

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, §40.3

The Texas Animal Health Commission (commission) proposes amendments to Title 4, Texas Administrative Code, Chapter 40, §40.1, concerning Definitions, and §40.3, concerning Herd Status Plans for Cervidae.

BACKGROUND AND SUMMARY OF PROPOSED AMENDMENTS

The commission proposes amendments to §40.1 and §40.3 to clarify, correct and update information regarding chronic wasting disease (CWD) management and the CWD Herd Certification Program (HCP).

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.

In May 2019, the United States Department of Agriculture (USDA) updated the CWD Program Standards ("federal standards"). The federal standards were revised to clarify and update acceptable methods for complying with the legal requirements in Title 9 of the Code of Federal Regulations (CFR) Parts 55 and 81. As a participating Approved State CWD Herd Certification Program, the commission is amending the HCP rules to align with revised federal standards or regulations.

The HCP is a voluntary, cooperative surveillance and certification program between the commission, USDA, 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. Certification status, in addition to compliance with the HCP performance-based regulations and herd status, permits interstate animal movement.

SECTION-BY-SECTION DISCUSSION

The proposed amendment to §40.1, Definitions, adds "CWD-Exposed Herd" and "CWD-Positive Animal" to the list of definitions, and amends the definition for "complete herd inventory." CWD-Exposed Herd is defined as 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. CWD-Positive Animal is defined as an animal that has had a diagnosis of CWD established through official confirmatory testing conducted by the National Veterinary Services Laboratories. To provide clarity and reduce confusion, the term "complete herd inventory" was replaced with "complete physical herd inventory" which is now defined as a visual verification of all animals and identifications to reconcile records maintained by the owner. The term "complete physical herd inventory" was updated in §40.3(f)(1)(B) and (C). The definitions align with the federal standards.

The proposed amendments to §40.3, Herd Certification Program for Cervidae, also coincide with the federal standards. The amendment to §40.3(a)(3)(A) changes the timeframe from 72 hours to immediate notification for a herd owner to make a report to the USDA or the commission of farmed or captive cervids that escape or disappear, and all free-ranging cervids that enter the facility. The amendment to §40.3(c)(7)(C) removes the exception for lowering a herd to First Year status if the animal(s) is tested "not detected" postmortem within the first year after entry into the herd. The amendment to §40.3(d) clarifies that one of the animal identifications must be an "official" form of animal identification approved by USDA. The amendment to §40.3(f)(1)(A) and (C) requires all identification to be visually verified on the animals during an initial inspection and a physical herd inspection. To remove redundancies, the rule in §40.3(a)(4)(C) was repealed and the provision that follows was renumbered accordingly. Currently a complete physical herd inventory is required for all enrollees during the initial inspection and subsequent physical herd inspections or when there is a discrepancy during annual inspections; see §40.3(f)(1)(A) and (C) for requirements. Non-substantive grammatical corrections were made in §40.3(f)(1)(A)(iii) and §40.3(h)(5).

FISCAL NOTE

Ms. Myra Sines, Chief of Staff, determined for each year of the first five years the rules are in effect, there may be an estimated additional cost to state government as a result of enforcing and administering the rules as proposed. The rules will be administered and enforced using existing personnel as part of their current duties; however, there will be an additional cost if cervid producers opt to have a commission representative conduct the physical herd inspection instead of an authorized veterinarian. As of May 2022, 279 cervid herds are enrolled in the state's CWD HCP. The costs for conducting an initial or physical herd inspec-

tion, may increase or decrease depending on unknown external factors affecting cervid producers participating in the program. Since the HCP is voluntary and the commission authorizes certain private veterinarians to perform physical inspections, it is unknown how many reviews will be conducted by the commission.

The effect on state government for each year of the first five years the proposed amendment is in effect is indeterminate. The variety of business models utilized by deer breeders make meaningful estimates of potential costs to state government difficult. If cervid producers elect to have the commission conduct a review, the commission will incur costs to obtain identification systems that are compatible with the monitoring and management systems used by the industry. The commission currently utilizes low frequency electronic identification wands and binoculars to visually verify animal identification. The commission anticipates purchasing additional equipment to keep pace with emerging identification technologies utilized by cervid producers and to minimize animal handling during inspection. The commission also anticipates verification of all identification by commission employees would increase staff time and travel necessary to complete the inspections.

