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

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 6. ORGANIZATION AND ADMINISTRATION

The Texas Ethics Commission (the TEC) proposes amendments to Texas Ethics Commission Rules in Chapter 6.

Specifically, the TEC proposes amendments to rules in Subchapter A of Chapter 6 (relating to General Rules), including §§6.1 regarding Definitions, and 6.9 regarding Computation of Time.

The TEC also proposes amendments to rules in Subchapter B of Chapter 6 (relating to Officers and Employees of the Commission), including §§6.21 regarding Officers of the Commission, and 6.23 regarding Commission Staff.

The TEC also proposes amendments to rules in Subchapter C of Chapter 6 (relating to Commission Meetings), including §§6.35 regarding Called Meetings, 6.39 regarding Meeting Agenda, 6.43 regarding Speakers Addressing the Commission, 6.45 regarding Order and Conduct of Commission Meeting and 6.47 regarding Tape Recording of Meeting; Minutes.

This proposal, along with the contemporaneous proposal of the repeal of certain other rules in Chapter 6, amends the rules used in the organization and administration of the TEC.

State law requires state agencies to "review and consider for readoption each of its rules … not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date." Tex. Gov't Code §2001.039. The law further requires agencies to "readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section." *Id*.

The TEC is continuing its comprehensive review with a review of the TEC's rules regarding its organization and administration, which are codified in Chapter 6. The repeal of some rules and adoption of amendments to other rules seek to shorten, simplify, and reorganize the rules to eliminate surplusage and improve clarity on the TEC's organization and administration.

James Tinley, General Counsel, has determined that for the first five-year period the proposed amended rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amended rules.

The General Counsel has also determined that for each year of the first five years the proposed amended rules are in effect, the public benefit will be consistency and clarity in the Commission's rules regarding sworn complaint procedures. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amended rules.

The General Counsel has determined that during the first five years that the proposed amended rules are in effect, they will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; create a new regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed amended rules from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to J.R. Johnson, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed amended rules may do so at any Commission meeting during the agenda item relating to the proposed amended rules. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

SUBCHAPTER A. GENERAL RULES

1 TAC §6.1, §6.9

The amended rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed amended rules affect Subchapter E of Chapter 571 of the Government Code

§6.1. Definitions.

The following words and terms, when used in this Part [~~part~~], shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--The Government Code, Chapter 571 (concerning Texas Ethics Commission).

(2) Administrative Procedure Act--The Government Code, Chapter 2001 (concerning Administrative Procedure).

(3) Agency--The state agency governed by the commission, as it functions and operates through the administrative staff hired by the commission and its executive director.

(4) Commission--The Texas Ethics Commission, as constituted and described in the Texas Constitution, Article 3, §24a and in the Government Code, Chapter 571.

(5) Document--A report, complaint, response, letter, or any other written material.

(6) Executive director--The person employed by the commission to serve as the agency's chief administrative officer, or any other employee of the commission acting as the designee of the executive director.

[(7) Family member or relative--An individual who is related within the second degree of affinity or consanguinity, as defined by the Government Code, Chapter 573, Subchapter B (concerning Relationships by Consanguinity or by Affinity).]

(7) [(8)] Filer--A person required to file a report with the commission or a local filing authority in accordance with a law enforced by the commission [this title].

(8) [(9)] Individual--A human being who has been born and is alive.

(9) [(10)] Local filing authority--A public servant other than the Texas Ethics Commission with whom a filer must file a report in accordance with a law enforced by the commission [this title, as identified in §20.5 of this title (relating to Reports Filed with a County Filing Authority) and §20.7 of this title (relating to Reports Filed with Other Local Filing Authority)].

(10) [(11)] Open Meetings Law--The Government Code, Chapter 551 (concerning Open Meetings).

(11) [(12)] Open Records Law--The Government Code, Chapter 552 (concerning Open Records).

(12) [(13)] Person--An individual, representative, corporation, association, or other entity, including any nonprofit corporation, or any agency or instrumentality of federal, state, or local government.

(13) [(14)] Postmark--A postal cancellation by the United States Postal Service that contains the post office name, state, and zip code and the month, day, and year the canceling post office accepted custody of the material.

[(15) Presiding officer--The person elected to serve as the commission's chairman or chairwoman under §6.21 of this title (relating to Officers of the Commission).]

(14) [(16)] Report--Any document or other information required to be filed under this title.

(15) [(17)] Staff--Employees of the commission, hired by the commission or the executive director.

(16) [(18)] Title 15--The Election Code, Title 15 (concerning Regulating Political Funds and Campaigns).

[(19) First responder--An individual who is:]

[(A) a peace officer whose duties include responding rapidly to an emergency;]

[(B) fire protection personnel, as that term is defined by Section 419.021, Government Code;]

[(C) a volunteer firefighter who performs firefighting duties on behalf of a political subdivision;]

[(D) an ambulance driver; or]

[(E) an individual certified as emergency medical services personnel by the Department of State Health Services.]

[(20) Judicial office--The office of:]

[(A) chief justice or justice, supreme court;]

[(B) presiding judge or judge, court of criminal appeals;]

[(C) chief justice or justice, court of appeals;]

[(D) district judge;]

(E) judge, statutory county court; or]

[(F) judge, statutory probate court.]

[(21) Non-judicial office--An elective public office and the secretary of state, but not including an office described by paragraph (20) of this section.]

§6.9. Computation of Time.

(a) This section states how to compute a period of time prescribed or allowed by this Part [title], by any order of the agency, or by any applicable statute. The day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period is included. However, if the last day of the time period would not be a business day as defined by Section 552.0031 of the Texas Government Code [Saturday, a Sunday, or a legal holiday], the period is extended until the next day that is [not] a business day [Saturday, a Sunday, or a legal holiday. A legal holiday, for purposes of this section, is any day other than a Saturday or Sunday that the agency is closed for a holiday established by state law].

(b) A time period described by statute or this Part [title] to be a certain number of business days is calculated under subsection (a) of this section without including any day [Saturday, Sunday, or legal holiday] within that time period that is not a business day as defined by Section 552.0031 of the Texas Government Code.

(c) A document required to be filed or served by a deadline established by statute or this title is filed or served when it is actually received. A document may be deemed to be filed or served when it is deposited with the United States Postal Service, properly addressed to the recipient, with all postage prepaid. The date of the postmark on the envelope for the document is presumed to be the date the document was deposited with the United States Postal Service.

(d) A document filed or served by delivery to the United States Postal Service is presumed to have been filed before 5:00 p.m. on the date indicated by the postmark.

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

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James Tinley
General Counsel
Texas Ethics Commission
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SUBCHAPTER B. OFFICERS AND EMPLOYEES OF THE COMMISSION

1 TAC §6.21, §6.23

The amended rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed amended rules affect Subchapter E of Chapter 571 of the Government Code.

§6.21. Officers of the Commission.

~~[(a) The commission shall select a presiding officer and a vice-presiding officer.]~~

(a) [~~(b)~~] The commission's [~~Commission~~] chair and vice chair shall be [~~officers are~~] elected annually by majority vote of the commission. The election shall take place at the first commission meeting held after June 1 of each year. Each officer shall serve until his or her successor is selected.

(b) [~~(c)~~] The chair [~~presiding officer~~] and vice chair [~~the vice-presiding officer~~] shall be members of [~~elected from~~] different political parties [~~party caucus lists~~].

(c) [~~(d)~~] The chair and vice chair [~~presiding officer~~] may be re-elected; however, if a new chair [~~presiding officer~~] is elected he or she [~~it~~] should be a member of [~~from~~] a different political party [~~caucus list~~] than the former chair [~~presiding officer~~].

(d) [~~(e)~~] The person elected to serve as the commission's chair shall also serve as the commission's presiding officer. The presiding officer shall preside at all meetings of the commission. While presiding, the presiding officer shall direct the order of the meeting, appoint committees and persons to chair committees, recognize persons to be heard at hearings, set reasonable and necessary time limits for speakers, and take other actions to clarify issues and preserve order. Unless the chair appoints a presiding officer pro tem pursuant to subsection (f) of this section, [~~When the presiding officer is absent,~~] the vice chair [~~vice-presiding officer~~] shall perform all duties of the presiding officer when the chair is absent.

(e) [~~(f)~~] In addition to other powers identified elsewhere in this Part, the [~~The~~] presiding officer may perform the following actions of the commission:

(1) Sign previously approved subpoenas and orders;

(2) Schedule hearings and meetings;

(3) Timely respond to [~~litigation~~] matters on behalf of the commission, including litigation matters, when action is required before the next scheduled meeting. [~~and is within the scope of the authorization granted by the commission; and~~]

~~[(4) Respond to matters on behalf of the commission when action is required and is within the scope of the authorization granted by the commission.]~~

(f) [~~(g)~~] The chair [~~presiding officer~~] may appoint a commissioner as presiding officer [~~chair~~] pro tem to preside over a hearing held by the commission.

(g) If the chair or vice chair is unable to participate in a matter pending before the commission, either may select a replacement from among the other commissioners to exercise their authority and fulfill their duties under this Part and any other applicable law.

§6.23. Commission Staff.

(a) The executive director is the chief administrative officer of the agency. The executive director shall attend commission meetings at the pleasure of the commission and serve as liaison between the commission and the public.

(b) The commission delegates to the executive director all powers conferred on the commission by the Act or other law, except for any power that requires a vote of the commission or approval of the chair. Any action taken by the executive director shall conform with all applicable law, including this Part [~~title~~] and other policies that may be adopted from time to time by the commission.

(c) The executive director shall attend commission meetings unless specifically excused by the commission and shall perform any duties or assignments established by the commission.

(d) The general counsel shall attend commission meetings unless specifically excused by the commission, shall provide legal advice to the commission and executive director, and shall perform any duties delegated by the executive director.

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

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James Tinley
General Counsel
Texas Ethics Commission
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SUBCHAPTER C. COMMISSION MEETINGS

1 TAC §§6.35, 6.39, 6.43, 6.45, 6.47

The amended rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed amended rules affect Subchapter E of Chapter 571 of the Government Code.

Subchapter C. Commission Meetings

§6.35. Called Meetings.

The executive director shall give notice to each commissioner of the date and time of each meeting. Notice under this section shall be provided a reasonable amount of time in advance of the meeting[~~, and may be by telephone, fax, or mail~~].

§6.39. Meeting Agenda.

(a) The agenda shall consist of agenda items proposed by the executive director prior to the meetings for which the agenda is specified. At a reasonable time before filing a copy of the agenda as required by the Open Meetings Law, the executive director shall provide a copy of the proposed agenda to the presiding officer. If the presiding officer is not reasonably available, the executive director shall [~~provide a copy of the proposed agenda to the vice-presiding officer. If the vice-presiding officer is not reasonably available, the executive director shall~~] provide a copy of the proposed agenda to any two commissioners.

(b) The presiding officer, a commission member with the consent of the presiding officer, or any two commissioners may direct the executive director to include an item on the agenda if it complies with the posting requirements specified by law. The presiding officer may direct the executive director to remove an item included on a proposed agenda unless that item is requested by two commission members other than the presiding officer.

(c) A member of the public may ask the executive director to place an item on a proposed agenda. The executive director shall advise the commission of the request and may include the item on a proposed agenda.

§6.43. Speakers Addressing the Commission.

(a) The executive director shall prescribe a speaker registration form. Each person who wishes to speak at a commission meeting shall provide the following information:

(1) the speaker's name;

(2) the person or entity the speaker represents, if any;

(3) the agenda item the speaker wishes to address; and

(4) his or her mailing address and telephone number.

(b) Any person who addresses the commission shall state his or her name and the name of the person or entity the speaker represents, if any, for purposes of the [~~tape~~] recording under §6.47 of this title (relating to [~~Tape~~] Recording of Meeting; Minutes).

§6.45. Order and Conduct of Commission Meeting.

(a) The presiding officer shall preside at all meetings of the commission. The presiding officer shall direct the order of the meeting in accordance with its agenda, recognize persons to be heard, set reasonable and necessary time limits for speakers, maintain and enforce appropriate standards of conduct, and take any other action necessary in his or her discretion to clarify issues and preserve order. [~~When the presiding officer is absent, the vice-presiding officer shall perform all duties under this subsection.~~]

(b) Commission meetings shall be conducted in accordance with rules and procedures set forth in the most recently published edition of Robert's Rules of Order.

(c) With unanimous consent of all commissioners present, any provision or requirement of this section may be waived.

(d) No action of the commission that otherwise complies with law shall be void or invalid because the action was taken in violation of a rule or procedure established by this section.

§6.47. [~~Tape~~] Recording of Meeting; Minutes.

(a) All meetings of the commission shall be [~~tape~~] recorded. The [~~tape~~] recording shall be the official record of actions taken at the meeting.

(b) The presiding officer shall announce the names of each commissioner who makes or seconds a motion to be voted upon by the commission. After the vote has been taken, the presiding officer shall announce the vote in a manner that identifies how each commissioner voted, if a commissioner abstained, or if a commissioner was not present for the vote.

(c) The executive director shall prepare minutes after each meeting that reflect all commission votes and other actions taken during the meeting. The minutes shall be approved by vote of the commission at a subsequent commission meeting.

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

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James Tinley
General Counsel
Texas Ethics Commission
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CHAPTER 6. ORGANIZATION AND ADMINISTRATION

The Texas Ethics Commission (the TEC) proposes the repeal of Texas Ethics Commission rules in Chapter 6, relating to Organization and Administration.

Specifically, the TEC proposes the repeal of rules in Subchapter A (relating to General Rules), including §6.5 regarding Authority to Adopt Rules and §6.7 regarding Actions That Require Six Votes.

The TEC also proposes the repeal of rules in Subchapter C (relating to Commission Meetings), including §6.31 regarding Quorum, and §6.33 regarding Frequency of Meetings.

This proposal, along with the contemporaneous proposal of amendments to certain other rules in Chapter 6, amends the rules used in the organization and administration of the TEC.

State law requires state agencies to "review and consider for readoption each of its rules" not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date." Tex. Gov't Code §2001.039. The law further requires agencies to "readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section."

The TEC is continuing its comprehensive review with a review of the TEC's rules regarding its organization and administration, which are codified in Chapter 6. The repeal of some rules and adoption of amendments to other rules seek to shorten, simplify, and reorganize the rules to eliminate surplusage and improve clarity on the TEC's organization and administration.

James Tinley, General Counsel, has determined that for the first five-year period the proposed repealed rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed repealed rules.

The General Counsel has also determined that for each year of the first five years the proposed repealed rules are in effect, the public benefit will be consistency and clarity in the Commission's rules regarding sworn complaint procedures. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed repealed rules.

The General Counsel has determined that during the first five years that the proposed repealed rules are in effect, they will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; create a new regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed repealed rules from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to J.R. Johnson, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed repealed rules may do so at any

Commission meeting during the agenda item relating to the proposed repealed rules. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

SUBCHAPTER A. GENERAL RULES

1 TAC §6.5, §6.7

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Chapter 571 of the Government Code.

§6.5. Authority to Adopt Rules.
§6.7. Actions That Require Six Votes.

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

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James Tinley
General Counsel
Texas Ethics Commission
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SUBCHAPTER C. COMMISSION MEETINGS

1 TAC §6.31, §6.33

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Chapter 571 of the Government Code.

§6.31. Quorum.
§6.33. Frequency of Meetings.

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

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James Tinley
General Counsel
Texas Ethics Commission
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For further information, please call: (512) 463-5800

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CHAPTER 12. SWORN COMPLAINTS

The Texas Ethics Commission (the TEC) proposes new Chapter 12 in TEC Rules, regarding Sworn Complaints.

Specifically, the TEC proposes new rules in Subchapter A of Chapter 12 (relating to Respondent's Rights), including §12.1 regarding Notice, §12.2 regarding Representation by Counsel, §12.3 regarding *Ex Parte* Communications and §12.4 regarding Agreements to be in Writing.

The TEC also proposes new rules in Subchapter B of Chapter 12 (relating to Filing and Initial Processing of Complaint), including §12.11 regarding Deadline for Filing a Complaint, §12.12 regarding File Date for a Complaint, §12.13 regarding Description of Violation, §12.14 regarding Statement of Facts and §12.15 regarding Commission Initiated Complaint.

The TEC also proposes new rules in Subchapter C of Chapter 12 (relating to Investigation and Discovery), including §12.21 regarding Response to Notice of Complaint, §12.22 regarding Written Questions, §12.23 regarding Production of Documents During Preliminary Review, §12.24 regarding Proposed Settlement Before Preliminary Review Hearing, §12.25 regarding Subpoenas Issued by Commission, and §12.26 regarding Subpoenas Issued by Counsel for the Respondent.

The TEC also proposes new rules in Division 1 of Subchapter D of Chapter 12 (relating to Pleadings and Motions: General Rules), including §12.31 regarding Purpose and Effect of Motions, §12.32 regarding Required Form of Motions, §12.33 regarding Certificate of Conference, §12.34 regarding Motion Deadlines, §12.35 regarding Method of Filing, §12.36 regarding Service of Documents, §12.37 regarding Non-conforming Documents, §12.38 regarding Amended and Supplemental Filings, and §12.39 regarding Application of this Subchapter.

The TEC also proposes new rules in Division 2 of Subchapter D of Chapter 12 (relating to Pleadings and Motions: Types of Motions), including §12.41 regarding Motion to Extend Time, §12.42 regarding Motion for Continuance, §12.43 regarding Motion to Dismiss, §12.44 regarding Motion for Summary Disposition, and §12.45 regarding Motion for Sanctions.

The TEC also proposes new rules in Division 1 of Subchapter E of Chapter 12 (relating to Hearings: General Rules), including §12.51 regarding Conduct and Decorum, and §12.52 regarding Private Deliberations.

The TEC also proposes new rules in Division 2 of Subchapter E of Chapter 12 (relating to Hearings: Powers of the Presiding Officer), including §12.61 regarding Selection and Delegation of Presiding Officer, §12.62 regarding Set Hearing, §12.63 regarding Consolidate or Sever Matters for Hearing, §12.64 regarding Conduct Hearings, §12.65 regarding Rule of Evidentiary Matters and §12.66 regarding Sign Orders and Subpoenas.

The TEC also proposes new rules in Division 3 of Subchapter E of Chapter 12 (relating to Hearings: Preliminary Review Hearings), including §12.71 regarding Notice of Preliminary Review Hearing, and §12.72 regarding Preliminary Review Hearing.

The TEC also proposes new rules in Division 4 of Subchapter E of Chapter 12 (relating to Hearings: Formal Hearings), including §12.81 regarding Order of Formal Hearing, §12.82 regarding Notice of Formal Hearing, §12.83 regarding Formal Hearing: Venue, §12.84 regarding Presentation of Evidence, §12.85 regarding Rules of Evidence, and §12.86 regarding Number of Exhibits.

The TEC also proposes new rules in Subchapter F of Chapter 12 (relating to Resolutions), including §12.91 regarding Agreed Resolutions, §12.92 regarding Resolution of Technical or De Minimis Allegations, §12.93 regarding Default Proceedings and §12.94 regarding Final Orders After Formal Hearings.

This proposal, along with the contemporaneous proposal of the repeal of all existing rules in Chapter 12, amends the rules used in sworn complaint proceedings at the Ethics Commission.

State law requires state agencies to "review and consider for readoption each of its rules" not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date. Tex. Gov't Code § 2001.039. The law further requires agencies to "readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section." *Id.*

The TEC started its comprehensive review with the TEC's rules regarding sworn complaint procedures, which are codified in Chapter 12. The repeal of existing rules and adoption of new rules seek to shorten, simplify, and reorganize the rules to eliminate surplusage and improve clarity on sworn complaint procedures.

James Tinley, General Counsel, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rules.

The General Counsel has also determined that for each year of the first five years the proposed rules are in effect, the public benefit will be consistency and clarity in the TEC's rules regarding sworn complaint procedures. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed rules.

The General Counsel has determined that during the first five years that the proposed rules are in effect, they will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; create a new regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The TEC invites comments on the proposed rules from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to J.R. Johnson, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed rules may do so at any Commission meeting during the agenda item relating to the proposed rules. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the TEC's website at www.ethics.state.tx.us.

SUBCHAPTER A. RESPONDENT'S RIGHTS

1 TAC §§12.1 - 12.4

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.1. Notice.

(a) A notice required to be sent to a complainant under chapter 571 of the Government Code shall be sent to the address most recently provided to the commission by the complainant.

(b) A notice required to be sent to a respondent under chapter 571 of the Government Code shall be sent to the address provided to the commission by the complainant or, if the respondent has provided a different address, to the address most recently provided to the commission by the respondent.

(c) A person entitled to receive notice may waive that right by filing a written waiver with the executive director.

(d) A respondent or complainant in a complaint may waive the right under section 571.032 of the Government Code to receive written notices related to the complaint by registered or certified mail, restricted delivery, return receipt requested, and may agree to receive written notices related to the complaint by first class mail, electronic mail, or other means.

§12.2. Representation by Counsel.

(a) A respondent has the right to be represented by counsel retained by the respondent in any proceeding of a complaint.

(b) Counsel representing a respondent shall enter an appearance with the commission that contains the counsel's mailing address, email address, telephone number, and state bar number. If the respondent's counsel is not licensed to practice law in Texas, the representative must show authority to appear as the respondent's counsel.

(c) The commission may, through the approval of its executive director, admit an attorney who is a resident of and licensed to practice law in another state, and who is not an active member of the State Bar of Texas, to represent a respondent before the commission if the nonresident attorney complies with the requirements of Tex. Gov't Code §82.0361 and Rule XIX of the Rules Governing Admission to the Bar of Texas and files a motion, accompanied by proof of compliance with those provisions, with the commission requesting to be admitted to represent a respondent.

(d) This rule does not allow a person to engage in the unauthorized practice of law.

§12.3. Ex Parte Communications.

Neither commission enforcement staff nor respondents may communicate with commissioners or the general counsel outside the presence of the other party for the purpose of influencing a decision on a pending sworn complaint after the commission accepts jurisdiction over an allegation.

§12.4. Agreements to be in Writing.

No stipulation or agreement with respect to any matter in a complaint shall be effective unless it has been:

(1) reduced to writing and signed by each person making the stipulation or agreement, or by that person's authorized representative, and filed with the commission; or

(2) entered into the record during the course of a hearing.

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

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James Tinley
General Counsel
Texas Ethics Commission
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SUBCHAPTER B. FILING AND INITIAL PROCESSING OF A COMPLAINT

1 TAC §§12.11 - 12.15

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.11. Deadline for Filing a Complaint.

(a) The commission has no jurisdiction over an alleged violation:

(1) if the alleged violation is also a criminal offense, and if, at the time the complaint is filed or at the time the commission would vote to initiate a preliminary review of a matter, the allegation would be barred from criminal prosecution by operation of the applicable statute of limitations; or

(2) if the alleged violation is not also a criminal offense and if the allegation is based on facts that occurred more than three years before the date the complaint is filed or the date the commission would vote to initiate a preliminary review of a matter.

(b) For purposes of this section, a complaint is not filed unless it complies with the requirements of section 571.122 of the Government Code.

§12.12. File Date for a Complaint.

The file date for a complaint is the date the complaint is received by the commission.

§12.13. Description of Violation.

(a) If a complaint does not include the specific rule or provision of law alleged to have been violated, the complaint must clearly and concisely describe facts that, if true, would constitute a violation of a law administered and enforced by the commission.

(b) A complaint that erroneously cites a specific rule or provision of law is nonetheless sufficient if the correct citation can reasonably be ascertained by the commission. When a complaint erroneously cites a specific rule or provision of law, the commission shall cite the correct rule or provision of law in the notice provided to the respondent.

§12.14. Statement of Facts.

(a) The alleged facts must provide sufficient detail to reasonably place the respondent on notice of the law violated and of the manner and means by which the violation allegedly occurred and to afford the respondent a basis on which to prepare a response.

(b) The facts alleged may adopt by reference the content of documents submitted with the complaint. However, the allegations must reasonably identify those portions of the document that are relevant to the alleged violation.

§12.15. Commission Initiated Complaint.

(a) Commission staff may gather or present documents or evidence, make recommendations, and otherwise communicate with commissioners in contemplation of, or in preparation for, a commission initiated preliminary review. Commissioners may request documents, evidence, or recommendations, and otherwise communicate with commission staff in contemplation of, or in preparation for, a commission initiated preliminary review.

(b) A preliminary review initiated by the commission under section 571.124(b) of the Government Code is deemed to be a complaint for purposes of all further proceedings under chapter 571 of the Government Code and of this chapter.

(c) Documents or evidence gathered by the commission and commission staff in contemplation of, or in preparation for, a commission initiated preliminary review are related to the processing of a preliminary review or motion for the purposes of sections 571.139 and 571.140 of the Government Code.

(d) Discussions between the commission and commission staff regarding gathering documents or evidence in contemplation of, or in preparation for, a commission initiated preliminary review are related to the processing of a preliminary review or motion for the purposes of sections 571.139 and 571.140 of the Government Code.

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SUBCHAPTER C. INVESTIGATION AND DISCOVERY

1 TAC §§12.21 - 12.26

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.21. Response to Notice of Complaint.

(a) The response required by section 571.1242 of the Government Code must:

(1) be in writing;

(2) admit or deny the allegations set forth in the complaint; and

(3) be signed by the respondent.

(b) If a respondent does not submit a response within the time period prescribed by section 571.1242 of the Government Code, the commission may issue an order imposing a civil penalty for failure to file a response.

(c) If a respondent does not submit a response that satisfies the requirements of subsection (a) of this section, the commission may issue an order imposing a penalty for failure to file a complete response.

§12.22. Written Questions.

(a) A complainant or respondent must respond to written questions not later than 15 business days after receiving the written questions.

(b) If the commission staff submits written questions to a respondent, the 120-day deadline for the commission to propose an agreement to the respondent or dismiss the complaint (provided in section 571.1242(g) of the Government Code) is tolled beginning on the date the commission sends the written questions and resets on the date the commission receives the respondent's written response.

§12.23. Production of Documents During Preliminary Review.

(a) Before applying for the commission to issue a subpoena under §571.137(a-1) of the Government Code, commission staff must send to the person from whom records are sought a written request for the production or inspection of documents or other tangible things that:

(1) specifies the items to be produced or inspected, either by individual item or by category, and describes with reasonable particularity each item and category; and

(2) provides a reasonable amount of time, but not less than 30 days, to comply with the request.

(b) The person from whom records are sought must produce or allow the inspection of documents or other tangible things within the person's possession, custody or control within the time provided in the request, or submit in writing, as appropriate:

(1) objections to those records that are unreasonable, improper, or unnecessary to investigate the complaint; or

(2) that, after a diligent search, no items have been identified that are responsive to the request.

(c) Commission staff shall provide to the commission any response it receives to its request for production or inspection when applying for a subpoena under §571.137(a-1) of the Government Code.

(d) If the commission staff applies to the commission for the issuance of a subpoena pursuant to section 571.137(a-1) of the Government Code, the 120-day deadline for the commission to propose an agreement to the respondent or dismiss the complaint (provided in section 571.1242(g) of the Government Code) is tolled beginning on the date the staff applies to the commission for the subpoena and resets on either:

(1) the date the commission rejects the staff's application for a subpoena;

(2) the date the person to whom the subpoena is directed complies with the subpoena; or

(3) the date the commission receives a final ruling on a person's failure or refusal to comply with a subpoena that is reported to a district court pursuant to section 571.137(c) of the Government Code.

§12.24. Proposed Settlement Before Preliminary Review Hearing.

If commission staff proposes to a respondent an agreement to settle a complaint that would be effective upon approval by the commission and the respondent, the 120-day deadline for the commission to propose an agreement to the respondent or dismiss the complaint (provided in section 571.1242(g) of the Government Code) is met. If a respondent approves a proposed agreement, commission staff must submit the proposed agreement to the commission to seek final approval at the next scheduled commission meeting. If a respondent rejects a proposed agreement, the matter shall be set for a preliminary review hearing at the next commission meeting for which notice has not yet been posted. If a respondent rejects a proposed agreement within 45 days before the date of a commission meeting, the matter shall be set for a preliminary review hearing at the next commission meeting thereafter.

§12.25. Subpoenas Issued by Commission.

(a) A subpoena issued under §571.137 of the Government Code shall specify the date, time, place, and manner for execution of the subpoena.

(b) A subpoena issued under section 571.137 of the Government Code that requires a person to provide testimony shall be served on that person at least 10 business days before the date the subpoena is to be executed.

(c) A subpoena sought by commission staff under section 571.137(a) of the Government Code must be requested in writing and may be approved and issued by the unanimous agreement of the chair and vice chair. If either the chair or vice chair does not approve the request, then staff may seek approval through a vote of the commission, in which case the subpoena will be issued upon the affirmative vote of five commissioners.

§12.26. Subpoenas Issued by Counsel for the Respondent.

(a) This section applies only to subpoenas issued by a respondent's counsel under section 571.125(f) (concerning the issuance of a subpoena for a witness in a preliminary review hearing) or 571.130(f) (concerning the issuance of a subpoena for a witness in a formal hearing) of the Government Code.

(b) A subpoena must be issued in the name of "The State of Texas" and must:

(1) state the sworn complaint numbers for the sworn complaints at issue in the hearing at which the witness is summoned to appear;

(2) state that the subpoena pertains to a sworn complaint proceeding before the Texas Ethics Commission;

(3) state the date on which the subpoena is issued;

(4) identify the person to whom the subpoena is directed;

(5) state the time and place of the preliminary review hearing or formal hearing at which the subpoena directs the person to appear;

(6) identify the respondent at whose instance the subpoena is issued and the respondent's attorney of record;

(7) specify with reasonable particularity any documents with which the person to whom the subpoena is directed shall appear;

(8) state the text of § 12.31(i) of this chapter; and

(9) be signed by the attorney issuing the subpoena.

(c) A subpoena must command the person to whom it is directed to appear and give testimony at:

(1) a preliminary review hearing; or

(2) a formal hearing.

(d) A subpoena may only direct a person to appear, with or without documents, and give testimony at a preliminary review hearing or formal hearing before the commission.

(e) A subpoena may be issued only by the counsel of record for a respondent in a sworn complaint proceeding before the commission against that respondent.

(f) Service.

(1) Manner of service. A subpoena may be served at any place within the State of Texas by any sheriff or constable of the State of Texas, or any person who is not a party and is 18 years of age or older. A subpoena must be served by delivering a copy to the witness and tendering to that person any fees required by law. If the witness is a party and is represented by an attorney of record in the sworn complaint proceeding, the subpoena may be served on the witness's attorney of record.

(2) Deadline for service. A subpoena must be served upon the person required to appear at least 21 days before the preliminary review hearing or formal hearing at which the person is required to appear. The subpoena and proof of service must be filed with the commission within three days of its service on the person required to appear.

(3) Proof of service. Proof of service must be made by filing either:

(A) the witness's signed written memorandum attached to the subpoena showing that the witness accepted the subpoena; or

(B) a statement by the person who made the service stating the date, time, and manner of service, and the name of the person served.

(g) Response.

