

ADOPTED RULES

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

TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 40. CHRONIC WASTING DISEASE

4 TAC §§40.1, 40.2, 40.5, 40.6

The Texas Animal Health Commission (Commission) in a duly noticed meeting on July 11, 2023, adopted amendments to Title 4, Texas Administrative Code, Chapter 40 titled "Chronic Wasting Disease." Specifically, amendments to §40.1, concerning Definitions, §40.2, concerning General Requirements, and §40.5, concerning Surveillance and Movement Requirements for Exotic CWD Susceptible Species were adopted without changes to the proposed text published in the May 12, 2023, issue of the *Texas Register* (48 TexReg 2433) and will not be republished. Amendments to §40.6, concerning CWD Movement Restriction Zones were adopted without changes to the proposed text published in the June 2, 2023, issue of the *Texas Register* (48 TexReg 2789) and will not be republished.

JUSTIFICATION FOR RULE ACTION

The Commission adopts amendments to §§40.1, 40.2, 40.5, and 40.6 to clarify, correct, and update information regarding CWD management to reduce the risk of interstate and intrastate transmission of CWD in susceptible cervid species.

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

The purpose of the changes to §40.1 is to add, amend, and remove defined terms to provide clarity and align these rules with the federal standards regarding the management of CWD. The purpose of the changes to §40.2 is to provide clarity in the procedures for issuing hold orders and quarantines and reduce confusion for disease tracing and carcass disposal.

The purpose of the changes to §§40.5 and 40.6 is to change the testing requirements for exotic CWD susceptible species to align

with federal standards and match state standards for testing native CWD susceptible species in order to increase surveillance of CWD in the state.

Changes were also made to update the geographic depiction in the attached graphic included in §40.6(b)(1)(C) to align with amendments to the rule which went into effect May 17, 2023. Additional geographic depictions have been added as attached graphics for each movement restriction zone. The attached graphics are designed to assist the readability of these rules and to aid the public in understanding the individual zones.

Grammatical and editorial changes were also made for each section for consistency and improved readability.

HOW THE RULES WILL FUNCTION

Section 40.1 Definitions

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

Section 40.2 General Requirements

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

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

Section 40.5 Surveillance and Movement Requirements for Exotic CWD Susceptible Species

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

The amendments to §40.5(b) specify that all eligible mortalities be tested for CWD within seven days using an official CWD test in accordance with the requirements in §40.5. The amendments also remove the limit to test only three animals a year. The amendments to §40.5(c) remove unnecessary additional language to explain the defined term "official animal identification" and to add information on where to report annual inventories. The amendments to §§40.5(d) and (e) clarify testing requirements and reporting and change the time to submit test results and reports from 30 days to 14 days. The amendments to §40.5(f) improve readability.

Section 40.6 CWD Movement Restriction Zones

The proposed amendments to §40.6(a) clarify the definition of Exotic CWD Susceptible Species, specifically adding muntjac (*Muntiacus*) and specifying that mule deer, white-tailed deer, and other native species under the jurisdiction of the Texas Parks and Wildlife Department are excluded from that definition and application of §40.6. Amendments to §40.6(c) and (d) change the mortality testing age from 16 months to 12 months and clarify that testing must occur within seven days. The amendments to these subsections also provide information on where test results and lab reports may be submitted. These amendments are intended to increase surveillance in designated containment and surveillance zones and align the requirements with federal standards for CWD testing.

This amendment also updates the geographic depiction in the attached graphic included in §40.6(b)(1)(C) to align with amendments to the rule, which went into effect May 17, 2023. Additionally, geographic depictions have been added as attached graphics for each movement restriction zone. The attached graphics are designed to assist the readability of these rules and to aid the public in understanding the individual zones.

SUMMARY OF COMMENTS RECEIVED AND COMMISSION RESPONSE

During the 30-day comment periods following rule proposals, the Commission received the following comments regarding the proposed rule amendments.

Comment: Senator Charles Perry, Texas State Senator for District 28 and Chair of the Senate Committee on Water, Agriculture, and Rural Affairs, is supportive of the proposed changes that bring clarity to Commission rules and better align Commission rules with federal standards. Senator Perry encouraged the Commission to work with stakeholders to find solutions to protect wild and captive bred cervids species in Texas that work for all parties.

Response: The Commission thanks Senator Perry for his support and for his work as Chair of Senate Committee on Water, Agriculture, and Rural Affairs. The Commission extends its sincere gratitude for Senator Perry's commitment to ensure the safety and prosperity of Texas animal agriculture and the people of Texas.

Comment: An individual commenter provided summaries and links to blog posts related to CWD. The commenter expressed concern regarding updated science on CWD and scrapie prion environmental and zoonotic factors and the potential for interspecies transmission of prion diseases. The commenter was neither for nor against the proposed changes but generally expressed the need for continued investment in research related to CWD.

Response: The Commission thanks the commenter for the feedback. No changes to the rules were made as a result of this comment.

Comment: An individual commenter was against the requirement that all mortalities of exotic CWD susceptible species, 12 months of age or older, be tested for CWD. The commenter explained that it costs \$129 test each red deer harvested on his property by his veterinarian, that he does not use his property for commercial hunting but only allows friends and family to harvest red deer for meat so he does not make profit from the harvests. The commenter believed this requirement would be onerous and it would be impossible to test all eligible mortalities.

Response: The Commission thanks the commenter for explaining the personal impact that the proposed rule will have. The Commission understands that this increased surveillance will increase the number of mortalities required to be tested each year. The Commission has determined that increased surveillance is necessary to protect Texas exotic livestock from CWD. This decision was made after careful consideration and upon the recommendation of Commission staff and the cervid health working group. The Commission thanks the commenter for the comment. No changes were made as a result of this comment.

Comment: An individual commenter provided general recommendations to modify the language employed in the rule amendments and stated that new regulations are needed. The commenter was critical that the rules regarding CWD management were based on an assumption that CWD is "spread" rather than the "existence" of CWD because the origin of CWD is unknown. The commenter was also critical that the rule requiring clinical signs of CWD be reported, provides a false sense of security to hunters and that these clinical signs are easily mistaken for other illnesses. The commenter recommended disposable instruments for postmortem sample collection, recommended recertification and financial accountability for postmortem sample collectors, recommended testing of fetal tissue for CWD to encompass all mortalities from CWD, recommended that the priority be to human health with an increased concern of zoonotic disease transmission and recommended mandatory testing before consumption, recommended that current zoning is causing negative economic impacts. The commenter stated that recent research shows successful transmission of CWD by experimental infection of various mammals and that all mammals are susceptible to CWD and should be listed as CWD susceptible species. The commenter recommended sample collection techniques include harvesting of hair follicles for DNA collection as well as one lymph node and that samples be submitted to a laboratory of the collecting facility's choice. The commenter also stated that deep burial contributes to re-contamination of soil with prions and proposed incineration be required and could be accomplished with mobile incinerators. The commenter also recommended that all species should be mandatorily tested to include carcasses purposed for donation for scientific research.

Response: The Commission thanks the commenter for the information provided. The Commission declines to further amend the

rule as requested by the commenter. No changes were made in response to these comments.

Comment: An individual commenter was critical of Commission rules that impose movement restriction zones. The commenter believed that the imposition of movement restrictions does not address the transmission of CWD by other mammals, the zoonotic potential of CWD, and the presence of CWD in the environment. The commenter would like to revise and improve state standards on testing and not simply match federal testing standards.

Response: The Commission thanks the commenter for the information provided. The Commission declines to further amend the rule as requested by the commenter. No changes were made in response to these comments.

STATUTORY AUTHORITY

The amendments to §§40.1, 40.2, 40.5, 40.6 within Chapter 40 of the Texas Administrative Code are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code.

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

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

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

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

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

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

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

sion, by rule, shall adopt the form and content of the records maintained by a dealer.

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

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

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

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

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

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

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

Pursuant to §161.061, titled "Establishment," if the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or any agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. The quarantine of an affected place may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or

stockyard pen. The Commission may, through §161.061(c), establish a quarantine to prohibit or regulate the movement of any article or animal the Commission designates to be a carrier of a disease listed in Section 161.041 or a potential carrier of one of those diseases, if movement is not otherwise regulated or prohibited for an animal into an affected area, including a county, district, pasture, lot, ranch, field, range, thoroughfare, building, stable, or stockyard pen.

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

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

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

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

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

The adopted rules in this chapter do not affect other statutes, sections, or codes.

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 August 16, 2023.

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Texas Animal Health Commission

Effective date: September 5, 2023

Proposal publication date: May 12, 2023 and June 2, 2023

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



4 TAC §40.3

The Texas Animal Health Commission (Commission) in a duly noticed meeting on July 11, 2023, adopted the repeal of existing §40.3, concerning Herd Certification Program for Cervidae in the Texas Administrative Code, Title 4, Part 2, Chapter 40. This repeal is in conjunction with the adoption of a new §40.3, concerning CWD Herd Certification Program. The proposed repeal was published simultaneously in the May 12, 2023, issue of the *Texas Register* (48 TexReg 2440). This repeal is adopted without changes and will not be republished.

JUSTIFICATION FOR RULE ACTION

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

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

HOW THE RULES WILL FUNCTION

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

SUMMARY OF COMMENTS RECEIVED AND COMMISSION RESPONSE

During the comment period, the Commission received one comment from an individual regarding the proposed repeal.

Comment: The commenter was supportive of the proposed repeal and replacement because it is efficient. The commenter recommended adding a requirement for recertification and financial accountability for postmortem sample collectors, recommended disposable instruments for postmortem sample collection, recommended that current zoning is causing negative economic impacts, and suggested new CWD legislation is required.

Response: The Commission thanks the commenter for the feedback. No changes were made as a result of this comment.

STATUTORY AUTHORITY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 August 16, 2023.

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Effective date: September 5, 2023

Proposal publication date: May 12, 2023

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



4 TAC §40.3

The Texas Animal Health Commission (Commission) in a duly noticed meeting on July 11, 2023, adopted a new §40.3, concerning the CWD Herd Certification Program to add to Title 4, Texas Administrative Code, Chapter 40 "Chronic Wasting Disease". The new section is adopted in conjunction with the repeal of existing §40.3 concerning Herd Certification Program for Cervidae, which was also published simultaneously in the May 12, 2023, issue of the *Texas Register* (48 TexReg 2442). This new section is adopted with changes due to grammar and punctuation corrections. The rule will be republished.