PUBLIC BENEFIT NOTE

Ms. Sines determined that for each year of the first five years the proposed rules are in effect, the anticipated public benefits will be improved understanding and compliance with commission rules and federal requirements necessary for CWD susceptible species to participate in interstate commerce and mitigate the risks and spread of CWD.

TAKINGS IMPACT 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. Instead, the proposed amendments relate to the handling of animals, including requirements concerning testing, movement, inspection, identification, reporting of disease, and treatment pursuant to 4 TAC §59.7. Therefore, the proposed rules are compliant with the Private Real Property Preservation Act in Texas Government Code §2007.043 and do not constitute a takings.

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

Ms. Sines has also determined that there will be an adverse economic effect on small businesses, or micro-businesses. Those impacts are the same as adverse economic impacts to the persons that voluntarily participate in the HCP and are required to comply with the proposed rules. Commission data indicates there are 279 herds voluntarily enrolled in Texas' HCP as of the preparation of this analysis. The proposed rule requiring all identification devices on an animal be verified will have an adverse impact on deer breeders and owners of CWD susceptible species. The commission believes that most if not all of these 279 cervid producers qualify as a small or micro-business. The herd size for the businesses range from 1 to 793 animals.

It is difficult to predict the economic impact the proposed rule would have on the herds that remain in the voluntary program because herd size, facility size, equipment, animal husbandry and handling practices and business models vary per facility. Regardless of these variables, the agency expects the length of time it takes to conduct an initial inspection or physical herd

inspection will increase. Because veterinary pricing varies significantly (flat rate, graduated rates and herd call rates) the agency cannot quantify how much it will cost a cervid producer to verify all identification devices as opposed to the current requirement to verify one device. However, based on the agency's inspection fee and information obtained from private veterinary practitioners, the commission estimates that an inspection will cost approximately \$100 to \$350 per hour. Other considerations that may increase the cost of inspections include mileage, travel, type of medication administered, and sedation fees for the veterinarians or third parties that provide sedation services. The commission estimates that the average medication costs range from \$50 to \$75 per animal and sedation services range from \$100 to \$200 per animal.

As such, alternatives were considered to achieve the goals of the proposed new rules while reducing potential adverse impacts on small and micro-businesses and persons required to comply.

One alternative was to do nothing. This alternative was rejected because the current rules do not meet the minimum requirements of the HCP as outlined in 9 CFR §55.23. The commission is required to update rules to maintain Approved State Program Status by the USDA. Refusal to update rules and comply with HCP requirements would result in suspension of the program, which would prevent the movement of Texas herds in interstate commerce. Therefore, this alternative was rejected.

Another alternative considered would be to require physical herd inspections be conducted by commission employees to ensure compliance with identification requirements. While it is an option to utilize commission personnel for these inspections, the commission may not have the staff resources immediately available to conduct inspections. This alternative would remove the producer's choice of selecting the inspecting entity for a physical herd inspection (commission employee or a private TAHC authorized veterinarian) who can meet the producer's schedule. Therefore, this alternative was also rejected.

Another alternative would be imposing less stringent visual verification requirements. Although this alternative may be considered for future rulemaking, suggested alternatives were rejected because the proposed amendment is necessary to meet the minimum federal requirements and maintain Texas' HCP approved status. The commission will continue to identify flexibilities that are less stringent, and will, to the extent agency resources and staffing permit, allow physical herd inspections to be conducted at a time that aligns with industry practices for handling animals and meets the requirements of the HCP.

The commission determined that there will be no effect on rural communities, since the economic contribution of individual deer and other CWD susceptible species in the HCP is not a significant driver of economic activities.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

The commission has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to

protect the environment or reduce risks to human health from environmental exposure.

LOCAL EMPLOYMENT IMPACT STATEMENT

The proposed amendments will not affect a local economy.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, the commission prepared the following Government Growth Impact Statement. 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 may require the creation of new employee positions or the elimination of existing employee positions;
3. Implementation of the proposed rules may increase future legislative appropriations to the Commission;
4. The proposed rules will not increase the hourly inspection fee but the Commission may see an increase in revenue as a result of fees assessed for time spent conducting an inspection;
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 will not 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 §40.3 will impose a cost on a regulated person if they participate in the voluntary herd certification program. The commission determined these proposals are necessary to follow federal requirements and maintain Texas' Approved State Program Status. 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 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 §40.01 and §40.03 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.

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 §161.048, 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.