(1) Except as provided in this subsection, a person served with a subpoena must comply with the command stated therein unless discharged by the commission or by the party summoning such witness. A person commanded to appear and give testimony must remain at the place of hearing from day to day until discharged by the commission or the party summoning the witness.

(2) If a subpoena commanding testimony is directed to a corporation, partnership, association, governmental agency, or other organization, and the matters on which examination is requested are described with reasonable particularity, the organization must designate one or more persons to testify on its behalf as to matters known or reasonably available to the organization.

(3) A person commanded to appear with documents must produce the documents as they are kept in the usual course of business or must organize and label them to correspond with the categories in the demand.

(4) A person commanded to appear at a hearing must file any motion to quash the subpoena or objection to a requirement to appear with certain documents with the commission no later than the 14th day before the hearing at which the person is directed to appear. Commission staff may move to quash a subpoena or object to appearance with certain documents in the same manner as the person commanded to appear by the subpoena. The filer of a motion to quash or objection to a requirement to appear with certain documents must serve the motion or objection on the proponent of the subpoena in person, by mail, by commercial delivery service, by fax, by email, or by other such manner as the presiding officer of the commission may direct, no later than the deadline for filing the motion to quash or objection to appearance with documents with the commission. After affording commission staff and the person commanded to appear an opportunity to move to quash the subpoena or object to appearance with certain documents, and affording the proponent of the subpoena an opportunity to respond to the motion to quash or objection to appearance with documents, the commission's presiding officer shall rule on a motion to quash or objection to appearance with documents.

(5) A person commanded to attend and give testimony, or to produce documents or things, at a preliminary review hearing or formal hearing may object to giving testimony or producing documents at the time and place specified for the hearing, rather than under subsection (g)(4) of this section.

(6) A party's appearance with a document in response to a subpoena directing the party to appear with the document authenticates the document for use against that party in any proceeding before the commission unless the party appearing with the document objects to the authenticity of the document, or any part of it, at the time of the party's appearance, stating the specific basis for objection. An objection must have a good faith factual and legal basis. An objection made to the authenticity of only part of a document does not affect the authenticity of the remainder. If objection is made, the party attempting to use the document should be given a reasonable opportunity to establish its authenticity. The requirement that the commission provide a reasonable opportunity to establish the document's authenticity may be satisfied by the opportunity to present a witness to authenticate the document at a subsequent hearing before the commission.

(h) A counsel for a respondent issuing a subpoena must take reasonable steps to avoid imposing undue burden or expense on the person served. In ruling on a motion to quash or objection to appearance with documents, the presiding officer must provide a person served with a subpoena an adequate time for compliance, protection from disclosure of privileged material or information, and protection from undue burden or expense. The presiding officer may impose reasonable conditions on compliance with a subpoena, including compensating the witness for undue hardship.

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SUBCHAPTER D. PLEADINGS AND MOTIONS
DIVISION 1. GENERAL RULES

1 TAC §§12.31 - 12.39

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.31. Purpose and Effect of Motions.

To make a request, including to obtain a ruling, order, or any other procedural relief, a party shall file a written motion. The motion shall describe specifically the action requested and the basis for the requested action. Unless otherwise specified in this chapter, a motion is not granted until it has been ruled on by the executive director, the presiding officer, or by vote of the commission, as applicable, even if the motion is uncontested or agreed.

§12.32. Required Form of Motions.

Written requests for commission action shall be typewritten or printed legibly on 8-1/2 x 11-inch paper and timely filed with the commission. Photocopies are acceptable if copies are clear and legible. All filings shall contain or be accompanied by the following:

(1) the name of the party seeking action;

(2) the sworn complaint number;

(3) the parties to the case and their status as commission staff or respondent;

(4) a concise statement of the type of relief, action, or order desired and identification of the specific reasons for and facts to support the action requested;

(5) the signature of the submitting party or the party's authorized representative;

(6) a proposed order sought by the moving party; and

(7) a reference in the motion's title to a request for a hearing on the motion if the moving party seeks a hearing.

§12.33. Certificate of Conference.

Except as provided in this chapter or unless otherwise ordered by the presiding officer, all motions shall include a certificate of conference that complies substantially with one of the following examples:

(1) Example one: "Certificate of Conference: I certify that I conferred with {name of other party or other party's authorized representative} on {date} about this motion. {Succinct statement of other party's position on the action sought and/or a statement that the parties negotiated in good faith but were unable to resolve their dispute before submitting it to the commission for resolution.} Signature."; or

(2) Example two: "Certificate of Conference: I certify that I made reasonable but unsuccessful attempts to confer with {name of other party or other party's authorized representative} on {date or dates} about this motion. {Succinctly describe these attempts.} Signature."

§12.34. Motion Deadlines.

(a) The following deadlines apply to motions in which a hearing is either sought by a party or scheduled by the presiding officer:

(1) motions must be filed with the commission no later than 30 days before the date of the hearing;

(2) responses to motions must be filed with the commission no later than 14 days before the date of the hearing; and

(3) replies to responses must be filed with the commission no later than 7 days before the date of the hearing.

(b) A scheduling order containing the deadlines under this section shall be included with the notice required by section 571.126 of the Government Code. The presiding officer may amend a scheduling order upon the request of a party for good cause shown. A decision by the presiding officer to amend a scheduling order or to deny a motion, response, or evidence shall be issued to the parties to a hearing within 5 business days after the decision is made.

(c) Except as otherwise provided in this chapter or as ordered or allowed by the commission, responses to motions shall be in writing and filed by the applicable deadline. However, if the presiding officer finds good cause has been shown, responses to written motions may be presented orally at hearing.

(d) The presiding officer may deny a party's motions, responses, or replies or deny a party's evidence from being admitted into the record of the hearing if the party fails to timely file.

§12.35. Method of Filing.

(a) Motions, responses, and other documents in a sworn complaint proceeding must be filed with the commission by emailing it to sworncomplaints@ethics.state.tx.us and including the following information in the subject line:

(1) the sworn complaint number; and

(2) the title of the document.

(b) The time and date of filing is the electronic time stamp affixed by the commissions email system. Documents received when the commission is closed shall be deemed filed the next business day.

§12.36. Service of Documents.

(a) On the same date a document is filed with the commission, a copy shall also be sent to each party or the party's authorized representative by hand-delivery; by regular, certified, or registered mail; or by email, upon agreement of the parties.

(b) A person filing a document shall include a certificate of service that certifies compliance with this section.

(1) A certificate of service shall be sufficient if it substantially complies with the following example: "Certificate of Service: I certify that on {date}, a true and correct copy of this {name of document} has been sent to {name of opposing party or authorized representative for the opposing party} by {specify method of delivery, e.g., email, regular mail, fax, certified mail.} {Signature}."

(2) If a filing does not certify service, the commission may:

(A) return the filing;

(B) send a notice of noncompliance to all parties, stating the filing will not be considered until all parties have been served; or

(C) send a copy of the filing to all parties.

(c) The following rebuttable presumptions shall apply regarding a party's receipt of documents served by another party:

(1) If a document was hand-delivered to a party, the commission shall presume that the document was received on the date of filing at the commission.

(2) If a document was served by courier-receipted overnight delivery, the commission shall presume that the document was received no later than the next business day after filing at the commission.

(3) If a document was served by regular, certified, or registered mail, or non-overnight courier-receipted delivery, the commission shall presume that it was received no later than three days after mailing.

(4) If a document was served by fax or email before 5:00 p.m. on a business day, the commission shall presume that the document was received on that day; otherwise, the commission shall presume that the document was received on the next business day.

(d) The sender has the burden of proving date and time of service.

§12.37. Non-conforming Documents.

When a filed document fails to conform to the requirements of this subchapter, the executive director may either:

(1) reject the filing, identify the errors to be corrected and state a deadline for correction; or

(2) accept the filing.

§12.38. Amended and Supplemental Filings.

A party may amend or supplement its pleadings as follows:

(1) If a notice of a hearing or other documents provided to the complainant or respondent under section 571.126(b)(2) of the Government Code contain a material defect, the commission may correct the notice or other document and deliver it to the complainant and respondent as soon as practicable and in the same manner as the original notice. If the respondent does not receive the correction at least 10 days before the date of the hearing, the presiding officer may by order reschedule the hearing. The executive director shall notify the parties and the complainant of the date, time, and place of the hearing as soon as practicable.

(2) As to all other matters, an amendment or supplementation that includes information material to the substance of a hearing, requests for relief, changes to the scope of a hearing, or other matters that unfairly surprise other parties may not be filed later than seven days before the date of the hearing, except by agreement of all parties or by permission of the presiding officer.

§12.39. Application of this Subchapter.

If there is a conflict between this section and a requirement found in another section relating to a specific type of motion, the more specific provision applies.

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DIVISION 2. TYPES OF MOTIONS

1 TAC §§12.41 - 12.45

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.41. Motion to Extend Time.

(a) The executive director may extend a deadline pursuant to §571.136 of the Government Code.

(b) A request for more time to file a document or respond to discovery shall include:

(1) a statement of the number of extension requests previously sought in the case by the movant;

(2) the specific reason for the request; and

(3) a proposed date for the deadline the movant seeks to extend.

(c) Motions to extend time shall be filed no later than five days before the date of the deadline at issue or shall state good cause for presenting the motion after that time. If the executive director finds good cause has been demonstrated, the executive director may consider a motion filed after that time.

(d) Unless otherwise ordered by the executive director, responses to motions for extension of a deadline are due three days after receipt of the motion.

(e) A motion for continuance or extension of time is not granted until it has been ruled on by the executive director, even if the motion is uncontested or agreed.

§12.42. Motion for Continuance.

(a) The presiding officer may postpone or delay a hearing.

(b) A request to postpone or delay a hearing shall include:

(1) a statement of the number of motions for continuance previously filed in the case by the movant;

(2) the specific reason for the request; and

(3) whether the movant is available if the hearing or prehearing conference is continued to the next tentatively scheduled commission meeting.

(c) Motions for continuance shall be filed no later than five days before the date of the proceeding or shall state good cause for presenting the motion after that time. If the presiding officer finds good cause has been demonstrated, the presiding officer may consider a motion filed after that time.

(d) Responses to motions for continuance shall be in writing, except a response to a motion for continuance made on the date of the proceeding may be presented orally at the proceeding. Unless otherwise ordered or allowed by the presiding officer, responses to motions for continuance shall be made by the earlier of:

(1) three days after receipt of the motion; or

(2) the date and time of the proceeding.

(d) A motion for continuance is not granted until it has been ruled on by the presiding officer, even if the motion is uncontested or agreed.

§12.43. Motion to Dismiss.

(a) A party may move to dismiss a complaint in whole or in part on the grounds that an alleged violation has no basis in law or fact. An alleged violation has no basis in law if the allegations, if taken as true, together with inferences reasonably drawn from them do not constitute a violation of a rule adopted by or a law administered and enforced by the commission. An alleged violation has not basis in fact if no reasonable person could believe the facts alleged.

(b) A motion to dismiss must identify each alleged violation to which it is addressed, and must state specifically the reasons the alleged violation has no basis in law, no basis in fact, or both.

(c) The commission may, but is not required to, conduct an oral hearing on the motion to dismiss. The commission may not consider evidence in ruling on the motion and must decide the motion based solely on the facts alleged in the complaint, together with any complaint exhibits permitted by commission rule or statute.

§12.44. Motion for Summary Disposition.

(a) Summary disposition shall be granted on all or part of a complaint's allegations if the allegations, the motion for summary disposition, and the summary disposition evidence show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor as a matter of law on all or some of the issues expressly set out in the motion. Summary disposition is not permitted based on the ground that there is no evidence of one or more

essential elements of a claim or defense on which the opposing party would have the burden of proof at the formal hearing.

(b) Unless otherwise ordered by the presiding officer:

(1) A party must file a motion for summary disposition at least 45 days before a scheduled hearing on the merits.

(2) The response and opposing summary disposition evidence shall be filed no later than 15 days after the filing of the motion.

(c) A motion for summary disposition shall include the contents listed below. A motion may be denied for failure to comply with these requirements.

(1) The motion shall state the specific issues upon which summary disposition is sought and the specific grounds justifying summary disposition.

(2) The motion shall also separately state all material facts upon which the motion is based. Each material fact stated shall be followed by a clear and specific reference to the supporting summary disposition evidence.

(3) The first page of the motion shall contain the following statement in at least 12-point, bold-face type: "Notice to parties: This motion requests the commission to decide some or all of the issues in this case without holding an evidentiary hearing on the merits. You have 15 days after the filing of the motion to file a response. If you do not file a response, this case may be decided against you without an evidentiary hearing on the merits."

(d) Responses to motions.

(1) A party may file a response and summary disposition evidence to oppose a motion for summary disposition.

(2) The response shall include all arguments against the motion for summary disposition, any objections to the form of the motion, and any objections to the summary disposition evidence offered in support of the motion.

(e) Summary disposition evidence.

(1) Summary disposition evidence may include deposition transcripts; interrogatory answers and other discovery responses; pleadings; admissions; affidavits; materials obtained by discovery; matters officially noticed; stipulations; authenticated or certified public, business, or medical records; and other admissible evidence. No oral testimony shall be received at a hearing on a motion for summary disposition.

(2) Summary disposition may be based on uncontroverted written testimonial evidence of an interested witness, or of an expert witness as to subject matter concerning which the presiding officer must be guided solely by the opinion testimony of experts, if the evidence is clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted.

(3) All summary disposition evidence offered in support of or in opposition to a motion for summary disposition shall be filed with the motion or response. Copies of relevant portions of materials obtained by discovery that are relied upon to support or oppose a motion for summary disposition shall be included in the summary disposition evidence.

(f) Proceedings on motions.

(1) The presiding officer may order a hearing on a motion for summary disposition and the commission may rule on the motion without a hearing.

(2) The affirmative vote of six commissioners is necessary to grant summary disposition finding a violation by a preponderance of the evidence.

(3) If summary disposition is granted on all contested issues in a case, the record shall close on the date ordered by the presiding officer or on the later of the filing of the last summary disposition arguments or evidence, the date the summary disposition response was due, or the date a hearing was held on the motion. The commission shall issue a final decision and written report, including a statement of reasons, findings of fact, and conclusions of law in support of the summary disposition rendered.

(4) If summary disposition is granted on some but not all of the contested issues in a case, the commission shall not take evidence or hear further argument upon the issues for which summary disposition has been granted. The commission shall issue an order:

(A) specifying the facts about which there is no genuine issue;

(B) specifying the issues for which summary disposition has been granted; and

(C) directing further proceedings as necessary. If an evidentiary hearing is held on the remaining issues, the facts and issues resolved by summary disposition shall be deemed established, and the hearing shall be conducted accordingly. After the evidentiary hearing is concluded, the commission shall include in the final decision a statement of reasons, findings of fact, and conclusions of law in support of the partial summary disposition rendered.

§12.45. Motion for Sanctions.

(a) The commission has the authority to impose appropriate sanctions against a party or its representative for:

(1) filing a motion or pleading that is deemed by the commission to be groundless and brought:

(A) in bad faith;

(B) for the purpose of harassment; or

(C) for any other improper purpose, such as to cause unnecessary delay or needless increase in the cost of the proceeding;

(2) abuse of the discovery process in seeking, making, or resisting discovery;

(3) failure to comply with a commission order; or

(4) violating §2.51 of this chapter.

(b) By record vote of at least six commissioners, the commission may issue an order imposing sanctions when justified by party or representative behavior described in subsection (a) of this section and after notice and opportunity for hearing. Sanctions may include:

(1) disallowing or limiting further discovery by the offending party;

(2) charging all or part of the expenses of discovery against the offending party or its representatives;

(3) deeming designated facts be admitted for purposes of the proceeding;

(4) refusing to allow the offending party to support or oppose a claim or defense or prohibiting the party from introducing designated matters into the record;

(5) disallowing in whole or in part requests for relief by the offending party and excluding evidence in support of those requests; and

(6) striking motions or testimony in whole or in part.

(c) In deciding if a complaint is frivolous, the commission will be guided by the Texas Rules of Civil Procedure, Rule 13, and interpretations of that rule, and may also consider:

(1) the timing of the complaint with respect to when the facts supporting the alleged violation became known or should have become known to the complainant, and with respect to the date of any pending election in which the respondent is a candidate or is involved with a candidacy, if any;

(2) the nature and type of any publicity surrounding the filing of the complaint, and the degree of participation by the complainant in publicizing the fact that a complaint was filed with the commission;

(3) the existence and nature of any relationship between the respondent and the complainant before the complaint was filed;

(4) if respondent is a candidate for election to office, the existence and nature of any relationship between the complainant and any candidate or group opposing the respondent;

(5) any evidence that the complainant knew or reasonably should have known that the allegations in the complaint were groundless; and

(6) any evidence of the complainant's motives in filing the complaint.

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SUBCHAPTER E. HEARINGS
DIVISION 1. GENERAL RULES

1 TAC §§12.51 - 12.53

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.51. Conduct and Decorum.

(a) Parties, representatives, and other participants at a hearing shall conduct themselves with dignity, show courtesy and respect for one another and for the commission, and follow any additional guidelines of decorum prescribed by the presiding officer, including adherence to the amount of time allotted for the hearing. Attorneys shall adhere to the standards of conduct in the Texas Lawyer's Creed promulgated by the Supreme Court of Texas and the Court of Criminal Appeals and the Texas Disciplinary Rules of Professional Conduct promulgated by the Supreme Court of Texas.

(b) Attorneys should advise their clients and witnesses of the applicable rules of conduct and decorum.

(c) All objections, arguments, and other comments by parties shall be directed to the commission and not to an opposing party.

(d) While a party is addressing the commission or questioning a witness, any other party shall not interrupt for any purpose except to make a valid objection.

(e) Parties shall not approach the dais without leave of the presiding officer and must not lean on the dais.

(f) Parties shall remain seated at the counsel table at all times except:

(1) when addressing the commission; and

(2) whenever it may be proper to handle documents, exhibits, or other evidence.

(g) Parties must question witnesses and deliver arguments to the commission while seated at the counsel table or standing at the lectern. If a party seeks to question or argue from another location, leave of the presiding officer must be requested and granted.

(h) Parties must request leave of the presiding officer to conduct a demonstration.

(i) The presiding officer may take appropriate action to maintain and enforce proper conduct and decorum, including:

(1) issuing a warning;

(2) sanctioning a party pursuant to §12.33 of this chapter;

(3) excluding persons from the proceeding;

(4) recessing the proceeding; and

(5) clearing the hearing room of persons causing a disruption.

§12.52. Private Deliberations.

As provided by section 571.139 of the Government Code, the commission may deliberate in private regarding the resolution of a sworn complaint or motion, including a dismissal of a complaint, a determination of whether a violation within the jurisdiction of the commission has occurred, and an appropriate penalty upon a finding of a violation. As provided by section 2001.061 of the Government Code, the presiding officer may permit the executive director, general counsel, or other employee of the commission who has not participated in a hearing in the complaint for the purpose of using the special skills or knowledge of the agency and its staff in evaluating the evidence.

§12.53. Record of Rulings.

Rulings not made orally at a recorded hearing shall be in writing and issued to all parties of record.

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

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James Tinley
General Counsel
Texas Ethics Commission
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For further information, please call: (512) 463-5800

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DIVISION 2. POWERS OF THE PRESIDING OFFICER

1 TAC §§12.61 - 12.66

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.61. Selection and Delegation of Presiding Officer.

(a) Except as otherwise provided in subsection (b), the commission's chair shall serve as the presiding officer for all hearings.

(b) The chair may appoint another commissioner to preside over a hearing held by the commission.

§12.62. Set Hearings.

The presiding officer may order that one or more hearings be held to address any matters pending in a sworn complaint proceeding, including motions to dismiss, motions for discovery or subpoenas, motions for sanctions, or any other matters related to the proceeding. The commission shall provide such an order to the parties and the complainant within five business days after the decision is made. The order shall include the date, time, and place of the hearing and a list of the matters to be addressed at the hearing.

§12.63. Consolidate or Sever Matters for Hearing.

(a) The presiding officer may order that cases be consolidated or joined for hearing if there are common issues of law or fact and consolidation or joint hearing will promote the fair and efficient handling of the matters.

(b) The presiding officer may order severance of issues if separate hearings on the issues will promote the fair and efficient handling of the matters.

§12.64. Conduct Hearings.

(a) The presiding officer shall have the authority and duty to conduct a full, fair, and efficient hearing, including the power to:

(1) administer oaths;

(2) take testimony, including the power to question witnesses and to request the presence of a witness from a state agency;

(3) require the prefiling of exhibits and testimony;

(4) exclude irrelevant, immaterial, or unduly repetitious testimony;

(5) reasonably limit the time for presentations of evidence or argument;

(6) reopen the record when justice requires, if the commission has not issued a final order; and

(7) take other steps conducive to a fair and efficient formal hearing.

§12.65. Rule on Evidentiary Matters.

The presiding officer shall have the power to rule on admissibility and other questions of evidence.

§12.66. Sign Orders and Subpoenas

The presiding officer may sign previously approved subpoenas and orders.

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

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DIVISION 3. PRELIMANARY REVIEW HEARINGS

1 TAC §12.71, §12.72

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.71. Notice of Preliminary Review Hearing.

(a) Commission staff shall provide notice of a preliminary review hearing to a respondent and complainant at least 10 days before the date of the hearing and must include:

(1) the date, time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved; and

(4) a short and plain statement of the factual matters asserted.

(b) Commission staff shall provide to a respondent at least 10 days before the date of the hearing:

(1) a list of proposed witnesses to be called at the hearing and a brief statement as to the nature of the testimony expected to be given by each witness to be called at the hearing; and

(2) copies of all documents expected to be used or introduced as exhibits at the hearing.

(c) The respondent shall provide to commission staff the contents described by paragraphs (b)(1) and (2) of this section at least 5 days before the date of the hearing. If a respondent or commission staff fail to comply with this section, the commission may reschedule the hearing or proceed with the hearing and exclude at the hearing evidence, documents, and testimony provided by the respondent or commission staff, as applicable, but such failure may be excused upon a showing of good cause.

§12.72. Preliminary Review Hearing.

(a) Commission staff and the respondent may present any relevant evidence at a preliminary review hearing, including examination and cross-examination of witnesses.

(b) Commission staff and the respondent may present an opening and closing statement at a preliminary review hearing.

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

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DIVISION 4. FORMAL HEARINGS

1 TAC §§12.81 - 12.86

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.81. Order of Formal Hearing.

As soon as practicable after the commission orders a formal hearing, the executive director shall provide to the parties to the complaint, and to the complainant, a copy of the commission's decision to order the hearing. The decision shall include the date, time, and place of the hearing and be signed by the presiding officer.

§12.82. Notice of Formal Hearing.

(a) Commission staff shall provide notice of a formal hearing to a respondent and complainant at least 60 days before the date of the hearing and must include, in addition to the contents required by section 571.126(b) of the Government Code:

(1) the date, time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved; and

(4) a short and plain statement of the factual matters asserted.

(b) Commission staff shall file and provide to a respondent and complainant at least 30 days before the date of the hearing:

(1) a list of proposed witnesses to be called at the hearing and a brief statement as to the nature of the testimony expected to be given by each witness to be called at the hearing; and

(2) copies of all documents expected to be used or introduced as exhibits at the hearing.

(c) The respondent shall file and provide to commission staff at least 14 days before the date of the hearing:

(1) a list of proposed witnesses to be called at the hearing and a brief statement as to the nature of the testimony expected to be given by each witness to be called at the hearing; and

(2) copies of all documents expected to be used or introduced as exhibits at the hearing.

(d) If a respondent or commission staff fail to comply with this section, the commission may reschedule the hearing or proceed with the hearing and exclude at the hearing evidence, documents, and testimony provided by the respondent or commission staff, as applicable, but such failure may be excused upon a showing of good cause.

§12.83. Formal Hearing: Venue.

When the commission orders a formal hearing the commission shall decide whether the formal hearing will be held before the commission or before the State Office of Administrative Hearings.

§12.84. Presentation of Evidence.

(a) After the resolution of all prehearing matters, each party shall make its presentation during the formal hearing. Commission staff shall make the first opening statement. The respondent or respondent's authorized representative shall then make an opening statement, should the respondent wish to do so at that time. The respondent may reserve the opening statement until the presentation of the respondent's case.

(b) Following opening statements, commission staff may present evidence in its case. At the conclusion of the presentation of the evidence, commission staff may rest. The respondent or the respondent's authorized representative may then make an opening statement, or, if an opening statement has already been made, present evidence in its defense of the allegations raised in the notice of formal hearing. At the conclusion of the presentation of evidence by the respondent, the respondent may rest.

(c) After both parties have rested their case, commission staff shall make a closing argument. The respondent may then make a closing argument. Commission staff may then make a reply.

(d) Unless otherwise ordered by the presiding officer, after closing arguments, evidence will be closed and the case will be turned over to the members of the commission for deliberation and decision.

§12.85. Rules of Evidence.

(a) The Texas Rules of Evidence as applied in a nonjury civil case in district court govern a formal hearing only to the extent consistent with Chapter 571 of the Government Code.

(b) Evidence may be admitted if it meets the standards set out in section 2001.081 of the Government Code.

§12.86. Numbering of Exhibits.

(a) Each exhibit to be offered shall first be numbered by the offering party.

(b) Copies of the original exhibit shall be furnished by the party offering the exhibit to the commission and to each party present at the hearing unless otherwise ordered by the presiding officer.

(c) An exhibit excluded from evidence will be considered withdrawn by the offering party and will be returned to the party.

(d) Pre-numbered exhibits may be filed with the commission prior to the formal hearing. Pre-numbered exhibits that are not offered and admitted at the hearing will be deemed withdrawn.

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

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SUBCHAPTER F. RESOLUTIONS

1 TAC §§12.91 - 12.94

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.91. Agreed Resolutions.

(a) Upon the affirmative vote of six commissioners, the commission may enter into an agreed resolution with a respondent to settle a complaint filed against the respondent, including an assurance of voluntary compliance, a notice of reporting error, or an agreed order.

(b) An assurance of voluntary compliance:

(1) resolves a sworn complaint:

(A) with no determination that a violation within the jurisdiction of the commission has occurred, if entered into before a preliminary review hearing is completed; or

(B) with a determination that all violations within the jurisdiction of the commission, when viewed as a whole in consideration of any mitigating action taken by the respondent, are technical or de minimis; and

(2) may include a civil penalty.

(c) A notice of reporting error resolves a complaint with a determination that all violations within the jurisdiction of the commission are reporting errors that do not materially defeat the purpose of disclosure and may include a civil penalty in the form of an assessment fee.

(d) An agreed order resolves a sworn complaint with a determination that one or more violations within the jurisdiction of the commission occurred and may include a civil penalty.

§12.92. Resolution of Technical or De Minimis Allegations.

(a) Technical, clerical, or de minimis violations for purposes of §§571.0631 and 571.140 of the Government Code means any violation of law under the TEC's jurisdiction that neither materially affects disclosure nor undermines public trust in government.

(b) Examples of technical, clerical, or de minimis violations include:

(1) Typographical or incomplete information on a campaign finance report that is not misleading and does not materially affect disclosure;

(2) Failure to include a disclosure statement or a highway right-of-way notice on political advertising;

(3) Failure of a non-incumbent to use the word "for" in a campaign communication that is not otherwise misleading;

(4) Failure to file a timely campaign finance report or campaign treasurer appointment if the alleged violations do not materially affect disclosure;

(5) Failure to timely respond to a sworn complaint if the respondent shows good cause for the late response.

(c) During the review of a sworn complaint under Chapter 571, Subchapter E of the Government Code, if the executive director determines that all of the alleged violations in the sworn complaint are technical or de minimis, the executive director may enter into an assurance of voluntary compliance with the respondent. Before entering into an assurance of voluntary compliance, the executive director may require a respondent to correct the violations.

§12.93. Default Proceedings.

(a) If a respondent fails to respond to a complaint by the deadline set by Section 571.1242 or fails to appear for a formal hearing, the commission may, upon notice and hearing, proceed on a default basis.

(b) A default proceeding under this section requires adequate proof of the following:

(1) the notice of hearing to the respondent stated that the allegations listed in the notice could be deemed admitted and that the relief sought in the notice of hearing might be granted by default against the party that fails to appear at the hearing;

(2) the notice of hearing satisfies the requirements of sections 2001.051 and 2001.052 of the Government Code; and

(3) the notice of hearing was:

(A) received by the defaulting party; or

(B) sent by regular mail or by certified mail, restricted delivery, return receipt requested, to the party's last known address as shown by the commission's records.

(c) In the absence of adequate proof to support a default, the presiding officer shall continue the hearing and direct commission staff to provide adequate notice of hearing. If adequate notice is unable to be provided, the commission may dismiss the complaint.

(d) Upon receiving the required showing of proof to support a default, the commission may by vote deem admitted the allegations in the notice of hearing and issue a default decision.

§12.94. Final Orders after Formal Hearings.

(a) The commission should issue a final order within 60 days after the conclusion of a formal hearing.

(b) The executive director shall dismiss a complaint if the commission fails to adopt a motion under section 571.132 of the Government Code. The dismissal shall state the complaint was dismissed because there were insufficient commission votes to find that there was or was not a violation of law.

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

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CHAPTER 12. SWORN COMPLAINTS

The Texas Ethics Commission (the TEC) proposes the repeal of all existing rules in Texas Ethics Commission Chapter 12.

Specifically, the Commission proposes the repeal of all rules in Subchapter A of Chapter 12 (relating to General Provision and Procedures), including §12.5, regarding Deadline for Filing a Complaint, §12.6 regarding File Date for Purposes of Commission Response Deadline, §12.7 regarding Confidentiality,

§12.9 regarding Compliance with Open Meetings Law and Open Records Law, §12.11 regarding Delegation to Executive Director, §12.13 regarding Representation by Counsel, §12.15 regarding Appearance of Complainant at Hearing, §12.19 regarding Agreements to be in Writing, §12.21 regarding Notice, §12.23 regarding Hearing in Respondent's Absence, §12.25 regarding Waiver of Hearing, §12.27 regarding Deadline Extension, §12.28 regarding Production of Documents during Preliminary Review, §12.29 regarding Subpoenas Issued by Commission, §12.30 regarding Subpoenas Issued by Counsel for the Respondent, §12.31 regarding Conduct and Decorum, §12.33 regarding Sanctioning Authority, §12.34 regarding Agreed Orders, §12.35 regarding frivolous Complaint, and §12.36 regarding Assessment of Civil Penalty.

The TEC also proposes the repeal of all rules in Subchapter B of Chapter 12 (relating to Filing and Initial Processing of a Complaint), including §12.51 regarding Non-Complying Complaint, §12.52 regarding Response to Notice of Complaint, §12.53 regarding Commission Initiated Complaint, §12.59 regarding Description of Violation, §12.61 regarding Statement of Facts, and §12.67 regarding Copies and Documents Provided by the Commission.

The TEC also proposes the repeal of all rules in Subchapter C of Chapter 12 (relating to Investigation and Preliminary Review), including §12.81 regarding Technical, Clerical or De Minimis Violations, and §12.83 regarding Preliminary Review.

