Code, has become a permanent program administered by the Texas Department of Criminal Justice.

No public comments were received regarding adoption of this repeal.

The repeal is adopted under §508.036(b)(1) Government Code, which provides authority for the Board adopt rules relating to the decision-making processes used by the Board and parole panels.

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

Filed with the Office of the Secretary of State on April 28, 2023.

TRD-202301547

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Effective date: May 18, 2023

Proposal publication date: February 3, 2023

For further information, please call: (512) 406-5478



PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 385. AGENCY MANAGEMENT AND OPERATIONS

SUBCHAPTER C. MISCELLANEOUS

37 TAC §385.9981

The Texas Juvenile Justice Department (TJJD) adopts amendments to Texas Administrative Code Chapter 385, Subchapter C, §385.9981 with changes to the proposed text as published in the October 28, 2022, issue of the *Texas Register* (47 TexReg 7255). The amended section will be republished.

SUMMARY OF CHANGES

The amendments to §385.9981, concerning Sick Leave Pool and Family Leave Pool Administration, include adding that a donating employee may donate one or more days of the employee's accrued sick leave to the sick leave pool or accrued sick or vacation leave to the family leave pool, adding the reasons an employee is eligible to withdraw hours from the family leave pool, and revising the title of the rule.

The new amendment to §385.9981 corrects a typo to read *family* leave pool (instead of *sick* leave pool).

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rule-making action.

STATUTORY AUTHORITY

The amended section is adopted under §661.002 and §661.022, Government Code, which require TJJD to adopt rules and prescribe procedures relating to the operation of the agency's sick leave pool and the agency's family leave pool.

§385.9981. *Sick Leave Pool and Family Leave Pool Administration.*

(a) Purpose. The purpose of this rule is to establish a sick leave pool and a family leave pool for Texas Juvenile Justice Department (TJJD) employees as mandated by Sections 661.002 and 661.022, Government Code.

(b) General Provisions.

(1) The director of human resources is the pool administrator.

(2) All contributions to the TJJD leave pools are voluntary.

(3) The donating employee may not designate a specific employee to receive the donated hours.

(4) The following provisions apply to employees who withdraw leave pool time that is beyond what they contributed.

(A) The pool administrator determines the number of hours that an employee may withdraw from the pool; however, the amount withdrawn may never exceed the lesser of:

- (i) one-third of the total time in the pool; or
- (ii) 90 days.

(B) An employee absent on time withdrawn from a leave pool may use the time as sick leave earned by the employee, and the employee is treated for all purposes as if the employee were absent on earned sick leave.

(C) The estate of a deceased employee is not entitled to payment for unused time withdrawn by the employee from a leave pool.

(c) Sick Leave Pool Provisions.

(1) The donating employee may donate one or more days of the employee's accrued sick leave to the sick leave pool.

(2) An employee is eligible to use time contributed to the sick leave pool if the employee's sick leave has been exhausted because of:

- (A) a catastrophic illness or injury; or
- (B) a previous donation of time to the pool.

(3) An employee may withdraw time from the sick leave pool that the employee did not contribute only if the employee or an immediate family member suffers a catastrophic illness or injury.

(d) Family Leave Pool Provisions.

(1) The donating employee may donate one or more days of the employee's accrued sick or vacation leave to the family leave pool.

(2) An employee is eligible to withdraw time from the family leave pool because of:

- (A) the birth of a child;
- (B) the placement of a foster child or adoption of a child under 18 years of age;
- (C) the placement of any person 18 years of age or older requiring guardianship;
- (D) a serious illness to an immediate family member or the employee, including a pandemic-related illness;
- (E) an extenuating circumstance created by an ongoing pandemic, including providing essential care to a family member; or
- (F) a previous donation of time to the pool.

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

Filed with the Office of the Secretary of State on April 26, 2023.

TRD-202301500

Christian von Wupperfeld
General Counsel

Texas Juvenile Justice Department

Effective date: May 16, 2023

Proposal publication date: October 28, 2022

For further information, please call: (512) 490-7278



REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Animal Health Commission

Title 4, Part 2

The Texas Animal Health Commission (Commission) proposes the review of Texas Administrative Code, Title 4, Part 2, Chapter 32, concerning Hearing and Appeal Procedures, in its entirety, in accordance with Texas Government Code §2001.039.

As required by §2001.039 of the Texas Government Code, the Commission will accept comments and make a final assessment regarding whether the reasons for initially adopting these rules continues to exist and whether these rules should be revised, readopted or repealed.

Comments on the rule review may be submitted to Amanda Bernhard, Texas Animal Health Commission, by mail at 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719, or by email at "comments@tahc.texas.gov" no later than 30 days from the date that the proposed review is published in the *Texas Register*. When submitting comments, please indicate "Comments on Chapter 32" in the subject line.

TRD-202301519
Jeanine Coggeshall
General Counsel
Texas Animal Health Commission
Filed: April 28, 2023



The Texas Animal Health Commission (Commission) proposes the review of Texas Administrative Code, Title 4, Part 2, Chapter 36, concerning Exotic Livestock and Fowl, in its entirety, in accordance with Texas Government Code §2001.039.

As required by §2001.039 of the Texas Government Code, the Commission will accept comments and make a final assessment regarding whether the reasons for initially adopting these rules continue to exist and whether these rules should be revised, readopted or repealed.

Comments on the rule review may be submitted to Amanda Bernhard, Texas Animal Health Commission, by mail at 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719, or by email at "comments@tahc.texas.gov" no later than 30 days from the date that the proposed review is published in the *Texas Register*. When submitting comments, please indicate "Comments on Chapter 36" in the subject line.

TRD-202301520

Jeanine Coggeshall
General Counsel
Texas Animal Health Commission
Filed: April 28, 2023



The Texas Animal Health Commission (Commission) proposes the review of Texas Administrative Code, Title 4, Part 2, Chapter 38, concerning Trichomoniasis, in its entirety, in accordance with Texas Government Code §2001.039.

As required by §2001.039 of the Texas Government Code, the Commission will accept comments and make a final assessment regarding whether the reasons for initially adopting these rules continue to exist and whether these rules should be revised, readopted or repealed.

Comments on the rule review may be submitted to Amanda Bernhard, Texas Animal Health Commission, by mail at 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719, or by email at "comments@tahc.texas.gov" no later than 30 days from the date that the proposed review is published in the *Texas Register*. When submitting comments, please indicate "Comments on Chapter 38" in the subject line.

TRD-202301521
Jeanine Coggeshall
General Counsel
Texas Animal Health Commission
Filed: April 28, 2023



The Texas Animal Health Commission (Commission) proposes the review of Texas Administrative Code, Title 4, Part 2, Chapter 43, concerning Tuberculosis, in its entirety, in accordance with Texas Government Code §2001.039.

As required by §2001.039 of the Texas Government Code, the Commission will accept comments and make a final assessment regarding whether the reasons for initially adopting these rules continue to exist and whether these rules should be revised, readopted or repealed.

Comments on the rule review may be submitted to Amanda Bernhard, Texas Animal Health Commission, by mail at 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719, or by email at "comments@tahc.texas.gov" no later than 30 days from the date that the proposed review is published in the *Texas Register*. When submitting comments, please indicate "Comments on Chapter 43" in the subject line.

TRD-202301522

Jeanine Coggeshall
General Counsel
Texas Animal Health Commission
Filed: April 28, 2023



The Texas Animal Health Commission (Commission) proposes the review of Texas Administrative Code, Title 4, Part 2, Chapter 45, concerning Reportable and Actionable Diseases, in its entirety, in accordance with Texas Government Code §2001.039.

As required by §2001.039 of the Texas Government Code, the Commission will accept comments and make a final assessment regarding whether the reasons for initially adopting these rules continue to exist and whether these rules should be revised, readopted or repealed.

Comments on the rule review may be submitted to Amanda Bernhard, Texas Animal Health Commission, by mail at 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719, or by email at "comments@tahc.texas.gov" no later than 30 days from the date that the proposed review is published in the *Texas Register*. When submitting comments, please indicate "Comments on Chapter 45" in the subject line.

TRD-202301523
Jeanine Coggeshall
General Counsel
Texas Animal Health Commission
Filed: April 28, 2023



The Texas Animal Health Commission (Commission) proposes the review of Texas Administrative Code, Title 4, Part 2, Chapter 47, concerning Authorized Personnel, in its entirety, in accordance with Texas Government Code §2001.039.

As required by §2001.039 of the Texas Government Code, the Commission will accept comments and make a final assessment regarding whether the reasons for initially adopting these rules continue to exist and whether these rules should be revised, readopted or repealed.

Comments on the rule review may be submitted to Amanda Bernhard, Texas Animal Health Commission, by mail at 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719, or by email at "comments@tahc.texas.gov" no later than 30 days from the date that the proposed review is published in the *Texas Register*. When submitting comments, please indicate "Comments on Chapter 47" in the subject line.

TRD-202301524
Jeanine Coggeshall
General Counsel
Texas Animal Health Commission
Filed: April 28, 2023



The Texas Animal Health Commission (Commission) proposes the review of Texas Administrative Code, Title 4, Part 2, Chapter 50, concerning Animal Disease Traceability, in its entirety, in accordance with Texas Government Code §2001.039.

As required by §2001.039 of the Texas Government Code, the Commission will accept comments and make a final assessment regarding whether the reasons for initially adopting these rules continue to exist and whether these rules should be revised, readopted or repealed.

Comments on the rule review may be submitted to Amanda Bernhard, Texas Animal Health Commission, by mail at 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719, or by email at "comments@tahc.texas.gov" no later than 30 days from the date that the proposed review is published in the *Texas Register*. When submitting comments, please indicate "Comments on Chapter 50" in the subject line.

TRD-202301525
Jeanine Coggeshall
General Counsel
Texas Animal Health Commission
Filed: April 28, 2023



The Texas Animal Health Commission (Commission) proposes the review of Texas Administrative Code, Title 4, Part 2, Chapter 51, concerning Entry Requirements, in its entirety, in accordance with Texas Government Code §2001.039.

As required by §2001.039 of the Texas Government Code, the Commission will accept comments and make a final assessment regarding whether the reasons for initially adopting these rules continue to exist and whether these rules should be revised, readopted or repealed.