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

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

Pursuant to §161.061, titled "Establishment", if the commission may establish a quarantine against all or the portion of a state, territory, or country in which a disease listed in rules adopted under Section 161.041. Section 161.061(b), a quarantine established may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen. Section 161.061(c), the commission may establish a quarantine to prohibit or regulate the movement of infected animals and the movement of animals into an af-

ected area. Section 161.061(d) allows the commission to delegate its authority to establish a quarantine to the Executive Commissioner.

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

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

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

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

Pursuant to §161.148, titled "Administrative Penalty", the commission may impose an administrative penalty on a person who violates Chapter 161 or a rule or order adopted under Chapter 161. The penalty for a violation may be in an amount not to exceed \$5,000, effective September 1, 2021.

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

§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) - (6) (No change.)

(7) Complete Physical Herd Inventory--A visual verification of all animals and identifications to reconcile records maintained by the owner. [One in which all animals in the herd must be validated by the person officially performing the inventory verification.]

(8) (No change.)

(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.

(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.

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

(12) [(40)] 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. This includes white-tailed deer (*Odocoileus virginianus*), mule deer (*Odocoileus hemionus*), black-tailed deer (*Odocoileus hemionus columbianus*), North American elk or wapiti (*Cervus canadensis*), red deer (*Cervus elaphus*), Sika deer (*Cervus nippon*), moose (*Alces alces*), reindeer and caribou (*Rangifer tarandus*) and any associated subspecies and hybrids.

(13) [(41)] 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.

(14) [(42)] 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.

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

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

(17) [(45)] 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.

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

(19) [(47)] Farmed or Captive--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.

(20) [(48)] Herd--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) [(49)] 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.

(22) [(20)] 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 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, selec-

tive 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 record-keeping.

(23) [(24)] 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.

(24) [(22)] 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.

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

(26) [(24)] 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.

(27) [(25)] 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 alphanumeric 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) [(26)] 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.

(29) [(27)] 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) National Uniform Eartagging System (NUES);
- (B) Animal Identification Number (AIN);

(C) Premises-based number system using a Premises Identification Number (PIN) or Location Identification Number (LID) in conjunction with a livestock production numbering system; or

(D) Any other numbering system approved by the commission for the identification of animals in commerce.

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

(31) [(29)] 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.

(32) [(30)] 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) [(31)] 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) [(32)] Status Date--The day, month, and year the commission approves a change in herd status.

(35) [(33)] 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) [(34)] 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.

§40.3. Herd Certification Program for Cervidae.

(a) Enrollment Requirements. Herd owners who enroll in the Herd Certification Program must maintain their herds in accordance with the following requirements:

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

(3) The herd owner shall:

(A) ~~Immediately report upon discovery~~ [Report, within 72 hours,] all farmed or captive cervids that escape or disappear and all free-ranging cervids that enter the facility; and

(B) (No change.)

(4) An annual inventory:

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

~~[(C) For herd owners seeking to qualify for animal movement in interstate commerce, a complete herd inventory must be performed at the time a herd is enrolled and a complete herd inventory must be performed for all herds enrolled in the CWD Herd Certification Program no more than three years after the last complete herd inventory for the herd.]~~

(C) [(4)] The herd owner is responsible for assembling, handling, and restraining the animals and for all costs incurred to present the animals for inspection.

(5) - (6) (No change.)

(b) (No change.)

(c) Herd Status. Herd status designation shall be assigned on the basis of the number of years of participation provided that the herd meets all requirements of the Herd Certification Program. If a herd is designated CWD-positive or CWD-exposed, it will immediately be placed in Suspended Status until such time when all herd plan requirements are met.

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

(7) Herd status changes.

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

(C) If a herd participating in the program acquires animals from a nonparticipating herd, the receiving herd reverts to First Year status with a new status date listed as the date of acquisition of the animal(s) [except when the added animal(s) is tested "not detected" postmortem within the first year after entry into the receiving herd].

(D) - (G) (No change.)

(d) Identification Requirements. Each animal required to be identified by this section must have at least two forms of animal identification attached to the animal.

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

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

(e) (No change.)

(f) Inspections. Enrolled herds are required to have an initial inspection, annual inspection and physical inspection and may not advance in status until the required inspections have been completed, submitted, reconciled and approved by the commission.

(1) Routine Program Inspections.

(A) Initial Physical Herd Inspection - an initial inspection of a cervid breeding facility must be conducted by a commission representative upon enrollment to:

(i) (No change.)

