

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES SUBCHAPTER E. ADVISORY COMMITTEES

4 TAC §1.203

The Texas Department of Agriculture (Department) adopts the repeal of 4 Texas Administrative Code, Chapter 1, Subchapter E, §1.203, concerning the Texas-Israel Exchange Fund (TIE) Advisory Committee. The repeal is adopted without changes to the proposed text as published in the June 24, 2022, issue of the *Texas Register* (47 TexReg 3599) and will not be republished.

Section 56 of Senate Bill 703, 87th Texas Legislature, Regular Session (2021), among other things, repealed Chapter 45.009, Texas Agriculture Code, which provided for the creation of the TIE Advisory Committee. The repeal of Texas Agriculture Code, §45.009 necessitates repeal of corresponding rules for the TIE Advisory Committee.

The Department did not receive any comments regarding the proposed repeal.

The repeal is adopted under Section 12.016 of the Texas Agriculture Code, which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 17. MARKETING AND PROMOTION SUBCHAPTER E. TEXAS-ISRAEL EXCHANGE RESEARCH PROGRAM

4 TAC §§17.100 - 17.104

The Texas Department of Agriculture (Department) adopts the repeal of 4 Texas Administrative Code, Chapter 17, Subchapter E, regarding Texas-Israel Exchange (TIE) Research Program Rules, §§17.100 - 17.104. The repeals are adopted without changes to the proposed text as published in the June 24, 2022 issue of the *Texas Register* (47 TexReg 3600) and will not be republished.

Section 56 of Senate Bill 703, 87th Texas Legislature, Regular Session (2021), among other things, repealed 45.009, Texas Agriculture Code, which provided for the creation of the TIE Advisory Committee. Furthermore, funding for the program has been suspended and the program has been inactive for the past 10 years. As a result, rules for the Texas-Israel Exchange Research Program are no longer necessary.

The Department did not receive any comments regarding the proposed repeals.

The repeals are adopted under Section 12.016 of the Texas Agriculture Code, which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 31. ADMINISTRATION

16 TAC §31.9

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts amended §31.9, related to the commission's Public Safety Advisory Committee, without changes to the text as published in the June 3, 2022, *Texas Register* (47 TexReg 3209). The rule will not be republished.

No public comments were received.

The amended rule is adopted pursuant to the agency's authority under §5.21 of the Alcoholic Beverage Code, authorizing the establishment of advisory committees; §31.6 of the commission's rules, which requires that a rule establishing a committee include qualifications of the members; and §5.31 of the Alcoholic Beverage Code by which the commission may prescribe and publish rules necessary to carry out the provisions of the code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 33. LICENSING

SUBCHAPTER A. APPLICATIONS

16 TAC §33.16

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts the repeal of 16 Texas Administrative Code §33.16 as published in the June 3, 2022, issue of the *Texas Register* (47 TexReg 3210) as part of a reorganization of its rules. The rule will not be republished.

No comments were received.

This repeal is adopted pursuant to the commission's authority under §5.31 of the Code to prescribe and publish rules necessary to carry out the provisions of the Code.

The adopted repeal does not impact any other current rules or statutes.

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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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 21. STUDENT SERVICES

SUBCHAPTER D. TEXAS FIRST EARLY HIGH SCHOOL COMPLETION PROGRAM

19 TAC §§21.50 - 21.55

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 21, Subchapter D, §§21.50 - 21.55, Texas First Early High School Completion Program, without changes to the proposed text as published in the April 29, 2022, issue of the *Texas Register* (47 TexReg 2405). The rules will not be republished.

Texas Education Code §28.0253 provides the Coordinating Board with the authority to adopt standards for a student to graduate early from high school and earn a diploma equivalent to the distinguished level of achievement by demonstrating early readiness for college.

In order to implement the Texas First Early High School Completion Program, the Coordinating Board is charged with defining and codifying in rule the criteria a student must meet in order to participate in this program and qualify for the Texas First Scholarship Program upon early enrollment at an eligible Texas public institution of higher education. Authority to adopt rules is provided in Texas Education Code §28.0253(c). As required by Texas Education Code § 28.0253(b), the Coordinating Board conferred with the Texas Education Agency to establish this program. The diploma established under this program enables a student to apply for admission to an eligible Texas public institution of higher education and also qualify for the Texas First Scholarship Program, established under Texas Education Code §§56.221-56.227, to promote efficiency in the state public education system and incentivize the enrollment of high performing students at eligible Texas institutions.