The TEC also proposes the repeal of all rules in Subchapter D of Chapter 12 (relating to Preliminary Review Hearing), including §12.84 regarding Notice of Preliminary Review Hearing, §12.85 regarding Preliminary Review Hearing, §12.86 regarding Motions for Continuance, and §12.87 regarding Resolution of Preliminary Review Hearing.

The TEC also proposes the repeal of all rules in Division 1 of Subchapter E of Chapter 12 (relating to Formal Hearing: General Procedures), including §12.101 regarding Application and Construction, §12.102 regarding Order of Formal Hearing, §12.103 regarding Notice of Formal Hearing, §12.117 regarding Formal Hearing: Venue, and §12.119 regarding Resolution after a Formal Hearing.

The TEC also proposes the repeal of all rules in Division 2 of Subchapter E of Chapter 12 (relating to Formal Hearing: Scheduling, Filing, and Service), including §12.121 regarding Prehearing Conferences, §12.123 regarding Scheduling Orders, §12.125 regarding Filing of Documents, and §12.127 regarding Service of Documents.

The TEC also proposes the repeal of all rules in Division 3 of Subchapter E of Chapter 12 (relating to Formal Hearing: Powers and Duties of Commission and Presiding Officer), including §12.131 regarding Powers and Duties of the Presiding Officer, and §12.133 regarding Orders From the Commission.

The TEC also proposes the repeal of all rules in Division 5 of Subchapter E of Chapter 12 (relating to Formal Hearing: Pleadings and Motions), including §12.151 regarding Required Form of Pleadings, §12.153 regarding Motions, Generally, and §12.155 regarding Motions for Continuance and to Extend Time.

The TEC also proposes the repeal of all rules in Division 6 of Subchapter E of Chapter 12 (relating to Formal Hearing: Hearings and Prehearing Conferences), including §12.161 regarding Time Allotted to Parties, §12.163 regarding Presentation of Evidence, §12.165 regarding Rules of Evidence, and §12.167 regarding Numbering of Exhibits.

The TEC also proposes the repeal of all rules in Division 7 of Subchapter E of Chapter 12 (relating to Formal Hearing: Disposition of Formal Hearing), including §12.171 regarding Standard of Proof, §12.173 regarding Default Proceedings, §12.174 regarding Summary Disposition, and §12.175 regarding Resolution of Formal Hearing.

This proposal, along with the contemporaneous proposal of new Subchapters and Divisions in Chapter 12, amends the rules used in sworn complaint proceedings at the Ethics Commission.

State law requires state agencies to "review and consider for readoption each of its rules . . . not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date." Tex. Gov't Code §2001.039. The law further requires agencies to "readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section." *Id.*

The TEC started its comprehensive review with the TEC's rules regarding sworn complaint procedures, which are codified in Chapter 12. The repeal of existing rules and adoption of new rules seek to shorten, simplify, and reorganize the rules to eliminate surplusage and improve clarity on sworn complaint procedures.

James Tinley, General Counsel, has determined that for the first five-year period the proposed repealed rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed repealed rules.

The General Counsel has also determined that for each year of the first five years the proposed repealed rules are in effect, the public benefit will be consistency and clarity in the TEC's rules regarding sworn complaint procedures. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed repealed rules.

The General Counsel has determined that during the first five years that the proposed repealed rules are in effect, they will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; create a new regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The TEC invites comments on the proposed repealed rules from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to J.R. Johnson, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed repealed rules may do so at any Commission meeting during the agenda item relating to the proposed repealed rules. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

SUBCHAPTER A. GENERAL PROVISIONS AND PROCEDURES

1 TAC §§12.5 - 12.7, 12.9, 12.11, 12.13, 12.15, 12.19, 12.21, 12.23, 12.25, 12.27 - 12.31, 12.33 - 12.36

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.5. Deadline for Filing a Complaint.
§12.6. File Date for Purposes of Commission Response Deadline.
§12.7. Confidentiality.
§12.9. Compliance with Open Meetings Law and Open Records Law.
§12.11. Delegation to Executive Director.
§12.13. Representation by Counsel.
§12.15. Appearance of Complainant at Hearing.
§12.19. Agreements to be in Writing.
§12.21. Notice.
§12.23. Hearing in Respondent's Absence.
§12.25. Waiver of Hearing.
§12.27. Deadline Extension.
§12.28. Production of Documents during Preliminary Review.
§12.29. Subpoenas Issued by Commission
§12.30. Subpoenas Issued by Counsel for the Respondent.
§12.31. Conduct and Decorum.
§12.33. Sanctioning Authority.
§12.34. Agreed Orders.
§12.35. Frivolous Complaint.
§12.36. Assessment of Civil Penalty.

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

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SUBCHAPTER B. FILING AND INITIAL PROCESSING OF A COMPLAINT

1 TAC §§12.51 - 12.53, 12.59, 12.61, 12.67

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.51. Non-Complying Complaint.
§12.52. Response to Notice of Complaint.
§12.53. Commission Initiated Complaint.
§12.59. Description of Violation.
§12.61. Statement of Facts.
§12.67. Copies and Documents Provided by the Commission.

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SUBCHAPTER C. INVESTIGATION AND PRELIMINARY REVIEW

1 TAC §12.81, §12.83

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.81. Technical, Clerical or De Minimis Violations.
§12.83. Preliminary Review.

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

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SUBCHAPTER D. PRELIMINARY REVIEW HEARING

1 TAC §§12.84 - 12.87

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.84. Notice of Preliminary Review Hearing.
§12.85. Preliminary Review Hearing.
§12.86. Motions for Continuance.
§12.87. Resolution of Preliminary Review Hearing.

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

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SUBCHAPTER E. FORMAL HEARING
DIVISION 1. GENERAL PROCEDURES

1 TAC §§12.101 - 12.103, 12.117, 12.119

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.101. Application and Construction.

§12.102. Order of Formal Hearing.

§12.103. Notice of Formal Hearing.

§12.117. Formal Hearing: Venue.

§12.119. Resolution after a Formal Hearing.

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

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DIVISION 2. SCHEDULING, FILING, AND SERVICE

1 TAC §§12.121, 12.123, 12.125, 12.127

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.121. Prehearing Conferences.

§12.123. Scheduling Orders.

§12.125. Filing of Documents.

§12.127. Service of Documents.

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

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DIVISION 3. POWERS AND DUTIES OF COMMISSION AND PRESIDING OFFICER

1 TAC §12.131, §12.133

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.131. Powers and Duties of the Presiding Officer.

§12.133. Orders From the Commission.

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

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DIVISION 5. PLEADINGS AND MOTIONS

1 TAC §§12.151, 12.153, 12.155

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.151. Required Form of Pleadings.

§12.153. Motions, Generally.

§12.155. Motions for Continuance and to Extend Time.

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

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James Tinley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: May 19, 2024
For further information, please call: (512) 463-5800

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DIVISION 6. HEARINGS AND PREHEARING CONFERENCES

1 TAC §§12.161, 12.163, 12.165, 12.167

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.161. Time Allotted to Parties.

§12.163. Presentation of Evidence.

§12.165. Rules of Evidence.

§12.167. Numbering of Exhibits.

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

Filed with the Office of the Secretary of State on April 1, 2024.

TRD-202401341
James Tinley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: May 19, 2024
For further information, please call: (512) 463-5800

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DIVISION 7. DISPOSITION OF FORMAL HEARING

1 TAC §§12.171, 12.173 - 12.175

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.171. Standard of Proof.

§12.173. Default Proceedings.

§12.174. Summary Disposition.

§12.175. Resolution of Formal Hearing.

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

Filed with the Office of the Secretary of State on April 1, 2024.

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James Tinley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: May 19, 2024
For further information, please call: (512) 463-5800

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CHAPTER 26. POLITICAL AND LEGISLATIVE ADVERTISING

1 TAC §26.1

The Texas Ethics Commission (the TEC) proposes amendments to TEC Rules in Chapter 26. Specifically, the TEC proposes amendments to §26.1, regarding the political advertising disclosure statement required on certain political advertising.

Political advertising generally needs to indicate the name of the person who paid for it, or if authorized by a candidate or committee, the candidate or committee who authorized it. Tex. Elec. Code §255.001. Under TEC Rule §26.1, the political advertising disclosure requirement is not required for most social media posts where "the person posting or re-posting" did not make an expenditure exceeding $100 in a reporting period for the post. 1 Texas Administrative Code §26.1.

The existing rule largely exempts social media posts from the disclosure statement requirement unless money is spent for the social media site to carry the post as an ad or to promote the post to increase its reach. *Id.* The existing rule focuses on "the person posting or re-posting" making an expenditure paying to boost the post. The rule does not clearly address a situation where the person doing the posting is being paid.

The proposed amendment would make clear, consistent with Section 255.001 of the Election Code, that a political advertising disclosure statement is required when a person is paid to post political advertising on the Internet.

James Tinley, General Counsel, has determined that for the first five-year period the proposed amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amended rule.

The General Counsel has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefit will be having a rule that is clearly harmonized with existing statute. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amended rule.

The General Counsel has determined that during the first five years that the proposed amended rule is in effect, it will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; create a new regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed amended rule from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to J.R. Johnson, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed amended rule may do so at any Commission meeting during the agenda item relating to the proposed amended rule. Information concerning the date, time, and location of Commission meetings is available by

telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

The amended rule is proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The proposed amended rule affects Title 15 of the Election Code.

§26.1. Disclosure Statement.

(a) A disclosure statement that is required by §255.001, Election Code, must contain the words "political advertising" or any recognizable abbreviation, and must:

(1) appear on one line of text or on successive lines of text on the face of the political advertising; or

(2) be clearly spoken in the political advertising if the political advertising does not include written text.

(b) A disclosure statement is not required on political advertising printed on letterhead stationery if the letterhead contains the full name of one of the following:

(1) the person who paid for the political advertising;

(2) the political committee authorizing the political advertising; or

(3) the candidate authorizing the political advertising.

(c) A disclosure statement is not required on:

(1) campaign buttons, pins, or hats, or on objects whose size makes printing the disclosure impractical;

(2) political advertising posted or re-posted on an Internet website, as long as the person posting or re-posting the political advertising:

(A) is not an officeholder, candidate, or political committee; [~~and~~]

(B) did not make an expenditure exceeding $100 in a reporting period for political advertising beyond the basic cost of hardware messaging software and bandwidth; and

(C) did not post or re-post the political advertising in return for consideration.

(3) the Internet social media profile webpage of a candidate or officeholder, provided the webpage clearly and conspicuously displays the full name of the candidate or officeholder; or

(4) political advertising posted or re-posted by a person on an Internet website, provided the advertising is posted with a link to a publicly viewable Internet webpage that:

(A) contains the disclosure statement; or

(B) is exempt from containing the disclosure statement under Subsection (c)(3).

(d) For the purposes of Subsection (c), an "Internet social media profile webpage" is an Internet webpage on a website where members of the public may, for no charge, connect electronically with other members of the public and share text, images, videos, and similar forms of communications.

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

Filed with the Office of the Secretary of State on April 1, 2024.

TRD-202401353
James Tinley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: May 19, 2024
For further information, please call: (512) 463-5800

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 80. MANUFACTURED HOUSING
SUBCHAPTER D. LICENSING

10 TAC §80.41

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") proposes to amend 10 Texas Administrative Code, Chapter 80, §80.41 relating to the regulation of the manufactured housing program.

10 Texas Administrative Code §80.41(c)(2)(D) and (E) adds that the Department may enter into an agreement with a third party to administer the licensing education exam(s) required under §1201.104 of the Manufactured Housing Standards Act. If required to be taken with the assistance of a third party, the applicant shall pay the cost of the exam.

Jim R. Hicks, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, has determined that for the first five-year period that the proposed rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these sections. There will be no effect on small businesses, micro-businesses, or rural communities because of the proposed amendments. The amendments will not cause the loss of any business opportunities or have an adverse effect on the businesses. There may be a slight economic costs to persons who are required to comply with the proposed rules, if the third party charges a fee to take the exam at their facility.

Mr. Hicks also has determined that for each year of the first five years that the proposed rules are in effect the public benefit for enforcing the amendments will be to maintain the necessary resources required to improve the general welfare and safety of purchasers of manufactured housing in this state as per §1201.002 of the Manufactured Housing Standards Act.

Mr. Hicks has also determined that for each year of the first five years the proposed rules are in effect there should be no adverse effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

Mr. Hicks has also determined that for each of the first five years the proposed rules are in effect would not have a large government growth impact. The proposed rules do not create or eliminate a government program. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed rules do not require the increase or decrease in future legislative appropriations to the agency. The proposed rules do not create a new regulation. The proposed rules do not expand, limit, or repeal an existing regulation. The proposed

rules do not increase or decrease the number of individuals subject to the rules applicability. The proposed rules do not positively or adversely affect this state's economy. This statement is made pursuant to the Administrative Procedures Act, Texas Government Code, §2001.0221.

If requested, the Department will conduct a public hearing on this rulemaking, pursuant to the Administrative Procedure Act, Texas Government Code §2001.029. The request for a public hearing must be received by the Department within 15 days after publication.

Comments may be submitted to Mr. Jim R. Hicks, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, P.O. Box 12489, Austin, Texas 78711-2489 or by e-mail at mhproposedrulecomments@tdhca.texas.gov. The deadline for comments is no later than 30 days from the date that these proposed rules are published in the *Texas Register*.

The amendments are proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by the proposed rule.

§80.41. License Requirements.

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

(c) Education.

(1) (No change.)

(2) Each test to be administered in connection with the course(s) will consist of a representative selection of questions from an approved set of questions approved by the Director. The test(s) will be open-book. A score of 70% correct is required to pass each test.

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

(C) A licensee or applicant suspected of cheating, or a licensee assisting others with cheating may be charged with violating §1201.551 of the Act and applicable Manufactured Housing Division rules, which may result in the denial, suspension, or revocation of their license.

(D) The Department may enter into an agreement with a third party to administer each test.

(E) The applicant shall pay the cost of the test, if required to be taken with the assistance of a third party.

(3) - (8) (No change.)

(d) - (g) (No change.)

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

Filed with the Office of the Secretary of State on April 4, 2024.

TRD-202401407

Jim R. Hicks
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: May 19, 2024
For further information, please call: (512) 475-2206

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PART 5. OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM OFFICE

CHAPTER 190. GOVERNOR'S UNIVERSITY RESEARCH INITIATIVE GRANT PROGRAM

SUBCHAPTER A. DEFINITIONS AND GENERAL PROVISIONS

10 TAC §190.1

The Office of the Governor ("OOG") proposes an amendment to 10 TAC §190.1. The proposed amendment will list the additional types of national academic recognitions that are considered to be highly prestigious for purposes of determining who qualifies as a "Distinguished researcher," rather than cross-reference the list of such recognitions that previously existed in a rule adopted by the Texas Higher Education Coordinating Board but has since been repealed.

EXPLANATION OF PROPOSED AMENDMENT

The rule under consideration relates to the Governor's University Research Initiative ("GURI") and was implemented to create and administer the GURI grant program, as enacted by Senate Bill 632 and House Bills 7 and 26 during the 84th Legislature, Regular Session, to facilitate the recruitment of distinguished researchers to eligible Texas universities.

The proposed amendment to §190.1 lists the types of national academic recognitions that are considered to be highly prestigious for purposes of determining who qualifies as a "Distinguished researcher."

FISCAL NOTE

Adriana Cruz, Executive Director, Texas Economic Development and Tourism Office, has determined that during each year of the first five years in which the proposed amendment is in effect, there will be no expected fiscal impact on state and local governments as a result of enforcing or administering the proposed amendment.

Ms. Cruz does not anticipate any measurable effect on local employment or the local economy as a result of the proposed amendment.

PUBLIC BENEFIT AND COSTS

Ms. Cruz has also determined that during each year of the first five years in which the proposed amendment is in effect, the public benefit anticipated as a result of the proposed rule change will be to clarify the additional types of national academic recognitions that are considered to be highly prestigious for purposes of determining which individuals or groups qualify as a "Distinguished researcher." There are no anticipated economic costs for persons required to comply with the proposed rule.

Ms. Cruz has determined there may be a positive fiscal impact on the state of Texas as a result of the proposed rule, as it ensures that Texas continues to gain more distinguished researchers and see additional participation in the GURI program from the increased pool of eligible institutions.

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

GOVERNMENT GROWTH IMPACT STATEMENT

Ms. Cruz has determined that during each year of the first five years in which the proposed amendment is in effect, the amendment:

1) will not create or eliminate a government program;

2) will not require the creation of new employee positions or the elimination of existing employee positions;

3) will not require an increase or decrease in future legislative appropriations to the OOG;

4) will not require an increase or decrease in fees paid to the OOG;

5) does not create new regulations;

6) will not expand, limit, or repeal existing regulations;

7) will not increase or decrease the number of individuals subject to the applicability of the rule; and

8) will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT

The OOG has determined that no private real property interests are affected by the proposed rule and the proposed rule does not restrict, limit, or impose a burden on an owner's rights to the owner's private real property that would otherwise exist in the absence of government action. As a result, the proposed amendment does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

SUBMISSION OF COMMENTS

Written comments regarding the proposed rule amendment may be submitted for 30 days following the date of publication of this notice by mail to Terry Zrubek, Deputy Executive Director, Office of the Governor, Economic Development and Tourism, P.O. Box 12428, Austin, Texas 78711 or by email to Terry.Zrubek@gov.texas.gov with the subject line "GURI Rule Review." The deadline for receipt of comments is 5:00 p.m., Central Time, on May 19, 2024.

STATUTORY AUTHORITY

The amendment is proposed under section 62.162 of the Texas Education Code, which authorizes the Texas Economic Development and Tourism Office, in consultation with the Texas Higher Education Coordinating Board, to adopt rules necessary to administer GURI.

CROSS REFERENCE TO STATUTE

Chapter 62 of the Texas Education Code.

§190.1 Definitions

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

(1) "Advisory board" means the Governor's University Research Initiative Advisory Board, the nine member board appointed by the Governor.

(2) "Applicant" is the entity that applies for a grant from the Governor's University Research Initiative program.

(3) "Application" is the information that is required to be completed and submitted by an applicant for a grant from the Governor's University Research Initiative program.

(4) "Distinguished researcher" means:

(A) an individual researcher who:

(i) is a Nobel laureate;

(ii) is a member of the National Academy of Sciences, the National Academy of Engineering, or the National Academy of Medicine, formerly known as the Institute of Medicine; or

(iii) has attained one or more of the following [~~a~~] national academic recognitions: [~~recognition listed in the categories under 19 TAC §15.43(b)(3)(E)(ii), unless the OOG, in its sole determination, determines that the recognition, notwithstanding its inclusion in such list, is inconsistent with the purpose and priorities of GURI; or~~]

(I) American Academy of Nursing Fellows;

(II) American Council of Learned Societies Fellows;

(III) American Law Institute Members;

(IV) Beckman Young Investigators;

(V) Burroughs Wellcome Fund Career Award Winners;

(VI) Cottrell Scholars;

(VII) Getty Scholars in Residence;

(VIII) Guggenheim Fellows;

(IX) Howard Hughes Medical Institute Investigators;

(X) Lasker Medical Research Award Winners;

(XI) MacArthur Foundation Fellows;

(XII) Andrew W. Mellon Foundation Distinguished Achievement Award Winners;

(XIII) National Endowment for the Humanities Fellows;

(XIV) National Humanities Center Fellows;

(XV) National Institutes of Health MERIT (R37) Winners;

(XVI) National Medal of Science Winners;

(XVII) National Medal of Technology and Innovation Winners;

(XVIII) National Science Foundation CAREER Award Winners (excluding those who are also PECASE winners);

(XIX) Newberry Library Long-term Fellows;

(XX) Pew Scholars in Biomedicine;

(XXI) Pulitzer Prize Winners;

(XXII) Presidential Early Career Awards for Scientists and Engineers (PECASE) Winners;

(XXIII) Robert Wood Johnson Health Policy Fellows;

(XXIV) Searle Scholars;

(XXV) Sloan Research Fellows;

(XXVI) Fellows of the Woodrow Wilson Center; or

(B) a group of researchers who have attained a recognition described by subparagraph [~~Subparagraph~~] (A)(iii) of this paragraph [~~Paragraph~~].

(5) "Eligible institution" means a general academic teaching institution or medical and dental unit.

(6) "Fund" means the Governor's University Research Initiative fund established under §62.165 of the Education Code.

(7) "General academic teaching institution" has the meaning assigned by §61.003 of the Education Code.

(8) "Governing Board" has the meaning assigned by §61.003 of the Education Code.

(9) "Grant agreement" means the GURI grant agreement executed by the Office of the Governor and the grantee.

(10) "Grantee" is the entity named as the recipient of the award in the grant agreement.

(11) "GURI" means Governor's University Research Initiative.

(12) "Medical and dental unit" has the meaning assigned by §61.003 of the Education Code.

(13) "OOG" or "Office" means the Texas Economic Development and Tourism Office within the Office of the Governor.

(14) "Private or independent institution of higher education" has the meaning assigned by §61.003 of the Education Code.

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

Filed with the Office of the Secretary of State on April 3, 2024.

TRD-202401403
Adriana Cruz
Executive Director, Economic Development and Tourism Office
Office of the Governor, Economic Development and Tourism Office
Earliest possible date of adoption: May 19, 2024
For further information, please call: (512) 936-0100

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 103. HEALTH AND SAFETY

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING GENERAL PROVISIONS FOR HEALTH AND SAFETY

19 TAC §103.1103

The Texas Education Agency (TEA) proposes new §103.1103, concerning opioid antagonist medication requirements in schools. The new section would implement Senate Bill (SB) 629, 88th Texas Legislature, Regular Session, 2023, and adopt by reference the rules of the executive commissioner of the Texas Health and Human Services Commission.

BACKGROUND INFORMATION AND JUSTIFICATION: SB 629, 88th Texas Legislature, Regular Session, 2023, established that each school district adopt and implement a policy regarding the maintenance, administration, and disposal of opioid antagonists at each campus in the district that serves students in Grades 6-12. Districts may adopt and implement such a policy at each campus in the district, including campuses serving students in a grade level below Grade 6. An open-enrollment charter school or private school may adopt and implement a policy regarding the maintenance, administration, and disposal of opioid antagonists. If a school adopts a policy, the school is permitted to apply the policy only at campuses serving students in Grades 6-12 or at each campus, including campuses serving students in a grade level below Grade 6.

The executive commissioner of the Health and Human Services Commission must, in consultation with the commissioner of education, adopt rules regarding the maintenance, administration, and disposal of opioid antagonists at a school campus subject to a policy. The rules must establish the process for checking the inventory of opioid antagonists at regular intervals for expiration and replacement and include the amount of training required for school personnel and school volunteers to administer an opioid antagonist.

Schools with a policy on the administration of opioid antagonists must be required to report certain information no later than the tenth business day after the date a school personnel member or a school volunteer administers an opioid antagonist.

Each school district, open-enrollment charter school, and private school that adopts a policy regarding the maintenance, administration, and disposal of opioid antagonists is responsible for training school personnel and school volunteers in the administration of an opioid antagonist. Training must include information on recognizing the signs and symptoms of an opioid-related drug overdose; administering an opioid antagonist; implementing emergency procedures, if necessary, after administering an opioid antagonist; and properly disposing of used or expired opioid antagonists. Training must be provided in a formal training session or through online education. Each school district, open-enrollment charter school, or private school that adopts a policy must maintain records on the required training.

The commissioner of education and the executive commissioner of the Health and Human Services Commission must jointly adopt rules necessary to implement Texas Education Code (TEC), Chapter 38, Subchapter E-1. The proposed new rule would, therefore, adopt by reference the rules of the executive commissioner of the Texas Health and Human Services Commission implementing the provisions of TEC, §38.222.

FISCAL IMPACT: Shannon Trejo, deputy commissioner for school programs, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation to adopt by reference the rules of the executive commissioner of the Texas Health and Human Services Commission.

It would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Dr. Trejo has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that school districts and charter schools have policies in place regarding the maintenance, administration, and disposal of opioid antagonists to support the health and safety of students on school campuses. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins April 19, 2024, and ends May 20, 2024. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on April 19, 2024. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §38.222, as added by Senate Bill (SB) 629, 88th Texas Legislature, Regular Session, 2023, which requires each school district to adopt and implement a policy regarding the maintenance, administration, and disposal of opioid antagonists at each campus that serves students in Grades 6-12 and allows each school district to adopt and implement the policy at each campus in the district that serves students in a grade level below Grade 6. The statute also allows each open-enrollment charter school or private school to adopt and implement a policy regarding the maintenance, administration, and disposal of opioid antagonists at each campus; and TEC, §38.228, as added by SB 629, 88th Texas Legislature, Regular Session, 2023, requires the commissioner of education and the executive commissioner of the Health and Human Services Commission to jointly adopt rules regarding the maintenance, administration, and disposal of opioid antagonists.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §38.222 and §38.228, as added by Senate Bill 629, 88th Texas Legislature, Regular Session, 2023.

§103.1103. Opioid Antagonist Medication Requirements in Schools.

In accordance with Texas Education Code, §38.222 and §38.228, the commissioner of education adopts by reference the rules of the executive commissioner of the Texas Health and Human Services Commission, on behalf of the Department of State Health Services, in the Texas Administrative Code, Title 25, Part 1, Chapter 40, Subchapter F (relating to Opioid Antagonist Medication Requirements in Schools).

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

Filed with the Office of the Secretary of State on April 8, 2024.

TRD-202401423
Cristina de La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: May 19, 2024
For further information, please call: (512) 475-1497

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 296. TEXAS ASBESTOS HEALTH PROTECTION

SUBCHAPTER H. LICENSE AND REGISTRATION PROVISIONS RELATED TO MILITARY SERVICE MEMBERS, MILITARY VETERANS, AND MILITARY SPOUSES

25 TAC §296.131

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes the repeal of Texas Administrative Code (TAC), Title 25, Subchapter H, concerning License and Registration Provisions Related to Military Service Members, Military Veterans, and Military Spouses, and

§296.131, concerning Military Service Members, Military Veterans, and Military Spouses.

BACKGROUND AND PURPOSE

The purpose of the proposal is to repeal a rule no longer required due to implementation of Senate Bill (S.B.) 422, 88th Legislature, Regular Session, 2023, extending occupational reciprocity to military service members. DSHS implemented S.B. 422 by adopting amended 25 TAC §1.81, concerning Recognition of Out-of-State License of a Military Service Member and Military Spouse, and new §1.91, concerning Alternative Licensing for Military Service Members, Military Spouses, and Military Veterans.

SECTION-BY-SECTION SUMMARY

The proposed repeal removes Subchapter H because the only rule it contains is being repealed.

The proposed repeal of §296.131 removes the rule as no longer necessary. This will avoid repetitive or inconsistent rule language with adopted rules in 25 TAC Chapter 1.

FISCAL NOTE

Christy Havel Burton, Chief Financial Officer, has determined that for each year of the first five years the repeal will be in effect, enforcing or administering the repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed repeal will not create or eliminate a government program;

(2) implementation of the proposed repeal will not affect the number of DSHS employee positions;

(3) implementation of the proposed repeal will result in no assumed change in future legislative appropriations;

(4) the proposed repeal will not affect fees paid to DSHS;

(5) the proposed repeal will not create a new regulation;

(6) the proposal will repeal an existing regulation;

(7) the proposed repeal will not change the number of individuals subject to the rule; and

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

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

Christy Havel Burton has also determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The repeal does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule.

LOCAL EMPLOYMENT IMPACT

The proposed repeal will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas and does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Timothy Stevenson, DSHS Associate Commissioner, Consumer Protection Division, has determined that for each year of the first five years the repeal is in effect, the public benefit will be repealing a rule that is no longer required. DSHS proposes the repeal of 25 TAC §296.131 because this rule does not establish rule requirements beyond those adopted in amendments to 25 TAC §1.81 and new 25 TAC §1.91 pursuant to S.B. 422.

Christy Havel Burton has also determined that for the first five years the repeal is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeal.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to the Environmental Operations Branch Rules Coordinator, DSHS, Mail Code 2835, P.O. Box 149347, Austin, Texas, 78714-9347, hand delivered to the Environmental Operations Branch Rules Coordinator, DSHS, Mail Code 2835, 1100 West 49th Street, Austin, Texas 78756, or by email to EHGRulesCoordinator@dshs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R081" in the subject line.

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001 to implement Texas Occupations Code, Chapter 1954.

The repeal implements Texas Health and Safety Code, Chapter 1001; Texas Government Code, Chapter 531; and Texas Occupations Code, Chapter 1954.

§296.131. Military Service Members, Military Veterans, and Military Spouses.

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

Filed with the Office of the Secretary of State on April 3, 2024.

TRD-202401374

Cynthia Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: May 19, 2024
For further information, please call: (512) 834-6787

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 744. MINIMUM STANDARDS FOR SCHOOL-AGE AND BEFORE OR AFTER-SCHOOL PROGRAMS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §744.405, concerning What telephone numbers must I post and where must I post them; §744.501, concerning What written operational policies must I have; and §744.2801, concerning To whom may I release children; and new §744.521, concerning What rights does a parent of a child in care of my child-care operation have, in Texas Administrative Code, Title 26, Chapter 744, Minimum Standards for School-Age and Before or After-School Programs.

BACKGROUND AND PURPOSE

The purpose of this proposal is to implement Senate Bill (S.B.) 1098, 88th Legislature, Regular Session, 2023. S.B. 1098 amended Texas Human Resources Code (HRC), Chapter 42, by adding §42.04271 to establish specific rights of the parent or guardian of a child enrolled in a licensed or registered child day care operation. Accordingly, HHSC Child Care Regulation (CCR) is proposing rules in Chapter 744 that will (1) establish new requirements related to parent rights, and (2) update and clarify current requirements that are related to parent rights.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §744.405 (1) updates the rule title to reflect that a child-care operation must post contact information in addition to telephone numbers; (2) adds new subsection (b) so the posting requirement is consistent: a child-care operation must post the name, address, and telephone number for both the local CCR office and the child-care operation; (3) updates a reference from "Licensing" to "Child Care Regulation"; and (4) renumbers subsections in the rule accordingly.

The proposed amendment to §744.501 (1) adds a requirement that a child-care operation include, in its written operational policies, procedures that address parent rights that are consistent with rules in new Division 5 of Subchapter B; (2) removes operational policy requirements that have been moved to new Division 5; (3) reorganizes a paragraph in the rule to consolidate information and improve readability; and (4) renumbers paragraphs in the rule accordingly.

Proposed new Division 5, Parent Rights, in Subchapter B, Administration and Communication, contains new rules related to the rights of a parent with a child enrolled in a child-care operation.

Proposed new §744.521 outlines the rights of a parent with a child enrolled in a child-care operation, including the right to (1) enter and examine the child-care operation without advance notice; (2) file a complaint against the child-care operation; (3) review the child-care operation's publicly accessible records; (4) review written records about the parent's child; (5) receive from the child-care operation (A) HHSC inspection reports regarding the operation, and (B) information regarding how to access the operation's compliance history online; (6) have the child-care operation comply with a court order limiting the rights of another parent to visit or pick up the child from the operation; (7) be provided with the contact information for CCR; (8) view any available video recordings maintained by the operation of an alleged incident of abuse or neglect involving the parent's child, with certain restrictions; (9) obtain a copy of the child-care operation's policies and procedures; (10) review upon request (A) staff training records, and (B) in-house training curriculum, if any; and (11) be free from retaliation for exercising any of the parent's rights.