JUSTIFICATION FOR RULE ACTION

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

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

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

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

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

HOW THE RULES WILL FUNCTION

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

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

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

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

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

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

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

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

Section 40.3(c)(6) is amended to specify that annual inspections will take place during the annual inspection window, which is: "The period of time each year for an enrolled herd to complete an annual inspection. Unless a specific period is set by a commission representative in writing, the annual inspection window begins 30 days before the month and day of the enrollment date and ends 30 days after the month and day of the enrollment date." Previously the inspection was to occur 11-13 months from the last inspection. That rule created confusion for participants and was difficult to administer. This proposed change would mandate that the annual inspection occur during the annual inspection window which will simplify this requirement for participants and for the Commission. This modification also allows for some flexibility for participants to request an adjustment to their inspection window to meet the needs of their herd. This should help eliminate and reduce missed or late annual inspections to keep participating herds in compliance with the regulations. This subsection also amends the visual verification requirement to require that every animal in the herd have one required identification visually verified. The prior rule required visual verification on 50 percent of the animals. This change is made to align with federal standards and ensure inventories are annually reconciled.

Section 40.3(c)(7), regarding a complete physical herd inventory, is amended to add additional flexibility for participants to complete a physical herd inventory in accordance with federal

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

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

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

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

The last subsection, §40.3(h) makes minor changes to clarify the actions affecting enrollment and the administrative appeal process. Because the program is voluntary and requires compliance with the program requirements and the rules contained in Chapter 40, the Commission is authorized to lower a herd status, suspend enrollment, or revoke program enrollment entirely. This rule specifies the process that a participant may challenge an action that affects herd enrollment.

SUMMARY OF COMMENTS RECEIVED AND COMMISSION RESPONSE

During the comment period, the Commission received one comment from an individual regarding the proposed replacement.

Comment: The commenter was supportive of the proposed repeal and replacement because it is efficient. The commenter recommended adding a requirement for recertification and financial accountability for postmortem sample collectors, recommended disposable instruments for postmortem sample collection, recommended that current zoning is causing negative economic impacts, and suggested new CWD legislation is required.

Response: The Commission thanks the commenter for the feedback. No changes were made as a result of this comment.

STATUTORY AUTHORITY

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

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

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

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

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

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

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

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

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

Pursuant to §161.0541, titled "Elk Disease Surveillance Program," the Commission, by rule, may establish a disease surveillance program for elk. Such rules include the requirement for persons moving elk in interstate commerce to test the elk for

chronic wasting disease. Additionally, provisions must include testing, identification, transportation, and inspection under the disease surveillance program.

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

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

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

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

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

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

The adopted rules in this chapter do not affect other statutes, sections or codes.

§40.3. CWD Herd Certification Program.

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

- (1) Animal--An animal in the Cervidae family.

- (2) Annual inspection window--The period of time each year for an enrolled herd to complete an annual inspection. Unless a specific period is set by a commission representative in writing, the annual inspection window begins 30 days before the month and day of the enrollment date and ends 30 days after the month and day of the enrollment date.

- (3) Application and Agreement--The *CWD Herd Certification Application and Agreement*, a form published by the commission that is available on the commission website and available at TAHC region offices.

- (4) Eligible Mortality--The death from any cause of an animal 12 months of age or older, including hunter harvests and animals slaughtered at a slaughter facility or processing facility.

- (5) Enrolled herd--A herd that has been approved for enrollment in the program.

- (6) Enrollment Date--The day, month, and year in which an owners herd is officially enrolled in the Program.

- (7) Local TAHC Region Office--The TAHC Region Office that covers the county in which the herd's premises is located.

- (8) Program--The CWD Herd Certification Program administered by the commission.

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

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

(b) Program Enrollment Process.

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

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

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

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

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

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

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

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

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

(1) Premises.

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

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

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

(i) separate herd inventories and records;

(ii) separate working facilities;

(iii) separate water sources;

(iv) separate equipment; and

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

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

(2) Animal Identification.

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

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

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

(B) Identify all animals born in the herd.

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

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

(3) Reporting requirements.

(A) Required reporting. The herd owner shall:

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

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

(iii) immediately report a CWD-suspect animal;

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

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

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

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

(B) Methods of reporting.

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

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

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

(4) Testing.

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

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

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

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

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

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

(5) Recordkeeping.

(A) The herd owner shall maintain herd records that include a complete inventory of animals with documents showing all

births, deaths, acquisitions, dispositions, and escaped or disappeared animals.

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

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

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

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

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

(ii) Birth date;

(iii) Species;

(iv) Sex;

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

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

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

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

(ix) Age.

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

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

(6) Annual Inspection.

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

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

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

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

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

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

(iv) verify records are complete and accurate;

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

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

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

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

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

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

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

(7) Complete Physical Herd Inventory.

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

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

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

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

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

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

(iv) verify records are complete and accurate;

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

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

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

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

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

(G) If the herd owner requests the complete physical herd inventory be conducted by a commission employee, the commission will assess a fee of \$100 per hour for the complete physical herd

inventory performed by a commission representative. The herd owner is responsible for the fees assessed.

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

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

(d) Herd Status Advancement and Herd Certification

(1) Initial status.

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

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

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

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

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

(e) Effect of new animals on herd status.

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

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

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

(4) If any animals in the herd are commingled with animals from native ingress or from a nonparticipating herd, the herd will revert to first year status. If any animals in the herd are commingled with an animal from a herd with a lower program status, the herd with the higher program status will be reduced to the status of the herd with

which its animals commingled. After 12 months have elapsed since the addition, the herd may advance status at the next anniversary of the enrollment date.

(f) Detection of CWD in an enrolled herd.

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

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

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

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

(g) Actions affecting enrollment.

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

(2) Protest of an action affecting enrollment.

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

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

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

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

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

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

The agency certifies that legal counsel has reviewed the 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 August 16, 2023.

TRD-202302984
Jeanine Coggeshall
General Counsel
Texas Animal Health Commission
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Proposal publication date: May 12, 2023
For further information, please call: (512) 719-0718



TITLE 7. BANKING AND SECURITIES

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 86. RETAIL CREDITORS

SUBCHAPTER A. REGISTRATION OF RETAIL CREDITORS

7 TAC §86.102, §86.103

The Finance Commission of Texas (commission) adopts amendments to §86.102 (relating to Fees) and §86.103 (relating to Registration Term, Renewal, and Expiration) in 7 TAC Chapter 86, concerning Retail Creditors.

The commission adopts the amendments to §86.102 and §86.103 without changes to the proposed text as published in the June 30, 2023, issue of the *Texas Register* (48 TexReg 3449). The rules will not be republished.

The commission received no official comments on the proposed amendments.

The rules in 7 TAC Chapter 86 govern registrations with the Office of Consumer Credit Commissioner (OCCC) under Texas Finance Code, Chapters 345 and 347. In general, the purposes of the rule changes to 7 TAC Chapter 86 are to specify annual registration fees for registered creditors and manufactured home creditors, and to implement recent legislative amendments to Chapters 345 and 347.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC did not receive any informal precomments on the rule text draft.

The Texas Legislature passed SB 1371 in the 2023 regular legislative session. SB 1371 modernizes, clarifies, and corrects provisions of the Texas Finance Code administered by the OCCC. In particular, SB 1371 amends provisions relating to registration fees. Currently, Texas Finance Code, §345.351 provides a \$10 annual fee for a registered creditor registration under Chapter 345, and Texas Finance Code, §347.451 provides a \$15 annual fee for a manufactured home creditor registration under Chapter 347. SB 1371 amends these sections to authorize the Finance Commission to set annual registration fees under Chapters 345 and 347. SB 1371 has been signed by the governor and will be effective September 1, 2023.

Amendments to §86.102 specify that the annual registration fee is \$10 for a Chapter 345 registration and \$15 for a Chapter 347 registration. These are the same amounts currently included in the Finance Code, so the rule amendments would not change the fees that registrants currently pay. The OCCC is responsible for the costs of its operations. Under Texas Finance Code,

§16.002 and §16.003, the OCCC is a self-directed, semi-independent agency, and may set fees in amounts necessary for the purpose of carrying out its functions. The OCCC has reviewed its costs and determined that the \$10 and \$15 registration fee amounts are currently appropriate to cover the costs of carrying out the OCCC's responsibilities and functions under Texas Finance Code, Chapters 345 and 347. Other amendments throughout §86.102(b) ensure consistent use of the term "annual fee."

Amendments to §86.103 include updated cross-references to §86.102, to ensure that a reader can easily locate the fee provisions in §86.102.

The rule amendments are adopted under Texas Finance Code, §345.351 and §347.451 (as amended by SB 1371 (2023)), which authorize the commission to set fees for registrations under Texas Finance Code, Chapters 345 and 347. The rule amendments are also adopted under Texas Finance Code, §14.107 and §16.003, which authorize the commission and the OCCC to set fees in amounts necessary to carry out the functions of the OCCC. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Chapter 14 and Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 345 and 347.

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 August 18, 2023.

TRD-202303041
Matthew Nance
General Counsel
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7660



TITLE 13. CULTURAL RESOURCES

PART 8. TEXAS FILM COMMISSION

CHAPTER 121. TEXAS MOVING IMAGE INDUSTRY INCENTIVE PROGRAM

13 TAC §121.3

The Texas Film Commission within the Economic Development and Tourism Office of the Office of the Governor Office of the Governor ("OOG") adopts amendments to 13 TAC §121.3, concerning Eligible Projects. These amendments are adopted without changes to the proposed text as published in the July 14, 2023, issue of the *Texas Register* (48 TexReg 3795). The rule will not be republished.

REASONED JUSTIFICATION:

The adopted amendment relates to the Texas Moving Image Industry Incentive Program, which was implemented to increase employment opportunities for Texas industry professionals, encourage tourism to the state, and boost economic activity in

Texas cities and the overall Texas economy. The 88th Legislature passed House Bill 4539, which changed the residency threshold requirement for crew, actors, and extras from this state from 70% to 55%. The adopted amendments to §121.3 align the rule with section 485.023, Texas Government Code, as modified by the 88th Legislature.

COMMENTS

The public comment period for these rules began on July 14, 2023, and closed on August 13, 2023. The OOG received one comment.