In addressing Texas Education Code §28.0253(c), agency staff consulted with admissions and enrollment management administrators from eligible institutions in establishing a framework for the Texas First Early High School Completion Program (Program) and providing additional feedback. The information provided in the rules helps ensure all stakeholders have a clear understanding of the criteria needed to meet the Program requirements and related benefits that may incentivize students who otherwise apply for postsecondary opportunities outside of Texas to consider applying at one or more of the eligible Texas institutions.

Section 21.50 confirms the authority and purpose of the Program, as provided in Texas Education Code §28.0253(b)(c).

Section 21.51 provides definitions for the Program, as included in Texas Education Code §28.0253(a).

Section 21.52 provides the minimum criteria by which students demonstrate eligibility for the Program, including high school credits, minimum Grade Point Average, and achieving an overall minimum score on one of five assessments or achieving a Grade Point Average that ranks the student in the top ten percent of the student's class. Institutions and the Commissioner of Higher Education jointly developed and recommended these cut points as those that distinguish students who are college ready and prepared for post-secondary success. Allowing a student to meet the requirement based on class rank or assessment scores provides for a more holistic view of readiness.

Section 21.52 also provides the assessments and related standards and competencies that demonstrate a student's mastery of each subject area for which the Coordinating Board

and Commissioner of Higher Education have adopted college readiness standards, plus a language other than English, as required in Texas Education Code §28.0253(c). It provides a process by which a student verifies eligibility for the Program and codification on the student's transcript. These standards align to scores established by the Coordinating Board to define college readiness and provide for the use of assessments and scores commonly used by institutions to place students in college-level course work.

Section 21.53 verifies that the diploma awarded through this program is equivalent to the distinguished level of achievement, as required in Texas Education Code §28.0253(f).

Section 21.54 provides a notification requirement by the high school to its students and their parents or guardians listing the eligibility requirements for the Program, including the requirement for the student to provide official copies of applicable assessments to receive credit, as required in Texas Education Code §28.0253(g).

Section 21.55 confirms that students who meet all the Program requirements according to Title 19 Texas Administrative Code §21.52 have met the requirements of the Texas Success Initiative according to Texas Education Code Chapter 51 and the initial eligibility requirements of the TEXAS Grant program, as authorized by the Toward EXcellence, Access, and Success Grant Program under Texas Education Code §56.3041.

No comments were received regarding the adoption of the new rule.

New Subchapter D is adopted under Texas Education Code, §28.0253, which provides the Coordinating Board with the authority to adopt standards for a student to graduate early from high school earn a diploma equivalent to the distinguished level of achievement by demonstrating early readiness for college.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS

SUBCHAPTER T. TEXAS FIRST SCHOLARSHIP

19 TAC §§22.550 - 22.556

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 22, Subchapter T, §§22.550 - 22.556, Texas First Scholarship Program. Section 22.553 is adopted with changes to the proposed text as published in the April 29, 2022, issue of the *Texas Register* (47 TexReg 2408) and will be republished. The changes to

the text reflect corrections to the references to Texas Administrative Code Subchapter A. Sections 22.550 - 22.552 and 22.554 - 22.556 are adopted without change and will not be republished.

Specifically, §22.550 outlines the Authority and Purpose of the Texas First Scholarship Program, and §22.551 provides definitions applicable to the program.

The Texas First Scholarship is a portable scholarship, which a student may use at any public research or emerging research institution in the state. As such, §22.552 requires research and emerging research institutions to participate in the program. Research and emerging research institutions must also abide by the General Provisions outlined in Subchapter A of Chapter 22.

The statutory requirements that a student must meet to receive a Texas First Scholarship are outlined in §22.553, and §22.554 indicates the time period within which a recipient must use the state credit provided through the program.

The amount of the state credit issued through the Texas First Scholarship Program is tied in statute to the maximum value of the TEXAS Grant, and §22.555 indicates how the state credit value is calculated. The impact of the state credit on a student's other financial aid is also outlined in statute, as is the manner in which the state credit is to be applied to a student's educational expenses, both of which are also outlined in §22.555.

As outlined in Texas Education Code §56.226, the Texas First Scholarship Program uses a reimbursement approach, whereby institutions apply the state credit to a student's charges in one academic year and are reimbursed with state funding in the following academic year. As such, the reimbursement model, including the reporting required, is outlined in §22.556.