The proposed amendment to §744.2801 (1) updates the rule title; (2) updates language to improve readability; and (3) adds new subsection (b) to require a child-care operation, upon request from the parent who enrolled the child in the operation, to comply with a court order preventing another parent from removing the child from the operation.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

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

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will create a new regulation;

(6) the proposed rules will expand existing regulations;

(7) the proposed rules will not change the number of individuals subject to the rules; and

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; do not impose

a cost on regulated persons; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be rules that (1) clearly outline the rights of a parent who has a child enrolled in a licensed or registered child day care operation, and (2) comply with state law.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the rules do not impose fees, require a child-care operation to purchase curriculum or equipment, or require a child-care operation to alter current staffing patterns.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Aimee Belden by email at Aimee.Belden@hhs.texas.gov.

Written comments on the proposal may be submitted to Aimee Belden, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R075" in the subject line.

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

DIVISION 3. REQUIRED POSTINGS

26 TAC §744.405

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, and Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§744.405. What telephone numbers and other contact information must I post and where must I post this information [them~~]~~?

(a) You must post in a prominent place the following telephone numbers:

(1) 911 or, if 911 is not available in your area, you must post the telephone numbers for:

(A) Emergency medical services;

(B) Law enforcement; and

(C) Fire department;

(2) Poison control (1-800-222-1222); and

(3) The Texas Abuse and Neglect Hotline (1-800-252-5400).[~~;~~]

(b) You must post in a prominent place the name, address, and telephone number for:

(1) [~~(4)~~] The local Child Care Regulation [~~Licensing~~] office [~~telephone number~~]; and

(2) [~~(5)~~] The operation [~~operation's telephone number, name, and address~~].

(c) [~~(b)~~] If you use cellular phone service at your operation, you must ensure all employees and caregivers know the address of the operation to direct emergency personnel to the operation when dialing 911 from the operation.

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

Filed with the Office of the Secretary of State on April 3, 2024.

TRD-202401375
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: May 19, 2024
For further information, please call: (512) 438-3269

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DIVISION 4. OPERATIONAL POLICIES

26 TAC §744.501

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, and Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§744.501. What written operational policies must I have?
You must develop written operational policies and procedures that at a minimum address each of the following:

(1) Hours, days, and months of operation;

(2) Procedures for the release of children;

(3) Illness and exclusion criteria;

(4) Procedures for dispensing medication or a statement that medication is not dispensed;

(5) Procedures for handling medical emergencies;

(6) Procedures for parental notifications;

(7) Discipline and guidance that is consistent with Subchapter G of this chapter (relating to Discipline and Guidance). A copy of Subchapter G may be used for your discipline and guidance policy, unless you use disciplinary and training measures specific to a skills-based program, as specified in §744.2109 of this chapter (relating to May I use disciplinary measures that are fundamental to teaching a skill, talent, ability, expertise, or proficiency?);

(8) Suspension and expulsion of children;

(9) Meals and food service practices;

(10) Immunization requirements for children, including tuberculosis screening and testing if required by your regional Texas Department of State Health Services or local health authority;

(11) Enrollment procedures, including how and when parents will be notified of policy changes;

(12) Transportation, if applicable;

(13) Water activities, if applicable;

(14) Field trips, if applicable;

(15) Animals, if applicable;

(16) Procedures for providing and applying, as needed, insect repellent and sunscreen, including what types will be used, if applicable;

(17) Parent rights that are consistent with the rules in Division 5 of this subchapter (relating to Parent Rights);

(18) [~~(17)~~] Procedures for parents to review and discuss with the director any questions or concerns about the policies and procedures of the operation;

[~~(18) Procedures for parents to visit the operation at any time during your hours of operation to observe their child, program activities, the building, the premises, and equipment without having to secure prior approval;~~]

(19) Procedures for parents to participate in the operation's activities;

(20) Instructions on [~~Procedures for parents to review a copy of the operation's most recent Licensing inspection report and~~] how a [~~the~~] parent may access the:

(A) Minimum [~~minimum~~] standards online;

(B) Texas Abuse and Neglect Hotline; and

(C) HHSC website.

[~~(21) Instructions on how a parent may contact the local Licensing office, access the Texas Abuse and Neglect Hotline, and access the HHSC website;~~]

(21) [~~(22)~~] Emergency preparedness plan;

(22) [~~(23)~~] Procedures for conducting health checks, if applicable;

(23) [~~(24)~~] Information on vaccine-preventable diseases for employees, unless your operation is in the home of the permit holder, the director, or a caregiver. The policy must address the requirements outlined in §744.2581 of this chapter (relating to What must a policy for protecting children from vaccine-preventable diseases include?);

(24) [~~(25)~~] If your operation maintains and administers unassigned epinephrine auto-injectors to use when a child in care has an emergency anaphylaxis reaction, policies for maintenance, administration, and disposal of unassigned epinephrine auto-injectors that comply with the unassigned epinephrine auto-injector requirements set by the Texas Department of State Health Services, as specified in Texas Administrative Code, Title 25, [~~TAC~~] Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities) and Texas Health and Safety Code §773.0145; and

(25) [~~(26)~~] Procedures for supporting inclusive services to children with special care needs. The policy must address the requirements outlined in §744.2009 of this chapter (relating to What are my responsibilities when planning activities for a child in care with special care needs?)

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

Filed with the Office of the Secretary of State on April 3, 2024.

TRD-202401376
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: May 19, 2024
For further information, please call: (512) 438-3269

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DIVISION 5. PARENT RIGHTS

26 TAC §744.521

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, and Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

The new section affects Texas Government Code §531.0055 and HRC §42.042.

§744.521. What rights does a parent of a child in care of my child-care operation have?

A parent of a child in care has the right to:

(1) Enter and examine your operation during its hours of operation without advance notice;

(2) File a complaint against your operation;

(3) Review your operation's publicly accessible records;

(4) Review your operation's written records concerning the parent's child, as outlined in §744.601 of this chapter (relating to Who has the right to access children's records?);

(5) Receive from your operation:

(A) HHSC's inspection reports for your operation; and

(B) Information regarding how to access your operation's compliance history online;

(6) Have your operation comply with a court order preventing another parent from visiting or removing the parent's child from your operation, as outlined in §744.2801 of this chapter (relating to To whom may I release a child?);

(7) Be provided with contact information for Child Care Regulation, including the department's name, address, and telephone number;

(8) View any video recordings of an alleged incident of abuse or neglect involving the parent's child maintained by your operation as long as:

(A) Video recordings of the alleged incident are available;

(B) The parent is not allowed to retain any portion of the video depicting a child who is not the parent's child; and

(C) Your operation notifies in writing the parent of any other child captured in the video recording, before allowing the parent to inspect the video recording;

(9) Obtain a copy of your operation's policies and procedures, as outlined in §744.503 of this subchapter (relating to Must I provide parents with a copy of my operational policies?);

(10) Review, upon request of the parent, your:

(A) Staff training records; and

(B) In-house training curriculum, if any; and

(11) Be free from any retaliatory action by your operation for exercising any of the parent's rights.

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

Filed with the Office of the Secretary of State on April 3, 2024.

TRD-202401377
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: May 19, 2024
For further information, please call: (512) 438-3269

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SUBCHAPTER L. SAFETY PRACTICES DIVISION 5. RELEASE OF CHILDREN

26 TAC §744.2801

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, and Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§744.2801. To whom may I release a child [~~children~~]?

(a) You must release a child [~~children~~] only to a parent or a person designated by the parent.

(b) Upon request from the parent who placed a child in your care, you must comply with a court order that prevents another parent from removing the child from your operation.

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

Filed with the Office of the Secretary of State on April 3, 2024.

TRD-202401378
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: May 19, 2024
For further information, please call: (512) 438-3269

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CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §746.405, concerning What telephone numbers must I post and where must I post them; §, concerning What written operational policies must I have; §746.1317, concerning Must the training for my caregivers and the director meet certain criteria; and §746.4101, concerning Who may I release children to; and new §746.521, concerning What rights does a parent of a child in care of my child-care center have, in Texas Administrative Code, Title 26, Chapter 746, Minimum Standards for Child-Care Centers.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Senate Bill (S.B.) 1098 and S.B. 1242, 88th Legislature, Regular Session, 2023. S.B. 1098 amended Texas Human Resources Code (HRC), Chapter 42, by adding §42.04271 to establish specific rights of the parent or guardian of a child enrolled in a licensed or registered child day care operation. S.B. 1242 amended HRC §42.0421 by adding Subsection (g-1) to allow a child-care center director to provide training to center staff if the individual was not the director of the child-care center at the time HHSC Child Care Regulation (CCR) imposed an administrative penalty on the operation. Accordingly, CCR is proposing rules in Chapter 746 that will (1) establish new requirements related to parent rights, (2) update and clarify current requirements that are related to parent rights, and (3) update a requirement related to the criteria a child-care center director must meet to provide training to the director's staff.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §746.405 (1) updates the rule title to reflect that a child-care center must post contact information in addition to telephone numbers; (2) adds new subsection (b) so the posting requirement is consistent: a child-care center must post the name, address, and telephone number for both

the local CCR office and the child-care center; and (3) updates a reference from "Licensing" to "Child Care Regulation."

The proposed amendment to § (1) adds a requirement that a child-care center include, in its written operational policies, procedures that address parent rights that are consistent with rules in new Division 5 of Subchapter B; (2) removes operational policy requirements that have been moved to new Division 5; (3) reorganizes a paragraph in the rule to consolidate information and improve readability; and (4) renumbers paragraphs in the rule accordingly.

Proposed new Division 5, Parent Rights, in Subchapter B, Administration and Communication, contains new rules related to the rights of a parent with a child enrolled in a child-care center.

Proposed new §746.521 outlines the rights of a parent with a child enrolled in a child-care center, including the right to (1) enter and examine the child-care center without advance notice; (2) file a complaint against the child-care center; (3) review the child-care center's publicly accessible records, (4) review written records about the parent's child; (5) receive from the child-care center (A) HHSC inspection reports regarding the center and (B) information regarding how to access the center's compliance history online; (6) have the child-care center comply with a court order limiting the rights of another parent to visit or pick up the child from the center; (7) be provided with the contact information for CCR; (8) view any available video recordings maintained by the center of an alleged incident of abuse or neglect involving the parent's child, with certain restrictions; (9) obtain a copy of the child-care center's policies and procedures; (10) review upon request (A) staff training records, and (B) in-house training curriculum, if any; and (11) be free from retaliation for exercising any of the parent's rights.

The proposed amendment to §746.1317 (1) updates language to clarify which adverse actions prohibit a director from training staff; (2) updates a limitation on a director's ability to train staff if HHSC has issued an administrative penalty to the child-care center within the previous two years to allow the director to train staff if the individual was not the director at the time HHSC issued the penalty; and (3) renumbers subparagraphs accordingly.

The proposed amendment to §746.4101 (1) updates the rule title; (2) updates language to improve readability; and (3) adds new subsection (b) to require a child-care center, upon request from the parent who enrolled the child in the center, to comply with a court order preventing another parent from removing the child from the center.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

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

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will create a new regulation;

(6) the proposed rules will expand existing regulations;

(7) the proposed rules will not change the number of individuals subject to the rules; and

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; do not impose a cost on regulated persons; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be rules that (1) clearly outline the rights of a parent who has a child enrolled in a licensed or registered child day care operation, (2) allow caregivers in child-care centers to access training more easily, and (3) comply with state law.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the rules do not impose fees, require a child-care center to purchase curriculum or equipment, or require a child-care center to alter current staffing patterns.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Aimee Belden by email at Aimee.Belden@hhs.texas.gov.

Written comments on the proposal may be submitted to Aimee Belden, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be post-

marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R075" in the subject line.

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

DIVISION 3. REQUIRED POSTINGS

26 TAC §746.405

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, and Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§746.405. What telephone numbers and other contact information must I post and where must I post this information [~~them~~]?

(a) You must post in a prominent place the following telephone numbers:

(1) 911 or, if 911 is not available in your area, you must post the telephone numbers for:

(A) Emergency medical services;

(B) Law enforcement; and

(C) Fire department;

(2) Poison control (1-800-222-1222); and

(3) The Texas Abuse and Neglect Hotline (1-800-252-5400). [~~;~~]

[~~(4) The local Licensing office telephone number; and~~]

[~~(5) The child-care center telephone number, name, and address.~~]

(b) You must post in a prominent place the name, address, and telephone number for:

(1) The local Child Care Regulation office; and

(2) The child-care center.

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

Filed with the Office of the Secretary of State on April 3, 2024.

TRD-202401379
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: May 19, 2024
For further information, please call: (512) 438-3269

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DIVISION 4. OPERATIONAL POLICIES

26 TAC §746.501

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, and Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§746.501. What written operational policies must I have?

(a) You must develop written operational policies and procedures that at a minimum address each of the following:

(1) Hours, days, and months of operation;

(2) Procedures for the release of children;

(3) Illness and exclusion criteria;

(4) Procedures for dispensing medication or a statement that medication is not dispensed;

(5) Procedures for handling medical emergencies;

(6) Procedures for parental notifications;

(7) Discipline and guidance that is consistent with Subchapter L of this chapter (relating to Discipline and Guidance). A copy of Subchapter L may be used for your discipline and guidance policy;

(8) Suspension and expulsion of children;

(9) Safe sleep policy for infants from birth through 12 months old that is consistent with the rules in Subchapter H of this chapter (relating to Basic Requirements for Infants) that relate to sleep requirements and restrictions, including sleep positioning, and crib requirements and restrictions, including mattresses, bedding, blankets, toys, and restrictive devices;

(10) Meals and food service practices;

(11) Immunization requirements for children, including tuberculosis screening and testing if required by your regional Texas Department of State Health Services or local health authority;

(12) Hearing and vision screening requirements;

(13) Enrollment procedures, including how and when parents will be notified of policy changes;

(14) Transportation, if applicable;

(15) Water activities, if applicable;

(16) Field trips, if applicable;

(17) Animals, if applicable;

(18) Promotion of indoor and outdoor physical activity that is consistent with Subchapter F of this chapter (relating to Developmental Activities and Activity Plan); your policies must include:

(A) The benefits of physical activity and outdoor play;

(B) The duration of physical activity at your operation, both indoor and outdoor;

(C) The type of physical activity (structured and unstructured) that children may engage in at your operation;

(D) Each setting in which your physical activity program will take place;

(E) The recommended clothing and footwear that will allow a child to participate freely and safely in physical activities;

(F) The criteria you will use to determine when extreme weather conditions pose a significant health risk that prohibits or limits outdoor play; and

(G) A plan to ensure physical activity occurs on days when extreme weather conditions prohibit or limit outdoor play.

(19) Procedures for providing and applying, as needed, insect repellent and sunscreen, including what types will be used, if applicable;

(20) Parent rights that are consistent with the rules in Division 5 of this subchapter (relating to Parent Rights);

(21) [~~(20)~~] Procedures for parents to review and discuss with the child-care center director any questions or concerns about the policies and procedures of the child-care center;

(22) [~~(21)~~] Procedures for parents to participate in the child-care center's operation and activities;

(23) [~~(22)~~] Instructions on how a [~~Procedures for parents to review a copy of the child-care center's most recent Licensing inspection report and how the~~] parent may access the: [~~minimum standards online;~~]

(A) Minimum standards online;

(B) Texas Abuse and Neglect Hotline; and

(C) HHSC website.

[~~(23) Instructions on how a parent may contact the local Licensing office, access the Texas Abuse and Neglect Hotline, and access the HHSC website;~~]

(24) Your emergency preparedness plan;

(25) Your provisions to provide a comfortable place with an adult sized seat in your center or within a classroom that enables a mother to breastfeed her child. In addition, your policies must inform parents that they have the right to breastfeed or provide breast milk for their child while in care;

(26) Preventing and responding to abuse and neglect of children, including:

(A) Required annual training for employees;

(B) Methods for increasing employee and parent awareness of issues regarding child abuse and neglect, including warning signs that a child may be a victim of abuse or neglect and factors indicating a child is at risk for abuse or neglect;

(C) Methods for increasing employee and parent awareness of prevention techniques for child abuse and neglect;

(D) Strategies for coordination between the center and appropriate community organizations; and

(E) Actions that the parent of a child who is a victim of abuse or neglect should take to obtain assistance and intervention, including procedures for reporting child abuse or neglect;

(27) Procedures for conducting health checks, if applicable;

(28) Information on vaccine-preventable diseases for employees, unless your center is in the home of the permit holder. The policy must address the requirements outlined in §746.3611 of this chapter (relating to What must a policy for protecting children from vaccine-preventable diseases include?);

(29) If your operation maintains and administers unassigned epinephrine auto-injectors to use when a child in care has an emergency anaphylaxis reaction, policies for maintenance, administration, and disposal of unassigned epinephrine auto-injectors that comply with the unassigned epinephrine auto-injector requirements set by the Texas Department of State Health Services, as specified in Texas Administrative Code, Title 25, [~~TAC~~] Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities) and in Texas Health and Safety Code §773.0145; and

(30) Procedures for supporting inclusive services to children with special care needs. The policy must address the requirements outlined in §746.2202 of this chapter (relating to What are my responsibilities when planning activities for a child in care with special care needs?).

(b) You must also inform the parents that, any area within 1,000 feet of a child-care center is a gang-free zone, where criminal offenses related to organized criminal activity are subject to a harsher penalty under the Texas Penal Code. You may inform the parents by: [~~:~~]

(1) Providing this information in the operational policies;

[~~(1) They may visit the child-care center at any time during your hours of operation to observe their child, the program activities, the building, the premises, and the equipment without having to secure prior approval; and~~]

(2) Distributing the information in writing to the parents; or

[~~(2) Under the Texas Penal Code~~] any ~~area within 1,000 feet of a child-care center is a gang-free zone, where criminal offenses related to organized criminal activity are subject to a harsher penalty. You may inform the parents by:~~

[~~(A) Providing this information in the operational policies;~~]

[~~(B) Distributing the information in writing to the parents; or~~]

[~~(C) Informing the parents verbally as part of an individual or group parent orientation.~~]

(3) Informing the parents verbally as part of an individual or group parent orientation.

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

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 438-3269

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DIVISION 5. PARENT RIGHTS

26 TAC §746.521

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, and Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

The new section affects Texas Government Code §531.0055 and HRC §42.042.

§746.521. What rights does a parent of a child in care of my child-care center have?

A parent of a child in care has the right to:

(1) Enter and examine your center during its hours of operation without advance notice;

(2) File a complaint against your center;

(3) Review your center's publicly accessible records;

(4) Review your center's written records concerning the parent's child, as outlined in §746.601 of this chapter (relating to Who has the right to access children's records?);

(5) Receive from your center:

(A) HHSC's inspection reports for your center; and

(B) Information regarding how to access your center's compliance history online;

(6) Have your center comply with a court order preventing another parent from visiting or removing the parent's child from your center, as outlined in §746.4101 of this chapter (relating to To whom may I release a child?);

(7) Be provided with contact information for Child Care Regulation, including the department's name, address, and telephone number;

(8) View any video recordings of an alleged incident of abuse or neglect involving the parent's child maintained by your center as long as:

(A) Video recordings of the alleged incident are available;

(B) The parent is not allowed to retain any portion of the video depicting a child who is not the parent's child; and

(C) Your center notifies in writing the parent of any other child captured in the video recording, before allowing the parent to inspect the video recording;

(9) Obtain a copy of your center's policies and procedures, as outlined in §746.503 of this subchapter (relating to Must I provide parents with a copy of my operational policies?);

(10) Review, upon request of the parent, your:

(A) Staff training records; and

(B) In-house training curriculum, if any; and

(11) Be free from any retaliatory action by your center for exercising any of the parent's rights.

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

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SUBCHAPTER D. PERSONNEL
DIVISION 4. PROFESSIONAL DEVELOPMENT

26 TAC §746.1317

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, and Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§746.1317. Must the training for my caregivers and the director meet certain criteria?

(a) Training may include clock hours or CEUs provided by:

(1) A training provider registered with the Texas Early Childhood Professional Development System Training Registry, maintained by the Texas Head Start State Collaboration Office;

(2) An instructor who teaches early childhood development or another relevant course at a secondary school or institution of higher education accredited by a recognized accrediting agency;

(3) An employee of a state agency with relevant expertise;

(4) A physician, psychologist, licensed professional counselor, social worker, or registered nurse;

(5) A person who holds a generally recognized credential or possesses documented knowledge relevant to the training the person will provide;

(6) A director at your child-care center if:

(A) The director has demonstrated core knowledge in child development and caregiving;

(B) HHSC has not placed your center on probation or suspended, revoked, or refused to renew your permit [~~Your child-care center has not been on probation, suspension, emergency suspension, or revocation in the two years preceding the training or been assessed an administrative penalty~~] in the two years preceding the training; [~~and~~]

(C) HHSC has not assessed an administrative penalty against your center during the previous two years while your director was serving in that role; and

(D) [~~(C)~~] The only caregivers receiving the training are employees of your [~~child-care~~] center.

(7) A person who has at least two years of experience working in child development, a child development program, early childhood education, a childhood education program, or a Head Start or Early Head Start program and:

(A) Has a current Child Development Associate (CDA) credential; or

(B) Holds at least an associate degree in child development, early childhood education, or a related field.

(b) Training may include clock hours or CEUs obtained through self-instructional materials, if the materials were developed by a person who meets one of the qualifications in subsection (a) of this section.

(c) Instructor-led and self-instructional training, but not self-study training, must include:

(1) Specifically stated learning objectives;

(2) A curriculum, which includes experiential or applied activities;

(3) An evaluation/assessment tool to determine whether the person has obtained the information necessary to meet the stated objectives; and

(4) A certificate of successful completion from the training source.

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

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Karen Ray
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SUBCHAPTER S. SAFETY PRACTICES DIVISION 5. RELEASE OF CHILDREN

26 TAC §746.4101

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, and Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§746.4101. To whom [~~Who~~] may I release a child [~~children to~~]?

(a) You must release a child [~~children~~] only to a parent or a person designated by the parent.

(b) Upon request from the parent who placed a child in your care, you must comply with a court order that prevents another parent from removing the child from your center.

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

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Karen Ray
Chief Counsel
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For further information, please call: (512) 438-3269

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CHAPTER 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §747.403, concerning What telephone numbers must I post and where must I post them; §747.501, concerning What written operational policies must I have; and §747.3901, concerning Who may I release children to; and new §747.521, concerning What rights does a parent of a child in care of my child-care home have, in Texas Administrative Code, Title 26, Chapter 747, Minimum Standards for Child-Care Homes.

BACKGROUND AND PURPOSE

The purpose of this proposal is to implement Senate Bill (S.B.) 1098, 88th Legislature, Regular Session, 2023. S.B. 1098 amended Texas Human Resources Code (HRC), Chapter 42, by adding §42.04271 to establish specific rights of the parent or guardian of a child enrolled in a licensed or registered child day care operation. Accordingly, HHSC Child Care Regulation (CCR) is proposing rules in Chapter 747 that will (1) establish new requirements related to parent rights; and (2) update and clarify current requirements that are related to parent rights.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §747.403 (1) updates the rule title to reflect that a child-care home must post contact information in addition to telephone numbers; (2) adds new subsection (b) so the posting requirement is consistent: a child-care home must post the name, address, and telephone number for both the local CCR office and the child-care home; and (3) updates a reference from "Licensing" to "Child Care Regulation."

The proposed amendment to §747.501 (1) adds a requirement that a child-care home include, in its written operational policies, procedures that address parent rights that are consistent with rules in new Division 5 of Subchapter B; (2) removes operational policy requirements that have been moved to new Division 5; (3) reorganizes a paragraph in the rule to consolidate information and improve readability; and (4) renumbers paragraphs in the rule accordingly.

Proposed new Division 5, Parent Rights, in Subchapter B, Administration and Communication, contains new rules related to the rights of a parent with a child enrolled in a child-care home.

Proposed new §747.521 outlines the rights of a parent with a child enrolled in a child-care home, including the right to (1) en-

ter and examine the child-care home without advance notice; (2) file a complaint against the child-care home; (3) review the child-care home's publicly accessible records; (4) review written records about the parent's child; (5) receive from the child-care home (A) HHSC inspection reports regarding the home and (B) information regarding how to access the home's compliance history online; (6) have the child-care home comply with a court order limiting the rights of another parent to visit or pick up the child from the home; (7) be provided with the contact information for CCR; (8) view any available video recordings maintained by the child-care home of an alleged incident of abuse or neglect involving the parent's child, with certain restrictions; (9) obtain a copy of the child-care home's policies and procedures; (10) review upon request (A) staff training records, and (B) in-house training curriculum, if any; and (11) be free from retaliation for exercising any of the parent's rights.

The proposed amendment to §747.3901 (1) updates the rule title; (2) updates language for improved readability; and (3) adds new subsection (b) to require a child-care home, upon request from the parent who enrolled the child in the home, to comply with a court order preventing another parent from removing the child from the home.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

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

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will create a new regulation;

(6) the proposed rules will expand existing regulations;

(7) the proposed rules will not change the number of individuals subject to the rules; and

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; do not impose a cost on regulated persons; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be rules that (1) clearly outline the rights of a parent who has a child enrolled in a licensed or registered child day care home; and (2) comply with state law.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the rules do not impose fees, require a child-care home to purchase curriculum or equipment, or require a child-care home to alter current staffing patterns.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Aimee Belden by email at Aimee.Belden@hhs.texas.gov.

Written comments on the proposal may be submitted to Aimee Belden, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R075" in the subject line.

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

DIVISION 3. REQUIRED POSTINGS

26 TAC §747.403

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, and Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§747.403. What telephone numbers and other contact information must I post and where must I post this information [them]?

(a) You must post in a prominent place the following telephone numbers:

(1) 911 or, if 911 is not available in your area, you must post the telephone numbers for:

(A) Emergency medical services;

(B) Law enforcement; and

(C) Fire department;

(2) Poison control (1-800-222-1222); and

(3) The Texas Abuse and Neglect Hotline (1-800-252-5400).[;]

(b) You must post in a prominent place the name, address, and telephone number for:

(1) [(4)] The local Child Care Regulation [Licensing] office [telephone number]; and

(2) [(5)] Your child-care [telephone number, name, and] home [address].

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

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Karen Ray
Chief Counsel
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DIVISION 4. OPERATIONAL POLICIES

26 TAC §747.501

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, and Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§747.501. What written operational policies must I have?

You must develop written operational policies and procedures that at a minimum address each of the following:

(1) Procedure for the release of children;

(2) Illness and exclusion criteria;

(3) Procedures for dispensing medication, or a statement that medication is not dispensed;

(4) Procedures for handling medical emergencies;

(5) Discipline and guidance policy that is consistent with Subchapter L of this title (relating to Discipline and Guidance). A copy of Subchapter L may be used for your discipline and guidance policy;

(6) Safe sleep policy for infants from birth through 12 months old that is consistent with the rules in Subchapter H of this chapter (relating to Basic Requirements for Infants) that relate to sleep requirements and restrictions, including sleep positioning, and crib requirements and restrictions, including mattresses, bedding, blankets, toys, and restrictive devices;

(7) Animals, if applicable;

(8) Promotion of indoor and outdoor physical activity that is consistent with Subchapter F of this chapter (relating to Developmental Activities and Activity Plan). Your policies must include:

(A) The duration of physical activity at your home, both indoor and outdoor;

(B) The recommended clothing and footwear that will allow a child to participate freely and safely in physical activities; and

(C) A plan to ensure physical activity occurs on days when extreme weather conditions prohibit or limit outdoor time.

(9) Parent rights that are consistent with the rules in Division 5 of this subchapter (relating to Parent Rights);

[(9) Procedures for parents to visit the child-care home any time during your hours of operation to observe their child, program activities, the home, the premises, and equipment without having to secure prior approval;]

(10) Instructions on how a [Procedures for parents to review a copy of the child-care home's most recent Licensing inspection report and how the] parent may access the:

(A) Minimum [minimum] standards online;

(B) Texas Abuse and Neglect Hotline; and

(C) HHSC website.

[(11) Instructions on how a parent may contact the local Licensing office, access the Texas Abuse and Neglect Hotline, and access the HHSC website;]

(11) [(12)] Your emergency preparedness plan;

(12) [(13)] Procedures for conducting health checks, if applicable;

(13) [(14)] Information on vaccine-preventable diseases for employees, if your licensed child-care home is not located in your own residence. The policy must address the requirements outlined in §747.3411 of this chapter (relating to What must a policy for protecting children from vaccine-preventable diseases include?); and

(14) [(15)] If your home maintains and administers unassigned epinephrine auto-injectors to use when a child in care has an emergency anaphylaxis reaction, policies for maintenance, administration, and disposal of unassigned epinephrine auto-injectors that comply with the unassigned epinephrine auto-injector requirements set by the Texas Department of State Health Services, as specified in Texas Administrative Code, Title 25, [TAC] Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities) and in Texas Health and Safety Code §773.0145.

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

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DIVISION 5. PARENT RIGHTS

26 TAC §747.521

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, and Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

The new section affects Texas Government Code §531.0055 and HRC §42.042.

§747.521. What rights does a parent of a child in care of my child-care home have?

A parent of a child in care has the right to:

(1) Enter and examine your child-care home during its hours of operation without advance notice;

(2) File a complaint against your child-care home;

(3) Review your child-care home's publicly accessible records;

(4) Review your child-care home's written records concerning the parent's child, as outlined in §747.601 of this chapter (relating to Who has the right to access children's records?);

(5) Receive from your child-care home:

(A) HHSC's inspection reports for your child-care home; and

(B) Information regarding how to access your child-care home's compliance history online;

(6) Have your child-care home comply with a court order preventing another parent from visiting or removing the parent's child from your child-care home, as outlined in §747.3901 of this chapter (relating to To whom may I release a child?);

(7) Be provided with contact information for Child Care Regulation, including the department's name, address, and telephone number;

(8) View any video recordings of an alleged incident of abuse or neglect involving the parent's child maintained by your child-care home as long as:

(A) Video recordings of the alleged incident are available;

(B) The parent is not allowed to retain any portion of the video depicting a child who is not the parent's child; and

(C) Your child-care home notifies in writing the parent of any other child captured in the video recording, before allowing the parent to inspect the video recording;

(9) Obtain a copy of your child-care home's policies and procedures, as outlined in §747.503 of this subchapter (relating to Must I provide parents with a copy of my operational policies?);

(10) Review, upon request of the parent, your:

(A) Staff training records; and

(B) In-house training curriculum, if any; and

(11) Be free from any retaliatory action by your child-care home for exercising any of the parent's rights.

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

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SUBCHAPTER S. SAFETY PRACTICES
DIVISION 5. RELEASE OF CHILDREN

26 TAC §747.3901

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, and Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§747.3901. To whom [~~Who~~] may I release a child [~~children to~~]?

(a) You may release a child [~~children~~] only to a parent or a person designated by the parent.

(b) Upon request from the parent who placed a child in your care, you must comply with a court order that prevents another parent from removing the child from your child-care home.