(ii) Verify and record the two unique animal identification numbers for each individual animal, one of which is a nationally unique official animal identification present on the date the herd is initially enrolled in the Herd Certification Program. All required [At least one of the two] identification devices will be visually verified and reconciled with the herd owner's records;

(iii) 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 epidemiologist and approved by the Executive Director; and

(iv) (No change.)

(B) Annual Inspection - an annual inspection of a cervid breeding facility must be conducted by a commission representative or a TAHC Authorized Veterinarian 11 to 13 months after the last inspection to:

(i) - (iii) (No change.)

(iv) Review and reconcile the herd owner's records with the overall head count. Any discrepancies will require a complete physical herd inventory to determine the extent of the discrepancy;

(v) - (vi) (No change.)

(C) Physical Herd Inspection - a complete physical herd inventory [inspection] of a cervid breeding facility will be conducted by a commission representative or a TAHC Authorized Veterinarian no more than 3 years after the initial inspection or last complete physical herd [inspection] inventory to:

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

(iii) Reconcile the previous year's inventory and all documented dispositions and acquisitions. All required [One] identification must be visually verified on 100% of the animals;

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

(2) - (4) (No change.)

(g) (No change.)

(h) Revocation or suspension of enrollment by the Executive Director. The Executive Director may revoke or suspend enrollment after determining the herd owner failed to comply with any requirements in this chapter. Notification will be provided to inform the herd owner of the reasons for the action before enrollment is revoked or suspended.

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

(5) If the Executive Director determines [determine] that other action is necessary based on epidemiological principles, the Executive Director shall provide the herd owner written notice of the action.

(i) - (k) (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 May 27, 2022.

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Myra Sines

Chief of Staff

Texas Animal Health Commission

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For further information, please call: (512) 719-0700

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TITLE 16. ECONOMIC REGULATION

PART 4 TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 73. ELECTRICIANS

16 TAC §73.100

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 73, §73.100, regarding the Electricians Program. These proposed changes are referred to as the "proposed rule."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 73 implement Texas Occupations Code, Chapter 1305, Electricians.

Pursuant to Occupations Code, Chapter 1305, §1305.101(a)(2), the Commission is required to adopt the National Electrical Code (NEC) every three years "as the electrical code for the state." The Commission has adopted the 2020 NEC in its entirety by rule at 16 TAC, Chapter 73, §73.100, Technical Requirements. Section 90.4 of the 2020 NEC authorizes the Department to waive specific code requirements when doing so will not have a negative impact on safety.

Section 210.8(F) of the 2020 NEC requires certain outdoor outlets to have ground-fault circuit-interrupter (GFCI) protection. An incompatibility between most GFCI products on the market and common air-conditioning and heating equipment has resulted in that equipment failing by persistently tripping circuit breakers. Recent rulemaking by the Department has delayed the implementation of Section 210.8(F) until January 1, 2023, in order to allow equipment manufacturers to correct this incompatibility. See 16 TAC §75.100(a)(5). However, because this incompatibility will not be resolved by January 1, 2023, the proposed rule will exclude Section 210.8(F) from the Department's implementation of the 2020 NEC altogether.

Advisory Board Recommendations

The proposed rules were presented to and discussed by the Electrical Safety and Licensing Advisory Board at its meeting on May 25, 2022. The Advisory Board did not make any changes to the proposed rules. The Advisory Board voted and recommended that the proposed rules be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rule amends §73.100(b) to state that compliance with Section 210.8(F) of the 2020 NEC is not required.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rule is in effect, enforcing or administering the proposed rule does not have foreseeable implications relating to costs or revenues of state or local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

As Mr. Couvillon has determined that the proposed rule will not affect the local economy, the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rule is in effect, the public benefits will be increased safety for the public and reduced costs to consumers for service calls related to inoperable equipment.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule. Since the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rule does not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rule does not create or eliminate a government program.
2. Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rule does not require an increase or decrease in fees paid to the agency.
5. The proposed rule does not create a new regulation.
6. The proposed rule expands, limits, or repeals an existing regulation. The proposed rule removes the applicability of Section 210.8(F) of the 2020 NEC and thus limits an existing regulation.
7. The proposed rule does not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rule does not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rule and the proposed rule 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. As a result, the proposed rule does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY

The proposed rule is proposed under Texas Occupations Code, Chapters 51 and 1305, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rule are those set forth in Texas Occupations Code, Chapters 51 and 1305. No other statutes, articles, or codes are affected by the proposed rule.