No comments were received regarding the adoption of the new rules.

The new sections are adopted under Texas Education Code, Section 56.227, which provides the Coordinating Board with the authority to adopt rules necessary to implement Texas Education Code, Chapter 56, Subchapter K-1, Texas First Scholarship Program.

§22.553. *Eligible Students.*

To qualify for a scholarship, a person must:

- (1) be enrolled at an eligible institution, as outlined in §22.552 (relating to Eligible Institutions);
- (2) be a Resident of Texas;
- (3) have graduated early from high school under the Texas First Early High School Completion Program Chapter 21, Subchapter D;
- (4) comply with Education Code Section 28.0256; and
- (5) meet applicable standards outlined in Subchapter A of this Chapter (relating to General Provisions), including §22.3 (relating to Student Compliance with Selective Service Registration).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202202856

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS SUBCHAPTER AA. COMMISSIONER'S RULES ON SCHOOL FINANCE

19 TAC §61.1011

The Texas Education Agency adopts an amendment to §61.1011, concerning the formula transition grant. The amendment is adopted without changes to the proposed text as published in the May 20, 2022 issue of the *Texas Register* (47 TexReg 2989) and will not be republished. The adopted amendment extends certain provisions related to the average daily attendance (ADA) hold harmless to the 2020-2021 school year.

REASONED JUSTIFICATION: The adopted amendment to §61.1011 updates subsection (c)(4) regarding ADA. The change extends to the 2020-2021 school year the provision that allows exclusion of any reduction in ADA arising from the application of Elementary and Secondary School Emergency Relief (ESSER) funding toward the ADA hold harmless.

The adopted amendment removes language providing alternative provisions between the 2019-2020 and the 2020-2021 school years.

Subsection (c)(7) updates the term "students with limited English proficiency" to "emergent bilingual students" in alignment with Senate Bill 2066, 87th Texas Legislature, Regular Session, 2021.

New subsection (c)(14) excludes school district entitlements for certain students under TEC, §48.281, in calculations for the formula transition grant.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began May 20, 2022, and ended June 20, 2022. No public comments were received.

STATUTORY AUTHORITY: The amendment is adopted under Texas Education Code (TEC), §48.004, which specifies that the commissioner of education shall adopt rules that are necessary to implement and administer the Foundation School Program; and TEC, §48.277, which details the calculation of the formula transition grant for school districts and open-enrollment charter schools. This grant is provided to eligible school districts and open-enrollment charter schools on the basis of a comparison of funding under House Bill 3, 86th Texas Legislature, 2019, and funding under prior law.

CROSS REFERENCE TO STATUTE: The amendment implements Texas Education Code, §48.004 and §48.277.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 273. GENERAL RULES

22 TAC §273.17

The Texas Optometry Board (Board) adopts new §273.17, concerning Emergency Management. The adopted new rule requires CPR or BLS for initial licensure and for renewal licensure beginning January 1, 2023.

Rule 273.17 is adopted with one technical change to the proposed text published in the May 27, 2022 issue of the *Texas Register* (47 TexReg 3103). This rule will be republished.

SUMMARY OF TECHNICAL CHANGE(S):

Section §273.17(a)(2) - Change "Services" to "Support".

No public comments were received.

New Board Rule §273.17 is adopted under the Texas Optometry Act, Texas Occupations Code, §351.151. The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession.

§273.17. *Emergency Management.*

(a) Definitions.

(1) Cardiopulmonary resuscitation (CPR) is an emergency lifesaving procedure performed when the heart stops beating. A certification in CPR includes training and successful course completion in cardiopulmonary resuscitation, AED and obstructed airway procedures for all age groups according to recognized national standards.

(2) Basic Life Support (BLS) is a basic level of pre-hospital and inter-hospital emergency care and non-emergency medical services care. A certification in BLS includes training and successful course completion in airway management, cardiopulmonary resuscitation (CPR), control of shock and bleeding and splinting of fractures, according to recognized national standards.

(b) Requirement for Initial License. Commencing effective January 1, 2023, all applicants for initial licensure shall provide proof of successful completion of a CPR or BLS certification prior to receiving a license.