The commenter, a trade organization, suggested changes to provisions or portions of provisions not being amended by this rulemaking, such as definitional modifications and changes to certification requirements. Because these comments were outside the scope of this rulemaking, the OOG declines to make suggested changes. The OOG is grateful for the commenter's participation in the rulemaking process, and encourages further comment during the next review of TMIIP rules under section 2001.039, Texas Government Code, or to otherwise engage with the OOG on additional potential rulemaking actions.

STATUTORY AUTHORITY

The amendments are adopted under Section 485.022 of the Texas Government Code, which requires the Texas Film Commission to develop procedures for the administration and calculation of grant awards under TMIIP. The amendments are also adopted in accordance with House Bill 4539, which was signed by Governor Abbott on June 12, 2023 and will take effect on September 1, 2023.

CROSS REFERENCE TO STATUTE

Chapter 121 of Texas Government Code. No other statutes, articles, or codes are affected by the adopted amendments.

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

Filed with the Office of the Secretary of State on August 14, 2023.

TRD-202302961

Stephanie Whallon

Director

Texas Film Commission

Effective date: September 3, 2023

Proposal publication date: July 14, 2023

For further information, please call: (512) 463-2000



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

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

SUBCHAPTER B. HIGH SCHOOL

19 TAC §127.17

The State Board of Education (SBOE) adopts new §127.17, concerning Texas Essential Knowledge and Skills (TEKS) for career development and career and technical education (CTE). The new section is adopted with changes to the proposed text as published in the May 12, 2023 issue of the *Texas Register* (48 TexReg 2466) and will be republished. The new section establishes a set of standards to be imbedded within each CTE principles course.

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

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

At the April 2023 SBOE meeting, TEA staff presented two options for occupational safety and health standards to the board. Proposed new §127.17, Career and Technical Education Standards in Occupational Safety and Health, Adopted 2023, identified standards that would be embedded into the content for relevant CTE principles courses. Proposed new §127.18, Occupational Safety and Health (One Credit), Adopted 2023, identified standards for a one-credit standalone course in occupational safety and health. The SBOE approved both proposals for first reading and filing authorization in order to solicit feedback from the public to help inform a final decision on the standards.

After considering both options, the SBOE approved only §127.17 for second reading and final adoption.

In response to public comment, the SBOE approved the following changes to §127.17 at adoption.

Section 127.17(b) was amended by striking the word "principles."

Section 127.17(b)(1) was amended by replacing Principles of Education and Training with Construction Technology I.

Section 127.17(b)(2) was amended by replacing Principles of Health Science with Electrical Technology I.

Section 127.17(b)(3) was amended by replacing Principles of Hospitality and Tourism with Plumbing Technology I.

Section 127.17(b)(4) was amended by replacing Principles of Law, Public Safety, Corrections, and Security with HVAC Technology I.

Section 127.17(b)(5) was amended by replacing Principles of Applied Engineering with Masonry Technology I.

Section 127.17(b)(6) was amended by replacing Principles of Biosciences with Agriculture Mechanics and Metal Technology.

Section 127.17(b)(7) was amended by replacing Principles of Agriculture, Food, and Natural Resources with Welding I.

Section 127.17(b)(8) was amended by replacing Principles of Architecture with Metal Fabrication and Machining I.

Section 127.17(b)(9) was amended by replacing Principles of Construction with Oil and Gas Production II.

Section 127.17(b)(10) was amended by replacing Principles of Information Technology with Introduction to Culinary Arts.

Section 127.17(b)(11)-(14) were struck.

The following changes were also made since published as proposed.

Section 127.17(c)(1) was amended by adding the phrase "Occupational Safety and Health Administration (OSHA) regulations."

The student expectation in §127.17(d)(2) was amended by striking the phrase "such as the National Institute of Occupational Safety and Health, Centers for Disease Control and Prevention, National Center for Construction Education and Research, Texas Workforce Commission, and Texas Department of Insurance."

The student expectation in §127.17(d)(4) was amended by striking the word "general."

The SBOE approved the new section for first reading and filing authorization at its April 14, 2023 meeting and for second reading and final adoption at its June 23, 2023 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the new section for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2024-2025 school year. The earlier effective date will allow districts to implement TEKS for occupational safety and health beginning with the 2023-2024 school year. The effective date is 20 days after filing as adopted with the Texas Register.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period began May 12, 2023, and ended at 5:00 p.m. on June 16, 2023. Following is a summary of the public comments received and agency responses.

Comment. One teacher asked if the proposed occupational safety and health TEKS would satisfy requirements for the college, career, and military readiness indicator in the accountability system.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One administrator stated that the proposed new occupational safety and health TEKS should be embedded into CTE principles courses. The commenter explained that all students in CTE classes need the occupational safety and health training to ensure safety in programs of study and labs.

Response. The SBOE agrees that occupational safety and health training is important in ensuring safety in a number of CTE programs of study; however, the SBOE disagrees that the occupational safety and health TEKS should be embedded into principles courses as proposed. The board took action to amend proposed new §127.17 at adoption to require occupational safety and health TEKS be embedded in level two CTE courses in certain programs of study.

Comment. One teacher stated that the occupational safety and health TEKS should be embedded into existing CTE courses rather than offering a new CTE course.

Response. The SBOE agrees and took action to amend proposed new §127.17 to require occupational safety and health TEKS be embedded in level two CTE courses in certain programs of study.

Comment. Two teachers stated that the option to embed the occupational safety and health skills in each of the courses where it is applicable is more than sufficient. The commenters stated that an entire course is not needed because many of the CTE courses already cover safety protocols.

Response. The SBOE agrees that offering a new standalone course in occupational safety and health is unnecessary. In response to other comments, the board took action to amend proposed new §127.17 to require occupational safety and health TEKS be embedded in level two CTE courses in certain programs of study.

Comment. One administrator stated that students should not have to sacrifice another elective to fit a standalone class into their schedule when the occupational safety and health TEKS can be effectively covered within a principles course.

Response. The SBOE agrees that offering a new standalone course in occupational safety and health is unnecessary; however, the SBOE disagrees that the occupational safety and health TEKS should be embedded into principles courses as proposed. In response to other comments, the board took action to amend proposed new §127.17 at adoption to require occupational safety and health TEKS be embedded in level two CTE courses in certain programs of study.

Comment. One teacher and one administrator stated the occupational safety and health TEKS should be included in all CTE principles courses.

Response. The SBOE disagrees that the occupational safety and health TEKS should be embedded into principles courses as proposed. In response to other comments, the board took action to amend proposed new §127.17 at adoption to require occupational safety and health TEKS be embedded in level two CTE courses in certain programs of study.

Comment. One administrator stated that a standalone course would not provide the opportunity to tailor the standards to individual programs.

Response. The SBOE agrees that offering a new standalone course in occupational safety and health is unnecessary. In response to other comments, the board took action to amend proposed new §127.17 at adoption to require occupational safety and health TEKS be embedded in level two CTE courses in certain programs of study.

Comment. One administrator suggested that if occupational safety and health TEKS are to be embedded in principles courses, a more effective approach would be to cross-reference where the skills are already taught within existing student expectations rather than adding additional student expectations.

Response. The SBOE disagrees that simply cross-referencing these knowledge and skills would sufficiently address important health and safety content. In response to other comments, the board took action to amend proposed new §127.17 at adoption to require occupational safety and health TEKS be embedded in level two CTE courses in certain programs of study.

Comment. One administrator expressed a preference for embedding the proposed new occupational safety and health TEKS into CTE courses with some revisions. The commenter recommended specific courses in which the new standards should be required to be addressed.

Response. The SBOE agrees that the occupational safety and health TEKS should be addressed in some of the CTE courses suggested by the commenter. In response to this and other comments, the board took action to amend proposed new §127.17 at adoption to require occupational safety and health TEKS be embedded in level two CTE courses in certain programs of study.

Comment. One teacher stated that some principles courses are offered in middle school as early as Grade 6 and that occupational safety and health TEKS would be difficult for middle school students to grasp.

Response. The SBOE agrees that embedding the new occupational safety and health TEKS into principles courses might be challenging for some students. In response to this and other comments, the board took action to amend proposed new §127.17 at adoption to require occupational safety and health TEKS be embedded in level two CTE courses in certain programs of study.

Comment. One teacher stated that the OSHA 10-hour training should be required in all CTE principles courses. The commenter suggested specific courses that would benefit from the 10-hour training.

Response. The SBOE provides the following clarification. The adopted occupational health and safety TEKS identify specific knowledge and skills that must be included in instruction in specific CTE courses. This instruction is not required to provide students with the OSHA 10-hour training.

Comment. One teacher and one community member stated that OSHA training will give beginning high school students the opportunity to become more aware of safety issues in the workplace and add an OSHA training card to their portfolio.

Response. The SBOE agrees that occupational safety and health TEKS in high school will give high school students the opportunity to become more aware of safety issues in the workplace. The SBOE also provides the following clarification. The adopted occupational health and safety TEKS identify specific knowledge and skills that must be included in instruction in specific CTE courses. This instruction is not required to provide students with the OSHA 10-hour training.

Comment. One teacher stated that OSHA training is important for students after high school because industry employers would prefer students graduate with an OSHA 10-hour or 30-hour training card over other certifications.

Response. The SBOE provides the following clarification. The adopted occupational health and safety TEKS identify specific knowledge and skills that must be included in instruction in specific CTE courses. This instruction is not required to provide students with the OSHA 10-hour or 30-hour training.

Comment. One administrator stated that many districts currently offer the OSHA 10-hour training without offering the occupational safety and health TEKS.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One teacher asked if there could be an alternative online course that would be acceptable for students to earn the OSHA 10-hour card.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One teacher stated that the OSHA 10-hour training should be recognized by TEA as an acceptable industry-based certification.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One administrator stated that removing the OSHA 30-hour card from the industry-based certification list while proposing to embed occupational safety and health TEKS into courses or add a standalone occupational safety and health course is contradictory.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One teacher stated that the option for students to acquire an OSHA 10-hour card or preferably an OSHA 30-hour card should be allowed, encouraged, and recognized by the state as an industry-based certification. The commenter explained that this type of certification is applicable in all fields and industries and should be one that all students are given the opportunity to acquire.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One teacher stated that students need to have OSHA 10-hour training to be competitive in the job market.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One teacher asked how students can earn the OSHA 10-hour card.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. Two teachers asked if the occupational safety and health TEKS would need to be taught by a certified OSHA trainer.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One teacher asked if there is a certification examination to become an authorized OSHA outreach trainer.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One community member stated that OSHA training cards are not necessary for all students since many of them will not use the training in future careers.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One administrator stated that it would be more appropriate to embed occupational safety and health TEKS in practicum and extended practicum courses than in principles courses.