Comments on the rule review may be submitted to Amanda Bernhard, Texas Animal Health Commission, by mail at 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719, or by email at "comments@tahc.texas.gov" no later than 30 days from the date that the proposed review is published in the *Texas Register*. When submitting comments, please indicate "Comments on Chapter 51" in the subject line.

TRD-202301526
Jeanine Coggeshall
General Counsel
Texas Animal Health Commission
Filed: April 28, 2023



The Texas Animal Health Commission (Commission) proposes the review of Texas Administrative Code, Title 4, Part 2, Chapter 56, concerning Grants, Gifts and Donations, in its entirety, in accordance with Texas Government Code §2001.039.

As required by §2001.039 of the Texas Government Code, the Commission will accept comments and make a final assessment regarding whether the reasons for initially adopting these rules continue to exist and whether these rules should be revised, readopted or repealed.

Comments on the rule review may be submitted to Amanda Bernhard, Texas Animal Health Commission, by mail at 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719, or by email at "comments@tahc.texas.gov" no later than 30 days from the date that the proposed review is published in the *Texas Register*. When submitting comments, please indicate "Comments on Chapter 56" in the subject line.

TRD-202301527
Jeanine Coggeshall
General Counsel
Texas Animal Health Commission
Filed: April 28, 2023



The Texas Animal Health Commission (Commission) proposes the review of Texas Administrative Code, Title 4, Part 2, Chapter 59, concerning General Practices and Procedures, in its entirety, in accordance with Texas Government Code §2001.039.

As required by §2001.039 of the Texas Government Code, the Commission will accept comments and make a final assessment regarding whether the reasons for initially adopting these rules continue to exist and whether these rules should be revised, readopted or repealed.

Comments on the rule review may be submitted to Amanda Bernhard, Texas Animal Health Commission, by mail at 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719, or by email at "comments@tahc.texas.gov" no later than 30 days from the date that the proposed review is published in the *Texas Register*. When submitting comments, please indicate "Comments on Chapter 59" in the subject line.

TRD-202301529
Jeanine Coggeshall
General Counsel
Texas Animal Health Commission
Filed: April 28, 2023



The Texas Animal Health Commission (Commission) proposes the review of Texas Administrative Code, Title 4, Part 2, Chapter 60, concerning Scrapie, in its entirety, in accordance with Texas Government Code §2001.039.

As required by §2001.039 of the Texas Government Code, the Commission will accept comments and make a final assessment regarding whether the reasons for initially adopting these rules continue to exist and whether these rules should be revised, readopted or repealed.

Comments on the rule review may be submitted to Amanda Bernhard, Texas Animal Health Commission, by mail at 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719, or by email at "comments@tahc.texas.gov" no later than 30 days from the date that the proposed review is published in the *Texas Register*. When submitting comments, please indicate "Comments on Chapter 60" in the subject line.

TRD-202301530
Jeanine Coggeshall
General Counsel
Texas Animal Health Commission
Filed: April 28, 2023



Employees Retirement System of Texas

Title 34, Part 4

The Employees Retirement System of Texas files this notice of intent to review 34 Texas Administrative Code Chapter 73, concerning Benefits, in accordance with Texas Government Code §2001.039.

The Board will assess whether the reasons for adopting or re-adopting this chapter continue to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current provisions related to the governance of the Board, and is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing, within 30 days following the publication of this notice of intent to review in the *Texas Register*, to Cynthia C. Hamilton, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Hamilton at General.Counsel@ers.texas.gov.

ance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Hamilton at General.Counsel@ers.texas.gov. The deadline for receiving comments is Monday, June 19, 2023, at 10:00 a.m. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be subject to an additional 30-day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-202301594
Cynthia C. Hamilton
General Counsel
Employees Retirement System of Texas
Filed: May 2, 2023



The Employees Retirement System of Texas files this notice of intent to review 34 Texas Administrative Code Chapter 74, concerning Qualified Domestic Relations Orders, in accordance with Texas Government Code §2001.039.

The Board will assess whether the reasons for adopting or re-adopting this chapter continue to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current provisions related to the governance of the Board, and is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing, within 30 days following the publication of this notice of intent to review in the *Texas Register*, to Cynthia C. Hamilton, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Hamilton at General.Counsel@ers.texas.gov. The deadline for receiving comments is Monday, June 19, 2023, at 10:00 a.m. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be subject to an additional 30-day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-202301592
Cynthia C. Hamilton
General Counsel
Employees Retirement System of Texas
Filed: May 2, 2023



The Employees Retirement System of Texas files this notice of intent to review 34 Texas Administrative Code Chapter 77, concerning Judicial Retirement, in accordance with Texas Government Code §2001.039.

The Board will assess whether the reasons for adopting or re-adopting this chapter continue to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current provisions related to the governance of the Board, and is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing, within 30 days following the publication of this notice of intent to review in the *Texas Register*, to Cynthia C. Hamilton, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Hamilton at General.Counsel@ers.texas.gov. The deadline for receiving comments is Monday, June 19, 2023, at 10:00 a.m. Any proposed changes to the sections of this chapter as a result of the review will be published in the

Proposed Rules section of the *Texas Register* and will be subject to an additional 30-day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-202301593

Cynthia C. Hamilton

General Counsel

Employees Retirement System of Texas

Filed: May 2, 2023



The Employees Retirement System of Texas files this notice of intent to review 34 Texas Administrative Code Chapter 82, concerning Health Services in State Office Complexes, in accordance with Texas Government Code §2001.039.

The Board will assess whether the reasons for adopting or re-adopting this chapter continue to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current provisions related to the governance of the Board, and is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing, within 30 days following the publication of this notice of intent to review in the *Texas Register*, to Cynthia C. Hamilton, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Hamilton at General.Counsel@ers.texas.gov. The deadline for receiving comments is Monday, June 19, 2023, at 10:00 a.m. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be subject to an additional 30-day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-202301595

Cynthia C. Hamilton

General Counsel

Employee Retirement System of Texas

Filed: May 2, 2023



Adopted Rule Reviews

Texas Film Commission

Title 13, Part 8

The Texas Film Commission within the Economic Development and Tourism Office of the Office of the Governor (the "Office") adopts the review of 13 T.A.C. Chapter 121, concerning the Texas Moving Image Industry Incentive Program, conducted in accordance with §2001.039 of the Texas Government Code.

Notice of the review of this chapter was published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8283). The Office received no comments concerning this rule review.

The Office assessed each rule and, with the exception of 13 TAC §121.16, determined the reasons for adopting the chapter still exist. Elsewhere in this issue, the Office adopts the repeal of 13 TAC §121.16 and adopts with amendments the remaining provisions in Chapter 121.

This concludes the Office's review of 13 TAC Chapter 121, as required by the Government Code, §2001.039.

TRD-202301577

Stephanie Whallon

Director

Texas Film Commission

Filed: May 1, 2023



Texas Higher Education Coordinating Board

Title 19, Part 1

The Texas Higher Education Coordinating Board adopts the review of Chapter 1, Subchapter C, concerning Standards of Conduct. The proposed notice of review was published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 417). No comments were received regarding the review of this chapter. During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 1, Subchapter C, as required by the Texas Government Code, §2001.039.

TRD-202301540

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Filed: April 28, 2023



Texas Education Agency

Title 19, Part 2

Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 153, School District Personnel, Subchapter AA, Commissioner's Rules Concerning School District Personnel Duties and Benefits; Subchapter BB, Commissioner's Rules Concerning Professional Development; Subchapter CC, Commissioner's Rules on Creditable Years of Service; Subchapter DD, Criminal History Record Information Review; and Subchapter EE, Commissioner's Rules Concerning Registry of Persons Not Eligible for Employment in Public Schools, pursuant to Texas Government Code, §2001.039. TEA proposed the review of Chapter 153, Subchapters AA-EE, in the December 9, 2022 issue of the *Texas Register* (47 TexReg 8129).

Relating to the review of Chapter 153, Subchapters AA-EE, TEA finds that the reasons for adopting Subchapter AA; Subchapter BB, §153.1011; and Subchapters CC-EE continue to exist and readopts the rules. TEA finds that the reasons for adopting Subchapter BB, §153.1013, do not continue to exist. TEA received no comments related to the review of Subchapters AA-EE. No changes to Chapter 153, Subchapter AA; Subchapter BB, §153.1011; or Subchapters CC-EE, are necessary as a result of the review. At a later date, TEA anticipates repealing §153.1013 as the statutory authority no longer exists.

This concludes the review of Chapter 153.

TRD-202301607

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: May 3, 2023



Texas Board of Pardons and Paroles

Title 37, Part 5

The Texas Board of Pardons and Paroles (Board) files this notice of readoption of Texas Administrative Code, Title 37, Public Safety and Corrections, Part 5, Chapter 145, Parole. The review was conducted pursuant to Government Code, §2001.039. Notice of the Board's intention to review was published in the May 20, 2022, issue of the *Texas Register* (47 TexReg 3072).

As a result of the rule review, the Board has determined that the original justifications for initially adopting the rules in 37 TAC Chapter 145 continue to exist, excepting §145.27, which was repealed. The Board readopts §§145.1 - 145.3, 145.6, 145.7, 145.12 - 145.15, and 145.18 with amendments as published in the Adopted Rules section of this issue of the *Texas Register*.

No comments on the proposed rule review were received.

This concludes the review of 37 TAC Chapter 145, Parole.

TRD-202301548

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Filed: April 28, 2023



The Texas Board of Pardons and Paroles (Board) files this notice of readoption of Texas Administrative Code, Title 37, Public Safety and Corrections, Part 5, Chapter 149, Mandatory Supervision. The review was conducted pursuant to Government Code, §2001.039. Notice of the Board's intention to review was published in the October 21, 2022, issue of the *Texas Register* (47 TexReg 7071).

As a result of the rule review, the Board has determined that the original justifications for initially adopting the rules in 37 TAC Chapter 149 continue to exist.

No comments on the proposed rule review were received.

This concludes the review of 37 TAC Chapter 149, Mandatory Supervision.

TRD-202301550

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Filed: April 28, 2023



Texas Commission on Fire Protection

Title 37, Part 13

The Texas Commission on Fire Protection (commission) adopts the review of Texas Administrative Code, Title 37, Part 13, Chapter 401, concerning Administrative Practice and Procedure. The review was conducted pursuant to Texas Government Code, Chapter 2001, §2001.039.