(c) Requirement for Renewal of License. Effective January 1, 2023, all active licensees shall provide proof of successful completion of a CPR or BLS certification for renewal of a license each renewal cycle. Licensees may be credited two general hours of continuing education for CPR certification and four general hours of continuing education for BLS certification.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202202848

Kelly Parker

Executive Director

Texas Optometry Board

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For further information, please call: (512) 305-8500



PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER F. RECORDS KEEPING

22 TAC §573.52

The Texas Board of Veterinary Medical Examiners adopts amendments to §573.52, concerning Veterinarian Patient Record Keeping. These amendments are adopted with changes to the proposed text as published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3396). The rule will be republished.

The amendments are adopted, in part, to clarify what information is required for compliance. The amendments also update the rule in keeping with advances in the medical information modalities offered to the animal owning public and to increase the standards of veterinary medical practice. The changes reflect non-substantive variations from the proposed amendment. The changes affect no new persons, entities, or subjects other than those given notice, and the rule, as adopted, does not impose more stringent requirements than the proposed version.

The following entities furnished written comments on the proposed amendment: Texas Veterinary Medical Association (hereinafter "TVMA") and several other individual veterinarians.

TVMA and other individual veterinarians' comments essentially covered the same concerns contending the proposed rule, under subsection (a)(6) Examination Findings, requires the veterinarian to record medical data such as pulse and respiration rate, when the information often times is not useful and it would subject the veterinarian to disciplinary action for failing to record unnecessary information. The Board disagrees because under subsection (a)(6) the rule says, "if required for diagnosis or treatment and is not difficult to obtain," they would be required to record the listed medical information. The conditional language in the said subsection clearly allows the veterinarian latitude to practice medicine the way they see fit. Therefore, a veterinarian is not required to record the information they determine is not required for diagnosis or treatment or where it is difficult to obtain.

TVMA and other veterinarians commented against subsection (a)(12), regarding anesthesia monitoring. They contended it is too difficult to free up their aseptic hands to record real-time data or to recall every time they checked significant data. The Board disagrees that requiring basic information under subsec-

tions (a)(11) and (a) (12), such as the description of the procedure, the name of the surgeon, type of sedative and anesthetic agent used, route of administration, and dosage, is too much to ask of a medical professional. The requirement is very broad and a basic surgical report. For example, a horse castration would be sufficiently reported by documenting the horse's name, the owner's name, the doctor's name, name of sedative--Ketamine, Xylazine, and Valium--time of surgery, routine castration performed on right lateral recumbency, removed two testicles using an emasculator, and that the horse stood without complications at a time certain. This section in the rule gives large latitude to the practitioner to decide what they want to record.

The amendments are adopted under the authority of §§801.151(b) and 801.151(c) of the Texas Veterinary Licensing Act (Chapter 801, Texas Occupations Code). The Board interprets §801.151(c) as authorizing the agency to protect the public through adopting rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession.

§573.52. Veterinarian Patient Record Keeping.

(a) A veterinarian performing a physical examination, diagnosis, treatment or surgery on an animal or group of animals shall prepare a legible written record or computer record concerning the animals containing, at a minimum, the following information:

- (1) name, address, and telephone number of the owner;
- (2) identity of the species, animal, herd, or flock;
- (3) except for herds or flocks, the age, sex, color, and breed;
- (4) dates of examination, treatment and surgery;
- (5) brief history of the condition of each animal, litter, herd, or flock;
- (6) examination findings, if required for diagnosis or treatment and is not difficult to obtain:
 - (A) weight - actual or estimated;
 - (B) temperature;
 - (C) pulse;
 - (D) respiration; and
 - (E) any additional findings needed for diagnosis;
- (7) laboratory and radiographic tests performed and reports;
- (8) differential diagnosis; referrals/consultations; to/with specialists and the client's response;
- (9) procedures performed/treatment given and results;
- (10) drugs (and their dosages) administered, dispensed, or prescribed;
- (11) surgical procedures shall include a description of the procedure, the name of the surgeon, the type of sedative/anesthetic agent used, the route of administration and the dosage; and
- (12) anesthesia monitoring performed during surgical procedures.

(b) Individual records must be maintained on each patient, except that records on livestock or litters of animals may be maintained on a per-client basis. Records pertaining to these animals may be kept in a daily log or billing records, provided that the treatment informa-

tion is substantial enough to identify these animals and the medical care provided.

(c) Medical records and radiographs are the physical property of the hospital or the proprietor of the practice that prepared them. Records, including radiographs, must be maintained for a minimum of three years after the last visit.