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 1. CHRONIC WASTING DISEASE (CWD)

31 TAC §§65.81, 65.82, 65.85, 65.88

The Texas Parks and Wildlife Department proposes amendments to 31 TAC §§65.81, 65.82, 65.85, and 65.88, concerning Disease Detection and Response.

The proposed amendments would function collectively to refine surveillance efforts as part of the agency's effort to manage chronic wasting disease (CWD).

CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (referred to collectively as susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Much remains unknown about CWD, although robust efforts to increase knowledge are underway in many states and countries. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. Currently, scientific evidence suggests that CWD has zoonotic potential; however, no confirmed cases of CWD have been found in humans. Consequently, both the Centers for Disease Control and Prevention and the World Health Organization strongly recommend testing animals taken in areas where CWD exists, and if positive, recommend not consuming the meat. What is known is that CWD is invariably fatal to certain species of cervids and is transmitted both directly (through animal-to-animal contact) and indirectly (through environmental contamination). If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion-dollar ranching, hunting, wildlife management, and real estate economies could be significant.

The department has engaged in several rulemakings over the years to address the threat posed by CWD, including rules to designate a system of zones in areas where CWD has been confirmed. The purpose of those CWD zones is to determine the geographic extent and prevalence of the disease while containing it by limiting the unnatural movement of live CWD-susceptible species as well as the movement of carcass parts.

The department's response to the emergence of CWD in captive and free-ranging populations is guided by the department's CWD Management Plan (Plan) https://tpwd.texas.gov/huntwild/wild/diseases/cwd/plan.phtml. Developed in 2012 in consultation with the Texas Animal Health Commission (TAHC), other governmental entities and conservation organizations, and various advisory groups consisting of landowners, hunters, deer managers, veterinarians, and epidemiologists, the Plan sets forth the department's CWD management strategies and informs regulatory responses to the detection of the disease in captive and free-ranging cervid populations in the State of Texas. The Plan is intended to be dynamic; in fact, it must be so in order to accommodate the growing understanding of the etiology, pathology, and epidemiology of the disease and the potential management pathways that emerge as it becomes better understood through time. The Plan proceeds from the premise that disease surveillance and active management of CWD once it is detected are critical to containing it on the landscape.

The commission has directed staff to investigate methods to reduce the geographical extent of management zones and reduce the inconvenience and confusion created for hunters and landowners. Once CWD is found in a free-ranging deer, disease management becomes much more difficult compared to positive animals discovered in deer breeding facilities. This means that CWD zones for infected free-ranging populations are likely to remain and grow over time. To alleviate this issue, staff has developed a periodic, voluntary sampling approach which, in concert with the statewide carcass processing and disposal requirements described in the proposed amendment to §65.88, concerning Deer Carcass Movement and Disposal Restrictions, is intended to allow the department to discharge its statutory duty to conserve and protect deer resources while reducing the regulatory footprint associated with the current rule framework. Under this periodic, voluntary sampling approach, a CZ and/or SZ established in response to a CWD detection would result in an initial period during which testing of all hunter-harvested deer (at department expense) would be mandatory, followed by a specified time period (e.g. three years) of voluntary sampling of hunter-harvested deer, followed by a year of mandatory testing, and repeating the cycle of voluntary and mandatory sampling. If no additional positive deer are discovered, this pattern would be repeated until the surveillance metrics provide a reasonable assurance that CWD is not present on the landscape.

The proposed amendment to §65.81, concerning Containment Zones; Restrictions, would expand the geographical extent of CZ 2 in the Panhandle in response to additional detections of CWD in free-range mule deer. The proposed amendment also would remove mandatory check station requirements in CZs 1 (Hudspeth and Culberson counties), 2 (Deaf Smith, Oldham, and Hartley counties), 3 (Medina and Uvalde counties), 4 (Val Verde County), 5 (Lubbock County), and 6 (Kimble County) with voluntary check station measures beginning September 1, 2024. The department has determined that adequate disease surveillance in those zones has been achieved, that the extent or prevalence of CWD is known, and that voluntary surveillance measure can be implemented on an alternating basis with mandatory surveillance measures in those zones.

Similarly, the proposed amendment to §65.82, concerning Surveillance Zones; Restrictions, would replace mandatory

check station requirements with voluntary measures in SZ (Surveillance Zone) 1 (Culberson and Hudspeth counties), 3 (Medina and Uvalde counties), 4 (Val Verde County), 5 (Kimble County), and 6 (Garza, Lynn, Lubbock, and Crosby counties). The commission has directed staff to investigate new approaches to the process for the delineation of SZ parameters. Under current methodology, when CWD is detected in a deer breeding facility, a SZ is created, consisting of the area within a distance of two miles from the external perimeter of the property where the breeding facility was located (including all properties wholly or partially within those boundaries). Because properties where breeding facilities are located can be irregular and vary widely in size, surveillance zone boundaries therefore vary in shape and geographical extent accordingly. The proposed amendments would modify SZs to reflect a two-mile radius around a deer breeding facility (the physical facility, not the boundaries of the property where the facility is located) where CWD is detected, which would not include the entirety of properties only a portion of which are within the two-mile radius, only the portion of properties that are within the two-mile radius. The department believes that although this approach would reduce the efficacy of SZs to provide a high degree of surveillance, it should reduce confusion for hunters and landowners while providing some ability for the detection of CWD if it were present or should it have spread from the positive facilities to the surrounding landscape.

The proposed amendment also would eliminate SZ 10 and SZ 11 in Uvalde County and SZ 12 in Limestone County. The department has determined that the risk mitigation strategies implemented in the CWD-positive deer breeding facilities that precipitated those zones designations have significantly reduced the risk that CWD was or will be spread to nearby populations. The affected deer breeders attained herd plan agreements with the department, TAHC, and the United States Department of Agriculture (USDA) and were able to mitigate disease transmission via depopulation, enhanced disease surveillance, targeted culling of exposed animals, and cleaning and disinfection, among other methods. In those areas where deer breeding facilities have not instituted such measures, it is not possible to eliminate SZ designations.

The proposed amendment to §65.85, concerning Mandatory Check Stations, would provide for the establishment of voluntary check stations and procedures within CWD management zones. As discussed earlier in this preamble, the department proposes to implement voluntary procedures for testing hunter-harvested deer in certain zones if certain criteria exist. The proposed amendment would establish by rule the SZs in which voluntary check stations and procedures are implemented. The proposed amendment also retitles the section accordingly.

The proposed amendment to §65.88, concerning Deer Carcass Movement Restrictions, would create additional options governing the post-harvest transportation of deer and establish statewide carcass disposal standards. Because CWD prions (the infectious agents that causes CWD) are known to be present in tissues of infected animals, especially brain, spinal cord and viscera, the department believes that care should be taken with respect to the treatment of carcasses, especially carcasses of animals taken within a CWD management zone. Under current rule, a deer taken in a CWD management zone cannot be transported from the zone unless it has been processed as required by the section and transported to a final destination (the possessor's permanent residence or cold storage/processing facility) or taxidermist, unless it has first been presented at a department check station for tissue sample removal, which allows the department to conduct disease surveillance and provide a method for notifying hunters in the event that an animal tests positive for CWD. The department has determined that the current rules can be modified to allow the carcass of a harvested deer to be deboned at the location where harvest occurred, provided the meat is not processed beyond the removal of whole muscles from the bone, the meat is packaged in such a fashion that meat from multiple deer is not commingled, proof-of-sex and any required tag accompanies the meet to a final destination, and the remainder of the carcass remains at the harvest location.

The proposed amendment would also impose statewide carcass disposal measures for carcasses transported from the location of harvest elsewhere (i.e., not separated into quarters or deboned at the harvest location prior to transport), to consist of disposal of all deer parts not retained for cooking, storage, or taxidermy purposes to be disposed of (directly or indirectly) at a landfill permitted by the Texas Commission on Environmental Quality to receive such wastes, by interment at a depth of no less than three feet below the natural surface of the ground and covered with at least three feet of earthen material, or by being returned to the property where the animal was harvested. The department has determined that in light of the recent spate of CWD detections in free-ranging deer and in deer breeding facilities (which are extensively epidemiologically interconnected and the source of deer released at hundreds of locations across the state), a statewide carcass disposal rule will be beneficial by limiting and ideally eliminating the careless, haphazard, or inadequate disposal of potentially infectious tissues, thus mitigating the potential spread of CWD.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rules as proposed, as department personnel currently allocated to the administration and enforcement of disease management activities will administer and enforce the rules as part of their current job duties.

Mr. Macdonald also has determined that for each of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be a reduction of the probability of CWD being spread from locations where it might exist and an increase in the probability of detecting CWD if it does exist, thus ensuring the public of continued enjoyment of the resource and also ensuring the continued beneficial economic impacts of hunting in Texas.

There could be adverse economic impact on persons required to comply with the rules as proposed.

The proposed amendment to §65.88 would impose carcass disposal restrictions on every person who harvests or possesses deer after harvest anywhere in the state; however, those costs should range from no cost to minimal cost. For persons who debone or process deer at the location where the harvest occurred and leave the carcass at the harvest site, there is no cost of compliance. Similarly, there would be no cost of compliance for persons who transport carcasses to a cold storage/processing facility or taxidermist, as disposal of remains following such activities is a normal process for such entities and the department assumes is reflected in the price charged to the consumer for services rendered. For persons who transport carcasses to the possessor's final residence, there will be no additional cost

of compliance if the remains following processing are disposed of indirectly via a solid waste disposal service that transports the wastes to a permitted landfill. The remaining three options under the amendment as proposed (return of remains to the harvest location, interment at the cost of the possessor, and direct transport to a landfill) could result in an adverse economic impact as a result of compliance. The cost of returning unwanted deer parts to the location of harvest would consist of the cost of fuel, which could vary, depending on the distance travelled but, in most cases would be less than $200. The cost of interment could vary as well. For a person who manually excavates a site meeting the requirements of the proposed amendment or has access to mechanized excavation equipment, there would be no cost of compliance; thus, any costs associated with this option would be associated with rental or leasing fees for mechanized excavation equipment, which the department estimates at approximately $50 per hour. For deer parts transported directly to a landfill, the cost of compliance would be the fee charged by the landfill for carcass disposal, which also varies from facility to facility; however, the department estimates the probable cost per animal carcass to be less than $100. The department notes that most if not all hunters will either process their deer at the harvest location or transport the deer to a final destination where the remains will be collected and transported to a landfill by a contracted waste disposal service or municipal utility; therefore, there are no-cost options available to virtually every person required to comply.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, and rural communities. As required by Government Code, §2006.002(g), in April 2008, the Office of the Attorney General issued guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. Government Code, §2006.001(1), defines a small or micro-business as a legal entity "formed for the purpose of making a profit" and "independently owned and operated." A micro-business is a business with 20 or fewer employees. A small business is defined as a business with fewer than 100 employees, or less than $6 million in annual gross receipts.

Cold storage/processing facilities and taxidermists affected by the carcass disposal requirements of the proposed amendments may qualify as small or micro-businesses. Because all such entities are not regulated (by the department) there is no way to accurately assess how many of them there might be, but the department assumes there are many hundreds if not thousands. The department has determined that the adverse economic impacts of compliance with the rules as proposed would be identical to the cost of compliance for individuals affected by the proposed rules, discussed in an analysis earlier in this preamble.

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

One alternative was to do nothing. This alternative was rejected because the presence of CWD in breeding facilities and free-ranging populations presents an actual, direct threat to free-ranging and captive cervid populations and the economies that depend upon them. The repeated additional discoveries of CWD in captive and free-range populations indicates that additional measures are necessary to prevent the spread of CWD from locations where it may exist. Therefore, because the department has a statutory duty to protect and conserve the wildlife resources of the state and current rules do not achieve the necessary level of vigilance needed to prevent the spread of CWD, this alternative was rejected.

Another alternative would be an absolute prohibition on the movement of deer within the state for any purpose. While this alternative would significantly reduce the potential spread of CWD, it would deprive hunters of the ability to enjoy the benefits of harvest. Therefore, this alternative was rejected because the department determined that it placed an avoidable burden on the regulated community.

Another alternative would be mandatory harvest reporting for hunter-killed deer and the imposition of a system of randomized selection of harvested animals to provide a randomized distribution of sampling across the landscape. This alternative was rejected because it is beyond the administrative and fiscal capacity to implement in the near term.

The department has determined that the proposed rules will not affect rural communities because the rules do not directly regulate any rural community.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not result in direct impacts to local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules. Any impacts resulting from the discovery of CWD in or near private real property would be the result of the discovery of CWD and not the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; create a new regulation (by imposing statewide carcass disposal restrictions); limit an existing regulation (by creating the option for voluntary testing of hunter-harvested deer in CWD management zones), but will not repeal an existing regulation; not increase the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rules may be submitted to Dr. Hunter Reed, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (830) 890-1230 (e-mail: jhunter.reed@tpwd.texas.gov); or via the department's website at www.tpwd.texas.gov.

The amendments are proposed under the authority of Parks and Wildlife Code, §42.0177, 42.0177, which authorizes the commis-

sion to modify or eliminate the tagging, carcass, final destination, or final processing requirements or provisions of §§42.001, 42.018, 42.0185, 42.019, or 42.020, or other similar requirements or provisions in Chapter 42; Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

The proposed amendments affect Parks and Wildlife Code, Chapter 42, Chapter 43, Subchapter L, Chapter 61.

§65.81. Containment Zones; Restrictions.

The areas described in paragraph (1) of this section are CZs and the provisions of this subchapter applicable to CZs apply [~~on all properties lying wholly or partially~~] within the described areas.

(1) Containment Zones.

(A) Containment Zone 1: That portion of the state within the boundaries of a line beginning in Culberson County where U.S. Highway (U.S.) 62-180 enters from the State of New Mexico; thence southwest along U.S. 62-180 to F.M. 1111 in Hudspeth County; thence south on F.M. 1111 to I.H. 10 thence west along I.H. 10 to S.H. 20; thence northwest along S.H. 20 to Farm-to Market Road (F.M.) 1088; thence south along F.M. 1088 to the Rio Grande; thence northwest along the Rio Grande to the Texas-New Mexico border. Beginning September 1, 2024, voluntary check stations and procedures take effect in this zone and there are no mandatory check station requirements.

(B) Containment Zone 2: That portion of the state within the boundaries of a line beginning where I.H. 40 enters from the State of New Mexico in Deaf Smith County; thence east along I.H. 40 to U.S. 87 / 287 in Potter County; thence north along U.S. 287 [~~385 in Oldham County; thence north along U.S. 385 to Hartley in Hartley County; thence east along U.S. 87 to County Rd. 47; thence north along C.R. 47 to F.M. 281; thence west along F.M. 281 to U.S. 385; thence north along U.S. 385~~] to the Oklahoma state line. Beginning September 1, 2024, voluntary check stations and procedures take effect in this zone and there are no mandatory check station requirements.

(C) Containment Zone 3 is that portion of the state lying within the area designated as Containment Zone 3 as depicted in the following figure, more specifically described by the following latitude-longitude coordinate pairs: -99.37150859160, 29.63847446060; -99.37149088670, 29.63846662930; -99.37140891920, 29.63848553940; -99.37060541260, 29.63866345050; -99.36979991580, 29.63883435770; -99.36899250760, 29.63899824440; -99.36818326920, 29.63915509460; -99.36737228030, 29.63930489330; -99.36655962200, 29.63944762460; -99.36574537420, 29.63958327440; -99.36492961890, 29.63971182950; -99.36411243690, 29.63983327680; -99.36329390830, 29.63994760490; -99.36247411610, 29.64005480240; -99.36165314010, 29.64015485800; -99.36083106340, 29.64024776200; -99.36000796690, 29.64033350600; -99.35918393260, 29.64041208020; -99.35835904140, 29.64048347690; -99.35753337730, 29.64054768950; -99.35670702030, 29.64060471180; -99.35588005420, 29.64065453800; -99.35505256020, 29.64069716300; -99.35422462000, 29.64073258190; -99.35339631770, 29.64076079330; -99.35256773320, 29.64078179120; -99.35173895150, 29.64079557700; -99.35091005250, 29.64080214650; -99.35008112110, 29.64080150020; -99.34925223720, 29.64079363850; -99.34842348390, 29.64077856180; -99.34759494500, 29.64075627050; -99.34676670140, 29.64072676970; -99.34593883500, 29.64069005880; -99.34511142980, 29.64064614450; -99.34428456550, 29.64059502920; -99.34345832730, 29.64053671860; -99.34263279480, 29.64047121870; -99.34180805210, 29.64039853620; -99.34098417980, 29.64031867790; -99.34016125900, 29.64023165140; -99.33933937340, 29.64013746530; -99.33851860400, 29.64003613010; -99.33769903240, 29.63992765510; -99.33688073860, 29.63981205080; -99.33606380640, 29.63968932950; -99.33524831450, 29.63955950320; -99.33443434580, 29.63942258420; -99.33362197990, 29.63927858650; -99.33281129880, 29.63912752410; -99.33200238210, 29.63896941200; -99.33119531060, 29.63880426680; -99.33039016400, 29.63863210440; -99.32958702310, 29.63845294160; -99.32878596750, 29.63826679580; -99.32798707590, 29.63807368670; -99.32719042800, 29.63787363270; -99.32639610340, 29.63766665410; -99.32560418090, 29.63745277140; -99.32481473900, 29.63723200480; -99.32402785630, 29.63700437840; -99.32324361150, 29.63676991250; -99.32246208110, 29.63652863190; -99.32168334370, 29.63628056060; -99.32090747690, 29.63602572160; -99.32013455720, 29.63576414270; -99.31936466110, 29.63549584760; -99.31859786610, 29.63522086410; -99.31783424670, 29.63493921960; -99.31707388130, 29.63465094180; -99.31631684240, 29.63435606000; -99.31556320750, 29.63405460190; -99.31481305090, 29.63374659950; -99.31428518670, 29.63352422890; -99.31327613830, 29.63385871860; -99.31119621070, 29.63441522500; -99.30907905370, 29.63485166510; -99.30693374210, 29.63516616720; -99.30476946840, 29.63535738290; -99.30259551080, 29.63542449380; -99.30042118310, 29.63536721180; -99.29825580750, 29.63518578290; -99.29610866020, 29.63488098300; -99.29398894560, 29.63445412050; -99.29333570920, 29.63428256460; -99.29198312960, 29.63440193850; -99.28980918250, 29.63446884150; -99.28763488270, 29.63441135180; -99.28546954940, 29.63422971420; -99.28332246050, 29.63392471020; -99.28120282010, 29.63349764560; -99.27911971030, 29.63295034940; -99.27708205970, 29.63228516800; -99.27509859770, 29.63150495270; -99.27317782280, 29.63061304540; -99.27132796710, 29.62961326970; -99.26955695390, 29.62850990860; -99.26787237000, 29.62730769180; -99.26628142850, 29.62601176810; -99.26479094610, 29.62462769280; -99.26340730190, 29.62316139480; -99.26213642120, 29.62161915630; -99.26098374350, 29.62000758460; -99.25995420100, 29.61833358520; -99.25905219660, 29.61660432570; -99.25852828340, 29.61543549330; -99.25567633480, 29.60864361470; -99.25543327220, 29.60804452310; -99.25436510120, 29.60531724390; -99.24895181910, 29.59224873850; -99.24875409400, 29.59175761900; -99.24811849040, 29.58994021790; -99.24762026440, 29.58809037130; -99.24726154520, 29.58621600320; -99.24704385890, 29.58432514130; -99.24698969130, 29.58296661320; -99.24696813210, 29.58242588210; -99.24703467860, 29.58052635990; -99.24724320880, 29.57863470840; -99.24759281790, 29.57675902710; -99.24808200470, 29.57490734580; -99.24870866620, 29.57308759350; -99.24947011200, 29.57130756040; -99.25036307580, 29.56957486700; -99.25138372950, 29.56789693000; -99.25252769650,

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(D) Containment Zone 4: That portion of the state lying within the boundaries of a line beginning in Val Verde County at the International Bridge and proceeding northeast along Spur 239 to U.S. 90; thence north along U.S. 90 to the intersection of U.S. 277/377, thence north along U.S. 277/377 to the U.S. 277/377 bridge at Lake Amistad (29.496183°, -100.913355°), thence west along the southern shoreline of Lake Amistad to International boundary at Lake Amistad dam, thence south along the Rio Grande River to the International Bridge on Spur 239. Beginning September 1, 2024, voluntary check stations and procedures take effect in this zone and there are no mandatory check station requirements.

(E) Containment Zone 5: That portion of the state within the boundaries of a line beginning at the intersection of County Road (C.R.) 3600 and E. Division St. in Slaton in Lubbock County; thence west along E Division St. to S. New Mexico St.; thence northwest along S. New Mexico St. to Railroad Ave.; thence northwest along Railroad Ave. to Industrial Dr.; thence northwest along Industrial Dr. to U.S. Highway (U.S.) 84; thence northwest along U.S. 84 to State Highway (S.H.) Spur 331; thence northwest along S.H. 331 to S.H. Loop 289; thence north along S.H. Loop 289 to Farm to Market (F.M.) 40; thence east along FM 40 to C.R. 3650; thence south along C.R. 3650 to C.R. 6840; thence east along C.R. 6840 to C.R. 3700; thence south along C.R. 3700 to C.R. 3600; thence south along C.R. 3600 to E. Division St. Beginning September 1, 2024, voluntary check stations and procedures take effect in this zone and there are no mandatory check station requirements.

(F) Containment Zone 6. Containment Zone 6 is that portion of the state lying within the area designated as Containment Zone 6 as depicted in the following figure, more specifically described by the following latitude-longitude coordinate pairs: -99.64149620530, 30.33874131980; -99.64368509530, 30.33881527790; -99.64586372900, 30.33901321630; -99.64802278630, 30.33933428830; -99.65015302980, 30.33977711870; -99.65224534450, 30.34033981470; -99.65429077770, 30.34101996710; -99.65628057710, 30.34181466700; -99.65820622800, 30.34272051420; -99.66005948830, 30.34373363190; -99.66183242590, 30.34484968550; -99.66351745180, 30.34606390020; -99.66510735200, 30.34737107880; -99.66659531760, 30.34876562900; -99.66797497780, 30.35024158170; -99.66924042170, 30.35179262020; -99.67038622830, 30.35341210660; -99.67046477880, 30.35354140340; -99.67147782260, 30.35460588970; -99.67153230830, 30.35466602360; -99.67188955110, 30.35506746450; -99.67307523230, 30.35651392490; -99.67312410770, 30.35657758260; -99.67320399680, 30.35668212250; -99.67419784160, 30.35807240520; -99.67454916760, 30.35859625790; -99.67490548510, 30.35911757060; -99.67503636190, 30.35931074510; -99.67551615580, 30.36002520870; -99.67559374500, 30.36014136260; -99.67626717380, 30.36115489090; -99.67635111830, 30.36128196820; -99.67635731860, 30.36129141260; -99.67702442120, 30.36230808630; -99.67772804480, 30.36343779160; -99.67786171250, 30.36366423400; -99.67809406440, 30.36406546940; -99.67822368020, 30.36429367690; -99.67830297560, 30.36443424190; -99.67837167020, 30.36455843800; -99.67856992290, 30.36489829520; -99.67891470550, 30.36548187040; -99.67926295430, 30.36606391440; -99.67965466960, 30.36671044570; -99.67976457160, 30.36689341470; -99.68033394380, 30.36784958850; -99.68069940250, 30.36848209490; -99.68110363450, 30.36923041450; -99.68115288840, 30.36932507690; -99.68164128190,

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(G) - (J) (No change.)

(2) (No change.)

§65.82. Surveillance Zones; Restrictions.

The areas described in paragraph (1) of this section are SZs and the provisions of this subchapter applicable [~~to SZs apply on all properties lying wholly or partially~~] within the described areas.

(1) Surveillance Zones.

(A) Surveillance Zone 1: That portion of the state lying within a line beginning where U.S. 285 enters from the State of New Mexico in Reeves County; thence southeast along U.S. 285 to R.M. 652; thence west along R.M. 652 to Rustler Springs Rd./FM 3541 in Culberson County; thence south along Rustler Springs Rd./F.M. 3541 to F.M. 2185; thence south along F.M. 2185 to Nevel Road; thence west along Nevel Road to County Road 501; thence south along County Road 501 to Weatherby Road; thence south along Weatherby Road to F.M. 2185; thence southwest along to F.M. 2185 to S.H. 54; thence south on S.H. 54 to U.S. 90; thence south along U.S. 90 to the Culberson County line; thence southwest along the Culberson County line to the Rio Grande River in Hudspeth County; thence north along the Rio Grande to F.M. 1088; thence northeast along F.M. 1088 to S.H. 20; thence southeast along S.H. 20 to I.H. 10; thence southeast along I.H. 10 to F.M 1111; thence north on F.M. 1111 to U.S. 62/180; thence east and north along U.S. 62/180 to the New Mexico state line in Culberson County. Beginning September 1, 2024, voluntary check stations and procedures take effect in this zone and there are no mandatory check station requirements.

(B) Surveillance Zone 2. That portion of the state not within the CZ described in §65.81(1)(B) of this title (relating to Containment Zones; Restrictions) lying within a line beginning at the New Mexico state line where F.M. 1058 enters Texas in Deaf Smith County; thence east along F.M 1058 to U.S. 60 in Randall County; thence north along U.S. 60 to U.S. 87; thence south along U.S. 87 to S.H. 217 in Canyon; thence east along S.H. 217 to F.M. 1541; thence north along F.M. 1541 to Loop 335; thence east and north along Loop 335 to S.H. 136; thence northeast along S.H. 136 to F.M. 687; thence north along F.M. 687 to F.M. 1319 in Hutchinson County; thence northwest along F.M. 1319 to F.M. 913; thence north along F.M. 913 to S.H. 152; thence west along S.H. 152 to F.M. 1060 to the intersection of F.M. 1573 and F.M. 1060; thence north along F.M. 1573 to S.H. 15; thence northwest along S.H. 15 to the intersection of S.H. 15 and F.M. 1290; thence north

along F.M. 1290 in Sherman County to the Oklahoma state line. [~~That portion of the state lying within a line beginning at the New Mexico state line where U.S. 60 enters Texas; thence northeast along U.S. 60 to U.S. 87 in Randall County; thence south along U.S. 87 to S.H. 217 in Canyon; thence east along S.H. 217 to F.M. 1541; thence north along F.M. 1541 to Loop 335; thence east and north along Loop 335 to S.H. 136; thence northwest along S.H. 136 to N. Lakeside Dr.; thence north along N. Lakeside Dr. to E. Willow Creek Dr.; thence west along E. Willow Creek Dr. to Denton St.; thence north along Denton St. to E. Cherry; thence west along E. Cherry to N. Eastern St.; thence south along N. Eastern St. to E. Willow Creek Dr.; thence west along E. Willow Creek Dr. to U.S. 87; thence north along U.S. 87 to the City of Dumas; thence along the city limits of Dumas to U.S. 287 in Moore County; thence north along U.S. 287 to the Oklahoma state line~~].

(C) Surveillance Zone 3. That portion of the state not within the CZ described in §65.81(1)(C) of this title (relating to Containment Zones; Restrictions) lying within a line beginning at the intersection of F.M. 1250 and U.S. Highway 90 in Hondo in Medina County; thence west along U.S. Highway 90 to the Sabinal River in Uvalde County; thence north along the Sabinal River to F.M. 187; thence north along F.M. 187 to F.M. 470 in Bandera County; thence east along F.M. 470 to Tarpley in Bandera County; thence south along F.M. 462 to 18th Street in Hondo; thence east along 18th Street to State Highway 173; thence south along State Highway 173 to U.S. Highway 90; thence west along U.S. Highway 90 to Avenue E (F.M. 462); thence south along Avenue E (F.M. 462) to F.M. 1250; thence west along F.M 1250 to U.S. Highway 90. Beginning September 1, 2024, voluntary check stations and procedures take effect in this zone and there are no mandatory check station requirements.

(D) Surveillance Zone 4: That portion of the state lying within a line beginning in Val Verde County at the confluence of Sycamore Creek and the Rio Grande River (29.242341°, -100.793906°); thence northeast along Sycamore Creek to U.S. 277; thence northwest on U.S. 277 to Loop 79; thence north along Loop 79 to the Union Pacific Railroad; thence east along the Union Pacific Railroad to Liberty Drive (north entrance to Laughlin Air Force Base); thence north along Liberty Drive to U.S. 90; thence west along U.S. 90 to Loop 79; thence north along Loop 79 to the American Electric Power (AEP) Ft. Lancaster-to-Hamilton Road 138kV transmission line (29.415542°, -100.847993°); thence north along the AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line to a point where the AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line turns northwest (29.528552°, -100.871618°); thence northwest along the AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line to the AEP Ft. Lancaster-to-Hamilton Road maintenance road (29.569259°, -100.984758°); thence along the AEP Ft. Lancaster-to-Hamilton Road maintenance road to Spur 406; thence northwest along Spur 406 to U.S. 90; thence south along U.S. 90 to Box Canyon Drive; thence west along Box Canyon Drive to Bluebonnet Drive; thence southwest along Bluebonnet Drive to Lake Drive; thence south along Lake Drive to Lake Amistad (29.513298°, -101.172454°), thence southeast along the International Boundary to the International Boundary at the Lake Amistad dam; thence southeast along the Rio Grande River to the confluence of Sycamore Creek (29.242341°, -100.793906°). Beginning September 1, 2024, voluntary check stations and procedures take effect in this zone and there are no mandatory check station requirements.

(E) Surveillance Zone 5: That portion of the state lying within the boundaries of a line beginning on U.S. 83 at the Kerr/Kimble County line; thence north along U.S. 83 to I.H. 10; thence northwest along I.H. 10 to South State Loop 481; thence west along South State Loop 481 to the city limit of Junction in Kimble County; thence following the Junction city limit so as to circumscribe the city of Junction before intersecting with F.M. 2169; thence east along F.M. 2169 to County Road (C.R.) 410; thence east along C.R. 410 to C.R. 412; thence south along C.R. 412 to C.R. 470; thence east along C.R. 470 to C.R. 420; thence south along C.R. 420 to F.M. 479; thence east along F.M. 479 to C.R. 443; thence south along C.R. 443 to U.S. 290; thence west along U.S. 290 to I.H. 10; thence southeast along I.H. 10 to the Kerr/Kimble County line; thence west along the Kerr/Kimble County line to U.S. 83. Beginning September 1, 2024, voluntary check stations and procedures take effect in this zone and there are no mandatory check station requirements.

(F) Surveillance Zone 6: That portion of the state within the boundaries of a line beginning at the intersection of State Highway (S.H.) 207 and Farm to Market (F.M.) 211 in Garza County; thence west along F.M. 211 to U.S. Highway (U.S.) 87 in Lynn County; thence north along U.S. 87 to F.M. 41 in Lubbock County; thence west along F.M. 41 to F.M. 179; thence north along F.M. 179 to F.M. 2641; thence east along F.M. 2641 to U.S. 62/82; thence east along U.S. 62/82 to S.H. 207 in Crosby County; thence south along S.H. 207 to F.M. 211 in Garza County. Beginning September 1, 2024, voluntary check stations and procedures take effect in this zone and there are no mandatory check station requirements.

