

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.

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 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

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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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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.)

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 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.

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 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.

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



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.

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Public Utility Commission of Texas

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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.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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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.

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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.

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