(d) Medical records shall be released upon request from a treating veterinarian with a legitimate interest, and shall be returned to the originating practice within a reasonable time if requested. Copies of records must be made available upon request from the owner of an animal at a reasonable cost to the owner and within a reasonable time. A veterinarian may not withhold the release of veterinary medical records for nonpayment of a professional fee.

(e) All regulated substances shall be recorded as required by federal and/or state regulations.

(f) Any signed acknowledgement required by §§573.14 and 573.16 - 573.18 (relating to all complementary therapies).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Board of Veterinary Medical Examiners

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §§65.314 - 65.320

The Texas Parks and Wildlife Commission, in a duly noticed meeting on March 24, 2022, adopted amendments to 31 TAC §§65.314 - 65.320, concerning the Migratory Game Bird Proclamation. The amended rules are adopted without changes to the proposed text as published in the February 18, 2022, issue of the *Texas Register* (47 TexReg 749) and will not be republished.

The United States Fish and Wildlife Service (Service) issues annual frameworks for the hunting of migratory game birds in the United States. Regulations adopted by individual states may be more restrictive than the federal frameworks but may not be less restrictive. Responsibility for establishing seasons, bag limits, means, methods, and devices for harvesting migratory game birds within Service frameworks is delegated to the Texas Parks and Wildlife Commission (Commission) under Parks and Wildlife Code, Chapter 64, Subchapter C.

The amendments specify the season dates for hunting the various species of migratory game birds for 2022-2023. With two exceptions, the rules retain the season structure and bag limits for all species of migratory game birds from last year while adjusting the season dates to allow for calendar shift (i.e., to ensure that seasons open on the desired day of the week), since dates from a previous year do not fall on the same days in following years.

The amendment to §65.315, concerning Ducks, Coots, Mergansers, and Teal, removes the explicit restrictions governing daily bag limits for mergansers. At one time, merganser populations were in decline, but populations are now robust and mergansers are plentiful. Since the federal frameworks no longer stipulate a special limit for mergansers, the amendment allows the take of up to six mergansers per day as part of the aggregate daily duck bag limit.

The amendment to §65.316, concerning Geese, opens and closes the season for light geese in the Western Zone one week earlier than last year. The department's intent is to provide greater hunting opportunity for white-fronted geese, which arrive in the Western Zone in large numbers earlier than other species of geese.

The amendment to §65.317, concerning Special Youth-Only Waterfowl Season, establishes special provisions applicable to veterans, as defined by 38 U.S.C. Section 101, and members of the armed forces of the United States on active duty, including members of the national guard and reserves on active duty other than for training. The amendment also changes the title of the section accordingly. The 87th Texas Legislature (RS) enacted Senate Bill 675, which authorizes the commission to provide for special open seasons during which the taking and possession of ducks, geese, mergansers, coots, moorhens, and gallinules are restricted to veterans, as defined by 38 U.S.C. Section 101, and members of the armed forces of the United States on active duty, including members of the national guard and reserves on active duty other than for training, and to combine those seasons with other special seasons. The amendment combines the current youth-only special season with a special season for active-duty military personnel and military veterans and prescribes eligibility requirements for participation, which is necessary to provide a method of identifying persons legally authorized to participate in the special season. The eligibility requirements are those forms of official governmental documentation and identification that explicitly identify the person to whom they are issued as a member of the active-duty military or a military veteran. Additionally, Senate Bill 675 provides that if rules adopted by the commission require a person participating in the special open season to have in possession proof of veteran or active-duty status in possession, the rule must also provide that it is a defense to prosecution under that rule that the person produces in court proof of the person's veteran or active-duty status in accordance with commission rule. Accordingly, the rule as adopted does so.

The amendment to §65.318, concerning Sandhill Crane, corrects an inadvertent omission that occurred in 2016 when the department merged the Early Season Migratory Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation to create a single Migratory Game Bird Proclamation in response to a change in the federal process for establishing frameworks for migratory game bird hunting. In the process of that effort, the department inadvertently omitted a provision citing the federal requirement for a free federal sandhill crane hunting permit to be obtained by persons who hunt sandhill cranes. The permit

is a federal requirement and is used to provide more accurate survey data for management purposes.

The amendments also make nonsubstantive housekeeping-type changes to punctuation and phrasing for consistency.