§73.100. Technical Requirements

(a) Effective November 1, 2020, the department adopts the 2020 National Electrical Code as approved by the National Fire Protection Association, Inc. on August 25, 2019.

(b) Notwithstanding subsection (a), compliance with Section 210.8(F) of the 2020 National Electrical Code is not required [until January 1, 2023].

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 June 6, 2022.

TRD-202202117

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: July 17, 2022

For further information, please call: (512) 475-4879



TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 211. GENERAL PROVISIONS

22 TAC §211.11

Introduction. The Texas Board of Nursing (Board) proposes new §211.11, relating to Employee Leave Pools. The new section is being proposed under the authority of the Government Code Chapter 661 and is necessary to implement the statutory requirements of that chapter.

Section by Section Overview.

Sick Leave Pool. Section 661.002(a) authorizes the governing body of a state agency, through the establishment of a program, to allow an agency employee to voluntarily transfer to a sick leave pool sick leave earned by the employee. Section 661.002(b) and (c) require agencies to administer a sick leave pool and adopt rules and prescribe procedures relating to the operation of the agency sick leave pool. Section 661.004 provides that an agency employee may use time contributed to an agency sick leave pool if the employee has exhausted the employee's sick leave because of a catastrophic illness or injury or a previous donation of time to the pool. Proposed new §211.11(a) establishes the Board's sick leave pool.

Family Leave Pool. Section 661.022(a) authorizes the governing body of a state agency, through the establishment of a program, to allow an agency employee to voluntarily transfer sick or vacation leave earned by the employee to a family leave pool. Section 661.022(b) and (c) require agencies to administer a fam-

ily leave pool and adopt rules and prescribe procedures relating to the operation of the agency family leave pool. Section 661.021 provides that the purpose of the state employee family leave program is to provide eligible state employees more flexibility in bonding with and caring for children during a child's first year following birth, adoption, or foster placement; and caring for a seriously ill family member or the employee, including pandemic-related illnesses or complications caused by a pandemic; and allow employees to apply for leave time under the family leave pool. Proposed new §211.11(b) establishes the Board's family leave pool.

Consistent with §661.002(b) and §661.022(b), proposed new §211.11(c) provides that the Human Resources Director or other employee designated by the Executive Director will act as Sick Leave Pool and Family Leave Pool Administrator for the Board.

Proposed new §211.11(d) provides that the Sick Leave Pool and Family Leave Pool Administrator, with the approval of the Executive Director, will prescribe and implement policies to effectuate the operation of the pools. The policies and procedures will be consistent with the provisions of Chapter 661 and will be included in the Board's Employee Handbook.

Finally, proposed new §211.11(e) provides that all employee donations to the Board's sick leave pool and family leave pool are strictly voluntary and must be made in writing.

Proposed new §211.11(d) and (e) are consistent with the statutory directives of §661.002(c) and §661.022(c).

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

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed new section is in effect, the anticipated public benefit will be the adoption of rules that implement the statutory requirements of Chapter 661 and provide voluntary opportunities for agency employees to contribute to sick and family leave pools and utilize sick and/or leave time from the pools as necessary. There are no anticipated costs of compliance with the proposal.

Costs Under the Government Code §2001.0045. The Government Code §2001.0045 prohibits agencies from adopting a rule that imposes costs on regulated persons unless the agency repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule or amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the proposed rule. Pursuant to §2001.0045(c)(9), this prohibition does not apply to a rule that is necessary to implement legislation, unless the legislature specifically states §2001.0045 applies to the rule. There are no anticipated costs of compliance with the proposal, and the proposal is necessary for consistency with statutory amendments to the Occupations Code Chapter 661, effectuated by the Legislature (House Bill 2063, effective September 1, 2021).

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. The Government Code §2006.002(c) and (f) require, that if a proposed rule may have an economic impact on small businesses, micro businesses, or rural communities, state agencies must prepare, as part of the rule-

making process, an economic impact statement that assesses the potential impact of the proposed rule on these businesses and communities and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Because there are no anticipated costs of compliance associated with the proposal, an economic impact statement and regulatory flexibility analysis are not required.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Texas Administration Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed new section will be in effect: (i) the proposal does not create or eliminate a government program; (ii) the proposal is not expected to have an effect on current agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board; (iv) the proposal does not affect the fees paid to the Board; (v) the proposal creates a new regulation to implement the statutory requirements of Chapter 661, including those of HB 2063, effective September 1, 2021; (vi) the proposal does not expand, limit, or repeal an existing regulation; (vii) because the proposal implements new, voluntary provisions applicable to state agency employees consistent with statutory mandates for a sick and family leave pool, there is no increase or decrease in the number of individuals subject to the rule's applicability; and (viii) the proposal will not affect the state's economy.