Response. The SBOE disagrees that it would be more appropriate to embed occupational safety and health TEKS in practicum and extended practicum courses but agrees that the TEKS should be embedded in higher level courses. In response to this

and other comments, the board took action to amend proposed new §127.17 at adoption to require occupational safety and health TEKS be embedded in level two CTE courses in certain programs of study.

Comment. One teacher stated that occupational safety and health skills should be embedded in Grade 10 or 11 CTE courses and not in the principles courses. The commenter explained that occupational safety and health skills need to be addressed before students take practicum courses and students complete principles courses too far in advance. The commenter added that some districts have a summer requirement that students complete OSHA training the summer before starting a practicum.

Response. The SBOE agrees that the TEKS should be embedded in higher level courses. In response to this and other comments, the board took action to amend proposed new §127.17 at adoption to require occupational safety and health TEKS be embedded in level two CTE courses in certain programs of study.

Comment. One teacher stated that safety TEKS are integral to preparing students to be safe and mindful employees, regardless of whether the board approves the proposal to embed new occupational safety and health TEKS into principles courses or to adopt a new standalone course.

Response. The SBOE agrees that occupational safety and health TEKS are integral to preparing students to be safe employees. In response to other comments, the board took action to amend proposed new §127.17 at adoption to require occupational safety and health TEKS be embedded in level two CTE courses in certain programs of study.

Comment. One community member stated that institutions and industries have an obligation to promote safety in all facets of career and technical training and that safety should be at the forefront of every program of study.

Response. The SBOE agrees that safety should be addressed throughout CTE courses. In response to other comments, the board took action to amend proposed new §127.17 at adoption to require occupational safety and health TEKS be embedded in level two CTE courses in certain programs of study.

Comment. One community member stated that the SBOE is doing a disservice to everyone by removing this option because safety is and always should be at the forefront of every program of study promoted by TEA, not just career and technical programs.

Response. The SBOE provides the following clarification. The proposal did not call for eliminating health and safety content. The rule as adopted adds occupational safety and health TEKS to level two CTE courses in certain programs of study.

Comment. One community member and four teachers stated that occupational safety and health TEKS should be offered in a standalone course rather than in principles courses because of the volume of content already in those courses.

Response. The SBOE disagrees that the occupational health and safety TEKS should be offered as a standalone course but agrees that the content was not appropriate in principles courses. In response to other comments, the board took action to amend proposed new §127.17 at adoption to require occupational safety and health TEKS be embedded in level two CTE courses in certain programs of study.

Comment. Two teachers and one administrator expressed support for the standalone course option.

Response. The SBOE disagrees and determined that a standalone course in occupational safety and health was unnecessary. In response to other comments, the board took action to amend proposed new §127.17 at adoption to require occupational safety and health TEKS be embedded in level two CTE courses in certain programs of study.

Comment. One teacher suggested that the proposed new standalone course should be offered for one-half credit instead of one credit.

Response. The SBOE disagrees and determined that a standalone course in occupational safety and health was unnecessary. In response to other comments, the board took action to amend proposed new §127.17 at adoption to require occupational safety and health TEKS be embedded in level two CTE courses in certain programs of study.

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

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

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

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

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

- (1) Construction Technology I;
- (2) Electrical Technology I;
- (3) Plumbing Technology I;
- (4) HVAC Technology I;
- (5) Masonry Technology I;
- (6) Agriculture Mechanics and Metal Technology;
- (7) Welding I;
- (8) Metal Fabrication and Machining I;
- (9) Oil and Gas Production II; and
- (10) Introduction to Culinary Arts.

(c) Introduction.

(1) CTE instruction provides content aligned with challenging academic standards, industry-relevant technical knowledge,

Occupational Safety and Health Administration (OSHA) regulations, and college and career readiness skills for students to further their education and succeed in current and emerging professions.

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

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

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

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

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

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

(2) explain and discuss the importance of OSHA standards and OSHA requirements for organizations, how OSHA inspections are conducted, and the role of national and state regulatory entities;

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

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

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

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

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

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

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

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

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

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

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 August 21, 2023.

TRD-202303076

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: October 1, 2023

For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER C. EXAMINATION

22 TAC §1.43, §1.44

The Texas Board of Architectural Examiners (Board) adopts amendments to 22 Texas Administrative Code §1.43 and §1.44. The amendments are adopted without changes to the proposed text published in the June 23, 2023, issue of the *Texas Register* (48 TexReg 3385) and will not be republished.

Reasoned Justification. This rulemaking action implements changes to the Board's rules relating to the time period within which a candidate for registration is required to complete the Architect Registration Examination (ARE). The adopted rules implement a change in policy by National Council of Architectural Registration Boards (NCARB), thereby maintaining national registration standards in Texas while providing a more equitable process for the completion of the ARE.

Adopted §1.43 repeals a requirement based on the now-obsolete NCARB "five-year rolling clock" policy. The rolling clock policy placed a five-year expiration date on passed divisions of the ARE. NCARB's decision to repeal the policy was based on its conclusion that the five-year rolling clock was too restrictive. According to NCARB, most current ARE 5.0 exam items were developed under the previous ARE 4.0 and simply restructured for the current exam. Therefore, NCARB concluded that preserving these scores will not impact exam validity. The Board agrees.

In place of the rolling clock, NCARB has adopted a new score validity policy, which bases the validity of passed ARE sections on exam versions (such as ARE 4.0, ARE 5.0, etc.) rather than a set time frame. Under this policy, a passed exam section will remain valid throughout the delivery of the exam version under which it was taken, as well as the next exam version. For example, previously-expired ARE 4.0 sections have been reinstated and considered current throughout delivery of the current ARE 5.0 and may be used by candidates to establish credit for ARE 5.0. Likewise, ARE 5.0 sections will remain valid throughout the delivery of ARE 5.0, and future credits based on passed ARE 5.0 sections will remain valid throughout the delivery of ARE 6.0.

To maintain compliance with national registration standards, amended §1.43 replaces the formerly-adopted five-year rolling clock requirement with a requirement that architect candidates must schedule and pass all sections of the examination within

the time period required by NCARB. Since exam versions are expected to be in place for approximately 10 years, the adopted rule should result in a substantially longer window to complete the exam for all candidates.

Secondly, adopted §1.43 retains a procedure for certain individuals to request an extension to the testing period, with amendments. Under the former rule, a candidate who gave birth to or adopted a child, developed a serious medical condition, or commenced active-duty service as a member of the military was eligible to request extended time to complete the examination. Though NCARB has eliminated an internal procedure allowing such requests, the adopted rule retains it for Texas purposes, with amendments. Under the adopted rule, an individual who experiences one of these life events is eligible to receive an extended period of validity for an expired examination section if the event occurred within the 12 months immediately preceding the date of expiration. Submission of a request for extension is required within six months of the expiration of the examination section. Additionally, the extension for a serious medical condition is limited in time to a maximum of six months, and only if the condition reasonably prevented the person from preparing for or taking the examination. The adopted amendments recognize that, although the testing window will be much longer for all candidates, candidates who experience a qualifying life event late in the testing window might nonetheless be deserving of an extension.

Lastly, the Board amends §1.44. The amendment implements a repeal of the five-year rolling clock as applied to the transfer of exam scores between states and replaces it with a requirement that the transferred candidate must pass all sections of the examination within the time period required by NCARB.

Summary of Comments and Agency Response.

The Board did not receive any comments on the proposed rule.

Statutory Authority. Amendments to §1.43 and §1.44 are adopted under the authority of Tex. Occ. Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practice of architecture; and Tex. Occ. Code §1051.704, which requires the Board to examine each applicant for registration on any architectural subject or procedure the Board requires and to issue a certificate of registration to each applicant who passes the examination.

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 August 17, 2023.

TRD-202303035

Lance Brenton

General Counsel

Texas Board of Architectural Examiners

Effective date: September 6, 2023

Proposal publication date: June 23, 2023

For further information, please call: (512) 305-8519



CHAPTER 3. LANDSCAPE ARCHITECTS SUBCHAPTER C. EXAMINATION

22 TAC §3.43, §3.44

The Texas Board of Architectural Examiners (Board) adopts amendments to 22 Texas Administrative Code §3.43 and §3.44. The amendments are adopted without changes to the proposed text published in the June 23, 2023, issue of the *Texas Register* (48 TexReg 3387) and will not be republished.

Reasoned Justification. This rulemaking action implements changes to the Board's rules relating to the time period within which a candidate for registration is required to complete the Landscape Architect Registration Examination (LARE). The adopted rules are intended to maintain consistency between the rules for architect and landscape architect registration, align Texas with national registration standards, and provide a more equitable process for the completion of the LARE.

Adopted §3.43 repeals a requirement that a candidate for landscape architect registration must pass all sections of the examination within five (5) years from the date the candidate passes a section of the examination, or otherwise lose credit for that section. The former requirement was based on an identical rule the Board adopted for architect registration candidates. That rule, in turn, was based on a policy by the National Council of Architectural Registration Boards (NCARB). Recently, NCARB repealed this "five-year rolling clock" policy. Given this change in policy, the Board has reexamined its rules and determined the five-year rolling clock should be repealed for both architect and landscape architect candidates.

The Council of Landscape Architectural Registration Boards (CLARB), which administers the LARE, does not require its examinees to complete the LARE within five years of passing the first section of the examination. Rather, examinees must pass all sections of the LARE during the period in which that version of the LARE is in effect. If an examinee does not complete the LARE before a new version comes into effect, previously-passed sections of the examination may be used to establish credit under the new version.

Because the Board is repealing the five-year requirement for architect examinees, and because CLARB does not have a similar requirement, the Board amends §3.43 to replace the adopted five-year rolling clock requirement for landscape architect candidates with a requirement that candidates must schedule and pass all sections of the examination within the time period required by CLARB. Given that the most recent version of the LARE examination has been offered for 11 years, and because CLARB allows examinees to establish credit for new versions of the LARE based on passed sections of the previous version of the LARE, it is expected that the adopted rule will result in a much longer window for registrants to complete the LARE. Additionally, the adopted rule will bring Texas into alignment with national registrations standards as established by CLARB.