The department received three comments opposing adoption of the proposed amendment to §65.314 that established dove seasons. Each of the commenters stated that the season in the South Zone should not open on a Friday because it adds pressure to the population and creates management challenges for hunting lease operators. The commenters stated that the season should either open on the same day as the rest of the state or be limited to Saturday and Sunday afternoon hunts. The department disagrees with the comments and responds that department surveys indicate a preference among hunters and landowners for the earliest possible hunting opportunity available under the federal frameworks in the South Zone.

The department received no comments supporting adoption of the proposed amendment.

The department received 54 comments opposing adoption of the portion of the proposed amendment to §65.315 that eliminated the composite bag limit for mergansers and merged the bag limit for mergansers with the bag limit for ducks. Of those comments, seven offered a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that bag limits for mergansers are too high and the population has been extirpated. The department disagrees with the comment and responds that data at the state and continental levels indicate that merganser populations are robust and growing. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules should establish a yearly bag limit because limited habitat could cause numbers to decrease. The department disagrees with the comment and responds that data at the state and continental levels indicate that merganser populations are robust and growing, that habitat is not limited, and that the bag limit will not result in negative population impacts. No changes were made as a result of the comment.

One commenter opposed adoption and stated that mergansers are not ducks and limiting the bag limit will deter new hunters from becoming hunters "due to associated costs verses reward." The department disagrees with the comment and responds that a merganser is a type of duck, and that although the rule as adopted reduces overall hunting opportunity, the department cannot alter the federal frameworks. The department notes that the rule does not impact the cost of hunting for anyone. No changes were made as a result of the comment.

One commenter opposed adoption and stated that mergansers are not ducks, that combining the bag for mergansers and ducks reduces the number of birds that can be taken per day, and that because merganser populations are robust, the daily bag limit is being cut in half. The department disagrees with the comment and responds that mergansers are a type of duck and that the department cannot implement bag limits in excess of those allowed under the federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that merganser harvest will be drastically reduced because the aggregate bag limit will cause hunters to focus on other species of ducks. The

commenter also stated that the rule will result in waste because hunters who accidentally take a merganser will discard it in favor of a more desirable species. The department disagrees with the comment and responds that the harvest regulations are not expected to result in overpopulation of mergansers and that a hunter who discards a merganser after killing it commits an offence. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the total combined daily bag limit should be no more than five. The department disagrees with the comment and responds that it is commission policy to achieve maximum utilization of the resource that is allowable under the federal frameworks and that in any case the federal frameworks are biologically justifiable. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the possession limit should be 12 per year. The department disagrees with the comment and responds that given the population status of various species, habitat quality, and attendant harvest pressure, there is no biological reason to limit the possession limit on an annual basis. No changes were made as a result of the comment.

The department received 37 comments supporting adoption of the rule as proposed.

The department received 10 comments opposing adoption of the proposed amendment to §65.316 that shifted the season timing for all species of geese in the Western Goose Zone. Of the 10 comments, six provided a justification or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the additional week of hunting opportunity should be added in February. The department disagrees with the comment and responds that the rule does not add an additional week of hunting opportunity, it shifts the current season to open and close one week earlier than last year. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the rule was promulgated to appease outfitters and podcasters. The department disagrees with the comments and responds that the rule as adopted is intended to provide hunters with the opportunity to hunt when large numbers of geese of all species are present and not in response to any request or pressure from an external source. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the majority of goose hunters in the Western Goose Zone would prefer the season to be extended through the middle of February. The department disagrees with the comment and responds that department survey data does not support that claim. No changes were made as a result of the comment.

One commenter opposed adoption and stated that moving the season earlier will not change anything because ducks will still be in the eastern part of the zone before they arrive in the Panhandle, meaning there will be less of them when they reach the rest of the zone. The department disagrees with the comment and responds that the rule in question sets season dates for geese, not ducks, which have a separate season structure. No changes were made as a result of the comment.

The department received 10 comments supporting adoption of the rule as proposed.

The department received one comment opposing adoption of the proposed amendment to §65.317 that established duck seasons. The commenter stated that for the past three years, migration of ducks into the coastal prairies has not occurred until mid-to-late December with the strongest migration not occurring until late January into early February and that the department should start the duck season one week later in November and end the season one week later in the month of February. The department disagrees with the comment and responds that the season as adopted runs to the last day allowed under the federal frameworks, which the commission does not have authority to modify. No changes were made as a result of the comment.

The department received no comments supporting the proposed amendment.