The commission received no comments on the proposed rule review, which was published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8759).

The commission has determined that the reasons for initially adopting the rule continue to exist and readopts the chapter without changes.

This concludes the review of Texas Administrative Code, Title 37, Part 13, Chapter 401.

TRD-202301609

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Filed: May 3, 2023



The Texas Commission on Fire Protection (commission) adopts the review of Texas Administrative Code, Title 37, Part 13, Chapter 403, concerning Criminal Convictions and Eligibility for Certification. The review was conducted pursuant to Texas Government Code, Chapter 2001, §2001.039.

The commission received no comments on the proposed rule review, which was published in the October 15, 2021 edition of the *Texas Register* (46 TexReg 7079).

The commission has determined that the reasons for initially adopting the rule continue to exist and readopts the chapter without changes.

This concludes the review of Texas Administrative Code, Title 37, Part 13, Chapter 403.

TRD-202301610

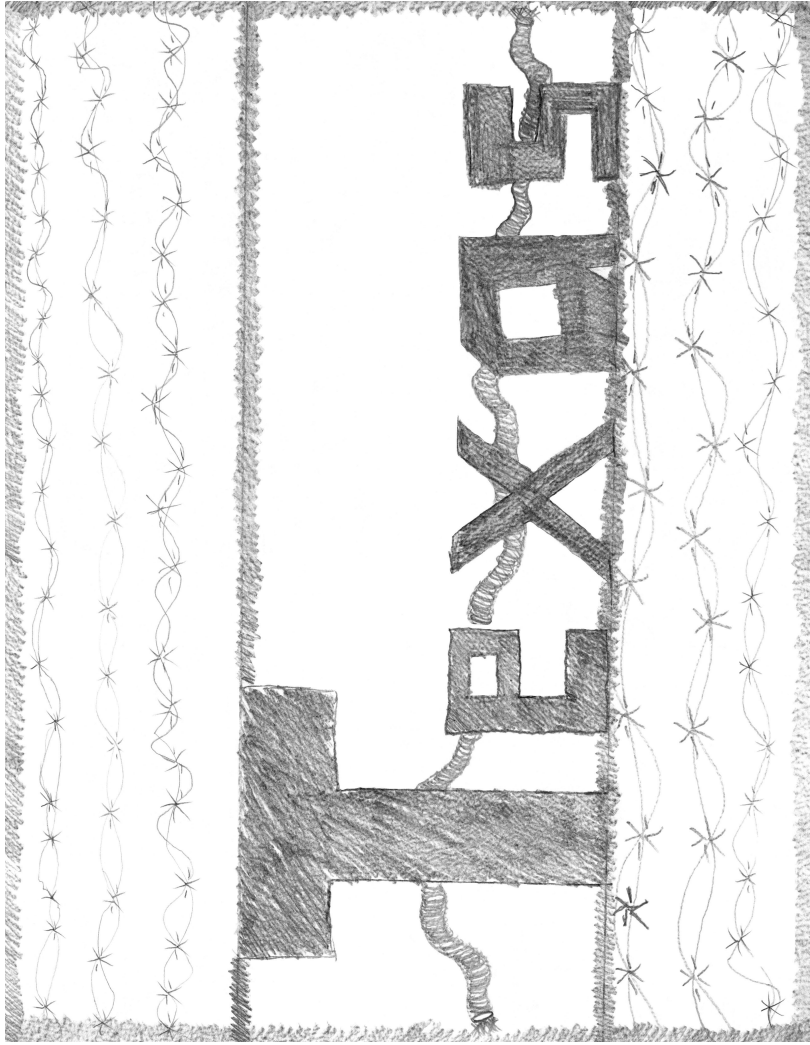
Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Filed: May 3, 2023





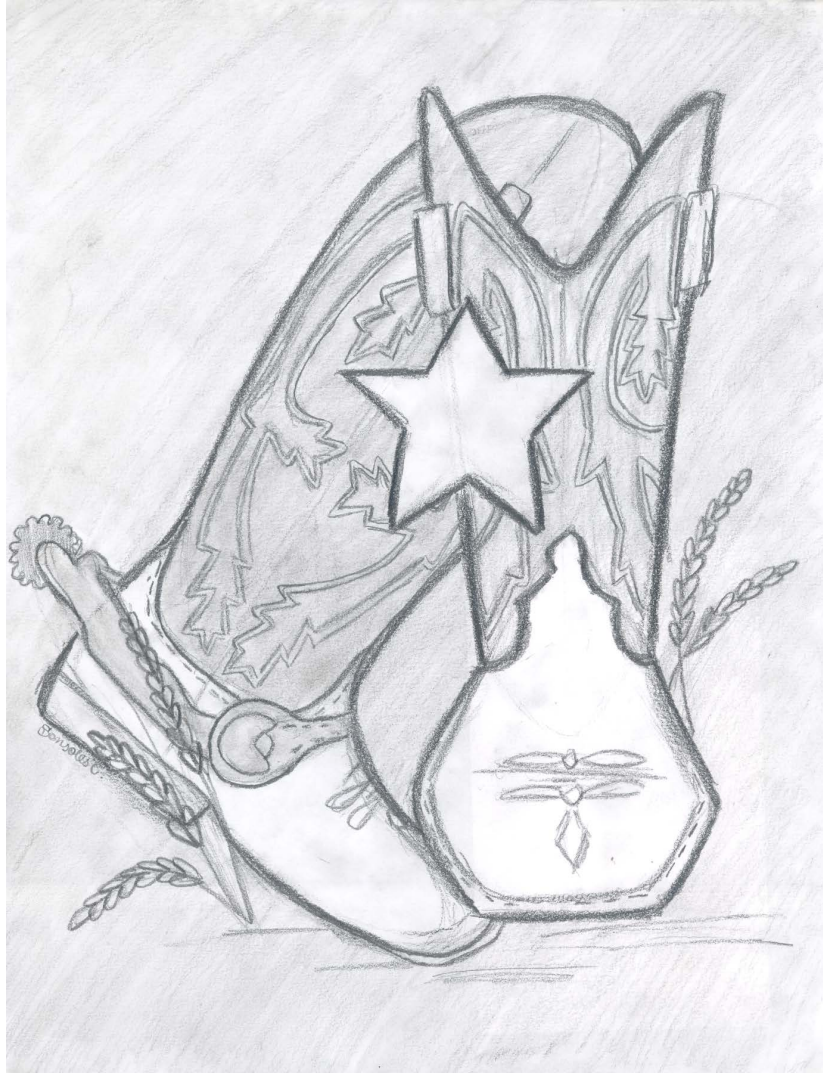
TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 19 TAC §22.49(d)

Area of Study	Average Annual Earnings (five years after graduation)	Reasonable Monthly Student Loan Payment (based on a 10-year repayment at an average 5% interest)	Reasonable Student Debt to Income Ratio	Maximum Amount of Student Loan Debt Used in College Access Loan Calculation
Agriculture and natural resources	\$53,000	\$442	10%	\$50,350
Architecture and engineering	\$83,228	\$694	10%	\$79,067
Arts	\$45,210	\$377	10%	\$42,950
Biological and life sciences	\$48,827	\$407	10%	\$46,386
Business	\$59,123	\$493	10%	\$56,167
Communications and journalism	\$49,098	\$409	10%	\$46,643
Computers, statistics, and mathematics	\$68,246	\$569	10%	\$64,833
Education	\$49,127	\$409	10%	\$46,671
Health	\$60,398	\$503	10%	\$57,378
Humanities and liberal arts	\$47,418	\$395	10%	\$45,047
Industrial arts, consumer services, and recreation	\$49,907	\$416	10%	\$47,412
Law, public policy, and social work	\$45,476	\$379	10%	\$43,202
Physical sciences	\$59,588	\$497	10%	\$56,609
Psychology or undeclared major	\$42,960	\$358	10%	\$40,812
Social sciences	\$50,274	\$419	10%	\$47,760



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Health and Safety Code and Texas Water Code Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code and the Texas Health and Safety Code. Before the State may enter into a voluntary settlement agreement, pursuant to Section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *State of Texas v. Hill Top Cafe, Inc.*; Cause No. D-1-GN-21-005808; in the 261st Judicial District, Travis County, Texas.

Background: Hill Top Cafe, Inc. owns and operates a restaurant outside of Fredericksburg, located at 10661 North U.S. Highway 87, Doss, Gillespie County. The restaurant uses groundwater from a well to serve its customers but, among other violations, has refused to properly disinfect that water by installing appropriate disinfecting facilities prescribed by law. The State initiated the suit on behalf of the Texas Commission on Environmental Quality (TCEQ) to address Hill Top Cafe's noncompliance with Texas public drinking water statutes and rules, and a TCEQ administrative order.

Proposed Settlement: The parties propose an Agreed Final Judgment and Permanent Injunction that orders Hill Top Cafe to either cease operating as a public drinking water system, or bring the restaurant into compliance with Texas law, including the installation of chlorination facilities and regular performance of sampling, monitoring, reporting, and other operational requirements. The proposed judgment also awards the State against Hill Top Cafe, Inc. \$18,000 in civil penalties; \$6,000 in attorney's fees; and all outstanding penalties and fees owed to the TCEQ.

For a complete description of the proposed settlement, the agreed judgment should be reviewed in its entirety. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Phillip Ledbetter, Assistant Attorney General, Office of the Attorney General of Texas, P.O. Box 12548, MC 066, Austin, Texas 78711-2548; (512) 463-2012; facsimile (512) 320-0911; email Phillip.Ledbetter@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202301562
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: April 28, 2023

Comptroller of Public Accounts

Notice of Coastal Protection Fee Suspension

The Comptroller of Public Accounts, administering agency for the collection of the Coastal Protection Fee, has received certification from the Commissioner of the General Land Office that the balance in the Coastal Protection Fund has exceeded the maximum amount allowed by law.

Pursuant to the Natural Resources Code, §40.155 and §40.156, the comptroller hereby provides notice of the suspension of the coastal protection fee effective June 1, 2023.

The fee shall not be collected on crude oil transferred to or from a marine terminal on or after June 1, 2023, until notice of the reinstatement of the fee is published in the *Texas Register*.