Secondly, adopted §3.43 retains a procedure for certain individuals to request an extension to the testing period, with amendments. Under the former rule, a candidate who gave birth to or adopted a child, developed a serious medical condition, or commenced active-duty service as a member of the military was eligible to request extended time to complete the examination. Under the adopted rule, an individual who experiences one of these life events is eligible to receive an extended period of validity for an expired examination section if the event occurred within the 12 months immediately preceding the date of expiration. Submission of a request for extension is required within six months of the expiration of the examination section. Additionally, the extension for a serious medical condition is limited in time to a maximum of six months, and only if the condition

reasonably prevented the person from preparing for or taking the examination. The amendment recognizes that, although the testing window will be much longer for all candidates, candidates who experience a qualifying life event late in the testing window might nonetheless be deserving of an extension.

Lastly, the Board amends §3.44. The amendment implements a repeal of the five-year rolling clock as applied to the transfer of exam scores between states and replaces it with a requirement that the transferred candidate must pass all sections of the examination within the time period required by CLARB.

Summary of Comments and Agency Response.

The Board did not receive any comments on the proposed rule.

Statutory Authority. Amendments to §3.43 and §3.44 are adopted under the authority of Tex. Occ. Code § 1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practice of landscape architecture; and Tex. Occ. Code § 1052.153, which requires the Board to approve and prescribe the scope of an examination and methods of procedure to measure the ability of an applicant for landscape architectural registration, in a manner that ensures the safety of the public welfare and property rights.

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 August 17, 2023.

TRD-202303036

Lance Brenton

General Counsel

Texas Board of Architectural Examiners

Effective date: September 6, 2023

Proposal publication date: June 23, 2023

For further information, please call: (512) 305-8519



PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 102. FEES

22 TAC §102.1

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §102.1, concerning fees. The adopted amendment reflects the fees required to submit the following applications to the Board: Registered Dental Assistant (RDA) Course Provider Application, and Continuing Education (CE) Provider Application. This rule is adopted without changes to the proposed text published in the July 7, 2023 issue of the *Texas Register* (48 TexReg 3620), and will not be republished.

No comments were received regarding adoption of this rule.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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 August 16, 2023.

TRD-202303017

Lauren Studdard

General Counsel

State Board of Dental Examiners

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Proposal publication date: July 7, 2023

For further information, please call: (512) 305-8910



CHAPTER 110. SEDATION AND ANESTHESIA

22 TAC §110.18

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §110.18, concerning inspection of sedation/anesthesia providers. The adopted amendment gives the Board discretion on whether to pursue revocation of a dental license if a permit holder who is in an inactive status is found to have administered or delegated the administration of level 2, 3, or 4 sedation/anesthesia while in inactive status. The adopted amendment also gives the Board discretion on whether to pursue revocation of a dental license if a permit holder who is an exempt location status is found to have administered or delegated the administration of level 2, 3, or 4 sedation/anesthesia in a non-exempt location. This rule is adopted without changes to the proposed text published in the July 7, 2023 issue of the *Texas Register* (48 TexReg 3620), and will not be republished.

No comments were received regarding adoption of this rule.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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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Lauren Studdard

General Counsel

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PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

CHAPTER 134 LICENSING, REGISTRATION, AND CERTIFICATION FOR SURVEYORS

The Texas Board of Professional Engineers and Land Surveyors (Board) adopts amendments to 22 Texas Administrative Code, Chapter 134, regarding the licensing of registered professional land surveyors, specifically §134.23, relating to Applications

From Standard Registration Holders, and §134.101, relating to Proposed Actions on Applications. Amendments to 22 Texas Administrative Code §134.23 are adopted without changes to the proposed text as published in the June 16, 2023, issue of the *Texas Register* (48 TexReg 3031) and will not be republished. Amendments to 22 Texas Administrative Code §134.101 are adopted with changes made at the adoption stage consisting of standardization of the style and format of rule citations contained in the figure associated with this rule. This rule will be republished.

REASONED JUSTIFICATION FOR RULE ADOPTION

The adopted amendments to §134.23 clarify the Board's policy to consider previous enforcement actions against a previous registration holder, who allowed his or her registration to expire and become non-renewable, if and when that registration holder reapplies for a new registration. In addition, the title of §134.23 is amended to make clear this rule applies to former registration holders. Identical amendments were adopted in July 2022, but were inadvertently repealed as part of a separate rule package that became effective in March 2023. These amendments restore the changes that were originally adopted in July 2022.

The adopted amendments to §134.101 correct an erroneous statutory citation and standardize the style and format of rule citations contained in the figure associated with this rule.

PUBLIC COMMENT

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rules. The public comment period began on June 16, 2023, and ended July 16, 2023. The Board received no comments from the public.

SUBCHAPTER C. LAND SURVEYOR APPLICATION REQUIREMENTS

22 TAC §134.23

STATUTORY AUTHORITY

The amendments are adopted pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Texas Engineering Practice Act and the Professional Land Surveying Practices as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

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 August 14, 2023.

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Lance Kinney

Executive Director

Texas Board of Professional Engineers and Land Surveyors

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Proposal publication date: June 16, 2023

For further information, please call: (512) 440-7723



SUBCHAPTER H. REVIEW PROCESS OF APPLICATIONS AND REGISTRATION ISSUANCE

22 TAC §134.101

STATUTORY AUTHORITY

The adopted rules are adopted pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Texas Engineering Practice Act and the Professional Land Surveying Practices as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

§134.101. Proposed Actions on Applications.

The following is a table of suggested actions the board may impose against applicants for specific circumstances related to an application. The action may be less than or greater than the suggested actions shown in the following table.

Figure: 22 TAC §134.101

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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Lance Kinney

Executive Director

Texas Board of Professional Engineers and Land Surveyors

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For further information, please call: (512) 440-7723



SUBCHAPTER G. EXAMINATIONS

22 TAC §§134.61, 134.67, 134.71, 134.73

The Texas Board of Professional Engineers and Land Surveyors (Board or TBPELS) adopts rule amendments to 22 Texas Administrative Code, Chapter 134, Subchapter G, regarding the examination process for professional land surveyors, specifically amendments to §134.61, relating to Surveying Examinations Required for a Registration as a Professional Surveyor; §134.67, relating to the Examination on the Principles and Practice of Surveying; §134.71, relating to taking an Examination for Record Purposes; and §134.73, relating to Examination Results and Analysis, without changes to the proposed text as published in the April 21, 2023, issue of the *Texas Register* (48 TexReg 2037). The rules will not be republished.

REASONED JUSTIFICATION FOR RULE ADOPTION

The 2018-2019 Report of the Sunset Review of the Texas Board of Professional Land Surveying noted that the Surveying Board did not utilize the national Principles and Practice of Surveying examination (NCEES PS Exam) for registration of land surveyors in Texas. The Sunset Report found Texas was the only state that did not use this exam for registration. (Texas Sunset Advisory Commission: Staff Report with Final Results, p. 22, June 2019). The Sunset Commission adopted Recommendation 2.8, which directed the board to conduct a comprehensive analysis

regarding adoption of the nationally accepted practice exam and a separate, corresponding jurisprudence exam.

After the Surveying Board was abolished and its duties transferred to the Texas Board of Professional Engineers and Land Surveyors, TBPELS undertook several years of research, data collection and analysis, and exam development concerning conversion to the nation surveying exam. The analysis was monitored, reviewed, and the transition recommended to the Board by the Surveying Advisory Committee (SAC), as required by Texas Occupations Code §1001.216.

At its November 17, 2022, meeting, the Board received and reviewed the SAC's exam analysis recommendation, and the Board approved the SAC's recommendation to use the new examination process to become a Registered Professional Land Surveyor (RPLS) in the state of Texas. Starting in 2023, the current RPLS exam will be replaced with a combination of the National Council of Examiners for Engineering and Surveying (NCEES) Principles and Practice of Professional Surveying (PS) exam and a new Texas State Specific Exam (TSSE).

The adopted rules implement the changes to the examination requirements resulting from the Sunset Commission recommendation, subsequent analysis, and resulting approval by the Board to convert to the national NCEES PS exam and a state-specific jurisprudence exam.

PUBLIC COMMENT

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rules. The public comment period began on April 21, 2023, and ended May 21, 2023. The Board received no comments from the public.

STATUTORY AUTHORITY

The amendments are adopted pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. The amendments are also adopted pursuant to Texas Occupations Code §§1071.254 and 1071.256 related to examinations required to become an RPLS.

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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Lance Kinney

Executive Director

Texas Board of Professional Engineers and Land Surveyors

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TITLE 25. HEALTH SERVICES

PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 701. POLICIES AND PROCEDURES

25 TAC §701.3

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") adopts the amendments to 25 Texas Administrative Code §701.3(29) and (63) with changes to the proposed amendments to update the alphabetical order of the definitions as published in the June 2, 2023, issue of the *Texas Register* (48 TexReg 2818); therefore, the rules will be republished. The amendments relate to the definition and use of "Scope of Work."

Reasoned Justification

CPRIT amends the term "Scope of Work" to include "specific aims and subaims, if appropriate." Grant applicants submit a Scope of Work with their grant application and, if approved, the Scope of Work becomes part of the grant contract.

Summary of Public Comments and Staff Recommendation

CPRIT received no public comments regarding the proposed amendments to §701.3; CPRIT staff recommends moving forward with adoption of the amendments.

The rule changes are adopted under the authority of the Texas Health and Safety Code Annotated, § 102.108, which provides the Institute with broad rule-making authority to administer the chapter, including rules for awarding grants.

§701.3. Definitions.

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

(1) Advisory Committee--a committee of experts, including practitioners and patient advocates, created by the Oversight Committee to advise the Oversight Committee on issues related to cancer.

(2) Allowable Cost--a cost that is reasonable, necessary for the proper and efficient performance and administration of the project, and allocable to the project.

(3) Annual Public Report--the report issued by the Institute pursuant to Texas Health and Safety Code §102.052 outlining Institute activities, including Grant Awards, research accomplishments, future Program directions, compliance, and Conflicts of Interest actions.