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

Request for Public Comment. To be considered, written comments on this proposal should be submitted to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by email to Dusty.Johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The new section is proposed under the authority of the Government Code Chapter 661 and the Occupations Code §301.151. Chapter 661 prescribes the statutory mandates applicable to sick and family leave pools, including mandates for agency rulemaking. Section §301.151 addresses the Board's general rulemaking authority.

Cross Reference To Statute. The following statutes are affected by this proposal: the Government Code Chapter 661 and the Occupations Code §301.151.

§211.11. Employee Leave Pools.

(a) Sick Leave Pool. A sick leave pool is established to allow eligible state employees to use time contributed to the sick leave pool if the employee has exhausted the employee's sick leave because of a catastrophic illness or injury or a previous donation of time to the pool.

(b) Family Leave Pool. A state employee family leave pool is established to provide eligible state employees more flexibility in bonding with and caring for children during a child's first year following birth, adoption, or foster placement and for caring for a seriously ill family member or the employee, including pandemic-related illnesses or complications caused by a pandemic.

(c) The Human Resources Director or other employee designated by the Executive Director will act as Sick Leave Pool and Family Leave Pool Administrator.

(d) The Sick Leave Pool and Family Leave Pool Administrator, with the approval of the Executive Director, will prescribe and implement policies to effectuate the operation of the pools. The policies and procedures must be consistent with the provisions of the Texas Government Code Chapter 661 and will be included in the agency's Employee Handbook.

(e) Employee donations to the sick leave pool and family leave pool are strictly voluntary and must be made in writing.

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 27, 2022.

TRD-202202074

Jena Abel

Deputy General Counsel

Texas Board of Nursing

Earliest possible date of adoption: July 17, 2022

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



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 181. VITAL STATISTICS

SUBCHAPTER B. VITAL RECORDS

25 TAC §181.28

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes an amendment to §181.28, concerning Instructions and Requirements for Issuance of Certified Copies of Vital Records by the State Registrar, Local Registrar, or County Clerk.

BACKGROUND AND PURPOSE

The purpose of the proposed amendment to §181.28 amends the list of security features in the rule. This change allows DSHS to increase the security of vital statistics paper by removing detailed information on security features from public access. The amendment also increases DSHS's flexibility to address changes in security technology and ensures a steady supply of security paper from qualified vendors.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §181.28(c) revises the specific security features in the rule.

The proposed amendment to §181.28(d) deletes this subsection as it is no longer necessary.

FISCAL NOTE

Donna Sheppard, DSHS Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foresee-

able implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the rule will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of DSHS employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to DSHS;
- (5) the proposed rule will not create a new rule;
- (6) the proposed rule will not expand, limit, or repeal existing rules;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule will not affect the state's economy.

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

Donna Sheppard has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule does not apply to small or micro-businesses, and rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and relates to a state agency procurement.

PUBLIC BENEFIT AND COSTS

Dr. Manda Hall, Associate Commissioner, has determined that for each year of the first five years the rule is in effect, the public benefit will be that Texans can continue to receive birth and death certificates issued on security paper because the rule will allow for all security paper vendors who can meet current national security standards to qualify for state agency procurements for security paper.

Donna Sheppard has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because security paper vendors already need to meet requirements for manufacturing security paper.

TAKINGS IMPACT ASSESSMENT

DSHS has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 West 51st Street,

Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule 22R098" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §191.003, which authorizes rules necessary for the effective administration of Vital Statistics Records; and Texas Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The amendment will implement Texas Government Code Chapter 531 and Texas Health and Safety Code Chapters 191 and 1001.

§181.28. Instructions and Requirements for Issuance of Certified Copies of Vital Records by the State Registrar, Local Registrar, or County Clerk.

- (a) Birth certificates.