Inquiries should be submitted to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-202301571
Jenny Burleson
Director, Tax Policy Division
Comptroller of Public Accounts
Filed: May 1, 2023

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/08/23 - 05/14/23 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/08/23 - 05/14/23 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009³ for the period of 05/01/23 - 05/31/23 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 05/01/23 - 05/31/23 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

³ For variable rate commercial transactions only.

TRD-202301599
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 2, 2023

Court of Criminal Appeals

Availability of Judicial and Court Personnel Training Fund

The Court of Criminal Appeals announces the availability of funds to be provided in the form of grants to entities for the purpose of providing continuing legal education courses, programs, and technical assistance projects for prosecutors, prosecutor office personnel, criminal defense attorneys and criminal defense attorney office personnel who regularly represent indigent defendants in criminal matters, clerks, judges, and other court personnel of the appellate courts, district courts, county courts at law, county courts, justice courts and municipal courts of this State, individuals responsible for providing court security, or other persons as provided by statute.

The Court of Criminal Appeals also announces the availability of funds to be provided in the form of grants to entities for the purpose of providing continuing legal education courses, programs, and technical assistance projects on actual innocence for law enforcement officers, law students, criminal defense attorneys, prosecuting attorneys, judges, or other persons as provided by statute.

Funds are subject to the provisions of Chapter 56 of the Texas Government Code and the General Appropriations Act (Article IV, Court of Criminal Appeals, Strategy B.1.1, Judicial Education). The grant period is September 1, 2023 through August 31, 2024. The deadline for applications is July 1, 2023.

Applicants may request an application packet by contacting the Judicial Education Section of the Texas Court of Criminal Appeals: 201 West 14th Street, Suite 103, Austin, Texas 78701, (512) 475-2312, judicial.education@txcourts.gov.

TRD-202301600

Laura Moorman

Assistant Grant Administrator

Court of Criminal Appeals

Filed: May 2, 2023



Availability of Judicial and Court Personnel Training Fund

The Court of Criminal Appeals announces the availability of funds to be provided in the form of grants to entities for the purpose of developing a training program to educate and inform judges and their staff on mental health care resources available in the State of Texas. Funds are subject to the provisions of Chapter 56 of the Texas Government Code and the General Appropriations Act (Article IV, Court of Criminal Appeals, Strategy B.1.1, Judicial Education).

The Court of Criminal Appeals also announces the availability of funds to be provided in the form of grants to statewide professional associations and other entities whose purposes include providing continuing legal education, courses, and programs for judges and court staff, prosecuting attorneys, and criminal defense attorneys on mental health issues and pre-trial diversion. Judicial education shall include information for judges and staff on mental health care resources available in the court's geographic region.

Funds are subject to the provisions of Chapter 56 of the Texas Government Code and the General Appropriations Act (Article IV, Court of Criminal Appeals, Strategy B.1.1, Judicial Education). The grant period is September 1, 2023 through August 31, 2024. The deadline for applications is July 1, 2023.

Applicants may request application instructions by contacting the Judicial Education Section of the Texas Court of Criminal Appeals: 201 West 14th Street, Suite 103, Austin, Texas 78701, (512) 475-2312, judicial.education@txcourts.gov.

TRD-202301602

Laura Moorman

Assistant Grant Administrator

Court of Criminal Appeals

Filed: May 2, 2023



Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 13, 2023**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **June 13, 2023**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission **in writing**.

(1) COMPANY: Calcote, Justin Riley; DOCKET NUMBER: 2023-0285-WOC-E; IDENTIFIER: RN111624268; LOCATION: Winters, Runnels County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Daphne Greene, (903) 535-5157; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(2) COMPANY: Celanese Ltd.; DOCKET NUMBER: 2021-1592-AIR-E; IDENTIFIER: RN100258060; LOCATION: Bay City, Matagorda County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 4449, Special Conditions Number 1, Federal Operating Permit Number O1628, General Terms and Conditions and Special Terms and Conditions Number 17, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$9,375; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$3,750; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: CRYSTAL SPRINGS WATER COMPANY, INCORPORATED; DOCKET NUMBER: 2022-0083-PWS-E; IDENTIFIERS: RN102670809 and RN102690740; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j) and Texas Health and Safety Code, §341.0351, by failing to notify the executive director (ED) prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.41(c)(3)(I), by failing to fine grade the well site so that the site is free from depressions, reverse grades, or areas too rough for proper ground maintenance so as to ensure that surface water will drain away from the well; 30 TAC §290.42(m), by failing to enclose each water treatment plant and all appurtenances by an intruder-resistant fence; 30 TAC §290.46(k), by failing to obtain approval from the ED for the use of interconnections; 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) as long as the well remains in service; and 30 TAC §290.46(v), by failing to ensure that the electrical wiring is securely installed in compliance with a local or national electrical code; PENALTY: \$4,975; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Devon Street Homes LP; DOCKET NUMBER: 2023-0283-WQ-E; IDENTIFIER: RN111556288; LOCATION: Tomball, Harris County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Monica Larina, (512) 239-0184; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: ETC Texas Pipeline, Ltd.; DOCKET NUMBER: 2017-0562-AIR-E; IDENTIFIER: RN106225436; LOCATION: Ganago, Jackson County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §§101.20(2) and (3), 113.1090, 116.115(c), and 122.143(4), 40 Code of Federal Regulations (CFR) §63.7(b)(1) and §63.6645(g), Federal Operating Permit (FOP) Number O3587, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Numbers 1.A and 7, New Source Review (NSR) Permit Numbers 98529 and PSDTX1264, Special Conditions (SC) Number 4.B, and Texas Health and Safety Code (THSC), §382.085(b), by failing to timely submit a stack test notification at least 60 days prior to the date testing was scheduled as required by 40 CFR Part 63 Subparts A and ZZZZ; 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), FOP Number O3587, GTC and STC Number 7, NSR Permit Numbers 98529 and PSDTX1264, SC Number 1, and THSC, §382.085(b), by failing to comply with the maximum allowable emissions rates; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), FOP Number O3587, GTC and STC Number 7, NSR Permit Numbers 98529 and PSDTX1264, SC Number 24.A, and THSC, §382.085(b), by failing to timely submit a stack test notification at least 45 days in advance of testing as required by NSR Permit Numbers 98529 and PSDTX1264; 30 TAC §116.110(a) and §116.116(b)(1) and THSC, §382.0518(a) and §382.085(b), by failing to comply with the representations with regards to construction plans and operation procedures in a permit application; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O3587, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: \$209,510; ENFORCEMENT COORDINATOR: Amanda Diaz, (713) 422-8921; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401-0318, (361) 881-6900.

(6) COMPANY: Gemini HDPE LLC; DOCKET NUMBER: 2021-0589-AIR-E; IDENTIFIER: RN100229905; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing

plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review (NSR) Permit Number 106824, Special Conditions (SC) Numbers 1, 5.B (effective January 20, 2017), and 6.B (effective May 31, 2019), Federal Operating Permit (FOP) Number O3758, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 9, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the volatile organic compounds emissions limits for the polyethylene pellet handling systems between each extruder and product loadout and failed to comply with the maximum allowable emissions rate; 30 TAC §§116.115(c), 116.116(a)(1), and 122.143(4), NSR Permit Number 106824, SC Number 1, FOP Number O3758, GTC and STC Number 9, and THSC, §382.085(b), by failing to comply with the representations with regard to construction plans and operation procedures in a permit application; and 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 106824, SC Number 1, FOP Number O3758, GTC and STC Number 9, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$360,938; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$144,375; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: J and B Tittle, Incorporated dba The T Post; DOCKET NUMBER: 2023-0062-PST-E; IDENTIFIER: RN102838562; LOCATION: Henderson, Rusk County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$2,556; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: Jim Wells County Freshwater Supply District 1; DOCKET NUMBER: 2023-0208-UTL-E; IDENTIFIER: RN102673506; LOCATION: Ben Bolt, Jim Wells County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$645; ENFORCEMENT COORDINATOR: Kaisie Hubschmitt, (512) 239-1482; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 881-6900.

(9) COMPANY: MESA GRANDE WATER SUPPLY CORPORATION; DOCKET NUMBER: 2023-0189-UTL-E; IDENTIFIER: RN101179539; LOCATION: Granbury, Hood County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$600; ENFORCEMENT COORDINATOR: Nick Lohret-Froio, (512) 239-4495; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Top-Way Materials LLC; DOCKET NUMBER: 2023-0045-WQ-E; IDENTIFIER: RN100798644; LOCATION: Rhome, Wise County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Ellen Ojeda, (512) 239-2581; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: YRLAS, RICKY J; DOCKET NUMBER: 2023-0156-PWS-E; IDENTIFIER: RN105773196; LOCATION: Crockett, Houston County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Ronica Rodriguez Scott, (361) 881-6990; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202301585

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: May 2, 2023



Notice of an Application for a Temporary Water Use Permit

Notice Issued April 28, 2023

APPLICATION NO. 13829

RK Hall, LLC, 5020 SE Loop 286, Paris, Texas 75460, Applicant, seeks a temporary water use permit to divert and use not to exceed 15 acre-feet of water, within a period of one year, from a point on Bois d'Arc Creek, tributary of the Red River, Red River Basin, at a maximum diversion rate of 0.56 cfs (250 gpm), for industrial purposes in Fannin County. More information on the application and how to participate in the permitting process is given below.

The application and partial fees were received on March 7, 2022. Additional information and fees were received on May 24, June 17, and July 6, 2022. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on July 13, 2022. The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, a requirement to take reasonable measures to reduce impacts to aquatic resources due to impingement and entrainment. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, by May 16, 2023. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by May 16, 2023. The Executive Director may approve the application unless a written request for a contested case hearing is filed by May 16, 2023.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns.

Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/> by entering WRTP 13829 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address.