(4) Approved Budget--the financial expenditure plan for the Grant Award, including revisions approved by the Institute and permissible revisions made by the Grant Recipient. The Approved Budget may be shown by Project Year and detailed budget categories.

(5) Authorized Expense--cost items including honoraria, salaries and benefits, consumable supplies, other operating expenses, contracted research and development, capital equipment, construction or renovation of state or private facilities, travel, and conference fees and expenses.

(6) Authorized Signing Official (ASO)--the individual, including designated alternates, named by the Grant Applicant, who is authorized to act for the Grant Applicant or Grant Recipient in submitting the Grant Application and executing the Grant Contract and associated documents or requests.

(7) Bylaws--the rules established by the Oversight Committee to provide a framework for its operation, management, and governance.

(8) Cancer Prevention--a reduction in the risk of developing cancer, including early detection, control and/or mitigation of the incidence, disability, mortality, or post-diagnosis effects of cancer.

(9) Cancer Prevention and Control Program--effective strategies and interventions for preventing and controlling cancer designed to reduce the incidence and mortality of cancer and to enhance the quality of life of those affected by cancer.

(10) Cancer Prevention and Research Fund--the dedicated account in the general revenue fund consisting of legislative appropriations, gifts, grants, other donations, and earned interest.

(11) Cancer Research--research into the prevention, causes, detection, treatments, and cures for all types of cancer in humans, including basic mechanistic studies, pre-clinical studies, animal model studies, translational research, and clinical research to develop preventative measures, therapies, protocols, medical pharmaceuticals, medical devices or procedures for the detection, treatment, cure or substantial mitigation of all types of cancer and its effects in humans.

(12) Chief Compliance Officer--the individual employed by the Institute to monitor and report to the Oversight Committee regarding compliance with the Institute's statute and administrative rules. The term may also apply to an individual designated by the Chief Compliance Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(13) Chief Executive Officer--the individual hired by the Oversight Committee to perform duties required by the Institute's Statute or designated by the Oversight Committee. The term may apply to an individual designated by the Chief Executive Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(14) Chief Prevention Officer--the individual hired by the Chief Executive Officer to oversee the Institute's Cancer Prevention program, including the Grant Review Process, and to assist the Chief Executive Officer in collaborative outreach to further Cancer Research and Cancer Prevention. The term may also apply to an individual designated by the Chief Prevention Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(15) Chief Product Development Officer--the individual hired by Chief Executive Officer to oversee the Institute's Product Development program for drugs, biologicals, diagnostics, or devices arising from Cancer Research, including the Grant Review Process, and to assist the Chief Executive Officer in collaborative outreach to further Cancer Research and Cancer Prevention. The term may apply to an individual designated by the Chief Product Development Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(16) Chief Scientific Officer--the individual hired by the Chief Executive Officer to oversee the Institute's Cancer Research program, including the Grant Review Process, and to assist the Chief Executive Officer in collaborative outreach to further Cancer Research and Cancer Prevention. The term may apply to an individual designated by the Chief Scientific Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(17) Code of Conduct and Ethics--the code adopted by the Oversight Committee pursuant to Texas Health and Safety Code §102.109 to provide guidance related to the ethical conduct expected of Oversight Committee Members, Program Integration Committee Members, and Institute Employees.

(18) Compliance Program--a process to assess and ensure compliance by the Oversight Committee Members and Institute Em-

ployees with applicable laws, rules, and policies, including matters of ethics and standards of conduct, financial reporting, internal accounting controls, and auditing.

(19) Conflict(s) of Interest--a financial, professional, or personal interest held by the individual or the individual's Relative that is contrary to the individual's obligation and duty to act for the benefit of the Institute.

(20) Encumbered Funds--funds that are designated by a Grant Recipient for a specific purpose.

(21) Financial Status Report--form used to report all Grant Award related financial expenditures incurred in implementation of the Grant Award. This form may also be referred to as "FSR" or "Form 269-A."

(22) Grant Applicant--the public or private institution of higher education, as defined by §61.003, Texas Education Code, research institution, government organization, non-governmental organization, non-profit organization, other public entity, private company, individual, or consortia, including any combination of the aforementioned, that submits a Grant Application to the Institute. Unless otherwise indicated, this term includes the Principal Investigator or Program Director.

(23) Grant Application--the written proposal submitted by a Grant Applicant to the Institute in the form required by the Institute that, if successful, will result in a Grant Award.

(24) Grant Award--funding, including a direct company investment, awarded by the Institute pursuant to a Grant Contract providing money to the Grant Recipient to carry out the Cancer Research or Cancer Prevention project in accordance with rules, regulations, and guidance provided by the Institute.

(25) Grant Contract--the legal agreement executed by the Grant Recipient and the Institute setting forth the terms and conditions for the Cancer Research or Cancer Prevention Grant Award approved by the Oversight Committee.

(26) Grant Management System--the electronic interactive system used by the Institute to exchange, record, and store Grant Application and Grant Award information.

(27) Grant Mechanism--the specific Grant Award type.

(28) Grant Program--the functional area in which the Institute makes Grant Awards, including research, prevention and product development.

(29) Grant Progress Report--the required report submitted by the Grant Recipient at least annually and at the close of the grant award describing the activities undertaken to achieve the Scope of Work of the funded project and including information, data and program metrics. Unless the context clearly indicates otherwise, the Grant Progress Report also includes other required reports such as a Historically Underutilized Business and Texas Supplier form, a single audit determination form, an inventory report, a single audit determination form, a revenue sharing form, and any other reports or forms designated by the Institute.

(30) Grant Recipient--the entire legal entity responsible for the performance or administration of the Grant Award pursuant to the Grant Contract. Unless otherwise indicated, this term includes the Principal Investigator, Program Director, or Company Representative.

(31) Grant Review Cycle--the period that begins on the day that the Request for Applications is released for a particular Grant Mechanism and ends on the day that the Oversight Committee takes action on the Grant Award recommendations.

(32) Grant Review Process--the Institute's processes for Peer Review, Program Review and Oversight Committee approval of Grant Applications.

(33) Indirect Costs--the expenses of doing business that are not readily identified with a particular Grant Award, Grant Contract, project, function, or activity, but are necessary for the general operation of the Grant Recipient or the performance of the Grant Recipient's activities.

(34) Institute--the Cancer Prevention and Research Institute of Texas or CPRIT.

(35) Institute Employee--any individual employed by the Institute, including any individual performing duties for the Institute pursuant to a contract of employment. Unless otherwise indicated, the term does not include an individual providing services to the Institute pursuant to a services contract.

(36) Intellectual Property Rights--any and all of the following and all rights in, arising out of, or associated therewith, but only to the extent resulting from the Grant Award:

(A) The United States and foreign patents and utility models and applications therefore and all reissues, divisions, re-examinations, renewals, extensions, provisionals, continuations and such claims of continuations-in-part as are entitled to claim priority to the aforesaid patents or patent applications, and equivalent or similar rights anywhere in the world in Inventions and discoveries;

(B) All trade secrets and rights in know-how and proprietary information;

(C) All copyrights, whether registered or unregistered, and applications therefore, and all other rights corresponding thereto throughout the world excluding scholarly and academic works such as professional articles and presentations, lab notebooks, and original medical records; and

(D) All mask works, mask work registrations and applications therefore, and any equivalent or similar rights in semiconductor masks, layouts, architectures or topography.

(37) Invention--any method, device, process or discovery that is conceived and/or reduced to practice, whether patentable or not, by the Grant Recipient in the performance of work funded by the Grant Award.

(38) License Agreement--an understanding by which an owner of Technology and associated Intellectual Property Rights grants any right to make, use, develop, sell, offer to sell, import, or otherwise exploit the Technology or Intellectual Property Rights in exchange for consideration.

(39) Matching Funds--the Grant Recipient's Encumbered Funds equal to one-half of the Grant Award available and not yet expended that are dedicated to the research that is the subject of the Grant Award. For public and private institutions of higher education, this includes the dollar amount equivalent to the difference between the indirect cost rate authorized by the federal government for research grants awarded to the Grant Recipient and the five percent (5%) Indirect Cost limit imposed by §102.203(c), Texas Health and Safety Code.

(40) Numerical Ranking Score--the score given to a Grant Application by the Review Council that is substantially based on the final Overall Evaluation Score submitted by the Peer Review Panel, but also signifies the Review Council's view related to how well the Grant Application achieves program priorities set by the Oversight Committee, the overall Program portfolio balance, and any other criteria described in the Request for Applications.

(41) Overall Evaluation Score--the score given to a Grant Application during the Peer Review Panel review that signifies the reviewers' overall impression of the Grant Application. Typically it is the average of the scores assigned by two or more Peer Review Panel members.

(42) Oversight Committee--the Institute's governing body, composed of the nine individuals appointed by the Governor, Lieutenant Governor, and the Speaker of the House of Representatives.

(43) Oversight Committee Member--any person appointed to and serving on the Oversight Committee.

(44) Patient Advocate--a trained individual who meets the qualifications set by the Institute and is appointed to a Scientific Research and Prevention Programs Committee to specifically represent the interests of cancer patients as part of the Peer Review of Grant Applications assigned to the individual's committee.

(45) Peer Review--the review process performed by Scientific Research and Prevention Programs Committee members and used by the Institute to provide guidance and recommendations to the Program Integration Committee and the Oversight Committee in making decisions for Grant Awards. The process involves the consistent application of standards and procedures to produce a fair, equitable, and objective evaluation of scientific and technical merit, as well as other relevant aspects of the Grant Application. When used herein, the term applies individually or collectively, as the context may indicate, to the following review process(es): Preliminary Evaluation, Individual Evaluation by Primary Reviewers, Peer Review Panel discussion and Review Council prioritization.

(46) Peer Review Panel--a group of Scientific Research and Prevention Programs Committee members conducting Peer Review of assigned Grant Applications.

(47) Prevention Review Council--the group of Scientific Research and Prevention Programs Committee members designated as the chairpersons of the Peer Review Panels that review Cancer Prevention program Grant Applications. This group includes the Review Council chairperson.

(48) Primary Reviewer--a Scientific Research and Prevention Programs Committee member responsible for individually evaluating all components of the Grant Application, critiquing the merits according to explicit criteria published in the Request for Applications, and providing an individual Overall Evaluation Score that conveys the general impression of the Grant Application's merit.

(49) Principal Investigator, Program Director, or Company Representative--the single individual designated by the Grant Applicant or Grant Recipient to have the appropriate level of authority and responsibility to direct the project to be supported by the Grant Award.