(G) (No change.)

(H) Surveillance Zone 8. SZ 8 is that portion of Duval County lying within the area described by the following latitude-longitude coordinate pairs: -98.26853300300, 28.03848933420; -98.26589894960, 28.03870362130; -98.26382666860, 28.03873495650; -98.26168570770, 28.03864289040; -98.25955612520, 28.03842674530; -98.25744704830, 28.03808744760; -98.25536751610, 28.03762645160; -98.25332644050, 28.03704573330; -98.25133256850, 28.03634778150; -98.24939444400, 28.03553558780; -98.24752037150, 28.03461263300; -98.24571838040, 28.03358287260; -98.24399619060, 28.03245071990; -98.24236117890, 28.03122102650; -98.24120596430, 28.03024641260; -98.23764719940, 28.02709399450; -98.23726160830, 28.02674663390; -98.23582165410, 28.02533802570; -98.23448864450, 28.02384885000; -98.23326828560, 28.02228548750; -98.23216580050, 28.02065463650; -98.23118590620, 28.01896328400; -98.23033279420, 28.01721867560; -98.22961011190, 28.01542828500; -98.22902094780, 28.01359978130; -98.22856781790, 28.01174099660; -98.22825265510, 28.00985989210; -98.22807680110, 28.00796452400; -98.22804100110, 28.00606300930; -98.22814540020, 28.00416349070; -98.22838954320, 28.00227410180; -98.22877237680, 28.00040293240; -98.22929225400, 27.99855799380; -98.22994694140, 27.99674718450; -98.23073362900, 27.99497825630; -98.23164894210, 27.99325878140; -98.23268895600, 27.99159611980; -98.23384921300, 27.98999738820; -98.23512474120, 27.98846942880; -98.23651007630, 27.98701878090; -98.23753363050, 27.98606014200; -98.23812756760, 27.98552859310; -98.23859321690, 27.98512010170; -98.24017990520, 27.98384233640; -98.24185729580, 27.98265940820; -98.24361820790, 27.98157637890; -98.24545510380, 27.98059788250; -98.24736012140, 27.97972810560; -98.24932510790, 27.97897076960; -98.25134165440, 27.97832911470; -98.25340113210, 27.97780588610; -98.25549472890, 27.97740332210; -98.25761348710, 27.97712314520; -98.25974834150, 27.97696655390; -98.26189015850, 27.97693421810; -98.26402977450, 27.97702627610; -98.26615803560, 27.97724233410; -98.26826583590, 27.97758146780; -98.27034415740, 27.97804222640; -98.27066337070,

27.97812448630; -98.27092531890, 27.97819327050; -98.27118842850, 27.97825846810; -98.27135329220, 27.97829973340; -98.27339325350, 27.97888012930; -98.27538611560, 27.97957769600; -98.27732335070, 27.98038944910; -98.27919666850, 27.98131191570; -98.28099805140, 27.98234114890; -98.28271978900, 27.98347274480; -98.28435451100, 27.98470186160; -98.28483623730, 27.98509663910; -98.28781024450, 27.98758316700; -98.28886928050, 27.98850974440; -98.29030945540, 27.98991769800; -98.29164285070, 27.99140623600; -98.29286375500, 27.99296898800; -98.29396693720, 27.99459926560; -98.29494766950, 27.99629009130; -98.29580174750, 27.99803422780; -98.29652550850, 27.99982420930; -98.29711584690, 28.00165237330; -98.29757022780, 28.00351089340; -98.29788669820, 28.00539181270; -98.29806389510, 28.00728707800; -98.29810105160, 28.00918857400; -98.29799800060, 28.01108815860; -98.29775517530, 28.01297769680; -98.29737360750, 28.01484909670; -98.29685492350, 28.01669434310; -98.29620133730, 28.01850553260; -98.29541564090, 28.02027490720; -98.29450119300, 28.02199488750; -98.29346190410, 28.02365810530; -98.29230222030, 28.02525743510; -98.29102710420, 28.02678602470; -98.28964201370, 28.02823732480; -98.28894971860, 28.02889554680; -98.28793108410, 28.02983443720; -98.28713422910, 28.03054400140; -98.28554739730, 28.03182241250; -98.28386969320, 28.03300597540; -98.28210830270, 28.03408961830; -98.28027077130, 28.03506869700; -98.27836497140, 28.03593901570; -98.27639906860, 28.03669684430; -98.27438148670, 28.03733893480; -98.27232087180, 28.03786253530; -98.27022605450, 28.03826540150; -98.26853300300, 28.03848933420; and -98.30155203260, 27.19694473190.[-98.27174932070, 27.95642982020; -98.27388849940, 27.95652170740; -98.27601633780, 27.95673759350; -98.27812373230, 27.95707655480; -98.28020166610, 27.95753714120; -98.28224124840, 27.95811738240; -98.28423375210, 27.95881479580; -98.28617065090, 27.95962639760; -98.28804365580, 27.96054871560; -98.28984475060, 27.96157780350; -98.29156622620, 27.96270925800; -98.29320071330, 27.96393823800; -98.29424069340, 27.96481101760; -98.30642858790, 27.97549504130; -98.30692921880, 27.97594346320; -98.30836946820, 27.97735119370; -98.30970296670, 27.97883952330; -98.31092400210, 27.98040208240; -98.31202734290, 27.98203218360; -98.31300826060, 27.98372284990; -98.31386255010, 27.98546684490; -98.31458654760, 27.98725670330; -98.31517714670, 27.98908476310; -98.31563181130, 27.99094319850; -98.31594858710, 27.99282405280; -98.31612610990, 27.99471927320; -98.31616361140, 27.99662074460; -98.31606092310, 27.99852032470; -98.31581847640, 28.00040987900; -98.31543730170, 28.00228131520; -98.31491902360, 28.00412661810; -98.31426585420, 28.00593788410; -98.31348058400, 28.00770735470; -98.31256656960, 28.00942745010; -98.31152771970, 28.01109080170; -98.31036847870, 28.01269028330; -98.30909380710, 28.01421904230; -98.30770916090, 28.01567052860; -98.30652296870, 28.01677477150; -98.29476413900, 28.02715939820; -98.29446157480, 28.02742312300; -98.29287488890, 28.02870162410; -98.29119732650, 28.02988528270; -98.28943607290, 28.03096902640; -98.28759867300, 28.03194821070; -98.28569299860, 28.03281863930; -98.28372721490, 28.03357658150; -98.28216192700, 28.03408627840; -98.28209992850, 28.03411284900; -98.28209629310, 28.03411493290; -98.28025876110, 28.03509401150; -98.27835296060, 28.03596433010; -98.27638705720, 28.03672215850; -98.27436947480, 28.03736424880; -98.27230885930, 28.03788784910; -98.27021404140, 28.03829071510; -98.26809399880, 28.03857112010; -98.26595781780, 28.03872786210; -98.26381465380, 28.03876026950; -98.26167369230, 28.03866820320; -98.25954410930, 28.03845205790; -98.25743503190, 28.03811276000; -98.25535549920, 28.03765176380; -98.25331442320, 28.03707104520; -98.25132055070, 28.03637309330; -98.24938242580, 28.03556089930; -98.24750835300, 28.03463794430; -98.24570636160, 28.03360818380; -98.24398417140, 28.03247603080; -98.24234915950, 28.03124633730; -98.24113442760, 28.03021886870; -98.23083475970, 28.02104737240; -98.23050872200, 28.02075285160; -98.22906895270, 28.01934417220; -98.22773612680, 28.01785493140; -98.22651595000, 28.01629151040; -98.22541364430, 28.01466060750; -98.22443392620, 28.01296921000; -98.22358098620, 28.01122456380; -98.22285847120, 28.00943414270; -98.22226946880, 28.00760561600; -98.22181649430, 28.00574681570; -98.22150148010, 28.00386570320; -98.22132576720, 28.00197033470; -98.22129010010, 28.00006882730; -98.22139462340, 27.99816932350; -98.22163888140, 27.99627995700; -98.22202182030, 27.99440881740; -98.22254179260, 27.99256391580; -98.22319656450, 27.99075315070; -98.22398332570, 27.98898427370; -98.22489870110, 27.98726485670; -98.22593876580, 27.98560225960; -98.22709906180, 27.98400359850; -98.22837461720, 27.98247571570; -98.22975996750, 27.98102514990; -98.23106012000, 27.97982198190; -98.24826906240, 27.96478130770; -98.24845806380, 27.96461741060; -98.25004429250, 27.96333954100; -98.25172121430, 27.96215649990; -98.25348165010, 27.96107334930; -98.25531806430, 27.96009472380; -98.25722259690, 27.95922481070; -98.25918709720, 27.95846733190; -98.26120315840, 27.95782552820; -98.26326215380, 27.95730214530; -98.26535527320, 27.95689942250; -98.26747356090, 27.95661908260; -98.26960795410, 27.95646232490; and -98.27174932070, 27.95642982020.]

(I) Surveillance Zone 9. SZ 9 is that portion of Gillespie County lying within the area described by the following latitude-longitude coordinate pairs: -99.17478378900, 30.46880138780; -99.17344441450, 30.46875473420; -99.17125882380, 30.46855395780; -99.16909308530, 30.46822975280; -99.16695648100, 30.46778350870; -99.16485816800, 30.46721713810; -99.16280713850, 30.46653306830; -99.16081218160, 30.46573423120; -99.15888184570, 30.46482405040; -99.15702440140, 30.46380642650; -99.15524780620, 30.46268572050; -99.15355967030, 30.46146673500; -99.15196722430, 30.46015469360; -99.15047728760, 30.45875521840; -99.14909623960, 30.45727430570; -99.14782999240, 30.45571830090; -99.14754058130, 30.45533004290; -99.14746306940, 30.45522422140; -99.14737913880, 30.45512214090; -99.14666615810, 30.45421953130; -99.14552016870, 30.45259509050; -99.14449930200, 30.45090918460; -99.14360792440, 30.44916903590; -99.14284984730, 30.44738209890; -99.14222831040,

30.44555602770; -99.14174596790, 30.44369864410; -99.14140487770, 30.44181790320; -99.14120649220, 30.43992185970; -99.14115165250, 30.43801863350; -99.14124058490, 30.43611637480; -99.14147290000, 30.43422322880; -99.14183910100, 30.43238297250; -99.14228093660, 30.43052147810; -99.14228943000, 30.43048580720; -99.14280487320, 30.42863512920; -99.14345886600, 30.42681762430; -99.14424860080, 30.42504107350; -99.14517068970, 30.42331308160; -99.14622117840, 30.42164104540; -99.14739556410, 30.42003212150; -99.14868881410, 30.41849319630; -99.15009538800, 30.41703085620; -99.15160926100, 30.41565135950; -99.15322395010, 30.41436060960; -99.15493254160, 30.41316413010; -99.15672772090, 30.41206704070; -99.15860180360, 30.41107403590; -99.16054676840, 30.41018936450; -99.16255429170, 30.40941681180; -99.16461578260, 30.40875968330; -99.16672242000, 30.40822079030; -99.16886519010, 30.40780243860; -99.17103492510, 30.40750641780; -99.17322234170, 30.40733399470; -99.17541808170, 30.40728590660; -99.17761275110, 30.40736235950; -99.17979696040, 30.40756302630; -99.18196136490, 30.40788704830; -99.18409670430, 30.40833303950; -99.18567792280, 30.40874767180; -99.18751824900, 30.40927339910; -99.18803417430, 30.40942481140; -99.18935156880, 30.40984877450; -99.19034348260, 30.41018862290; -99.19107608130, 30.41044831580; -99.19307014000, 30.41124667690; -99.19499972170, 30.41215633730; -99.19615230570, 30.41278765840; -99.19620639260, 30.41277708640; -99.19837615560, 30.41248060080; -99.20056363650, 30.41230770900; -99.20194435170, 30.41226263510; -99.20294397540, 30.41224783970; -99.20375910010, 30.41224434870; -99.20595390550, 30.41232031430; -99.20813828700, 30.41252049610; -99.21030289910, 30.41284403770; -99.21243848060, 30.41328955480; -99.21453589440, 30.41385514140; -99.21658616590, 30.41453837770; -99.21858052200, 30.41533634050; -99.22051042800, 30.41624561550; -99.22236762440, 30.41726231240; -99.22414416220, 30.41838208070; -99.22583243650, 30.41960012900; -99.22742521940, 30.42091124510; -99.22891569080, 30.42230981840; -99.23029746770, 30.42378986360; -99.23156463130, 30.42534504660; -99.23271175250, 30.42696871150; -99.23373391520, 30.42865390870; -99.23462673770, 30.43039342500; -99.23538639090, 30.43217981430; -99.23566797250, 30.43295099130; -99.23627361300, 30.43469349280; -99.23661526880, 30.43574792950; -99.23709940920, 30.43760495300; -99.23744236180, 30.43948543700; -99.23764264990, 30.44138133010; -99.23767354770, 30.44192498970; -99.23771679110, 30.44286474130; -99.23774265160, 30.44422426630; -99.23765562690, 30.44612659270; -99.23742518280, 30.44801991460; -99.23705229760, 30.44989612370; -99.23653856000, 30.45174718450; -99.23588616240, 30.45356516890; -99.23509789140, 30.45534228970; -99.23417711610, 30.45707093470; -99.23312777380, 30.45874369860; -99.23195435340, 30.46035341530; -99.23066187600, 30.46189318830; -99.22925587340, 30.46335642070; -99.22774236480, 30.46473684280; -99.22612783100, 30.46602853980; -99.22441918620, 30.46722597680; -99.22262374890, 30.46832402250; -99.22074921030, 30.46931797130; -99.21880360140, 30.47020356380; -99.21679525840, 30.47097700450; -99.21473278710, 30.47163497880; -99.21281331370, 30.47213170240; -99.21178735520, 30.47236856230; -99.21159906630, 30.47241152500; -99.20945503820, 30.47283059610; -99.20728394300, 30.47312727140; -99.20509508580, 30.47330027910; -99.20289784810, 30.47334887790; -99.20070164730, 30.47327285940; -99.19851589650, 30.47307254950; -99.19695268740, 30.47285163110; -99.19569920060, 30.47264807900; -99.19509647960, 30.47254524850; -99.19295965810, 30.47209943930; -99.19086109690, 30.47153349580; -99.18880978940, 30.47084984340; -99.18681452600, 30.47005141230; -99.18488385620, 30.46914162430; -99.18306770850, 30.46814718790; -99.18219751820, 30.46831433920; -99.18002644100, 30.46861055100; -99.17783763790, 30.46878309150; -99.17778919240, 30.46878415320; -99.17564049000, 30.46883122140; and -99.17478378900, 30.46880138780.[~~-99.17353593810, 30.39743442450; -99.17375688290, 30.39743648560; -99.18452955870, 30.39756726460; -99.18650306740, 30.39764152210; -99.18868707390, 30.39784203650; -99.19085128910, 30.39816590750; -99.19298645340, 30.39861174960; -99.19508343130, 30.39917765510; -99.19713325040, 30.39986120300; -99.19912713940, 30.40065946870; -99.20105656550, 30.40156903680; -99.20291327150, 30.40258601540; -99.20468931010, 30.40370605310; -99.20637707890, 30.40492435720; -99.20796935200, 30.40623571450; -99.20893862350, 30.40712458840; -99.20895081010, 30.40713624540; -99.20896777450, 30.40714183510; -99.21010719770, 30.40753808480; -99.21210135430, 30.40833614830; -99.21403105790, 30.40924552080; -99.21588805010, 30.41026231130; -99.21766438250, 30.41138216910; -99.21935245120, 30.41260030250; -99.22094502920, 30.41391149870; -99.22243529740, 30.41531014690; -99.22381687330, 30.41679026140; -99.22474340580, 30.41792590210; -99.22480835100, 30.41796172760; -99.22658493020, 30.41908146200; -99.22827324780, 30.42029947810; -99.22986607570, 30.42161056390; -99.23135659370, 30.42300910870; -99.23273841830, 30.42448912760; 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[(J) Surveillance Zone 10. SZ 10 is that portion of Limestone County lying within the area described by the following latitude-longitude coordinate pairs: -96.65881805040, 31.73430086730; -96.66104090900, 31.73442055060; -96.66324985920, 31.73466418940; -96.66543545060, 31.73503074110; -96.66758833200, 31.73551863760; -96.66969929240, 31.73612579150; -96.67175929910,

31.74340801060; -96.63111303750, 31.74313020830; -96.64027391640, 31.73843371330; -96.64166940590, 31.73775591030; -96.64366469470, 31.73690995180; -96.64572041930, 31.73617729780; -96.64782778280, 31.73556108310; -96.64997776830, 31.73506394410; -96.65216117680, 31.73468800780; -96.65436866660, 31.73443488260; -96.65659079340, 31.73430565150; and -96.65881805040, 31.73430086730.]

[(K) Surveillance Zone 11. SZ 11 is that portion of Uvalde County lying within the area described by the following latitude-longitude coordinate pairs: -99.65125892840, 29.37997244440; -99.64901351840, 29.37941401480; -99.64845146960, 29.37926298170; -99.64642007180, 29.37858685430; -99.64444354350, 29.37779577780; -99.64253035400, 29.37689314240; -99.64068870050, 29.37588281650; -99.63892647290, 29.37476913010; -99.63725121990, 29.37355685560; -99.63567011690, 29.37225118790; -99.63418993490, 29.37085772200; -99.63281701150, 29.36938242860; -99.63155722420, 29.36783162880; -99.63041596490, 29.36621196710; -99.62939811680, 29.36453038250; -99.62890579820, 29.36359183460; -99.62806121330, 29.36305789800; -99.62638629870, 29.36184548510; -99.62480553320, 29.36053968750; -99.62429303370, 29.36007754550; -99.62405653320, 29.35985950010; -99.62381874180, 29.35964253520; -99.62273207700, 29.35860163960; -99.62135950160, 29.35712622890; -99.62010005700, 29.35557532250; -99.61895913350, 29.35395556520; -99.61873659380, 29.35360972870; -99.61862150420, 29.35342798500; -99.61782652640, 29.35209215220; -99.61693676500, 29.35035577580; -99.61617856340, 29.34857213070; -99.61555516190, 29.34674885720; -99.61506922320, 29.34489376500; -99.61503820540, 29.34475276260; -99.61494624750, 29.34432910810; -99.61463086570, 29.34259114510; -99.61442547730, 29.34069635380; -99.61436197100, 29.33879385100; -99.61444061050, 29.33689178380; -99.61466105070, 29.33499829680; -99.61487321080, 29.33380912050; -99.61491150300, 29.33362019190; -99.61506063110, 29.33293256890; -99.61556121170, 29.33108049280; -99.61619893460, 29.32926106910; -99.61697106210, 29.32748208660; -99.61732421150, 29.32676913270; -99.61746690720, 29.32649127370; -99.61801697400, 29.32547330120; -99.61904740670, 29.32379784010; -99.61962570840, 29.32295977640; -99.61999500570, 29.32244439010; -99.62056993200, 29.32166962830; -99.62184101280, 29.32012634080; -99.62322450720, 29.31865919800; -99.62471448910, 29.31727447850; -99.62532991110, 29.31675242370; -99.62534908130, 29.31673657650; -99.62536140450, 29.31671616190; -99.62601184830, 29.31568933250; -99.62716487010, 29.31407645020; -99.62843574650, 29.31253310120; -99.62981903270, 29.31106589070; -99.63130880370, 29.30968109780; -99.63289867970, 29.30838464850; -99.63458185310, 29.30718209080; -99.63635111800, 29.30607857030; -99.63819890080, 29.30507880900; -99.64011729290, 29.30418708460; -99.64209808410, 29.30340721240; -99.64413279780, 29.30274252910; -99.64621272750, 29.30219587850; -99.64832897350, 29.30176959930; -99.65047248120, 29.30146551530; -99.65263407970, 29.30128492740; -99.65480452090, 29.30122860820; -99.65487587710, 29.30122887060; -99.65900846590, 29.30124789310; -99.66110711120, 29.30131575240; -99.66326739090, 29.30150809000; -99.66540870640, 29.30182382290; -99.66752189610, 29.30226160050; -99.66959791860, 29.30281954970; -99.67162789070, 29.30349528360; -99.67360312630, 29.30428591090; -99.67551517240, 29.30518804900; -99.67735584590, 29.30619783800; -99.67911726860, 29.30731095730; -99.67954559440, 29.30760570470; 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-99.70257218990, 29.35737149930; -99.70207313650, 29.35922393950; -99.70143682890, 29.36104381850; -99.70066598480, 29.36282334130; -99.69976389890, 29.36455488500; -99.69873442870, 29.36623103210; -99.69758197780, 29.36784460200; -99.69631147760, 29.36938868150; -99.69492836580, 29.37085665520; -99.69343856370, 29.37224223310; -99.69184845020, 29.37353947830; -99.69016483510, 29.37474283200; -99.68839492950, 29.37584713740; -99.68654631520, 29.37684766210; -99.68462691200, 29.37774011850; -99.68264494370, 29.37852068160; -99.68060890300, 29.37918600620; -99.67852751480, 29.37973324070; -99.67640969900, 29.38016003970; -99.67426453180, 29.38046457390; -99.67210120720, 29.38064553800; -99.66992899700, 29.38070215650; -99.66982079290, 29.38070171930; -99.66706723200, 29.38068663350; -99.65998003010, 29.38082841100; -99.65912069230, 29.38083583350; -99.65694891120, 29.38076767780; -99.65478687690, 29.38057522580; -99.65264385560, 29.38025930250; and -99.65125892840, 29.37997244440.]

[(L) Surveillance Zone 12. SZ 12 is that portion of Uvalde County lying within the area described by the following latitude-longitude coordinate pairs: -99.77993413720, 29.29464496260; -99.77999034560, 29.29464510230; -99.78359395520, 29.29465668420; -99.78570768690, 29.29472252300; -99.78786806550, 29.29491272730; -99.79000963960, 29.29522634520; -99.79212324670, 29.29566203510; -99.79419984340, 29.29621793300; -99.79623054440, 29.29689166050; -99.79820666000, 29.29768033510; -99.80011973380, 29.29858058260; -99.80196157830, 29.29958855110; -99.80372431010, 29.30069992760; -99.80540038360, 29.30190995680; -99.80698262320, 29.30321346090; -99.80846425390, 29.30460486190; -99.80983893070, 29.30607820520; -99.81110076530, 29.30762718570; -99.81224435170, 29.30924517390; -99.81326478910, 29.31092524480; -99.81415770310, 29.31266020720; -99.81491926470, 29.31444263450;

~~-99.81554620640, 29.31626489670; -99.81603583670, 29.31811919260; -99.81619440440, 29.31887663510; -99.81620949950, 29.31895453670; -99.81623277680, 29.31903087490; -99.81624122360, 29.31905863100; -99.81673088120, 29.32091292640; -99.81708111940, 29.32279131760; -99.81729043030, 29.32468576220; -99.81735790960, 29.32658814880; -99.81728325980, 29.32849033120; -99.81706679240, 29.33038416370; -99.81670942610, 29.33226153590; -99.81621268330, 29.33411440730; -99.81557868360, 29.33593484210; -99.81481013500, 29.33771504250; -99.81391032230, 29.33944738320; -99.81288309310, 29.34112444290; -99.81173284150, 29.34273903720; -99.81046448940, 29.34428424870; -99.80908346550, 29.34575345690; -99.80850269810, 29.34629485420; -99.80851507910, 29.34630490290; -99.80678761820, 29.34793865560; -99.80657185830, 29.34814076870; -99.80657138090, 29.34814121170; -99.80655435420, 29.34815699820; -99.80597612830, 29.34869270430; -99.80536412210, 29.34927473890; -99.80510057730, 29.34952246450; -99.80509532990, 29.34952733970; -99.80437561930, 29.35017550490; -99.80278735350, 29.35147413470; -99.80110549990, 29.35267895590; -99.79933726220, 29.35378480570; -99.79749021490, 29.35478694490; -99.79557227110, 29.35568107880; -99.79359164840, 29.35646337560; -99.79155683370, 29.35713048240; -99.78947654670, 29.35767954000; -99.78735970240, 29.35810819530; -99.78521537310, 29.35841461090; -99.78305274890, 29.35859747360; -99.78088109880, 29.35865599960; -99.77870973050, 29.35858993800; -99.77654795040, 29.35839957190; -99.77440502380, 29.35808571740; -99.77229013500, 29.35764971960; -99.77208135310, 29.35759382560; -99.77161614530, 29.35752567680; -99.76950128130, 29.35708963240; -99.76742352200, 29.35653331420; -99.76539177170, 29.35585910680; -99.76341473700, 29.35506989950; -99.76150088920, 29.35416907480; -99.75965842840, 29.35316049340; -99.75789524790, 29.35204847750; -99.75621890060, 29.35083779270; -99.75602127760, 29.35068405070; -99.75590513520, 29.35059296970; -99.75578417860, 29.35050683250; -99.75477991510, 29.34976222060; -99.75319761790, 29.34845803730; -99.75171611030, 29.34706596280; -99.75034173590, 29.34559196180; -99.74908037830, 29.34404235000; -99.74793743590, 29.34242376670; -99.74691779940, 29.34074314620; -99.74602583040, 29.33900768850; -99.74526534270, 29.33722482790; -99.74463958670, 29.33540220140; -99.74415123500, 29.33354761580; -99.74380237120, 29.33166901430; -99.74359448130, 29.32977444280; -99.74352844740, 29.32787201480; -99.74360454380, 29.32596987690; -99.74382243630, 29.32407617420; -99.74418118380, 29.32219901500; -99.74442827720, 29.32121228410; -99.74475467770, 29.32000902450; -99.74500563660, 29.31914317660; -99.74564085140, 29.31732310920; -99.74641050820, 29.31554334500; -99.74731130490, 29.31381150270; -99.74833937880, 29.31213499550; -99.74949032280, 29.31052099920; -99.75075920470, 29.30897642190; -99.75214058830, 29.30750787390; -99.75285889630, 29.30681596510; -99.75290419310, 29.30677371780; -99.75294286840, 29.30672668630; -99.75358175440, 29.30597555990; -99.75496305260, 29.30450698290; -99.75645093470, 29.30312071770; -99.75803902900, 29.30182269650; -99.75972053550, 29.30061847410; -99.76148825540, 29.29951320330; -99.76333462190, 29.29851161350; -99.76525173210, 29.29761799010; -99.76723138150, 29.29683615670; -99.76926509830, 29.29616945840; -99.77134418030, 29.29562074760; -99.77345973130, 29.29519237180; -99.77560269990, 29.29488616370; -99.77776391730, 29.29470343340; and -99.77993413720, 29.29464496260.]~~

(J) [~~(M)~~] Surveillance Zone 13. SZ 13 is that portion of Zavala County lying within the area described by the following latitude-longitude coordinate pairs: -99.49644185690, 29.02417661150; -99.49562966350, 29.02412334320; -99.49393660130, 29.02396991650; -99.49180196360, 29.02365131550; -99.49083631250, 29.02344929880; -99.48969562220, 29.02321065280; -99.48762660400, 29.02264981740; -99.48560377590, 29.02197121270; -99.48363580610, 29.02117774740; -99.48173112710, 29.02027282200; -99.47989789960, 29.01926031480; -99.47814397740, 29.01814456490; -99.47647687370, 29.01693035390;-99.47490372870, 29.01562288470; -99.47343127950, 29.01422776020; -99.47206583050, 29.01275095820; -99.47081322730, 29.01119880640; -99.46967883080, 29.00957795500; -99.46866749500, 29.00789534810; -99.46797379780, 29.00655894600; -99.46771833640, 29.00603193930; -99.46752808670, 29.00563118690; -99.46677531270, 29.00384692620; -99.46637898190, 29.00272972640; -99.46593095580, 29.00137117720; -99.46570890210, 29.00066465370; -99.46522755050, 28.99880927960; -99.46488527500, 28.99693020200; -99.46468353340, 28.99503546850; -99.46462318140, 28.99313319330; -99.46470446910, 28.99123152270; -99.46492704020, 28.98933859940; -99.46528993350, 28.98746252860; -99.46579158710, 28.98561134250; -99.46642984560, 28.98379296650; -99.46720196900, 28.98201518510; -99.46810464460, 28.98028560840; -99.46913400180, 28.97861163980; -99.47028562810, 28.97700044430; -99.47155458850, 28.97545891780; -99.47293544650, 28.97399365780; -99.47442228750, 28.97261093490; -99.47600874410, 28.97131666650; -99.47768802360, 28.97011639080; -99.47945293670, 28.96901524400; -99.48129592860, 28.96801793770; -99.48320911090, 28.96712873900; -99.48518429580, 28.96635145260; -99.48721303080, 28.96568940400; -99.48928663490, 28.96514542580; -99.49139623540, 28.96472184510; -99.49353280620, 28.96442047420; -99.49568720610, 28.96424260250; -99.49785021770, 28.96418899080; -99.50001258690, 28.96425986860; -99.50070476990, 28.96430895700; -99.50164138890, 28.96438408740; -99.50222476060, 28.96442829400; -99.50384970280, 28.96458709060; -99.50598308400, 28.96490547770; -99.50808823700, 28.96534585460; -99.51015615440, 28.96590633740; -99.51217798800, 28.96658452800; -99.51414508630, 28.96737752500; -99.51604903110, 28.96828193540; -99.51788167410, 28.96929388970; -99.51963517120, 28.97040905800; -99.52130201620, 28.97162266860; -99.52287507310, 28.97292952830; -99.52434760620, 28.97432404490; -99.52571330930, 28.97580025050; -99.52696633260, 28.97735182770; -99.52810130760, 28.97897213590; -99.52911337060, 28.98065424020; -99.52999818300, 28.98239094070; -99.53054361870, 28.98364460250; -99.53071826050, 28.98407555150; -99.53092659400, 28.98460575220; -99.53154608850, 28.98642914040; -99.53202864370, 28.98828424880; -99.53237218580, 28.99016313510; -99.53257523590,

28.99205775510; -99.53263691620, 28.99395999620; -99.53255695450, 28.99586171300; -99.53233568470, 28.99775476190; -99.53213313940, 28.99880562870; -99.53197404640, 28.99963103560; -99.53147358020, 29.00148249840; -99.53083642190, 29.00330122050; -99.53006529290, 29.00507941140; -99.52916348920, 29.00680945430; -99.52813486700, 29.00848393790; -99.52698382650, 29.01009568860; -99.52571529300, 29.01163780120; -99.52518092540, 29.01220517850; -99.52455981130, 29.01296021160; -99.52317917810, 29.01442606720; -99.52169239120, 29.01580939560; -99.52010581680, 29.01710426940; -99.51842624950, 29.01830514000; -99.51666088320, 29.01940686120; -99.51481728020, 29.02040471170; -99.51290333880, 29.02129441520; -99.51092725940, 29.02207215860; -99.50889750950, 29.02273460860; -99.50682278710, 29.02327892610; -99.50471198330, 29.02370277810; -99.50257414450, 29.02400434790; -99.50041843310, 29.02418234300; -99.49825408830, 29.02423600050; and -99.49644185690, 29.02417661150. 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(K) [~~(N)~~] Surveillance Zone 14. SZ 14 is that portion of Gonzales County lying within the area described by the following latitude-longitude coordinate pairs: -97.36173045860, 29.73476487270; -97.35841999840, 29.73572909520; -97.35730985270, 29.73599790480; -97.35517442860, 29.73638574070; -97.35301449860, 29.73665082110; -97.35083932010, 29.73679200990; -97.34865821580, 29.73680870180; -97.34648053390, 29.73670082540; -97.34431560810, 29.73646884300; -97.34239990550, 29.73615743850; -97.34190649300, 29.73606412650; -97.34190671230, 29.73606324300; -97.34162234480, 29.73601040010;-97.34160197820, 29.73600641250; -97.34103384450, 29.73589501060; -97.33927419950, 29.73550573800; -97.33853955680, 29.73532449340; -97.33820790740, 29.73524104940; -97.33613652360, 29.73464478870; -97.33411428730, 29.73393153740; -97.33214986420, 29.73310435250; -97.33025167130, 29.73216677900; -97.32842784140, 29.73112283510; -97.32668618780, 29.72997699440; -97.32503417080, 29.72873416730; -97.32347886580, 29.72739967950; -97.32202693320, 29.72597924930; -97.32068458920, 29.72447896300; -97.31945757990, 29.72290524860; -97.31835115660, 29.72126484850; -97.31737005300,