For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al <http://www.tceq.texas.gov>

TRD-202301617

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 3, 2023



Notice of District Petition

Notice issued April 27, 2023

TCEQ Internal Control No. D-02222023-065; Kings Valley Properties, Ltd. (Petitioner) filed a petition for creation of Tickey Creek Municipal Utility District of Collin County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of the majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 134.456 acres of land, more or less, located within Collin County, Texas; and (4) the proposed District is not within the corporate limits or extraterritorial jurisdiction of any city. The petition further states that the proposed District will purchase, construct, acquire, improve, maintain, own and operate water, wastewater, drainage, road and such additional facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. It further states that the planned residential development of the area and the present and future inhabitants of the area will be benefited by the above-referenced work, which will promote the purity and sanitary condition of the State's waters and the public health and welfare of the community. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately \$23,475,000 (\$15,850,000 for utilities and \$7,625,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202301615

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 3, 2023



Notice of District Petition

Notice issued April 27, 2023

TCEQ Internal Control No. D-11092022-014; Schlachter Realty, Ltd. (Petitioner) filed a petition for creation of Texas Tri-Modal Municipal Utility District No. 2 (District) of Dallas County with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of the majority of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 443.7 acres, more or less, located within Dallas County, Texas; (4) the proposed District is within the extraterritorial jurisdiction of the City of Wilmer (City). The petition further states that the proposed District will construct, purchase, acquire, maintain, own and operate water, wastewater, drainage, road and such additional facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. It further states that the planned residential and industrial development of the area and the present and future inhabitants of the area will be benefited by the above-referenced work, which will promote the purity and sanitary condition of the State's waters and the public health and welfare of the community.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner,

from the information available at this time, that the cost of said project will be approximately \$55,300,000. In accordance with Local Government Code § 42.042 and Texas Water Code § 54.016, the Petitioner submitted a petition to the City, requesting the City's consent to the creation of the District. After more than 90 days passed without receiving consent, the Petitioner submitted a petition to the City to provide water and sewer services to the District. The 120-day period for reaching a mutually agreeable contract as established by the Texas Water Code § 54.016(c) expired and information provided indicates that the Petitioner and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Water Code § 54.016(d), failure to execute such an agreement constitutes authorization for the Petitioner to proceed to the TCEQ for inclusion of their Property into the District.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202301616

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 3, 2023



Notice of District Petition

Notice issued May 1, 2023

TCEQ Internal Control No. D-02152023-058; Buffalo Hills Development, LLC, a Texas limited liability company (Petitioner) filed a petition for creation of Buffalo Hills Municipal Utility District of Johnson County (District) with the Texas Commission on Environmental Qual-

ity (TCEQ). The petition was filed pursuant to Article XVI, § 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is one lienholder, AgTexas Farm Credit Services, on the property to be included in the proposed District and the aforementioned entity has consented to the creation of the district; (3) the proposed District will contain approximately 589.1 acres of land located within Johnson County, Texas; and (4) all of the land to be included within the proposed district is located wholly within the extraterritorial jurisdiction of the City of Venus (City). The petition further states that the work to be done by the proposed District at the present time is the construction, maintenance and operation of a waterworks system, including the purchase and sale of water, for domestic and commercial purposes; the construction, maintenance and operation of a sanitary sewer collection, treatment and disposal system, for domestic and commercial purposes; the construction, installation, maintenance, purchase and operation of drainage and roadway facilities and improvements; and the construction, installation, maintenance, purchase and operation of facilities, systems, plants and enterprises of such additional facilities as shall be consonant with the purposes for which the District is organized. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$104,600,000 (including 79,700,000 for water, wastewater, and drainage plus \$24,900,000 for roads). In accordance with Local Government Code § 42.042 and Texas Water Code § 54.016, a petition was submitted to the City, requesting the City's consent to the creation of the District. After more than 90 days passed without receiving consent, a petition was submitted to the City to provide water and sewer services to the District. The 120-day period for reaching a mutually agreeable contract as established by the Texas Water Code § 54.016(c) expired and information provided indicates that the Petitioner and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Water Code § 54.016(d), failure to execute such an agreement constitutes authorization for the Petitioner to proceed to the TCEQ for inclusion of the land into the District.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If

a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202301618

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 3, 2023



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 13, 2023**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 13, 2023**. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Hassan LLC dba Culebra Food Stop; DOCKET NUMBER: 2021-0084-PST-E; TCEQ ID NUMBER: RN101436483; LOCATION: 1302 Laven Drive, San Antonio, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator - Class A, B, and C - for the facility; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(B), by failing to monitor the UST in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring for tanks installed on or after January 1, 2009; and TWC, §26.3475(a) and 30 TAC §334.50(b)(2)(A)(iii), by failing to monitor the UST associated pressurized piping in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial

monitoring for piping installed on or after January 1, 2009; PENALTY: \$6,750; STAFF ATTORNEY: Taylor Pearson, Litigation, MC 175, (512) 239-5937; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Skipper Beverage Company, LLC dba Corner Store 2069; DOCKET NUMBER: 2019-0563-PST-E; TCEQ ID NUMBER: RN102370467; LOCATION: 933 East Rundberg Lane, Austin, Travis County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report to the agency within 24 hours after monitoring results from a release detection method indicated a release may have occurred; 30 TAC §334.74(1), by failing to conduct tightness testing and secondary containment testing as appropriate within 30 days after monitoring results from a release detection method indicated a release may have occurred; 30 TAC §334.74(3), by failing to file a release determination report with the commission within 45 days after a suspected release has occurred; and 30 TAC §334.75(b), by failing to contain and immediately clean up a spill of any petroleum product from a UST system that is less than 25 gallons; PENALTY: \$19,901; STAFF ATTORNEY: Cynthia Sirois, Litigation, MC 175, (512) 239-3392; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

TRD-202301587
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: May 2, 2023



Notice of Public Meeting for TPDES Permit for Municipal Wastewater New Permit No. WQ0016211001

APPLICATION. Douglas T. Harrison, 1000 Harrison Road, New Braunfels, Texas 78132, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016211001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. TCEQ received this application on September 1, 2022.

The facility will be located approximately 0.4 miles south of the intersection of Harrison Road and State Highway 46, in Comal County, Texas 78132. The treated effluent will be discharged to West Fork Dry Comal Creek, thence to Dry Comal Creek, thence to the Comal River in Segment No. 1811 of the Guadalupe River Basin. The unclassified receiving water use is limited aquatic life use for the West Fork Dry Comal Creek. The designated uses for Segment No. 1811 are primary contact recreation, public water supply, aquifer protection, and high aquatic life use. In accordance with 30 Texas Administrative Code §307.5 and TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location

is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

<https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-98.325%2C29.7775&level=12>

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

ALTERNATIVE LANGUAGE NOTICE. Alternative language notice in Spanish is available at <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>. El aviso de idioma alternativo en español está disponible en <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>.

PUBLIC COMMENT / PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, June 8, 2023 at 7:00 p.m.

Smithson Valley High School (Cafeteria)

14001 Hwy 46

Spring Branch, Texas 78070

INFORMATION. Members of the public are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/goto/comment. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our web site at <https://www.tceq.texas.gov>.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Mammen Family Public Library, 131 Bulverde Crossing Road, Bulverde, Texas. Further information may also be obtained from Douglas T. Harrison at the address stated above or by calling Mr. Mike McMinimee, Project Engineer, JA Wastewater, LLC, at (720) 413-6909.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issuance Date: April 27, 2023

TRD-202301614

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 3, 2023



Notice of Second Public Meeting for TPDES Permit for Municipal Wastewater New Permit No. WQ0016148001

APPLICATION. Greenwood Ventures Group LLC, 101 Parklane Boulevard, Suite 102, Sugar Land, Texas 77478, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016148001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 975,000 gallons per day. TCEQ received this application on April 20, 2022.

The facility will be located approximately 1.87 miles southwest of the intersection of County Road 214 and U.S. Highway 183, in Caldwell County, Texas 78644. The treated effluent will be discharged to an unnamed tributary, thence to a second unnamed tributary, thence to West Fork Plum Creek, thence to Plum Creek in Segment No. 1810 of the Guadalupe River Basin. The unclassified receiving water uses are minimal aquatic life use for unnamed tributary and limited aquatic life use for West Fork Plum Creek (intermittent with pools), and high aquatic life use for West Fork Plum Creek (perennial). The designated uses for Segment No. 1810 are primary contact recreation, aquifer protection, and high aquatic life use. In accordance with 30 Texas Administrative Code §307.5 and the TCEQ's *Procedure to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected West Fork Plum Creek (perennial portion) and Plum Creek, which have been identified as high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. For the exact location, refer to the application.

<https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-97.700833%2C29.796111&level=12>

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

ALTERNATIVE LANGUAGE NOTICE. Alternative language notice in Spanish is available at <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>. El aviso de idioma alternativo en español está disponible en <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>.

PUBLIC COMMENT / PUBLIC MEETING. A second public meeting will be held and will consist of two parts, an Informal Discussion

Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Tuesday, June 13, 2023 at 7:00 p.m.

Lockhart Evening Lions Club

220 Bufkin Lane

Lockhart, Texas 78644

INFORMATION. Members of the public are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/goto/comment. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our web site at <https://www.tceq.texas.gov>.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Lockhart City Hall, 308 West San Antonio Street, Lockhart, Texas. Further information may also be obtained from Greenwood Ventures Group LLC at the address stated above or by calling Mr. Daniel Ryan, P.E., LJA Engineering, Inc, at (512) 439-4700.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issuance Date: May 2, 2023

TRD-202301619

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 3, 2023



Notice of Water Quality Application

The following notice was issued on May 01, 2023:

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin,

Texas 78711-3087 WITHIN (30) DAYS FROM THE DATE THIS NOTICE IS ISSUED.

INFORMATION SECTION

The Texas Commission on Environmental Quality (TCEQ) has initiated a minor amendment of the Texas Pollutant Discharge Elimination System Permit No. WQ0010086002 issued to Fort Bend County Water Control Improvement District No. 2 to correct the pretreatment language. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. The facility is located approximately 3,300 feet southeast of the intersection of Craven Road and U.S. Highway 90 in Fort Bend County, Texas 77489.

TRD-202301620

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 3, 2023

General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 26. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of April 24, 2023 to April 28, 2023. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§30.25, 30.32, and 30.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, May 5, 2023. The public comment period for this project will close at 5:00 p.m. on Sunday, June 4, 2023.