(50) Product Development Prospects--the potential for development of products, services, or infrastructure to support Cancer Research efforts, including but not limited to pre-clinical, clinical, manufacturing, and scale up activities.

(51) Product Development Review Council--the group of Scientific Research and Prevention Programs Committee Members designated as the chairpersons of the Peer Review Panels that review Grant Applications for the development of drugs, biologics, diagnostics, or devices arising from earlier-stage Cancer Research. This group includes the Review Council chairperson.

(52) Program Income--income from fees for services performed, from the use or rental of real or personal property acquired with Grant Award funds, and from the sale of commodities or items fabricated under the Grant Contract. Except as otherwise provided,

Program Income does not include rebates, credits, discounts, refunds, etc. or the interest earned on any of these items. Interest otherwise earned in excess of \$250 on Grant Award funds is considered Program Income.

(53) Program Integration Committee--the group composed of the Chief Executive Officer, the Chief Scientific Officer, the Chief Product Development Officer, the Commissioner of State Health Services, and the Chief Prevention Officer that is responsible for submitting to the Oversight Committee the list of Grant Applications the Program Integration Committee recommends for Grant Awards.

(54) Project Results--all outcomes of a Grant Award, including publications, knowledge gained, additional funding generated, and any and all Technology and associated Intellectual Property Rights.

(55) Project Year--the intervals of time (usually 12 months each) into which a Grant Award is divided for budgetary, funding, and reporting purposes. The effective date of the Grant Contract is the first day of the first Project Year.

(56) Real Property--land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

(57) Relative--a person related within the second degree by consanguinity or affinity determined in accordance with §§573.021 - 573.025, Texas Government Code. For purposes of this definition:

(A) examples of an individual within the second degree by consanguinity are a child, grandchild, parent, grandparent, brother, sister;

(B) a husband and wife are related to each other in the first degree of affinity. For other relationship by affinity, the degree of relationship is the same as the degree of the underlying relationship by consanguinity;

(C) an individual adopted into a family is considered a Relative on the same basis as a natural born family member; and

(D) an individual is considered a spouse even if the marriage has been dissolved by death or divorce if there are surviving children of that marriage.

(58) Request for Applications--the invitation released by the Institute seeking the submission of Grant Applications for a particular Grant Mechanism. It provides information relevant to the Grant Award to be funded, including funding amount, Grant Review Process information, evaluation criteria, and required Grant Application components. The Request for Applications includes any associated written instructions provided by the Institute and available to all Grant Applicants.

(59) Review Council--the term used to generally refer to one or more of the Prevention Review Council, the Product Development Review Council, or Scientific Review Council.

(60) Scientific Research and Prevention Programs Committee--a group of experts in the field of Cancer Research, Cancer Prevention or Product Development, including trained Patient Advocates, appointed by the Chief Executive Officer and approved by the Oversight Committee for the purpose of conducting Peer Review of Grants Applications and recommending Grant Awards. A Peer Review Panel is a Scientific Research and Prevention Programs Committee, as is a Review Council.

(61) Scientific Research and Prevention Programs Committee Member--an individual appointed by the Chief Executive Officer and approved by the Oversight Committee to serve on a Scientific Research and Prevention Programs Committee. Peer Review Panel

Members are Scientific Research and Prevention Programs Committee Members, as are Review Council Members.

(62) Scientific Review Council--the group of Scientific Research and Prevention Programs Committee Members designated as the chairpersons of the Peer Review Panels that review Cancer Research Grant Applications. This group includes the Review Council chairperson.

(63) Scope of Work--the goals and objectives or specific aims and subaims, if appropriate, of the Cancer Research or Cancer Prevention project, including the timeline and milestones to be achieved.

(64) Senior Member or Key Personnel--the Principal Investigator, Project Director or Company Representative and other individuals who contribute to the scientific development or execution of a project in a substantive, measurable way, whether or not the individuals receive salary or compensation under the Grant Award.

(65) Technology--any and all of the following resulting or arising from work funded by the Grant Award:

(A) Inventions;

(B) Third-Party Information, including but not limited to data, trade secrets and know-how;

(C) databases, compilations and collections of data;

(D) tools, methods and processes; and

(E) works of authorship, excluding all scholarly works, but including, without limitation, computer programs, source code and executable code, whether embodied in software, firmware or otherwise, documentation, files, records, data and mask works; and all instantiations of the foregoing in any form and embodied in any form, including but not limited to therapeutics, drugs, drug delivery systems, drug formulations, devices, diagnostics, biomarkers, reagents and research tools.

(66) Texas Cancer Plan--a coordinated, prioritized, and actionable framework that helps to guide statewide efforts to fight the human and economic burden of cancer in Texas.

(67) Third-Party Information--generally, all trade secrets, proprietary information, know-how and non-public business information disclosed to the Institute by Grant Applicant, Grant Recipient, or other individual external to the Institute.

(68) Tobacco--all forms of tobacco products, including but not limited to cigarettes, cigars, pipes, water pipes (hookah), bidis, kreteks, electronic cigarettes, smokeless tobacco, snuff and chewing tobacco.

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-202303044

Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

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For further information, please call: (512) 305-8487



CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §§703.6, 703.7, 703.10, 703.21, 703.25

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") adopts the amendments to 25 Texas Administrative Code §§703.6, 703.10, 703.21, and 703.25 without changes to the proposed amendments as published in the June 2, 2023, issue of the *Texas Register* (48 TexReg 2822); therefore, the rules will not be republished. CPRIT adopts amendments to 25 TAC §703.7 with a non-substantive change to correctly reference an administrative rule subsection as published in the June 2, 2023, issue of the *Texas Register* (48 TexReg 2822); therefore, the rule will be republished. The amendments ensure that CPRIT consistently uses the term "Scope of Work" throughout the Institute's administrative rules.

Reasoned Justification

The amendments replace inconsistent use of scope of work (e.g. project goals, goals and objectives, timeline) with "Scope of Work," which is a defined term in Texas Administrative Code Chapter 701.

Summary of Public Comments and Staff Recommendation

CPRIT received no public comments regarding the proposed amendments to §§703.6, 703.7, 703.10, 703.21, and 703.25; CPRIT staff recommends moving forward with adoption of the amendments.

The rule changes are adopted under the authority of the Texas Health and Safety Code Annotated, § 102.108, which provides the Institute with broad rule-making authority to administer the chapter, including rules for awarding grants.

§703.7. Program Integration Committee Funding Recommendation.

(a) The Institute uses a Program Review process undertaken by the Institute's Program Integration Committee to identify and recommend for funding a final list of meritorious Cancer Research projects, including those projects with Cancer Research Product Development prospects, and evidence-based Cancer Prevention and Control Program projects that are in the best overall interest of the State.

(b) Program Review shall be conducted pursuant to the requirements set forth in Chapter 702 of this title (relating to Institute Standards on Ethics and Conflicts, Including the Acceptance of Gifts and Donations to the Institute) and Chapter 102, Texas Health and Safety Code.

(c) The Program Integration Committee shall meet pursuant to a schedule established by the Chief Executive Officer, who serves as the Committee's presiding officer, to consider the prioritized list of Grant Applications submitted by the Prevention Review Council, the Product Development Review Council, or the Scientific Review Council.

(d) The Program Integration Committee shall approve by a majority vote a final list of Grant Applications recommended for Grant Awards to be provided to the Oversight Committee, including a list of Grant Applications, if any, that have been deferred until a future meeting of the Program Integration Committee. In composing the final list of Grant Applications recommended for Grant Award funding, the Program Integration Committee shall:

(1) Substantially base the list upon the Grant Award recommendations submitted by the Review Council.

(2) To the extent possible, give priority for funding to Grant Applications that:

(A) Could lead to immediate or long-term medical and scientific breakthroughs in the area of Cancer Prevention or cures for cancer;

(B) Strengthen and enhance fundamental science in Cancer Research;

(C) Ensure a comprehensive coordinated approach to Cancer Research and Cancer Prevention;

(D) Are interdisciplinary or interinstitutional;

(E) Address federal or other major research sponsors' priorities in emerging scientific or Technology fields in the area of Cancer Prevention, or cures for cancer;

(F) Are matched with funds available by a private or nonprofit entity and institution or institutions of higher education;

(G) Are collaborative between any combination of private and nonprofit entities, public or private agencies or institutions in this state, and public or private institutions outside this state;

(H) Have a demonstrable economic development benefit to this state;

(I) Enhance research superiority at institutions of higher education in this state by creating new research superiority, attracting existing research superiority from institutions not located in this state and other research entities, or enhancing existing research superiority by attracting from outside this state additional researchers and resources;

(J) Expedite innovation and commercialization, attract, create, or expand private sector entities that will drive a substantial increase in high-quality jobs, and increase higher education applied science or Technology research capabilities; and

(K) Address the goals of the Texas Cancer Plan.

(3) Document the factors considered in making the Grant Award recommendations, including any factors not listed in paragraph (2) of this subsection;

(4) Explain in writing the reasons for not recommending a Grant Application that was recommended for a Grant Award by the Review Council or for deferring a Grant Application recommendation until a future meeting date;

(5) Specify the amount of Grant Award funding for each Grant Application.

(A) Unless otherwise specifically stated, the Program Integration Committee adopts the changes to the Grant Award amount recommended by the Review Council.

(B) If the Program Integration Committee approves a change in the Grant Award amount that was not recommended by the Review Council, then the Grant Award amount and a written explanation for the change shall be provided.

(6) Specify changes, if any, to the Grant Application's Scope of Work recommended for a Grant Award and provide an explanation for the changes made;

(7) Address how the funding recommendations meet the annual priorities for Cancer Prevention, Cancer Research and Product Development programs and affect the Institute's overall Grant Award portfolio established by the Oversight Committee; and

(8) Provide a list of deferred Grant Applications, if any.

(e) In the event that the Program Integration Committee's vote on the final list of Grant Award recommendations or deferrals is not

unanimous, then the Program Integration Committee Member or Members not voting with the majority may submit a written explanation to the Oversight Committee for the vote against the final list of Grant Award recommendations or deferrals. The explanation may include the Program Integration Committee Member or Members' recommended prioritized list of Grant Award recommendations or deferrals.