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(L) [~~(O)~~] Surveillance Zone 15. SZ 15 is that portion of Hamilton County lying within the area described by the following latitude-longitude coordinate pairs: -98.30890186100, 31.52080856360; -98.30794932010, 31.52111312350; -98.30663041230, 31.52160433670; -98.30453882930, 31.52224752590; -98.30240259180, 31.52277212140; -98.30023085480, 31.52317587480; -98.29838701260, 31.52342024630; -98.29779674970, 31.52348430330; -98.29744266270, 31.52352111120; -98.29522795990, 31.52367850440; -98.29300597870, 31.52371144540; -98.29078624260, 31.52361979290; -98.28857826560, 31.52340393970;-98.28639151120, 31.52306481110; -98.28423535150, 31.52260386050; -98.28211902720, 31.52202306340; -98.28005160800, 31.52132490900; -98.27804195320, 31.52051238950; -98.27609867410, 31.51958898700; -98.27423009660, 31.51855865880; -98.27244422590, 31.51742582020; -98.27074871200, 31.51619532570; -98.26915081680, 31.51487244810; -98.26765738290, 31.51346285570; -98.26627480470, 31.51197258840; -98.26500900050, 31.51040803120; -98.26386538780, 31.50877588720; -98.26284885940, 31.50708314880; -98.26196376320, 31.50533706750; -98.26123026400, 31.50358858940; -98.26116089640, 31.50340501280; -98.26108575260, 31.50322311290; -98.26077433900, 31.50243348340; -98.26042212550, 31.50143535020; -98.26025598810, 31.50093214120; -98.25999676100, 31.50010013920; -98.25952635350, 31.49823965550; -98.25919898190, 31.49635679210; -98.25905574040, 31.49503029550; -98.25902903550, 31.49470094170; -98.25898933510, 31.49413025900; -98.25895159760, 31.49222688830; -98.25905921660, 31.49032547710; -98.25931172250, 31.48843416710; -98.25970802560, 31.48656105640; -98.26024642070, 31.48471416460; -98.26092459440, 31.48290139860; -98.26173963580, 31.48113051900; -98.26268804820,

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(M) [~~(P)~~] Surveillance Zone 16. SZ 16 is that portion of Washington County lying within the area described by the following latitude-longitude coordinate pairs: -96.37818600590, 30.18191727260; -96.38037260510, 30.18204179120; -96.38126142310, 30.18214344400; -96.38183665460, 30.18217619090; -96.38400921490, 30.18242462620; -96.38615843640, 30.18279594060; -96.38827512360, 30.18328854540; -96.39035021980, 30.18390033310; -96.39237484600, 30.18462868620; -96.39434033840, 30.18547048840; -96.39623828560, 30.18642213800; -96.39677557990, 30.18671848320; -96.39737630640, 30.18705681000; -96.39866130040, 30.18781788400; -96.40040012450, 30.18897655180; -96.40204803700, 30.19023151300; -96.40359798240, 30.19157739740; -96.40504332360, 30.19300844530; -96.40637787030, 30.19451853250; -96.40759590570, 30.19610119620; -96.40869221050, 30.19774966280; -96.40966208600, 30.19945687630; -96.41050137400, 30.20121552930; -96.41120647440, 30.20301809350; -96.41177436110, 30.20485685250; -96.41220259500, 30.20672393420; -96.41248933450, 30.20861134490; -96.41263334350, 30.21051100340; -96.41263399690, 30.21241477560; -96.41249128340, 30.21431450920; -96.41220580560, 30.21620206880; -96.41177877780, 30.21806937060; -96.41121202080, 30.21990841710; -96.41101164340, 30.22042153380; -96.41096545730, 30.22057139600; -96.41026138110, 30.22237430900; -96.40942300250, 30.22413336690; -96.40845390570, 30.22584103440; -96.40735823510, 30.22748999610; -96.40614067850, 30.22907318760; -96.40480644620, 30.23058382600; -96.40336124960, 30.23201543880; -96.40181127600, 30.23336189210; -96.40016316260, 30.23461741630; -96.39842396800, 30.23577663130; -96.39660114190, 30.23683456960; -96.39470249320, 30.23778669750; -96.39273615650, 30.23862893460; -96.39071055710, 30.23935767140; -96.38863437490, 30.23996978450; -96.38665406210, 30.24043452890; -96.38629454620, 30.24050872300; -96.38615699110, 30.24053684440; -96.38400651130, 30.24090834500; -96.38196210040, 30.24114560010; -96.37956349050, 30.24135890920; -96.37943402890, 30.24137020050; -96.37724607410, 30.24149469100; -96.37505342490, 30.24149463060; -96.37286547920, 30.24137001960; -96.37069161440, 30.24112139200; -96.36854114770, 30.24074981350; -96.36642329560, 30.24025687660; -96.36434713430, 30.23964469410; -96.36232156110, 30.23891588970; -96.36035525580, 30.23807358680; -96.35845664370, 30.23712139540; -96.35663385910, 30.23606339620; -96.35489471070, 30.23490412300; -96.35324664800, 30.23364854370; -96.35169672940, 30.23230203860; -96.35025159190, 30.23087037740; -96.34891742260, 30.22935969440; -96.34769993250, 30.22777646210; -96.34660433170, 30.22612746380; -96.34563530760, 30.22441976380; -96.34479700450, 30.22266067780; -96.34409300610, 30.22085774120; -96.34389250760, 30.22026010760; -96.34343696920, 30.21884607860; -96.34307079300, 30.21760464660; -96.34264385410, 30.21573732990; -96.34235846540, 30.21384976040; -96.34221584080, 30.21195002190; -96.34221658270, 30.21004624990; -96.34236067920, 30.20814659660; -96.34264750500, 30.20625919600; -96.34307582360, 30.20439212950; -96.34364379300, 30.20255339060; -96.34434897380, 30.20075085120; -96.34518833940, 30.19899222770; -96.34615828960, 30.19728504830; -96.34725466570, 30.19563662030; -96.34847276860, 30.19405399940; -96.34980737900, 30.19254395910; -96.35125277970, 30.19111296190; -96.35280278010, 30.18976713200; -96.35445074300, 30.18851222870; -96.35618961250, 30.18735362180; -96.35801194480, 30.18629626920; -96.35990993970, 30.18534469510; -96.36187547380, 30.18450297110; -96.36390013580, 30.18377469850; -96.36597526150, 30.18316299340; -96.36809197190, 30.18267047270; -96.37024121010, 30.18229924380; -96.37241378070, 30.18205089490; -96.37460038870, 30.18192648840; -96.37543874540, 30.18191180110; -96.37683307230, 30.18190253200; and -96.37818600590, 30.18191727260. 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(N) [~~(O)~~] Surveillance Zone 17. SZ 17 is that portion of Frio County lying within the area described by the following latitude-longitude coordinate pairs: -99.40328546520, 29.07915307200; -99.40054361410, 29.07930707700; -99.39959203180, 29.07932990480; -99.39837754610, 29.07930452900; -99.39647797530, 29.07923416400; -99.39552760710, 29.07918691730; -99.39337280530, 29.07899001740; -99.39123728960, 29.07866970240; -99.38913021260, 29.07822734500; -99.38706060440, 29.07766484140; -99.38503733420, 29.07698460240; -99.38306907230, 29.07618954340; -99.38116425240, 29.07528307200; -99.37933103580, 29.07426907280; -99.37757727620, 29.07315189160; -99.37591048600, 29.07193631590; -99.37433780430, 29.07062755470; -99.37286596590, 29.06923121620; -99.37150127290, 29.06775328340; -99.37024956730, 29.06620008900; -99.36911620640, 29.06457828740; -99.36810603970, 29.06289482700; -99.36722338810, 29.06115691970; -99.36647202570, 29.05937201040; -99.36585516380, 29.05754774480; -99.36537543670, 29.05569193670; -99.36503489130, 29.05381253470; -99.36491425580, 29.05283759490; -99.36489588640, 29.05266156230; -99.36487114270, 29.05248613340; -99.36467883380, 29.05064465580; -99.36462040430, 29.04874228040; -99.36470369480, 29.04684062200; -99.36492834030, 29.04494782350; -99.36492990260, 29.04493785210; -99.36513955680, 29.04360136330; -99.36550301600, 29.04173550110; -99.36600684970, 29.03988466300; -99.36664733060, 29.03806674420; -99.36742170930, 29.03628952710; -99.36832666360, 29.03456061950; -99.36935831300, 29.03288742190; -99.37051223510, 29.03127709600; -99.37178348530, 29.02973653410; -99.37316661710, 29.02827232940; -99.37465570640, 29.02689074810; -99.37624437610, 29.02559770260; -99.37792582390, 29.02439872600; -99.37969285140, 29.02329894880; -99.38153789460, 29.02230307680; -99.38345305650, 29.02141537110; -99.38543014090, 29.02063962970; -99.38746068690, 29.01997917180; -99.38953600590, 29.01943682300; -99.39164721800, 29.01901490360; -99.39378529010, 29.01871521880; -99.39594107450, 29.01853905050; -99.39810534800, 29.01848715250; -99.40026885120, 29.01855974680; -99.40242232780, 29.01875652280; -99.40383950340, 29.01895496840; -99.40507296930, 29.01915187360; -99.40538531660, 29.01920309630; -99.40714446970, 29.01949925910; -99.40754918900, 29.01956969410; -99.40965507880, 29.02001173040; -99.41172359060, 29.02057384670; -99.41374587360, 29.02125363810; -99.41571327430, 29.02204819600; -99.41761737330, 29.02295412110; -99.41945002160, 29.02396753710; -99.42120337510, 29.02508410800; -99.42286992820, 29.02629905610; -99.42444254600, 29.02760718240; -99.42591449480, 29.02900288930; -99.42727947090, 29.03048020390; -99.42853162750, 29.03203280390; -99.42966559990, 29.03365404440; -99.43067652860, 29.03533698640; -99.43156007990, 29.03707442650; -99.43231246470, 29.03885892750; -99.43293045500, 29.04068285040; -99.43341139750, 29.04253838690; -99.43375322520, 29.04441759310; -99.43395446640, 29.04631242320; -99.43401425130, 29.04821476370; -99.43393231560, 29.05011646890; -99.43389479440, 29.05044302380; -99.43381891550, 29.05136303910; -99.43359979540, 29.05320442480; -99.43333423930, 29.05464078420; -99.43327382600, 29.05492277520; -99.43321578760, 29.05520515100; -99.43307319710, 29.05585635130; -99.43257055780, 29.05770747200; -99.43193118050, 29.05952574360; -99.43115779630, 29.06130337760; -99.43025371080, 29.06303275940; -99.42922278990, 29.06470648070; -99.42806944380, 29.06631737110; -99.42679860750, 29.06785852910; -99.42541572040, 29.06932335160; -99.42392670280, 29.07070556220; -99.42233793030, 29.07199923820; -99.42065620690, 29.07319883620; -99.41888873580, 29.07429921550; -99.41704308830, 29.07529566050; -99.41512717150, 29.07618390090; -99.41314919440, 29.07696012990; -99.41111763240, 29.07762102080; -99.40946862840, 29.07806258830; -99.40915738060, 29.07813820930; -99.40884682480, 29.07821599600; -99.40816655680, 29.07837952130; -99.40605412680, 29.07880173010; -99.40391477070, 29.07910163230; and -99.40328546520, 29.07915307200.

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and -99.36629569600, 28.98651965640.~~]

(O) [~~(R)~~] Surveillance Zone 18. Surveillance Zone 18 is that portion of Bexar County within the boundaries of a line beginning at the intersection of Northwest Military Highway (FM 1535) and Interstate Highway (IH) Loop 410 in Bexar County; thence east along IH-Loop 410 to Wetmore Road; thence north along Wetmore Road to Bulverde Road; thence north along Bulverde Road to Evans Road; thence west along Evans Road to Stone Oak Parkway; thence west and south along Stone Oak Parkway to Huebner Road; thence west along Huebner Road to Northwest Military Highway; thence south along Northwest Military Highway (FM 1535) to IH-Loop 410.

(P) [~~(S)~~] Surveillance Zone 19. Surveillance Zone 19 is that portion of Sutton County lying within the area described by the following latitude/longitude pairs: -100.40986652300, 30.53767808780; -100.40687035900, 30.53756298810; -100.40542910100, 30.53744473740; -100.40325776100, 30.53714147950; -100.40111400100, 30.53671590810; -100.39900700900, 30.53616984720; -100.39694581400, 30.53550563710; -100.39493925000, 30.53472612440; -100.39299591400, 30.53383465010; -100.39293782400, 30.53380578890; -100.39189123600, 30.53328460470; -100.39169138500, 30.53318508050; -100.39159646800, 30.53313781220; -100.39001163700, 30.53234855830; -100.38819800400, 30.53137776240; -100.38640585800, 30.53027424850;

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(Q) [(T)] Surveillance Zone 20. Surveillance Zone 20 is that portion of Zavala County lying within the area described by the following latitude/longitude pairs: -99.53869816580, 29.05677900640; -99.53607979490, 29.05756025510; -99.53515588530, 29.05780278860; -99.53304445540, 29.05822712300; -99.53238085450, 29.05833438650; -99.53097875240, 29.05854805030; -99.52989897550, 29.05871258420; -99.52968204380, 29.05874563860; -99.52957768340, 29.05876154010; -99.52810276210, 29.05895630000; -99.52594632240, 29.05913473540;

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(R) [~~(U)~~] Surveillance Zone 21. Surveillance Zone 21 is that portion of Frio County lying within the area described by the following latitude/longitude pairs: -99.12083230650, 28.76958447260; -99.11778310110, 28.77134826160; -99.11750469510, 28.77149809900; -99.11559202710, 28.77238163650; -99.11361783670, 28.77315303370; -99.11159058310, 28.77380898450; -99.10951895380, 28.77434667750; -99.10741182670, 28.77476380820; -99.10527823230, 28.77505858860; -99.10312731490, 28.77522975540; -99.10096829310, 28.77527657480; -99.09881042040, 28.77519884630; -99.09666294550, 28.77499690280; -99.09453507220, 28.77467161010; -99.09243592010, 28.77422436240; -99.09037448560, 28.77365707650; -99.08835960280, 28.77297218400; -99.08639990580, 28.77217262010; -99.08450379180, 28.77126181170; -99.08267938460, 28.77024366230; -99.08093450010, 28.76912253510; -99.07927661290, 28.76790323470; -99.07771282350, 28.76659098610; -99.07705952620, 28.76598864060; -99.07500948920, 28.76404337180; -99.07419982490, 28.76324613130; -99.07284394730, 28.76176520900; -99.07160093250, 28.76020930580; -99.07047610040, 28.75858508780; -99.06947426400, 28.75689951370; -99.06859970850, 28.75515980450; -99.06785617340, 28.75337341280; -99.06724683640, 28.75154799060; -99.06677429970, 28.74969135670; -99.06644057940, 28.74781146330; -99.06624709660, 28.74591636140; -99.06619720720, 28.74469569120; -99.06619591960, 28.74462003210; -99.06618628540, 28.74454484240; -99.06603151970, 28.74293884500; -99.06597910060, 28.74103665380; -99.06606795150, 28.73913551580; -99.06629768350, 28.73724357180; -99.06666730490, 28.73536892250; -99.06717522510, 28.73351959410; -99.06781926180, 28.73170350410; -99.06859665040, 28.72992842700; -99.06950405570, 28.72820196140; -99.07053758700, 28.72653149730; -99.07169281380, 28.72492418470; -99.07296478590, 28.72338690290; -99.07430131070, 28.72197252950; -99.07555500120, 28.72072808090; -99.07560174330, 28.72068178200; -99.07709034580, 28.71930395740; -99.07867794430, 28.71801488880; -99.08035774120, 28.71682009260; -99.08209385240, 28.71574129920; -99.08216527210, 28.71569988770; -99.08223175900, 28.71565252130; -99.08310203240, 28.71505346330; -99.08486677340, 28.71395801440; -99.08670896850, 28.71296663570; -99.08862073300, 28.71208356890; -99.09059388490, 28.71131259230; -99.09261998060, 28.71065700450; -99.09469035030, 28.71011961040; -99.09679613520, 28.70970270900; -99.09892832560, 28.70940808400; -99.10107779880, 28.70923699570; -99.10323535870, 28.70919017620; -99.10539177450, 28.70926782580; -99.10753782030, 28.70946961220; -99.10966431450, 28.70979467210; -99.11176215880, 28.71024161500; -99.11382237730, 28.71080852870; -99.11583615470, 28.71149298770; -99.11779487370, 28.71229206370; -99.11969015210, 28.71320233790; -99.12151387850, 28.71421991560; -99.12325824700, 28.71534044270; -99.12491579050, 28.71655912480; -99.12624236720, 28.71766060740; -99.12984207390, 28.72081922980; -99.13007913470, 28.72102936290; -99.13154223910, 28.72242827310; -99.13289846090, 28.72390852720; -99.13414199080, 28.72546379020; -99.13526750110, 28.72708740600; -99.13627016830, 28.72877242540; -99.13714569420, 28.73051163600; -99.13789032420, 28.73229759310; -99.13850086330, 28.73412265150; -99.13897469020, 28.73597899800; -99.13930976830, 28.73785868520; -99.13950465510, 28.73975366510; -99.13955850790, 28.74165582380; -99.13947108770, 28.74355701620; -99.13924276080, 28.74544910080; -99.13887449670, 28.74732397450; -99.13836786470, 28.74917360750; -99.13772502690, 28.75099007770; -99.13694872930, 28.75276560460; -99.13604228980, 28.75449258230; -99.13500958480, 28.75616361290; -99.13385503190, 28.75777153750; -99.13258357150, 28.75930946720; -99.13120064580, 28.76077081270; -99.13008888400, 28.76181723050; -99.12937546680, 28.76245636800; -99.12861802990, 28.76313492870; -99.12475768160, 28.76659306310; -99.12438093600, 28.76692513010; -99.12279314550, 28.76821481360; -99.12111298320, 28.76941021370; and -99.12083230650, 28.76958447260.

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(S) [~~(V)~~] Surveillance Zone 22. Surveillance Zone 22 is that portion of Brooks County lying within the area described by the following latitude/longitude pairs: -98.30155203260, 27.19694473190; -98.29784116430, 27.19801110280; -98.29765718150, 27.19805959080; -98.29630183790, 27.19841677700; -98.29629592620, 27.19841833490; -98.29497230210, 27.19876732070; -98.29370832140, 27.19907592710; -98.29293978950, 27.19923988270; -98.29293723160, 27.19924039900; -98.29287671900, 27.19925261470; -98.29158963400, 27.19951242980; -98.29131243660, 27.19956724650; -98.29127750910, 27.19957401040; -98.28968731120, 27.19988195130; -98.28965040290, 27.19988907820; -98.28961706030, 27.19989549840; -98.28883355230, 27.20004636310; -98.28859505070, 27.20009144880; -98.28728824230, 27.20033389800; -98.28653238830, 27.20046578530; -98.28443034100, 27.20074625160; -98.28231227160, 27.20090315270; -98.28018725770, 27.20093581610; -98.27806440710, 27.20084410180; -98.27595281810, 27.20062840290; -98.27386154050, 27.20028964390; -98.27179953720, 27.19982927690; -98.26977564490, 27.19924927500; -98.26779853680, 27.19855212430; -98.26587668500, 27.19774081260; -98.26401832430, 27.19681881720; -98.26223141670, 27.19579008970; -98.26052361720, 27.19465903870; -98.25890224140, 27.19343051130; -98.25737423340, 27.19210977230; -98.25594613680, 27.19070248110; -98.25462406600, 27.18921466800; -98.25341368060, 27.18765270770; -98.25232016090, 27.18602329270; -98.25134818560, 27.18433340360; -98.25050191230, 27.18259028020; -98.24978495940, 27.18080138970; -98.24920039080, 27.17897439480; -98.24875070290, 27.17711712110; -98.24843781410, 27.17523752340; -98.24833787160, 27.17415444050; -98.24830351420, 27.17300440700; -98.24829712720, 27.17150503450; -98.24828889250, 27.16957184970; -98.24828556500, 27.16879067820; -98.24828727670, 27.16853269630; -98.24830445370, 27.16756250010; -98.24831306590, 27.16707605120; -98.24832080330, 27.16663901280; -98.24832864270, 27.16619620930; -98.24843176690, 27.16429815690; -98.24867345160, 27.16241020460; -98.24905265410, 27.16054043580; -98.24956774300, 27.15869685590; -98.25021650570, 27.15688735740; -98.25099615750, 27.15511968680; -98.25190335400, 27.15340141050; -98.25293420540, 27.15173988370; -98.25408429310, 27.15014221780; -98.25534868920, 27.14861525070; -98.25672197670, 27.14716551720; -98.25819827390, 27.14579922160; -98.25977125880, 27.14452221050; -98.26143419620, 27.14333994840; -98.26317996720, 27.14225749400; -98.26500109880, 27.14127947900; -98.26688979640, 27.14041008770; -98.26883797700, 27.13965303990; -98.27083730360, 27.13901157450; -98.27250539780, 27.13857459340; -98.27359293230, 27.13831775920; -98.27447494220, 27.13810945410; -98.27537787130, 27.13789620110; -98.27624026220, 27.13769251550; -98.27664949110, 27.13759585850; -98.27705254300, 27.13749936380; -98.27794235820,

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-98.31872010190, 27.14799827390; -98.31969287050, -98.27045143240, 27.13748232940; -98.27057696050,
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-98.32279424650, 27.17127223070; -98.32279424650, -98.28452131260, 27.13356548290; -98.28662193290,

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(T) [~~(W)~~] Surveillance Zone 23. Surveillance Zone 23 is that portion of Kimble County lying within the area described by the following latitude/longitude pairs: -99.93593588020, 30.41197645310; -99.93328467170, 30.41302363770; -99.93150701710, 30.41360245140; -99.92940461000, 30.41415395450; -99.92726506670, 30.41458506470; -99.92509755680, 30.41489393420; -99.92291137010, 30.41507923930; -99.92071587650, 30.41514018560; -99.91852048600, 30.41507651190; -99.91633460810, 30.41488849130; -99.91416761140, 30.41457692950; -99.91202878350, 30.41414316180; -99.90992729080, 30.41358904750; -99.90787213930, 30.41291696140; -99.90587213590, 30.41212978390; -99.90393585060, 30.41123088870; -99.90207157950, 30.41022412810; -99.90028730950, 30.40911381650; -99.89859068390, 30.40790471200; -99.89840156380, 30.40775959240; -99.89833318790, 30.40770672550; -99.89824568490, 30.40764131980; -99.89801173090, 30.40746480550; -99.89641003170, 30.40616208220; -99.89491010320, 30.40477132970; -99.89351836760, 30.40329850740; -99.89304774770, 30.40275268310; -99.89298993300, 30.40268396530; -99.89292555410, 30.40261978220; -99.89160665140, 30.40121925020; -99.89032912530, 30.39967064960; -99.88917121690, 30.39805292620; -99.88813788090, 30.39637301070; -99.88723353730, 30.39463809990; -99.88646205290, 30.39285562570; -99.88582672510, 30.39103322340; -99.88533026730, 30.38917869890; -99.88497479770, 30.38729999520; -99.88476183030, 30.38540515830; -99.88469226880, 30.38350230300; -99.88476640250, 30.38159957790; -99.88498390540, 30.37970513040; -99.88534383790, 30.37782707210; -99.88584465040, 30.37597344400; -99.88648419090, 30.37415218190; -99.88725971360, 30.37237108270; -99.88816789120, 30.37063777090; -99.88920482910, 30.36895966580; -99.89036608230, 30.36734395040; -99.89164667430, 30.36579754000; -99.89304111880, 30.36432705310; -99.89346576520, 30.36391590840; -99.89389023560, 30.36351269170; -99.89496790440, 30.36253556250; -99.89657166180, 30.36123544470; -99.89826999800, 30.36002904770; -99.90005564220, 30.35892153400; -99.90192095080, 30.35791764260; -99.90385794000, 30.35702166890; -99.90585832000, 30.35623744650; -99.90791353070, 30.35556833080; -99.91001477750, 30.35501718460; -99.91215306990, 30.35458636590; -99.91431925900, 30.35427771790; -99.91650407680, 30.35409256110; -99.91869817610, 30.35403168760; -99.92089217000, 30.35409535780; -99.92307667180, 30.35428329940; -99.92524233550, 30.35459470830; -99.92703154580, 30.35494882710; -99.92731182370, 30.35501133850; -99.92759306820, 30.35507049530; -99.92838971290, 30.35524704980; -99.93049003430, 30.35580085720; -99.93254412070, 30.35647257570; -99.93263024930, 30.35650368980; -99.93294560530, 30.35661805840; -99.93395361450, 30.35698099560; -99.93594581960, 30.35776525330; -99.93788132570, 30.35866365850; -99.93974497050, 30.35966989140; -99.94152877750, 30.36077964640; -99.94322511070, 30.36198817490; -99.94482670790, 30.36329030540; -99.94632671140, 30.36468046590; -99.94771869730, 30.36615270710; -99.94899670330, 30.36770072830; -99.95015525400, 30.36931790420; -99.95118938450, 30.37099731310; -99.95209466180, 30.37273176670; -99.95286720370, 30.37451384050; -99.95350369570, 30.37633590600; -99.95361031120, 30.37669040630; -99.95365369380, 30.37683846600; -99.95370394780, 30.37698488300; -99.95395811900, 30.37776501050; -99.95445584460, 30.37961926580; -99.95481264660, 30.38149777430; -99.95502698910, 30.38339249320; -99.95509794600, 30.38529530970; -99.95502520470, 30.38719807600; -99.95480906830, 30.38909264370; -99.95445045390, 30.39097089950; -99.95395088910, 30.39282479910; -99.95331250550, 30.39464640200; -99.95253802960, 30.39642790600; -99.95163077140, 30.39816167990; -99.95059461020, 30.39984029640; -99.94943397850, 30.40145656460; -99.94815384230, 30.40300355980; -99.94675968070, 30.40447465410; -99.94620659920, 30.40500740050; -99.94603539320, 30.40516827980; -99.94586803310, 30.40533217170; -99.94445688180, 30.40663147970; -99.94285301450, 30.40793220480; -99.94115439090, 30.40913920040; -99.93936828630, 30.41024729430; -99.93750235190, 30.41125173800; and -99.93593588020, 30.41197645310.

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-99.86854522780, 30.33870050260; -99.86857268570, 30.33867483580; -99.86856615910, 30.33840357450; -99.86854991850, 30.33733178010; -99.86854704550, 30.33691486320; -99.86862146340, 30.33501215620; -99.86883917940, 30.33311774490; -99.86889510360, 30.33276880930; -99.86917243380, 30.33111199960; -99.86947657360, 30.32958293080; -99.86997744090, 30.32772937400; -99.87061696100, 30.32590820030; -99.87139238830, 30.32412720630; -99.87230039590, 30.32239401590; -99.87333709000, 30.32071604810; -99.87449802660, 30.31910048510; -99.87553862390, 30.31784364590; -99.87612434800, 30.31649807390; -99.87703219800, 30.31476485130; -99.87806872700, 30.31308684650; -99.87922949170, 30.31147124180; -99.88050951780, 30.30992495220; -99.88190332120, 30.30845459570; -99.88340493190, 30.30706646470; -99.88500791910, 30.30576649980; -99.88670541930, 30.30456026400; -99.88849016520, 30.30345291870; -99.89035451680, 30.30244920230; -99.89229049470, 30.30155340960; -99.89428981340, 30.30076937330; -99.89634391710, 30.30010044800; 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(U) [~~(X)~~]Surveillance Zone 24. Surveillance Zone 24 is that portion of Medina County lying within the area described by the following latitude/longitude pairs: -99.03470528710, 29.32434210330; -99.03422756400, 29.32440747330; -99.03291391940, 29.32458721820; -99.03075068100, 29.32475719130; -99.02895229150, 29.32480381160; -99.02875152550, 29.32480424390; -99.02863847330, 29.32480448720; -99.02827985190, 29.32480525830; -99.02809031250, 29.32480519110; -99.02740657390, 29.32480323570; -99.02722320690, 29.32480226670; -99.02505316090, 29.32472324930; -99.02289366610, 29.32451998930; -99.02075397810, 29.32419335790; -99.01864326700, 29.32374475510; -99.01657057890, 29.32317610360; -99.01454479610, 29.32248984060; -99.01257459940, 29.32168890740; -99.01066843110, 29.32077673660; -99.00883445800, 29.31975723740; -99.00708053710, 29.31863477900; -99.00541418160, 29.31741417160; -99.00384252840, 29.31610064560; -99.00237230810, 29.31469982960; -99.00100981570, 29.31321772600; -98.99976088370, 29.31166068510;

-98.99863085740, 29.31003537780; -98.99762457210, 29.30834876750; -98.99674633190, 29.30660807950; -98.99599989210, 29.30482077060; -98.99538844250, 29.3029949680; -98.99491459460, 29.30113708050; -98.99458036980, 29.29925647710; -98.99438719140, 29.29736074080; -98.99434691830, 29.29651781560; -98.99432953560, 29.29596087290; -98.99432707560, 29.29588205460; -98.99431665170, 29.29540490470; -98.99430585430, 29.29454003130; -98.99430531810, 29.29449708310; -98.99429396020, 29.29358729840; -98.99429334470, 29.29300462350; -98.99438410690, 29.29110300840; -98.99461654540, 29.28921066960; -98.99498965660, 29.28733570980; -98.99550183500, 29.28548615630; -98.99615087980, 29.28366992770; -98.99693400490, 29.28189479900; -98.99784785080, 29.28016836900; -98.99888849870, 29.27849802780; -99.00005148800, 29.27689092470; -99.00133183500, 29.27535393820; -99.00272405450, 29.27389364630; -99.00422218330, 29.27251629840; -99.00581980590, 29.27122778870; -99.00751008160, 29.27003363100; -99.00928577430, 29.26893893520; -99.01113928290, 29.26794838540; -99.01306267430, 29.26706621970; -99.01504771690, 29.26629621280; -99.01708591620, 29.26564165900; -99.01916855060, 29.26510535870; -99.02128670900, 29.26468960660; -99.02343132860, 29.26439618120; -99.02559323380, 29.26422633780; -99.02722045370, 29.26418051300; -99.02722429220, 29.26418048760; -99.02824740570, 29.26417369290; -99.02920167740, 29.26416734800; -99.02926492560, 29.26416692720; -99.02926609000, 29.26416691950; -99.03029132650, 29.26416009410; -99.03127050390, 29.26415356770; -99.03127540380, 29.26415353500; -99.03137356840, 29.26415288030; -99.03191629000, 29.26415315250; -99.03220849990, 29.26415652320; -99.03305178650, 29.26416950500; -99.03306536280, 29.26416971400; -99.03494185070, 29.26424522800; -99.03710002890, 29.26444827670; -99.03923845410, 29.26477462290; -99.04134797720, 29.26522287030; -99.04341957230, 29.26579110120; -99.04544437530, 29.26647688450; -99.04741372180, 29.26727728610; -99.04931918430, 29.26818888160; -99.05115260770, 29.26920777040; -99.05290614470, 29.27032959310; -99.05457228890, 29.27154954940; -99.05614390690, 29.27286241910; -99.05761426950, 29.27426258400; -99.05897707950, 29.27574405220; -99.06022649940, 29.27730048360; -99.06135717620, 29.27892521690; -99.06236426440, 29.28061129800; -99.06324344670, 29.28235151010; -99.06399095260, 29.28413840410; -99.06460357500, 29.28596433080; -99.06507868340, 29.28782147320; -99.06541423580, 29.28970188050; -99.06560878730, 29.29159750170; -99.06565220900, 29.292252392620; -99.06567764710, 29.29341130390; -99.06568806080, 29.29408776440; -99.06568814260, 29.29412626510; -99.06569010870, 29.29505110900; -99.06568898310, 29.29535094270; -99.06559961510, 29.29725261210; -99.06536854260, 29.29914508760; -99.06499674680, 29.30102026450; -99.06448581210, 29.30287011170; -99.06383791880, 29.30468670610; -99.06305583450, 29.30646226670; -99.06214290210, 29.30818918760; -99.06110302530, 29.30986007100; -99.05994065270, 29.31146775880; -99.05866075810, 29.31300536310; -99.05726881970, 29.31446629600; -99.05577079640, 29.31584429790; -99.05417310260, 29.31713346410; -99.05248258060, 29.31832827040; -99.05070647130, 29.31942359670; -99.04885238290, 29.32041474920; -99.04692825890, 29.32129748010; -99.04494234340, 29.32206800640; -99.04290314590, 29.32272302570; -99.04081940510, 29.32325973070; -99.03870005090, 29.32367582100; -99.03706741290, 29.32391071510; -99.03698887320, 29.32392025930; -99.03691194560, 29.32393709900; -99.03505982880, 29.32429358780; and -99.03470528710, 29.32434210330.