FEDERAL AGENCY ACTIVITIES:

Applicant: Bureau of Ocean Energy Management (BOEM)

Project Description: For BOEM Gulf of Mexico (GOM) Lease Sale 261, which is tentatively scheduled for September 27, 2023, BOEM is proposing to offer for lease all available unleased blocks in the Western Planning Area (WPA), Central Planning Area (CPA), and Eastern Planning Area (EPA) not currently under Presidential withdrawal with the additional exclusions listed below. Under Section 12(a) of the Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. § 1341(a), the President may "withdraw from disposition any of the unleased lands of the Outer Continental Shelf." On September 8, 2020, the areas of the OCS designated by Section 104(a) of the Gulf of Mexico Energy Security Act of 2006, Public Law 109-432, were withdrawn from disposition by leasing for 10 years, beginning on July 1, 2022, and ending on June 30, 2032 (White House, 2020).

The GOM Lease Sale 261 would offer for lease all available unleased blocks within the WPA, CPA, and EPA portions of the lease sale area for oil and gas operations with the following exceptions as described under Alternative D in the GOM Lease Sales 259 and 261 Supplemental EIS:

- whole and partial blocks currently under Presidential withdrawal (White House, 2020);

- blocks that are adjacent to or beyond the United States' Exclusive Economic Zone in the area known as the northern portion of the Eastern Gap;

- whole and partial blocks within the boundaries of the Flower Garden Banks National Marine Sanctuary as of the July 2008 Presidential "Memorandum on Modification of the Withdrawal of Areas of the United States Outer Continental Shelf from Leasing Disposition" (Weekly Compilation of Presidential Documents, 2008);

- whole and partial blocks located south of and within 15 miles (mi) of Baldwin County, Alabama;

- whole and partial blocks that include Topographic features; and

- whole and partial blocks that include live bottom (Pinnacle Trend) areas.

In addition to the whole and partial blocks described under Alternative D in the GOM Lease Sales 259 and 261 Supplemental EIS, the Secretary is considering to also exclude:

- whole and partial blocks identified as either draft or final Wind Energy Areas A-M;

- whole and partial blocks that may contain significant sediment resources;

- whole or partial blocks whose lease status is currently under reconsideration; and

- any remaining blocks in which the status of existing leases is under appeal, if the lease status is not resolved before the publication of the Final Notice of Sale.

The final decision on how to proceed with the lease sale and the lease blocks available for leasing will be announced in the Record of Decision and, if the decision is to proceed, a Final Notice of Sale. BOEM reserves the right to modify the lease sale area in the Final Notice of Sale, including removing additional areas from GOM Lease Sale 261. Specifically, BOEM is considering removing the area comprising the northeastern GOM and continental shelf break between the 100 meters and 400 meters in depths isobaths to protect the Rice's Whales that may transit through the area. More information on these lease block exclusions can be found in the Proposed Notice of Sale for GOM Lease Sale 261, which is available on BOEM's website at <https://www.boem.gov/oil-gasenergy/leasing/lease-sale-261>.

CMP Project No: 23-1232-F2

FEDERAL AGENCY ACTIONS:

Applicant: Salvado, LLC

Location: The project site is located in West Galveston Bay, approximately 250 feet west of the terminus of Chiquita Road, west of Terramar Subdivision, in Galveston, Galveston County, Texas.

Latitude and Longitude: 29.136835, -95.066292

Project Description: The applicant proposes to discharge approximately 6,610 cubic yards of clean rock fill including limestone, crushed concrete rubble, and river rock in the installation of four breakwater structures at a total of 1,740 linear feet in length (700 linear feet; 560 linear feet; 320 linear feet and 160 linear feet respectively), 25 feet in width, and 3.1 feet in height (+1.1 feet above the mean high water line (MHWL)).

The applicant also proposes to discharge approximately 84,750 cubic yards of dredge material from nearby locations including the adjacent community, into 22.86 acres of unvegetated, shallow bay bottom between the proposed breakwaters and the existing shoreline due to historic erosion and for reestablishment of wetland habitat.

The applicant is not proposing to mitigate for the proposed impacts stating that the project will greatly reduce or prevent future erosion of vegetated estuarine habitat and the area between the breakwater reefs and the shoreline will be the future site of placement of dredge material, that will be allowed to restore to a more naturalized and native state. Additionally, the installation of a hard substrate will allow for natural colonization and recruitment of oyster reefs.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2022-00759. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 23-1234-F1

Applicant: 14000 Industrial Holdings, LLC

Location: The project site is located in Greens Bayou, at 13605 Industrial Road, in Houston, Harris County, Texas.

Latitude and Longitude: 29.75743, -95.18190

Project Description: The applicant proposes to hydraulically dredge approximately 317,594 cubic yards in association with the expansion of two large barge slips. The northern slip will be dredged to -12 feet below Mean Lower Low Water (MLLW) and will involve the dredging of approximately 190,903 cubic yards of material from a 6.85-acre area. The southern slip will be dredged to -12 feet below MLLW and will involve the dredging of approximately 126,691 cubic yards of material from a 5.11-acre area. The southern slip will also involve the construction of 11 steel pipe mooring structures driven along the southeastern side of the slip. Sheet pile bulkheads will be driven along the perimeter of the dredge area prior to commencement of dredging. The applicant has proposed to place the dredged material into the following dredge material placement areas (DMPAs): Green's Bayou, Lost Lake, Texas Deep Water, East/West Jones, HMS 850, and/or Adloy. The applicant has not proposed any compensatory mitigation.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-1993-01047. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 23-1237-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202301590

Mark Havens

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: May 2, 2023



Notice of Availability and Request for Comments on a Proposed Settlement Agreement

AGENCIES: The Texas General Land Office (GLO), Texas Commission on Environmental Quality (TCEQ), Texas Parks and Wildlife De-

partment (TPWD), and the United States Department of the Interior (DOI) on behalf of the United States Fish and Wildlife Service (collectively, the "Trustees").

ACTION: Notice of availability of a proposed Settlement Agreement for Natural Resource Damages related to the Eagle Otome 2010 Oil Spill and of a 30-day period for public comment on the proposed Settlement Agreement beginning the date of publication of this notice.

SUMMARY: Notice is hereby given that the Trustees are providing an opportunity for public comment on a proposed Settlement Agreement with AET, Inc., Ltd. and AET Ship Management, PTE., Ltd. (collectively, "AET") related to the Eagle Otome 2010 Oil Spill. The proposed Settlement Agreement resolves the civil claims of the Trustees against AET under the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq., and the Texas Oil Spill Prevention and Response Act, Tex. Nat. Res. Code § 40.001 et seq., for injury to, impairment of, destruction of, loss of, diminution of value of, and/or loss of use of natural resources resulting from the January 23, 2010 discharge of sour crude oil into the Sabine-Neches Waterway in the City of Port Arthur, Jefferson County, Texas at or from the T/V Eagle Otome as a result of the T/V Eagle Otome's collision with the towboat Dixie Vengeance.

Under the proposed Settlement Agreement, AET agrees to pay \$400,000 to the Trustees, as follows: \$311,492 to the DOI Natural Resource Damage Assessment and Restoration Fund to be used to restore, replace, rehabilitate, and/or acquire the equivalent of those natural resources and their services injured by the discharge of oil and for the Trustees' restoration planning and oversight of restoration implementation; and \$88,508 for the Trustees' past assessment costs. AET will receive from the Trustees a covenant not to sue for the claims resolved by the settlement.

ADDRESSES: Interested members of the public may request a copy of the proposed Settlement Agreement by contacting: Allison Fischer, Texas General Land Office, Coastal Resources Division, Natural Resources Damage Assessment, P.O. Box 12873, Austin, Texas 78711-2873, phone: (512) 463-5271, e-mail: allison.fischer@glo.texas.gov. A copy of the proposed Settlement Agreement may also be downloaded at <https://www.justice.gov/enrd/consent-decrees>.

DATES: Comments must be submitted in writing within 30 days of the publication of this notice to Allison Fischer of the Texas General Land Office at the address listed in the previous paragraph. Comments may be submitted either by mail or by e-mail. The Trustees will consider all written comments received during the 30-day comment period.

TRD-202301623

Mark Havens

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: May 3, 2023



Texas Health and Human Services Commission

Public Notice: Texas State Plan for Medical Assistance Amendment

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendment is effective June 1, 2023.

The purpose of the amendment is to update the rate methodology and payment rates for Prescribed Pediatric Extended Care Centers (PPECC). HHSC Provider Finance Department (PFD) staff evaluated

the PPECC rate methodology and payment rates as part of the biennial fee review process.

The proposed amendment is estimated to result in an annual aggregate expenditure of \$0 for federal fiscal year (FFY) 2023, consisting of \$0 in federal funds and \$0 in state general revenue. For FFY 2024, the estimated annual aggregate expenditure is \$0, consisting of \$0 in federal funds and \$0 in state general revenue. For FFY 2025, the estimated annual aggregate expenditure is \$0, consisting of \$0 in federal funds and \$0 in state general revenue. There is no fiscal impact for the proposed amendment in fee-for-service, as PPECC is a part of Managed Care services under STAR Kids and STAR Health.

Further detail on specific reimbursement rate changes is available on the HHSC PFD website under the proposed effective date at <http://pfd.hhs.texas.gov/rate-packets>.

A rate hearing will be held on May 19, 2023, at 9:00 a.m. in Austin, Texas. Information about the proposed rate change and the hearing can be found in the April 14, 2023, issue of the *Texas Register* (48 TexReg 1999) at <http://www.sos.state.tx.us/texreg/index.shtml>.

Copy of Proposed Amendment(s). Interested parties may obtain additional information or a free copy of the proposed amendments from Kenneth Anzaldua, State Plan Team Lead, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 438-4326; by facsimile at (512) 730-7472; or by email at Medicaid_Chip_SPA_Inquiries@hhs.state.tx.us. Copies of the proposed amendments will be available for review at the local county offices of HHSC (formerly the local offices of the Texas Department of Aging and Disability Services).

Written Comments. Written comments and requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail

Texas Health and Human Services Commission

Attention: Provider Finance, Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Provider Finance, Mail Code H-400

North Austin Complex

4601 West Guadalupe Street

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax

Attention: Provider Finance at (512) 730-7475

Email

PFD-LTSS@hhs.texas.gov

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202301597

Karen Ray
Chief Counsel

Texas Health and Human Services Commission

Filed: May 2, 2023



Public Notice: Texas State Plan for Medical Assistance Amendment

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendment is effective June 1, 2023.