The department received six comments opposing adoption of the portion of the proposed amendment to §65.317 that established a special opportunity for waterfowl for military veterans. Of those comments, three offered a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Two commenters opposed adoption and stated that the special opportunity for veterans should not be concurrent with that for youth because youth opportunity should not be hindered. The department disagrees with the comments and responds that concurrent opportunity doesn't mean that opportunity for one segment of the regulated community occurs at the expense of another segment of the regulated community, and that in any case, Texas is so large and provides so much waterfowl hunting opportunity that even at full participation by both communities there would be no user conflict with respect to hunting opportunity. The department also notes that providing special opportunity for veterans at some other time would mean that two days of general hunting opportunity would be lost (as those days would count against the total number of days of waterfowl opportunity allowed to Texas under the federal frameworks), which would affect a large number of hunters and reduce overall hunting opportunity. No changes were made as a result of the comments.

One commenter opposed adoption and stated that running the youth and veterans special hunting opportunity concurrently will result in overcrowding at public hunting areas and that the veteran's opportunity should occur the weekend following the end of the regular duck season. The department disagrees with the comment and responds that the special waterfowl season for youth and military veterans is statewide and not restricted to public hunting areas, that duck seasons as adopted run to the end of the federal frameworks, and that providing special opportunity for veterans at some other time than concurrently with the special youth season would mean that two days of general hunting opportunity would be lost, which would affect a large number of hunters. No changes were made as a result of the comment.

The department received 24 comments supporting adoption of the rule as proposed.

The department received four comments opposing adoption of the proposed amendment to §65.318 that reinserted missing language regarding the mandatory federal sandhill crane hunting permit.

One commenter opposed adoption and stated that sandhill cranes are an endangered species and should not be killed. The department disagrees with the comment and responds that sandhill cranes are not an endangered species, nor are they a threatened species, nor are they a species of concern, and

can be sustainably hunted without danger to the population. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be no hunting of sandhill cranes because it will endanger their populations. The department disagrees with the comment and responds that sandhill crane populations at the current time can be sustainably hunted without negative impacts to the population. No changes were made as a result of the comment.

The department received 25 comments supporting adoption of the rule as proposed.

The amendments are adopted under Parks and Wildlife Code, Chapter 64, which authorizes the commission and the executive director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 29, 2022.

TRD-202202853

James Murphy

General Counsel

Texas Parks and Wildlife Department

Effective date: September 1, 2022

Proposal publication date: February 18, 2022

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



TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS-ACTIVECARE)

34 TAC §41.33

The Board of Trustees of the Teacher Retirement System of Texas (TRS) adopts amendments to §41.33, concerning Definitions Applicable to the Texas School Employees Uniform Group Health Coverage Program, under Subchapter C (relating to Texas School Employees Group Health (TRS-ActiveCare)) of Chapter 41 in Part 3 of Title 34 of the Texas Administrative Code without changes to the proposed text as originally published in the June 3, 2022, issue of the *Texas Register* (47 TexReg 3230). The rule will not be republished.

REASONED JUSTIFICATION

The adopted amendments to §41.33 redefine the definition of "Employee" and "Part-time Employee" so that, if the person meets the other requirements of the definition and is Medicare eligible, but is nevertheless receiving coverage from the programs under Chapters 1551, 1575, and 1601 of the Insurance Code, such person would still meet those definitions, and thus be eligible to participate in TRS-ActiveCare. The

adopted amendments will allow TRS and participating entities to offer TRS-ActiveCare to such employees in compliance with the Medicare Secondary Payor (MSP) law (42 U.S.C. §1395y(b)(1)(A)(i)(I)).

COMMENTS

No comments on the proposed adoption of amended rule were received.

STATUTORY AUTHORITY

Amended §41.33 is adopted under the authority of Insurance Code §1579.052, which allows the trustee to adopt rules relating to the program as considered necessary by the trustee and requires the trustee to take the actions it considers necessary to devise, implement, and administer the program; Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board; and Clause 2 of Article VI of the United States Constitution ("the Supremacy Clause").

CROSS-REFERENCE TO STATUTE

The adopted amended §41.33 affects Chapter 1579, Insurance Code, which establishes the Texas School Employees Uniform Group Health Coverage (TRS-ActiveCare).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 29, 2022.

TRD-202202846

Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Effective date: August 18, 2022

Proposal publication date: June 3, 2022

For further information, please call: (512) 542-6506