(f) The Program Integration Committee's decision to not include a Grant Application on the prioritized list of Grant Applications submitted to the Oversight Committee is final. A Grant Application not included on the prioritized list created by the Program Integration Committee shall not be considered further during the Grant Review Cycle, except for the following:

(1) In the event that the Program Integration Committee's vote on the final list of Grant Award recommendations is not unanimous, then, upon a motion of an Oversight Committee Member, the Oversight Committee may also consider the Grant Award recommendations submitted by the non-majority Program Integration Committee Member or Members;

(2) A finding of an undisclosed Conflict of Interest as set forth in §703.9 of this chapter (relating to Limitation on Review of Grant Process); or

(3) A decision by the Program Integration Committee to defer a decision to include a Grant Application on the prioritized list of Grant Applications submitted to the Oversight Committee until a future meeting of the Program Integration Committee, subject to subsection (k) of this section.

(g) The Chief Compliance Officer shall attend and observe Program Integration Committee meetings to document compliance with Chapter 102, Texas Health and Safety Code and the Institute's administrative rules.

(h) At the time that the Program Integration Committee's final Grant Award recommendations are formally submitted to the Oversight Committee, the Chief Executive Officer shall prepare a written affidavit for each Grant Application recommended by the Program Integration Committee containing relevant information related to the Grant Application recommendation.

(1) Information to be provided in the Chief Executive Officer's affidavit may include:

(A) The Peer Review process for the recommended Grant Application, including:

(i) The Request for Applications applicable to the Grant Application;

(ii) The number of Grant Applications submitted in response to the Request for Applications;

(iii) The name of the Peer Review Panel reviewing the Grant Application;

(iv) Whether a preliminary review process was used by the Peer Review Panel for the Grant Mechanism in the Grant Review Cycle;

(v) An overview of the Conflict of Interest process applicable to the Grant Review Cycle noting any waivers granted; and

(vi) A list of all final Overall Evaluation Scores for all Grant Applications submitted pursuant to the same Grant Mechanism, de-identified by Grant Applicant;

(B) The final Overall Evaluation Score and Numerical Ranking Score assigned for the Grant Applications recommended during the Peer Review process; and

(C) A high-level summary of the business operations and management due diligence and intellectual property reviews, if applicable, conducted for a Cancer Research Product Development Grant Application.

(2) In the event that the Program Integration Committee's final Grant Award recommendations are not unanimous and the Program Integration Committee Member or Members in the non-majority recommend Grant Applications not included on the final list of Grant Award recommendations, then the Chief Executive Officer shall also prepare a written affidavit for each Grant Application recommended by the non-majority Program Integration Committee Member or Members.

(i) To the extent that the information or documentation for one Grant Application is the same for all Grant Applications recommended for Grant Award funding pursuant to the same Grant Mechanism, it shall be sufficient for the Chief Executive Officer to provide the information or documentation once and incorporate by reference in each subsequent affidavit.

(j) At least three business days prior to the Oversight Committee meeting held to consider the Grant Applications for Grant Award funding, the Chief Executive Officer shall provide a list of Grant Applications, if any, recommended for an advance of Grant Award funds upon execution of the Grant Contract. The list shall include the reasons supporting the recommendation to advance funds.

(k) The Program Integration Committee's decision to defer the final Grant Award recommendation for a Grant Application is only effective for the state fiscal year in which the Program Integration Committee's deferral decision is made.

(1) A Grant Application that is deferred by the Program Integration Committee and is pending a final Grant Award recommendation at the end of the state fiscal year shall be considered not recommended for a Grant Award without further action from the Program Integration Committee.

(2) A Grant Application that is deferred and pending a final Grant Award recommendation at the end of the state fiscal year may be resubmitted by the Grant Applicant in a subsequent review cycle. Such resubmission will not count against the resubmission limit, if any, stated in the Request for Applications.

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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Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

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For further information, please call: (512) 305-8487

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 9. TEXAS COMMISSION ON JAIL STANDARDS

CHAPTER 255. RULEMAKING PROCEDURES

37 TAC §255.6

The Commission on Jail Standards adopts 37 TAC §255.6 concerning advisory committees with changes to the text as proposed in the April 21, 2023, issue of the *Texas Register* (48 TexReg 2085). The rule will be republished. The changes correct misnumbering of the committee membership under (b) and clarify that the ex-officio members are non-voting.

HB 1545 of the 87th Legislative Session added Government Code Sec. 511.0081 Advisory Committees, which gave the Commission authority to establish advisory committees to make recommendations to the commission on programs, rules, and policies administered by the Commission.

The new rule cites the agency's statutory authority to create advisory committees, establishes the general rules that govern all its advisory committees, and establishes rules to govern specifically the Administrative Rule Advisory Committee. As other committees are established, the Commission will propose amendments to govern each committee specifically.

No public comments were received.

The rule is adopted under statutory authority of Government Code, Chapter 511, which authorizes the Texas Commission on Jail Standards to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails. This adoption does not affect other rules or statutes.

§255.6. *Advisory Committees.*

(a) General. The Texas Commission on Jail Standards (Commission) may establish advisory committees pursuant to Gov't. Code §511.0081 or if mandated by legislative action.

(1) Purpose, Role, and Responsibility. The purpose, role, and responsibility of a Commission advisory committee is to make recommendations to the Commission on programs, rules, and policies administered by the Commission.

(2) Goals. Unless mandated by legislative action, the goal of each advisory committee will be determined by the Commission at the time the advisory committee is created.

(3) Duration. Unless mandated by legislative action, the duration of each advisory committee will be determined by the Commission. The Commission will annually review and determine the continuing need for an advisory committee established by the Commission.

(4) Committee Members.

(A) Committees will consist of a minimum of five members and a maximum of nine members, unless mandated otherwise by legislative action.

(B) Unless otherwise mandated by legislative action, committee members will have various backgrounds of experience, expertise, and interest in the matters the committee will address. Committee members may include Commission commissioners, sheriffs, jail administrators, relevant governmental agency representatives, relevant professionals, and other interested members of the public. The Chair of the advisory committee, in consultation with the Executive Director, will appoint committee members that meet the criteria set forth.

(C) The Chair of the Texas Commission on Jail Standards appoints the Chair of advisory committees unless mandated otherwise by legislative action.

(D) Members of advisory committees will elect an advisory committee Vice-Chair from among its members to serve in the temporary absence of the advisory committee Chair.

(E) Terms. The Commission Executive Director will determine the members' terms of service. The terms of service will be staggered.

(F) Unless prohibited by legislative action, non-voting subject matter experts may be named to the committee at the discretion of the Chair with the consent of the committee.

(5) Rules. Each advisory committee established shall adopt policies and procedures that address the purpose of the advisory committee, membership qualifications, training requirements, terms of service, operating procedures, conflict of interest, and adherence to the requirements set forth in Texas Government Code 551.

(6) Committee Operations and Meetings.

(A) Meetings. The committee must meet at least quarterly; however, the Chair may decide that it is necessary to meet more frequently. The committee is subject to the Texas Open Meetings Act, Texas Government Code Chapter 551.

(B) Quorum. A majority of members constitutes a quorum.

(C) Compensation and Travel Reimbursement. Members will not be reimbursed for expenses related to their participation in the advisory committee.

(b) Administrative Rules Advisory Committee. The Commission establishes an Administrative Rules Advisory Committee to regularly review all administrative rules as part of the mandated rule review process, administrative rules required by new legislation, administrative rules as recommended by the Commission, and petitions for administrative rule changes. The committee makes recommendations to the Commission related to administrative rules. The Committee consists of a minimum of nine members as follows:

(1) one representative of the Commission to act as Committee Chair;

(2) one sheriff of a county with a population from 80,000 or more;

(3) one sheriff of a county with a population from less than 80,000;

(4) one county judge or county commissioner from a county with a population of 80,000 or more;

(5) one county judge or county commissioner from a county with a population of less than 80,000;

(6) one member of the public who is a representative of a statewide organization that advocates for individuals or issues related to county jails; (7) one member of the public;

(7) one non-voting ex-officio jail administrator from a jail consisting of 50 beds or less;

(8) one non-voting ex-officio jail administrator from a jail consisting of 51-999 beds; and

(9) one non-voting ex-officio jail administrator from a jail consisting of 1000 or more beds.

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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Brandon Wood

Executive Director

Texas Commission on Jail Standards

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For further information, please call: (512) 463-2690



CHAPTER 265. ADMISSION

37 TAC §265.7

The Commission on Jail Standards adopts amendments to 37 TAC §265.7, concerning telephone directories in jails without changes to the text as proposed in the June 9, 2023, issue of the *Texas Register* (48 TexReg 2935). The rule will not be re-published.

This amendment originates from a public petition the Commission received on February 9, 2023, from William Pailes, member of the public, who observed that telephone directories are no longer available widely, having been replaced by cell phones with internet access. Current law requires that a telephone directory shall be available for inmates' use within the processing area. This obsolescence of telephone directories makes the current rule obsolete.

This change will allow inmates to make telephone calls to people whose phone number the inmates have not memorized. Inmate contact lists are usually on their cell phone, which is confiscated at booking. The adopted amendment will require jails to allow inmates reasonable access to their contact lists upon booking.

A member of the public submitted a written comment on July 25, 2023, and made an oral comment during the August 3, 2023, quarterly Commission meeting. "I recognize that phone books are no longer a reasonable requirement for the jails to make available. However, rather than scrapping the rule completely I think it would be appropriate to adapt it for the times that we are living in, taking into account the array of circumstances that people who are coming into the jails may be dealing with. Creating

options for the varying levels of resources that different counties have could look like an option to either make available a kiosk or a computer that they can use to look up the names and numbers of local attorneys, or an alternative could be printing out a list of attorneys as is already done for bond companies available in the area, and laminating them to keep them durable.

"Since the average person is unlikely to have the number of an attorney saved in their phone, and since not everyone has/ or gets arrested with a phone in their possession, making a reasonable accommodation such as this would make much more sense than just doing away with any requirement to provide this information.

"Officers in booking facilities already face a large workload and rarely have time to answer simple questions about the process, much less take time out to work with someone to look up this type of information. There are compromises that we can require that will meet the needs of the people who come through the jails as well as those who work there."

The amendment is adopted under statutory authority of Government Code, Chapter 511, which authorizes the Texas Commission on Jail Standards to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This adoption does not affect other rules or statutes.

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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