The purpose of the amendment is to update the rate methodology and payment rate for Community First Choice (CFC) Personal Attendant Services (PAS) and Habilitation, under the Consumer Directed Services (CDS) option, for STAR Kids. The amendment aligns the CFC PAS and Habilitation CDS rate for STAR Kids with the base rate for Personal Care Services - Behavioral Health (PCS-BH) CDS. Provider Finance Department (PFD) staff evaluated the CFC PAS and Habilitation CDS rate methodology and payment rate as part of the biennial fee review process.

The proposed amendment is estimated to result in an annual aggregate expenditure of \$0 for federal fiscal year (FFY) 2023, consisting of \$0 in federal funds and \$0 in state general revenue. For FFY 2024, the estimated annual aggregate expenditure is \$0, consisting of \$0 in federal funds and \$0 in state general revenue. For FFY 2025, the estimated annual aggregate expenditure is \$0, consisting of \$0 in federal funds and \$0 in state general revenue. There is no fiscal impact for the proposed amendment in fee-for-service, as STAR Kids CFC PAS and Habilitation CDS is a part of Managed Care services.

Further detail on specific reimbursement rate changes is available on the HHSC PFD website under the proposed effective date at <http://pfd.hhs.texas.gov/rate-packets>.

A rate hearing will be held on May 19, 2023, at 9:00 a.m. in Austin, Texas. Information about the proposed rate change and the hearing can be found in the April 14, 2023, issue of the *Texas Register* (48 TexReg 1999) at <http://www.sos.state.tx.us/texreg/index.shtml>.

Copy of Proposed Amendment(s).

Interested parties may obtain additional information or a free copy of the proposed amendments from Kenneth Anzaldua, State Plan Team Lead, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 438-4326; by facsimile at (512) 730-7472; or by email at Medicaid_Chip_SPA_Inquiries@hhs.state.tx.us. Copies of the proposed amendments will be available for review at the local county offices of HHSC (formerly the local offices of the Texas Department of Aging and Disability Services).

Written Comments.

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North Austin Complex

4601 West Guadalupe Street

Austin, Texas 78751

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Fax

Attention: Provider Finance at (512) 730-7475

Email: PFD-LTSS@hhs.texas.gov

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202301598

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: May 2, 2023

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Department of State Health Services

Licensing Actions for Radioactive Materials

During the second half of March 2023, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radioactive Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: (512) 206-3760, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
THROUGHOUT TX	GAMMATECH INDUSTRIAL LLC	L07177	HOUSTON	00	03/15/23
THROUGHOUT TX	K ALLRED OILFIELD SERVICES LLC	L07178	MIDLAND	00	03/22/23
THROUGHOUT TX	AXIOS INTEGRITY LLC	L07179	VICTORIA	00	03/24/23

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
AUSTIN	TEXAS ONCOLOGY	L06206	AUSTIN	24	03/27/23
AUSTIN	ST DAVIDS HEALTHCARE PARTNERSHIP LP LLP DBA ST DAVIDS MEDICAL CENTER	L06335	AUSTIN	44	03/22/23
AUSTIN	ST DAVIDS HEART & VASCULAR PLLC DBA AUSTIN HEART	L04623	AUSTIN	105	03/22/23
AUSTIN	ARA ST DAVIDS IMAGING LP	L05862	AUSTIN	118	03/17/23
AUSTIN	AUSTIN RADIOLOGICAL ASSOCIATION	L00545	AUSTIN	244	03/17/23
BEDFORD	TEXAS ONCOLOGY PA	L05545	BEDFORD	77	03/17/23
BEDFORD	TEXAS ONCOLOGY PA	L05545	BEDFORD	78	03/27/23
BUDA	BAYLOR SCOTT & WHITE MEDICAL CENTERS - CAPITOL AREA	L07154	BUDA	02	03/17/23

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

CLIFTON	LHOIST NORTH AMERICA OF TEXAS LLC	L02461	CLIFTON	19	03/23/23
CORPUS CHRISTI	CHRISTUS SPOHN HEALTH SYSTEM CORPORATION DBA CHRISTUS SPOHN HOSPITAL CORPUS CHRISTI – SHORELINE & SOUTH	L02495	CORPUS CHRISTI	146	03/17/23
DALLAS	HEALTHTEXAS PROVIDER NETWORK DBA BAYLOR SCOTT & WHITE CARDIOLOGY	L06572	DALLAS	12	03/21/23
DALLAS	METHODIST HOSPITALS OF DALLAS	L00659	DALLAS	149	03/24/23
EL PASO	TEXAS ONCOLOGY PA DBA EL PASO CANCER TREATMENT CENTER - EAST	L05771	EL PASO	15	03/20/23
FORT WORTH	DARREN LACKAN MD PA	L06074	FORT WORTH	07	03/15/23
HOUSTON	THE UNIVERSITY OF TEXAS MD ANDERSON CANCER CENTER	L06227	HOUSTON	60	03/21/23
HUMBLE	CARDIOVASCULAR ASSOCIATION PLLC	L05421	HUMBLE	33	03/31/23
LAKEWAY	SCOTT & WHITE HOSPITAL– ROUND ROCK DBA BAYLOR SCOTT & WHITE	L06849	LAKEWAY	09	03/17/23
MCKINNEY	TEXAS ONCOLOGY PA	L06947	MCKINNEY	16	03/17/23
MIDLAND	MIDLAND COUNTY HOSPITAL DISTRICT	L00728	MIDLAND	126	03/17/23

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

MIDLAND	MIDLAND COUNTY HOSPITAL DISTRICT	L00728	MIDLAND	127	03/27/23
PARIS	ESSENT PRMC LP DBA PARIS REGIONAL MEDICAL CENTER	L03199	PARIS	71	03/17/23
PASADENA	KARAN S BHALLA MD PLLC	L07018	PASADENA	03	03/20/23
PLANO	TEXAS HEALTH PRESBYTERIAN HOSPITAL PLANO	L04467	PLANO	83	03/27/23
ROUND ROCK	SCOTT & WHITE HOSPITAL – ROUND ROCK DBA BAYLOR SCOTT & WHITE	L06085	ROUND ROCK	36	03/17/23
SAN ANTONIO	UT MEDICINE SAN ANTONIO	L06737	SAN ANTONIO	09	03/15/23
SAN ANTONIO	RLS (USA) INC	L04764	SAN ANTONIO	58	03/17/23
STAFFORD	ALOKI ENTERPRISE INC	L06257	STAFFORD	61	03/27/23
TEXARKANA	CHRISTUS HEALTH ARK-LA-TEX DBA CHRISTUS ST MICHAEL HEALTH SYSTEMS	L04805	TEXARKANA	43	03/22/23
THE WOODLANDS	ST LUKES COMMUNITY HEALTH SERVICES DBA ST LUKES THE WOODLANDS HOSPITAL	L05763	THE WOODLANDS	37	03/24/23
THROUGHOUT TX	TEXAS DEPARTMENT OF STATE HEALTH SERVICES	L05865	AUSTIN	16	03/20/23
THROUGHOUT TX	LOBO LABS LLC	L06642	CORPUS CHRISTI	05	03/22/23
THROUGHOUT TX	GLOBE ENGINEERS INC	L05527	DALLAS	08	03/22/23

THROUGHOUT TX	ECM INTERNATIONAL INC	L06987	EL PASO	09	03/23/23
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AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

THROUGHOUT TX	HAIMO AMERICA INC	L06936	HOUSTON	12	03/22/23
THROUGHOUT TX	ATLAS TECHNICAL CONSULTANTS LLC	L06407	LUBBOCK	27	03/16/23
THROUGHOUT TX	B2Z ENGINEERING LLC	L06996	MISSION	06	03/22/23
THROUGHOUT TX	SCHLUMBERGER TECHNOLOGY CORPORATION	L06303	SUGAR LAND	25	03/16/23

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
BROWNSVILLE	VHS BROWNSVILLE HOSPITAL COMPANY LLC	L06500	BROWNSVILLE	12	03/29/23
LONGVIEW	REGIONAL CLINICS OF LONGVIEW	L06487	LONGVIEW	06	03/24/23
TATUM	LUMINANT GENERATION COMPANY LLC	L04593	TATUM	17	03/23/23
TEXARKANA	TEXARKANA PET/CT IMAGING INSTITUTE LP	L05495	TEXARKANA	19	03/28/23
THROUGHOUT TX	CRITICAL RESPONSE INSPECTION SERVICE LLC	L06497	CROSBY	05	03/20/23
THROUGHOUT TX	TSI LABORATORIES INC	L04767	VICTORIA	22	03/20/23

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
HOUSTON	SHEIKH EJAZ AHMED MD	L06021	HOUSTON	05	03/29/23
SAN ANTONIO	SW DIAGNOSTIC CENTER PA	L03763	SAN ANTONIO	12	03/15/23

TRD-202301621
 Cynthia Hernandez
 General Counsel
 Department of State Health Services
 Filed: May 3, 2023



Texas Department of Insurance

Company Licensing

Application for incorporation in the state of Texas for Belong Health Insurance Company, a domestic life, accident and/or health company. The home office is in Austin, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202301613
 Justin Beam
 Chief Clerk
 Texas Department of Insurance
 Filed: May 3, 2023



Texas Lottery Commission

Scratch Ticket Game Number 2498 "CASH PAYOUT"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2498 is "CASH PAYOUT". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2498 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2498.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, GOLD BAR SYMBOL, \$5.00, \$10.00, \$20.00, \$50.00, \$75.00, \$100, \$250, \$500, \$1,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2498 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV

26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
GOLD BAR SYMBOL	WINX5
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$75.00	SVFV\$
\$100	ONHN
\$250	TOFF
\$500	FVHN
\$1,000	ONTH
\$100,000	100TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The

Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2498), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2498-0000001-001.

H. Pack - A Pack of the "CASH PAYOUT" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "CASH PAYOUT" Scratch Ticket Game No. 2498.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "CASH PAYOUT" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-two (42) Play Symbols. BONUS: If a player reveals 2 matching prize amounts in the same BONUS, the player wins that amount. KEY NUMBER MATCH: If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "Gold Bar" Play Symbol, the player wins 5 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly forty-two (42) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly forty-two (42) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the forty-two (42) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the forty-two (42) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: A Ticket can win up to nineteen (19) times in accordance with the approved prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. KEY NUMBER MATCH: Each Ticket will have four (4) different WINNING NUMBERS Play Symbols.