- (1) The State Registrar, Local Registrar, or county clerk shall issue only two types of certified copies:

- (A) a full reproduction of the legal portion of the original record as filed in their office with any addendum(s); or

- (B) an abstract of birth facts taken from the original record. Probate records and delayed records may not be abstracted. An abstract shall be issued in one of three styles:

- (i) a standard certified abstract;

- (ii) an electronic or computer generated certified abstract prepared in accordance with Health and Safety Code, §192.005 or §192.011, or when the condition of the original record does not permit full reproduction; or

- (iii) an heirloom style certified abstract which may only be issued by the State Registrar.

- (2) Each certified copy of a record, or abstract of birth facts, shall be issued over the signature or facsimile thereof of the officer to whom the record is entrusted, and shall bear the seal of their office, and a statement of certification:

- (A) either as a part of the custodian's files; or

- (B) as authorized to be issued from the State Registrar's file.

- (3) All certified copies of birth records shall include the following information, if known:

- (A) state or local file number;

- (B) given name(s);
- (C) surname;
- (D) date of birth;
- (E) state and city or county of birth;
- (F) sex;
- (G) father's name;
- (H) mother's maiden name;
- (I) date of filing;
- (J) date certified copy issued;
- (K) certification statement;
- (L) signature or facsimile signature of the custodian;

and

- (M) the seal of their office.

(b) Death certificates.

(1) The State Registrar, Local Registrar, or county clerk shall issue only two types of certified copies:

- (A) a full reproduction of the original record and any addenda as filed in their office; or
- (B) a certified abstract of death facts, taken from the original record.

(2) All certified copies of death records shall include:

- (A) state or local file number;
- (B) given name(s);
- (C) surname;
- (D) date of death;
- (E) date of birth;
- (F) state, city, or county of death;
- (G) sex;
- (H) date of filing;
- (I) date certified copy issued;
- (J) certification statement;
- (K) signature or facsimile signature of the custodian;

and

- (L) the seal of their office.

(c) Security features. No certified copy or abstract shall be issued unless the issuing office provides security features in the paper used for issuance. Each sheet or document shall be made on paper which contains as a minimum the following security features in accordance with the security standards adopted by the department [State Registrar]:

- (1) consecutive numbers [- documents that contain sequential numbers for control purposes];
- (2) background security features [- a repetitious design consisting of a pattern that hinders counterfeiting efforts];
- (3) security printing techniques, such as engraved border, latent images, microprinting, rainbow printing, tactile printing, and copy evident;

[(3) security thread - micro printed polyester thread that is introduced into the paper during the forming process so that the thread is embedded and is an integral part of the paper;]

[(4) an engraved border - a border that is produced from engraved artwork containing images from fine lines to very complex patterns;]

[(5) microline printing or security thread - a line of small alpha characters in capital letters that requires a magnifying glass to read;]

(4) [(6)] sensitized security paper [- paper that is reactive to chemicals commonly used to alter documents];

(5) security inks, such as erasable inks, fluorescent inks, thermochromic inks, and color shifting inks; and

[(7) prismatic printing - a rainbow printing that is used as a deterrent to color copying;]

[(8) erasable fluorescent printing - fluoresces under ultraviolet light and reacts to any attempt to erase in such a manner as to be immediately detectable;]

(6) [(9)] non-optical brightener paper. [brighteners - paper without added optical paper brighteners that will not fluoresce under ultraviolet light;]

[(10) complex colors - colors that are developed by using a mixture of two or more of the primary colors (red, yellow and blue) and black is required;]

[(11) intaglio printing - the printing process in which the paper is firmly pressed into the inked engraved plate. Once the paper is removed, the ink sticks to the top of the paper, creating a texture that can be felt with your fingers;]

[(12) latent image - designs in the engraved border that contains hidden images that appear only when viewed from a prescribed angle to a light source. The intaglio process can print these images;]

[(13) watermark - a three-dimensional graphic element molded into the paper in a continuous pattern during the paper manufacturing process;]

[(d) Other permitted security features. Other security features such as, but not limited to the following, may also be incorporated in the paper used;]

[(1) security laminate - a plastic laminate is placed over printed information as to reveal any attempts to alter the printed material; or]

[(2) a copy void pantograph - the word void appears when the document is photocopied;]

(d) [(e)] Record retention. An electronic record or paper application that includes the date issued, document control number, name, address and signature, and a photocopy or facsimile of the form of identification to whom the record was issued shall be made and maintained for a period of three years from the date issued.

(e) [(f)] The Vital Statistics Unit will develop standards for procurement parameters regarding the purchase and distribution of the issuing medium for birth certificates, including paper.