D. KEY NUMBER MATCH: Non-winning YOUR NUMBERS Play Symbols will all be different.

E. KEY NUMBER MATCH: Non-winning Prize Symbols will never appear more than two (2) times.

F. KEY NUMBER MATCH: The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

G. KEY NUMBER MATCH: The "GOLD BAR" (WINX5) Play Symbol will never appear in the WINNING NUMBERS or BONUS Play Symbol spots.

H. KEY NUMBER MATCH: The "GOLD BAR" (WINX5) Play Symbol will only appear on winning Tickets as dictated by the prize structure.

I. KEY NUMBER MATCH: Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

J. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and \$20).

K. BONUS SPOTS: Matching Prize Symbols will only appear in a winning BONUS play area as dictated by the prize structure.

L. BONUS SPOTS: Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

M. BONUS SPOTS: A Ticket will not have matching non-winning Prize Symbols across the four (4) BONUS play areas.

2.3 Procedure for Claiming Prizes.

A. To claim a "CASH PAYOUT" Scratch Ticket Game prize of \$5.00, \$10.00, \$20.00, \$50.00, \$75.00, \$100, \$250 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$75.00, \$100, \$250 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CASH PAYOUT" Scratch Ticket Game prize of \$1,000 or \$100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CASH PAYOUT" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "CASH PAYOUT" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "CASH PAYOUT" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A

Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If

more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2498. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2498 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5.00	768,000	9.38
\$10.00	768,000	9.38
\$20.00	240,000	30.00
\$50.00	96,000	75.00
\$75.00	9,600	750.00
\$100	17,100	421.05
\$250	620	11,612.90
\$500	460	15,652.17
\$1,000	65	110,769.23
\$100,000	5	1,440,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.79. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2498 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2498, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202301605

Bob Biard
General Counsel
Texas Lottery Commission
Filed: May 3, 2023

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Texas Department of Motor Vehicles

Correction of Error

The Texas Department of Motor Vehicles adopted amendments to 43 TAC §§206.94 - 206.97 and the repeal of 43 TAC §206.98 in the April 28, 2023, issue of the *Texas Register* (48 TexReg 2188). Due to an error by the Texas Register, the part name included an incorrect agency name. The part name should have been published as follows:

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES
TRD-202301601

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North Central Texas Council of Governments

Notice of Contract Award - 511DFW Traveler Information System and Information Exchange Network

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of contract award. The request appeared in the September 16, 2022, issue of the *Texas Register* (47 TexReg 5915). The selected entity will perform technical and professional work for the 511DFW Traveler Information System and Information Exchange Network.

The entity selected for this project is Mindhop, Inc., 10 County Center Road, Suite 332, White Plains, New York 10607. The amount of the contract is not to exceed \$7,000,000 over a six-year term.

Issued in Arlington, Texas on April 28, 2023.

TRD-202301586
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: May 2, 2023

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Texas Public Finance Authority

Notice of Request for Proposals for Underwriting Services

The Texas Public Finance Authority announces its Request for Proposals to create a pool of qualified investment banking firms from which to obtain underwriting services to assist the Authority in its financings for the fiscal biennium beginning September 1, 2023, and ending August 31, 2025, with the option to extend the use of the pool for underwriting services as needed for financings undertaken during the fiscal biennium beginning September 1, 2025, and ending August 31, 2027.

The Board will base its selection on a firm's relevant experience, qualifications, and success in providing the services outlined in the RFP; financial stability and strength; the quality of the information provided regarding the requirements of the RFP; and any other factors relevant to the firm's capacity and ability to meet the Authority's and the State's needs.

A copy of the RFP is available on the Authority's website, at <https://www.tpfa.texas.gov/rfp.aspx> and on the Electronic State Business Daily ("ESBD") at <https://www.txsmartbuy.com/esbd>.

Proposals are due no later than 3:00 p.m., CT, May 18, 2023, pursuant to the instructions in the RFP.

TRD-202301579
Kevin Van Oort
General Counsel
Texas Public Finance Authority
Filed: May 1, 2023

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South Texas Development Council

Middle Rio 2023 Respite RFQ

In partnership with the Texas Health and Human Services Commission (HHSC), the South Texas Development Council's (STDC) Middle Rio Aging and Disability Resource Center (MRADRC) is releasing this request for qualifications (RFQ) to utilize funding to provide respite services to individuals with disabilities of any age and/or individuals under the age of 60. The purpose of these services is to assist families within the nine (9) county service area of the MRADRC who have individuals with disabilities. The intention of the funding is to provide respite services which provide short-term, temporary relief to the informal, unpaid caregiver of eligible individuals. The STDC seeks to select one (1) potential service provider who is qualified to provide respite services.

For RFP package contact:

Michelle Barrah

Program Supervisor

South Texas Development Council

South Texas Aging and Disability Resource Center

1002 Dicky Lane

Laredo, Texas 78044-2187

(956) 722-3995 x 128 Tel

(855) 937-2372 Toll Free

(956) 722-2670 Fax

mbarrah@stdc.cog.tx.us

TRD-202301612

Nancy Rodriguez

Aging and Disability Director

South Texas Development Council

Filed: May 3, 2023

◆ ◆ ◆
Notice: South Texas

In partnership with the Texas Health and Human Services Commission (HHSC) the South Texas Development Council's (STDC) South Texas Aging and Disability Resource Center (STARDC) is releasing this request for qualifications (RFQ) to utilize funding to provide respite services to individuals with disabilities of any age and/or individuals under the age of 60. The purpose of these services is to assist families within the four (4) county service area of the STARDC who have individuals with disabilities. The intention of the funding is to provide respite services which provide short-term, temporary relief to the informal, unpaid caregiver of eligible individuals. The STDC seeks to select one (1) potential service provider who is qualified to provide respite services.

For RFQ package contact:

Michelle Barraha
Program Supervisor
South Texas Development Council
South Texas Aging and Disability Resource Center
1002 Dicky Ln.
Laredo, Texas 78044-2187
(956) 722-3995 x 128 Telephone
(855) 937-2372 Toll Free
(956) 722-2670 Fax
mbarrah@stdc.cog.tx.us
TRD-202301611
Nancy Rodriguez
Aging and Disability Director
South Texas Development Council
Filed: May 3, 2023

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Texas Department of Transportation

Notice of Public Hearing - Texas Private Activity Bond Surface Transportation Corporation

Notice is hereby given of a public hearing to be held by the Texas Private Activity Bond Surface Transportation Corporation (the "Corporation") by its designated hearing officer on May 19, 2023 at 1:00 p.m. CDT via teleconference and among the items to be discussed will be the proposal for the issuance by the Corporation of its senior lien revenue bonds (the "Bonds") to finance all or a portion of the construction, engineering, development fees, and other related costs of NTE Mobility Partners LLC (the "Developer") to develop, design and construct the Mandatory Capacity Improvement to bring the Facility to the Ultimate Configuration in accordance with the Comprehensive Development Agreement for a Concession North Tarrant Express Facility effective June 23, 2009 (as amended, supplemented and/or otherwise modified from time to time, the "CDA"), between the Texas Department of Transportation and the Developer. The work will include: (i) capacity improvements consisting of (a) General Purpose Capacity Improvements including design and construction of one additional general purpose lane per direction in Segment 1 (I-820) for 5.17 miles between the I-35W/I-820 interchange and the I-820/SH 183 interchange and (b) Managed Lane Capacity Improvements including design and construction of one additional managed lane per direction in Segment 2 (SH 183) for 5.11 miles between the I-820/SH 183 interchange and east of the split between SH 183 and SH 121 near Industrial Blvd (together the "Mandatory Capacity Improvements"); and (ii) anticipated additional works to include certain design and construc-

tion works necessary to accommodate the existing Ramps Zero and Hurstview Ramps within the Ultimate Configuration resulting from the construction of the Mandatory Capacity Improvements defined above (collectively, the "Mandatory Capacity Improvement Project"). The Bonds will also be used to fund reserves and capitalized interest, if any, to the extent authorized by state and federal law, to pay all or a portion of the costs of issuance of the Bonds and to fund certain major maintenance required pursuant to the terms of the CDA. The Mandatory Capacity Improvement Project will be managed and operated by the Developer pursuant to the CDA. The term of the CDA is until June 22, 2061 and, pursuant to the terms of the CDA, the Developer is authorized to toll the North Tarrant Express including the tolled portion of the Mandatory Capacity Improvement Project. North Tarrant Infrastructure, LLC is expected to be the Design-Build Contractor for the Mandatory Capacity Improvement Project. A map showing the location of the North Tarrant Express Mandatory Capacity Improvement Project is available online at <https://www.txdot.gov/projects/projects-studies/fort-worth/north-tarrant-express.html>

<https://ftp.txdot.gov/pub/txdot/get-involved/ftw/north-tarrant-express/050123-capacity-improvements.pdf>. The maximum aggregate principal amount of the Bonds to be issued, in one or more series, pursuant to a plan of financing, is \$500,000,000. The Bonds and the interest thereon shall be payable solely from funds paid or made available by the Developer and shall never constitute and shall not be considered obligations, general or otherwise, of the State of Texas, the Texas Transportation Commission, or the Texas Department of Transportation, or any other political subdivision of the State of Texas.

All interested parties are invited to express their views with respect to the Mandatory Capacity Improvement Project and the Bonds by attending the public hearing to be held via teleconference, by dialing the following toll-free number: (877) 336-1839 and use Access Code 2181892. Any interested persons unable to attend the hearing may submit their views in writing to the Corporation c/o projectfinance@txdot.gov prior to the date scheduled for the hearing.

This notice is published, and the above-described hearing is to be held in satisfaction of the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended, regarding the public approval prerequisite to the exemption from federal income taxation of interest on the Bonds. The public hearing will be held via teleconference in accordance with Revenue Procedure 2022-20 issued by the Internal Revenue Service.

TRD-202301622
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: May 3, 2023

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How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 48 (2023) is cited as follows: 48 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “48 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 48 TexReg 3.”

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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