(f) [(g)] The Vital Statistics Unit will explore options regarding establishment of a central database for the issuance of certified copies and abstracts of birth certificates by State and Local Registrars.

(g) [(h)] The Vital Statistics Unit will develop standards to limit access to archived paper birth certificates and set standards for the paper used to print certified copies and abstracts of birth.

(h) [(i)] Properly Qualified Applicant Acceptable Documentation.

(1) In accordance with Health and Safety Code, §191.051, "Certified Copies," all lobby and mail-in applications submitted to obtain certified documents must meet the guidelines set out in this rule.

(2) All applicants for certified documents must present proof of identity acceptable to the State Registrar.

(3) All requests for certified documents must be submitted on a state-approved application or in a format that is acceptable to the State Registrar.

(4) All lobby and mail-in applications submitted to obtain certified documents must contain the applicant's signature.

(5) All applicants must sufficiently identify the vital record that is of interest at the time of request.

(6) All primary identification documents must have a United States issuance origin.

(7) All identification documents must be verifiable by the source that issued the document.

(8) The Vital Statistics Unit shall retain a photocopy of all documents submitted and accepted as proof of identification in accordance with the retention period in subsection (e) of this section.

(9) All applicants must present identification consistent with the following identification requirements:

(A) primary identification outlined in paragraph (10) of this subsection; or

(B) secondary identification reflected in paragraph (11) of this subsection; and

(C) supporting documentation stated in paragraph (12) of this subsection.

(10) Primary Identification.

(A) Primary Identification documents do not require supporting instruments, unless otherwise specified.

(B) All acceptable Primary Identification documents must be current and valid.

(C) The applicant's identification must contain the applicant's name and photograph that establishes the applicant's identity.

(D) Acceptable forms of Primary Identification:

(i) Driver's License;

(ii) Federal or State Identification card;

(iii) Federal, State, or City law enforcement employment identification card, or employment badge accompanied by employment identification card;

(iv) Offender Identification card issued by the Department of Criminal Justice correctional facility or institution;

(v) Military Identification card;

(vi) Department of Homeland Security, United States Citizenship and Immigration Services (USCIS) issued:

(I) Employment Authorization Document (EAD);

(II) Permanent Resident Card (green card);

(III) Travel Documents:

(-a-) Re-entry Permit;

(-b-) Refugee Travel Permit; or

(-c-) Advance Parole.

(IV) SENTRI Card; or

(V) U.S. Citizen Identification Card.

(vii) United States Department of State issued:

(I) Border Crossing Card (B1 for business or pleasure or B2 medical purposes); or

(II) Visa.

(viii) Concealed Handgun License;

(ix) Pilot's license; or

(x) United States Passport.

(11) Secondary identification.

(A) In the absence of a form of primary identification, applicants are permitted to submit secondary forms of identification to establish proof of their identity.

(B) When submitting secondary forms of identification, applicants are required to produce:

(i) two forms of Acceptable Secondary Identification of different types; or

(ii) one form of Acceptable Secondary Identification, plus two forms of Acceptable Supporting Identification of different types.

(C) When submitting secondary forms of identification, the documents combined must confirm the identity of the applicant. At least one of the documents must contain the applicant's name, signature, or identifiable photo of the applicant.

(D) Acceptable forms of secondary identification:

(i) Current student identification;

(ii) Any Primary Identification that is expired;

(iii) Signed Social Security card, or Numident;

(iv) DD Form 214 Certificate of Release;

(v) Medicaid card;

(vi) Medicare card;

(vii) Veterans Affairs card;

(viii) Medical insurance card;

(ix) Foreign Passport accompanied by a Visa issued by the United States Department of State;

(x) Foreign Passport in accordance with the United States Department of State, Visa Waiver Program;

(xi) Certified birth certificate from the Department of State (FS-240, DS-1350 or FS-545);

(xii) Private Company Employment Identification card;

(xiii) Form I-94 - accompanied by the applicant's Visa or Passport;

(xiv) Mexican voter registration card; or

(xv) Foreign Identification with identifiable photo of applicant.

(12) Supporting Identification--Other records or documents that verify the applicant's identity. The Vital Statistics Unit refers to their policy for acceptable supporting identification. The examining or supervisory personnel may determine that a supporting identification document may meet the department's requirements in establishing identity.

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 June 2, 2022.

TRD-202202106

Cynthia Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: July 17, 2022

For further information, please call: (512) 776-7646