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(V) [(Y)] Surveillance Zone 25. Surveillance Zone 25 is that portion of Cherokee County lying within the area described by the following latitude/longitude pairs: -95.16551813760, 31.88499767200; -95.16585785040, 31.88501179520; -95.16883776280, 31.88514836070; -95.17072236840, 31.88527950140; -95.17293080210, 31.88554853500; -95.17511390170, 31.88594019510; -95.17726232710, 31.88645280610; -95.17936688570, 31.88708417460; -95.18141857260, 31.88783159950; -95.18340860800, 31.88869188260; -95.18532847560, 31.88966134300; -95.18716995850, 31.89073583260; -95.18892517440, 31.89191075370; -95.19058660920, 31.89318107840; -95.19214714940, 31.89454137080; -95.19360011230, 31.89598580950; -95.19493927480, 31.89750821270; -95.19615889990, 31.89910206470; -95.19725376150, 31.90076054380; -95.19821916660, 31.90247655120; -95.19905097560, 31.90424274160; -95.19974562040, 31.90605155420; -95.20030011920, 31.90789524570; -95.20071208980, 31.90976592290; -95.20097975990, 31.91165557650; -95.20110197480, 31.91355611550; -95.20107820230, 31.91545940210; -95.20090853530, 31.91735728590; -95.20059369180, 31.91924163940; -95.20013501150, 31.92110439250; -95.19953445040, 31.92293756700; -95.19915728340, 31.92389976250; -95.19815357340, 31.92631908540; -95.19779084440, 31.92715263060; -95.19691477030, 31.92890324420; -95.19590628340, 31.93060123560; -95.19476969690, 31.93223933070; -95.19350987350, 31.93381051170; -95.19213220490, 31.93530804740; -95.19064258830, 31.93672552140; -95.18904740160, 31.93805686040; -95.18735347570, 31.93929635960; -95.18556806570, 31.94043870790; -95.18369881940, 31.94147900990; -95.18175374480, 31.94241280770; -95.17974117550, 31.94323609950; -95.17766973520, 31.94394535700; -95.17554830050, 31.94453754050; -95.17338596280, 31.94501011200; -95.17119198940, 31.94536104630; -95.16897578340, 31.94558883920; -95.16674684340, 31.94569251440; -95.16451472300, 31.94567162760; -95.16228898930, 31.94552626830; -95.16007918180, 31.94525705950; -95.15789477180, 31.94486515490; -95.15574512140, 31.94435223440; -95.15363944330, 31.94372049610; -95.15292604870, 31.94347588710; -95.15225794440, 31.94323930920; -95.15201777130, 31.94315426200; -95.15112625370, 31.94283856320; -95.14978698470, 31.94233530500; -95.14779612430, 31.94147452330; -95.14587558800, 31.94050452620; -95.14403360410, 31.93942947040; -95.14227806340, 31.93825396290; -95.14061648540, 31.93698304090; -95.13905598640, 31.93562215030; -95.13760324830, 31.93417712230; -95.13626449070, 31.93265414830; -95.13504544390, 31.93105975340; -95.13395132440, 31.92940076830; -95.13298681290, 31.92768430020; -95.13215603390, 31.92591770210; -95.13146253880, 31.92410854130; -95.13090928990, 31.92226456710; -95.13049864870, 31.92039367750; -95.13023236530, 31.91850388500; -95.13020804960, 31.91825324460; -95.13003171160, 31.91633466000; -95.12993523850, 31.91468469710; -95.12996044570, 31.91278142340; -95.13013153130, 31.91088362950; -95.13044775380, 31.90899944150; -95.13090775080, 31.90713692680; -95.13150954440, 31.90530405940; -95.13225054990, 31.90350868610; -95.13312758760, 31.90175849270; -95.13413689570, 31.90006097120; -95.13527414690, 31.89842338770; -95.13653446720, 31.89685275140; -95.13791245650, 31.89535578460; -95.13940221190, 31.89393889410; -95.14099735310, 31.89260814350; -95.14269104970, 31.89136922770; -95.14447605040, 31.89022744850; -95.14634471390, 31.88918769150; -95.14828904190, 31.88825440580; -95.15030071320, 31.88743158490; -95.15237111880, 31.88672274930; -95.15449139950, 31.88613093190; -95.15665248290, 31.88565866480; -95.15884512270, 31.88530796850; -95.16105993790, 31.88508034340; -95.16328745280, 31.88497676360; and -95.16551813760, 31.88499767200[-95.16551813760, 31.88499767200; -95.16585785040, 31.88501179520; -95.16883776280, 31.88514836070; -95.17072236840, 31.88527950140; -95.17293080210, 31.88554853500; -95.17511390170, 31.88594019510; -95.17726232710, 31.88645280610; -95.17936688570, 31.88708417460; -95.18141857260, 31.88783159950; -95.18340860800, 31.88869188260; -95.18532847560, 31.88966134300; -95.18716995850, 31.89073583260; -95.18892517440, 31.89191075370; -95.19058660920, 31.89318107840; -95.19214714940, 31.89454137080; -95.19360011230, 31.89598580950; -95.19493927480, 31.89750821270; -95.19615889990, 31.89910206470; -95.19725376150, 31.90076054380; -95.19821916660, 31.90247655120; -95.19905097560, 31.90424274160; -95.19974562040, 31.90605155420; -95.20030011920, 31.90789524570; -95.20071208980, 31.90976592290; -95.20097975990, 31.91165557650; -95.20110197480, 31.91355611550; -95.20107820230, 31.91545940210; -95.20090853530, 31.91735728590;

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(W) [(Z)] Surveillance Zone 26. Surveillance Zone 26 is that portion of the state within the boundaries of a line beginning at the intersection of U.S. Highway 283 and County Road 176 in Coleman County; thence east along County Road 176 to State Highway (S.H.) 206; thence east along S.H. 206 to County Road 170; thence south along County Road 170 to County Road 171; thence south along C.R. 171 to County Road 113 in Brown County; thence south along C.R. 113 to Farm to Market (F.M.) 585; thence south along F.M. 585 to County Road 108 in Brown County; thence southwest along C.R. 108 to County Road 127 in Coleman County; thence southwest along C.R. 127 to F.M. 568; thence west along F.M. 568 to U.S. Highway 84, thence north along U.S. 84 to S.H. 206, thence north along S.H. 206 to U.S. 283; thence north along U.S. 283 to County Road 176.

(X) [(AA)] Existing SZs may be modified and additional SZs may be designated as necessary by the executive director as provided in §65.84 of this title (relating to Powers and Duties of the Executive Director).

(2) (No change.)

§65.85. [Mandatory] Check Stations.

(a) The department may establish mandatory or voluntary check stations or procedures in or for any CZ or SZ or portion of a CZ or SZ for the purpose of collecting biological information on susceptible species taken within a CZ or SZ.

(b) When a mandatory check station requirement or procedure is in effect, the [The] intact, unfrozen head of any susceptible species that has been killed in a CZ or SZ must be presented to a check station or other location designated by the department for the CZ or SZ in which the susceptible species was taken within 48 hours of take by the person or representative of the person who killed the susceptible species, unless otherwise authorized in writing by department personnel.

(c) (No change.)

(d) A person who fails or refuses to comply with mandatory check station requirements or procedures established under this section commits an offense.

§65.88. Deer Carcass Movement and Disposal Restrictions.

(a) Except as provided in this section, no person may [:]

[(1)] transport into this state or possess any part of a susceptible species from a state, Canadian province, or other place outside of Texas where CWD has been detected in free-ranging or captive herds except for:[; or]

[(2) transport or cause the transport of any part of a susceptible species from a property within a CZ or SZ.]

(b) In addition to the provisions of §65.10 of this title (Possession of Wildlife Resources) and except as may be otherwise prohibited by this subchapter, a department herd plan, or a quarantine or hold order issued by TAHC, a white-tailed deer or mule deer or part of a white-tailed or mule deer killed in this state may be transported from the location where the animal was killed to a final destination. Following final processing at a final destination, the parts of the animal not retained for cooking, storage or taxidermy purposes shall be disposed of only as follows:

(1) by transport, directly or indirectly, to a landfill permitted by the Texas Commission of Environmental Quality to receive such wastes;

(2) interment at a depth of no less than three feet below the natural surface of the ground and covered with at least three feet of earthen material; or

(3) returned to the property where the animal was harvested for disposal.

[(b) Subsection (a) of this section does not apply to susceptible species processed in accordance with this subsection, provided the applicable requirements of subsections (c) - (e) of this section have been met:]

[(1) meat that has been cut up and packaged (boned or filleted);]

[(2) a carcass that has been reduced to quarters with no brain or spinal tissue present;]

[(3) a cleaned hide (skull and soft tissue must not be attached or present);]

[(4) a whole skull (or skull plate) with antlers attached, provided the skull plate has been completely cleaned of all internal soft tissue;]

[(5) finished taxidermy products;]

[(6) cleaned teeth; or]

[(7) tissue prepared and packaged for delivery to and use by a diagnostic or research laboratory.]

(c) The carcass of a white-tailed or mule deer may be deboned, prior to transportation to a final destination, at the location where the animal was taken, provided:

(1) the meat from each deboned carcass is placed in a separate package, bag, or container;

(2) proof-of-sex and any required tag is retained and accompanies each package, bag, or container of meat;

(3) the remainder of the carcass remains at the location where the animal was harvested, except that a head may be transported to a taxidermist as provided in subsection (f) of this section.

(4) For purposes of this subsection, "deboning" means the detachment and removal of all musculature described by Parks and Wildlife Code, §42.001(8), from the bone. Muscles must remain intact (except for physical damage occurring as a result of take) and may not be processed further (i.e, ground, chopped, sliced, etc.).

(5) Proof-of-sex and any required tag must accompany the meat from the time of harvest until the meat reaches a final destination.

(6) It is an offense for any person to possess:

(A) meat from a carcass possessed under this subsection that has been processed further than whole muscles;

(B) meat from more than one carcass in single package, bag, or container.

[(c) For susceptible species harvested in a CZ or SZ, the provisions of subsection (b) of this section are applicable only if the susceptible species is processed within the CZ or SZ where the susceptible species was harvested, except for the transport of an intact head to a designated check station. The head of a susceptible species transported to a designated check station under the provisions of this subsection that is not taken to a taxidermist under the provisions of subsection (f) of this section must be:]

[(1) returned to the property where it was harvested for disposal; or]

[(2) disposed of in a landfill permitted by Texas Commission on Environmental Quality (TCEQ).]

(d) It is an offense for any person to dispose of those parts of an animal that the possessor does not retain for cooking, storage, or taxidermy purposes except as follows:

(1) by transport, directly or indirectly, to a landfill permitted by the Texas Commission of Environmental Quality to receive such wastes; or

(2) interment at a depth of no less than three feet below the natural surface of ground and covered with at least three feet of earthen material; or

(3) returned to the property where the animal was harvested.

[(d) A susceptible species harvested in a CZ or SZ and processed in accordance with the provisions of subsections (b) and (c) of this section may be transported from the CZ or SZ, provided it is accompanied by a department-issued check-station receipt, which shall remain with the susceptible species until it reaches a final destination.]

(e) If a person takes a susceptible species in a CZ or SZ within which the department has not designated a mandatory check station, the person shall transport the head of the susceptible species to [from the SZ solely for the purpose of presentation at] the nearest check station established by the department for the CZ or SZ in which the susceptible species was taken, provided such transport occurs immediately upon leaving the CZ or SZ where the animal was taken and occurs via the most direct route available. [The head of a susceptible species transported to a check station under the provisions of this subsection and not taken to a taxidermist under the provisions of subsection (f) of this section must be:]

[(1) returned to the property where it was harvested for disposal; or]

[(2) disposed of in a landfill permitted by TCEQ.]

(f) The skinned or unskinned head of a susceptible species from a CZ or SZ, other state, Canadian province, or other place outside of Texas may be transported to a taxidermist for taxidermy purposes, provided all brain material, soft tissue, spinal column and any unused portions of the head are disposed of prior to being transported to Texas, or disposed of in a landfill in Texas permitted by TCEQ to receive such wastes.

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

Filed with the Office of the Secretary of State on April 8, 2024.

TRD-202401418
James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 19, 2024
For further information, please call: (512) 389-4775

DIVISION 2. CHRONIC WASTING DISEASE - COMPREHENSIVE RULES

31 TAC §§65.90, 65.92, 65.98, 65.99

The Texas Parks and Wildlife Department proposes amendments to 31 TAC §§65.90, 65.92, 65.98, and 65.99, concerning Disease Detection and Response.

CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (referred to collectively as susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Much remains unknown about CWD, although robust efforts to increase knowledge are underway in many states and countries. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. Currently, scientific evidence suggests that CWD has zoonotic potential; however, no confirmed cases of CWD have been found in humans. Consequently, both the Centers for Disease Control and Prevention and the World Health Organization strongly recommend testing animals taken in areas where CWD exists, and if positive, recommend not consuming the meat. What is known is that CWD is invariably fatal to certain species of cervids and is transmitted both directly (through animal-to-animal contact) and indirectly (through environmental contamination). If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion-dollar ranching, hunting, wildlife management, and real estate economies could be significant.

The department has engaged in several rulemakings over the years to address the threat posed by CWD, including rules to designate a system of zones in areas where CWD has been confirmed. The purpose of those CWD zones is to determine the geographic extent and prevalence of the disease while containing it by limiting the unnatural movement of live CWD-susceptible species as well as the movement of carcass parts.

The department's response to the emergence of CWD in captive and free-ranging populations is guided by the department's CWD Management Plan (Plan) *https://tpwd.texas.gov/huntwild/wild/diseases/cwd/plan.phtml.* Developed in 2012 in consultation with the Texas Animal Health Commission (TAHC), other governmental entities and conservation organizations, and various advisory groups consisting of landowners, hunters, deer managers, veterinarians, and epidemiologists, the Plan sets forth the department's CWD management strategies and informs regulatory responses to the detection of the disease in captive and free-ranging cervid populations in the State of Texas. The Plan is intended to be dynamic; in fact, it must be so in order to accommodate the growing understanding of the etiology, pathology, and epidemiology of the disease and the potential management pathways that emerge as it becomes better understood through time. The Plan proceeds from the premise that disease surveillance and active management of CWD once it is detected are critical to containing it on the landscape.

As noted previously in this preamble, the department has been engaged in a long-term effort to stem the spread of CWD; however, by 2021 it was apparent that more robust measures were warranted because CWD was still being detected in additional deer breeding facilities, as well as on multiple release sites associated with CWD-positive deer breeding facilities. The commission adopted those rules, which require higher rates of testing, ante-mortem (live-animal) testing of breeder deer prior to release, and enhanced recordkeeping and reporting measures, in December of 2021 (46 TexReg 8724).

Following the implementation of more efficacious testing requirements, an unprecedented increase in CWD detections occurred. Since 2021, CWD has been detected in 22 deer breeding facilities, two release sites associated with CWD-positive deer breeding facilities, and two free-ranging deer in areas where CWD had not been previously detected. Department records indicate that within the last five years those breeding facilities transferred over 7,000 deer to other breeding facilities, release sites, and Deer Management Permit (DMP) sites. All those locations are therefore directly connected to the CWD-positive facilities and are subsequently of epidemiological concern. Additionally, approximately 287 deer breeding facilities received deer from one or more of the directly connected breeding facilities, which means those facilities (referred to as "Tier 1" facilities) are indirectly connected to the positive facilities and are also of epidemiological concern because they have received exposed deer that were in a trace-out breeding facility.

Because of this rapid explosion in epidemiological linkages between deer breeding facilities and associated release sites, the department became concerned about the excessive numbers of deer breeders continuing to be affected by inter-facility transfers, and subsequently determined that additional testing measures could increase the probability of detecting CWD in breeding facilities where it exists before it could be spread to additional breeding facilities and associated release sites. In addition to enhancing the department's ability to contain CWD where it is discovered, the additional testing measures also advanced the agency's desire to identify methods to provide relief to the regulated community without compromising the agency's statutory duty to protect and conserve native wildlife resources. Continuing along that trajectory, the rules as proposed would effect a number of changes to the current rules that would provide relief to the regulated community, in addition to other changes intended to streamline, simplify, and reduce regulatory requirements for hunters.

The proposed amendment to §65.90, concerning Definitions, would eliminate the definition for and references to "Tier 1" facilities, for reasons more thoroughly discussed elsewhere in this preamble in the proposed amendment to §65.99, concerning Breeding Facilities Epidemiologically Connected to Deer Infected with CWD; Positive Deer Breeding Facilities.

The proposed amendment to §65.92, concerning CWD Testing, would require the euthanization and post-mortem testing of any breeder deer confirmed positive for CWD via ante-mortem testing. Under current rule, only deer that die in a deer breeding facility or deer that test positive via ante-mortem testing in a deer breeding facility that is epidemiologically connected to a positive deer breeding facility are required to be post-mortem tested for CWD. The immediate post-mortem testing of deer confirmed positive via ante-mortem testing results in the immediate removal of a possible infectious animals and a method for continuing evaluation of the efficacy of ante-mortem testing, which is not as reliable as post-mortem for definitive disease diagnosis.

The proposed amendment to §65.98, concerning Transition Provisions, would make changes necessary to comport the rules with a rulemaking that took effect earlier this year (49 TexReg 267). In that rulemaking, the department amended §65.98 to implement a 60-day deadline for the submission of tissue samples from breeding facilities epidemiologically connected to deer infected with CWD, as well as to eliminate provisions allowing external nursing facilities for breeder deer. Those changes could not be made in the sections where they properly belong (§65.99, concerning Breeding Facilities Epidemiologically Connected to Deer Infected with CWD; Positive Deer Breeding Facilities) because that section was itself the subject of a rulemaking that had not yet taken effect, which rendered it ineligible for amendment at the time. Now that the amendment to §65.99 has taken effect, the changes to §65.98 can be removed and placed in §65.99 where they belong, which is accomplished in this rulemaking.

The proposed amendment to §65.99, concerning Breeding Facilities Epidemiologically Connected to Deer Infected with CWD; Positive Deer Breeding Facilities, would eliminate the "Tier 1" category of deer breeding facilities and the testing requirements for such facilities. As mentioned previously in this preamble, the department is committed to avoiding unnecessary regulatory burdens associated with the spread of CWD by the regulated community of persons who are authorized to possess, breed, and transfer live deer. As part of this effort, the department considers that rules adopted in December, 2021 (46 TexReg 8724) that without question improved the efficacy of the department's surveillance efforts for captive deer populations, in concert with recently adopted rules (48 TexReg 5146) requiring the ante-mortem testing of breeder deer prior to transfer to another deer breeder appear to have introduced a level of confidence sufficient for the department to eliminate the need for the category of "Tier 1" facilities for purposes of CWD management. "Tier 1" breeding facilities are facilities that received an exposed deer that was in a "trace-out" breeding facility (a breeding facility that received an exposed deer from a CWD-positive breeding facility). The precepts of epidemiological investigation dictate the creation of a record of the movements of individual animals that may have come into contact with an infected animal or environment, as well as the tracing of the movement of animals that may have come into contact with animals that may have come into contact with an infected animal or environment. By creating a movement history for deer entering and leaving a facility where a positive deer has been found, the department is able to employ surveillance and testing regimes that can exclude animals and facilities from the suspicion of harboring CWD. Eliminating the "Tier 1" designation would not only result in MQ designation for some breeding facilities currently designated NMQ, it would also allow the department to redirect limited resources to other avenues of CWD response. The proposed amendment also incorporates provisions from §65.98, concerning Transition Provisions, for the reasons set forth in the discussion to the proposed amendment to that section elsewhere in this preamble. As mentioned previously in this preamble in the discussion to the proposed amendment to §65.98, the department in a previous rulemaking placed provisions regarding nursing facilities and tissue sample submission deadlines in that section because the section where they more properly and intuitively belonged (§65.99) was unavailable for the amendment. The proposed amendment accomplishes the transfer of those provisions to §65.99.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rules as proposed, as department personnel currently allocated to the administration and enforcement of disease management activities will administer and enforce the rules as part of their current job duties.

Mr. Macdonald also has determined that for each of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be a reduction of the probability of CWD being spread from locations where it might exist and an increase in the probability of detecting CWD if it does exist, thus ensuring the public of continued enjoyment of the resource and also ensuring the continued beneficial economic impacts of hunting in Texas.

There will be an adverse economic impact on persons required to comply with the rules as proposed. Those costs are identical to the costs of compliance for small and microbusinesses discussed later in this preamble.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, and rural communities. As required by Government Code, §2006.002(g), in April 2008, the Office of the Attorney General issued guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses, micro-businesses, and rural communities. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

Government Code, §2006.001(1), defines a small or micro-business as a legal entity "formed for the purpose of making a profit" and "independently owned and operated." A micro-business is a business with 20 or fewer employees. A small business is defined as a business with fewer than 100 employees, or less than $6 million in annual gross receipts. The department has determined that the proposed rule could result in direct economic costs to small businesses and microbusinesses. Department data indicate that there are approximately 731 permitted deer breeders in Texas as of the preparation of this analysis. Although the department does not require deer breeders to file financial information with the department, the department believes that most if not all deer breeders would qualify as a small or micro-business. Since the rule if adopted would require a permitted deer breeder that receives confirmation of CWD via an ante-mortem test to euthanize that animal and submit tissues for post-mortem CWD testing, the adverse economic impacts are the cost to euthanize and test a breeder deer. The cost of euthanizing a deer can range from very little (if the breeder dispatches a deer by firearm) to the costs associated with veterinary services, which the department estimates should not exceed $300. The cost of post-mortem CWD testing administered by the Texas A&M Veterinary Medicine Diagnostic Lab (TVMDL is a minimum of $27, to which is added an $8 accession fee (which may cover multiple samples submitted at the same time). If a whole head is submitted to TVMDL there is an additional $23 sample collection fee, plus a $23 disposal fee. Thus, the fee for testing would be $35, plus any veterinary cost (which the department cannot quantify, because practice models vary widely across the state). The fee for submitting an entire head for testing would be $81. Because the nature of the market for breeder deer is fluid and the department does not require sale prices of breeder deer to be reported, the department has no way to determine the exact value of lost sales resulting from the euthanization of breeder deer; however, anecdotal and publicly available information suggests that the purchase cost of a breeder deer can range from hundreds of dollars to many thousands of dollars. Thus, a deer breeder who euthanizes a deer under the rules as proposed would be unable to sell that deer and, assuming the deer in question would be sold (not all breeder deer all sold), would incur a lost sale value of between hundreds of dollars and many thousands of dollars.

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

One alternative was to do nothing. This alternative was rejected because the presence of CWD in breeding facilities and free-ranging populations presents an actual, direct threat to free-ranging and captive cervid populations and the economies that depend upon them. The repeated additional discoveries of CWD in captive and free-range populations indicates that additional measures are necessary to prevent the spread of CWD from locations where it may exist. Therefore, because the department has a statutory duty to protect and conserve the wildlife resources of the state and current rules do not achieve the necessary level of vigilance needed to detect the presence and/or spread of CWD between breeding facilities, this alternative was rejected. The department does note that the removal of the "Tier 1" designation for deer breeding facilities, in concert with the requirement to euthanize and post-mortem test breeder that are confirmed via ante-mortem testing to be infected with CWD, will provide some deer breeders with the ability to return to normal operations.

Another alternative would be an absolute prohibition on the movement of deer within the state for any purpose. While this alternative would significantly reduce the potential spread of CWD, it would deprive deer breeders of the ability to engage in the business of buying and selling breeder deer. Therefore, this alternative was rejected because the department determined that it placed an avoidable burden on the regulated community.

Another alternative would be imposing less stringent testing requirements. This alternative was rejected because the testing requirements in the proposed rules will provide additional confidence than is possible under current disease-testing requirements to determine that CWD is or is not present. Less stringent testing requirements would reduce confidence and therefore impair the ability of the department to respond in the event that CWD actually is present. Less stringent testing requirements also could result in the spread of CWD to additional breeding facilities, which would be prohibited from transferring deer, which would, in turn, result in the total loss of sales opportunity. The department also believes that enhanced testing measures are necessary to provide assurance to the hunting public, private landowners, and the regulated community that healthy wildlife resources are available for the use and enjoyment of present and future generations.

The department has determined that the proposed rules will not affect rural communities because the rules do not directly regulate any rural community.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not result in direct impacts to local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules. Any impacts resulting from the discovery of CWD in or near private real property would be the result of the discovery of CWD and not the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation or repeal an existing regulation, but will limit an existing regulation (by eliminating the "Tier 1" category of deer breeding facility); not increase the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rules may be submitted to Dr. Hunter Reed, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (830) 890-1230 (e-mail: jhunter.reed@tpwd.texas.gov); or via the department's website at www.tpwd.texas.gov.

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

The proposed amendments affect Parks and Wildlife Code, Chapter 43, Subchapter L, and Chapter 61.

§65.90. Definitions.

The following words and terms shall have the following meanings, except in cases where the context clearly indicates otherwise.

(1) - (20) (No change.)

(21) Last known exposure--The last date a deer in a trace-out or trace-in breeding facility was exposed to a trace deer prior to the death or transfer of that trace deer[~~, or the last date an exposed deer entered a Tier 1 facility~~].

(22) - (36) (No change.)

[~~(37) Tier 1 facility--A breeding facility that has received an exposed deer that was in a trace-out breeding facility.~~]

(37) [~~(38)~~] Trace deer--A deer that the department has determined had been in a CWD-positive deer breeding facility on or after the date the facility was first exposed to CWD, if known; otherwise, within the previous five years from the reported mortality date of the CWD-positive deer, or the date of the ante-mortem test result.

(38) [~~(39)~~] Trace-in breeding facility--A breeding facility that meets either of the following criteria:

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

(39) [~~(40)~~] Trace-out breeding facility--A breeding facility that has received an exposed deer that was in a CWD-positive deer breeding facility.

(40) [~~(41)~~] Trap Site--A specific tract of land approved by the department for the trapping of deer under this chapter and Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, and R-1.

(41) [~~(42)~~] Triple T permit--A permit to trap, transport, and transplant white-tailed or mule deer (Triple T permit) issued under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter E, and Subchapter C of this chapter (relating to Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds).

(42) [~~(43)~~] Trap, Transport and Process (TTP) permit--A permit issued under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter E, and Subchapter C of this chapter (relating to Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds), to trap, transport, and process surplus white-tailed deer (TTP permit).

(43) [~~(44)~~] TWIMS--The department's Texas Wildlife Information Management Services (TWIMS) online application.

§65.92. CWD Testing.

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

(k) Upon notification by the department that CWD is suspected in a deer as a result of ante-mortem testing in a facility, the facility is automatically NMQ and the permittee shall:

(1) euthanize the positive deer within seven days of confirmation of the positive test result; and

(2) collect post-mortem test samples from breeder deer euthanized under this subsection within one business day of euthanasia, to include both ears and the identification tag required under Parks and Wildlife Code, Chapter 43, Subchapter L.

(l) [~~(k)~~] All CWD test samples shall be submitted to an accredited testing laboratory within seven days of collection.

§65.98. Transition Provisions.

[~~(a)~~] A release site that was not in compliance with the applicable testing requirements of this division in effect between August 15, 2016 and the effective date of this section shall be:

(1) required to comply with the applicable provisions of this division regarding CWD testing with respect to release facilities; and

(2) ineligible to be a release site for breeder deer or deer transferred pursuant to a Triple T permit or DMP until the release site has complied with paragraph (1) of this section.

[~~(b) To the extent that any provision of this subsection conflicts with the provisions of §65.99(e) of this title (relating to Breeding Facilities Epidemiologically Connected to Deer Infected with CWD; Positive Breeding Facilities), this section controls. Tissue samples required by §65.99(e)(2)(E) of this title shall be submitted within 60 days of notification by the department of Category B status.~~]

[~~(c) As of the effective date of this subsection, the provisions of §65.99(i) of this title cease effect.~~]

§65.99. Breeding Facilities Epidemiologically Connected to Deer Infected with CWD; Positive Deer Breeding Facilities.

(a) Effectiveness.

(1) To the extent that any provision of this section conflicts with any provision of this division, the provisions of this section prevail.

(2) The provisions of Division 1 of this subchapter apply to any facility designated by the department as a Category A or Category B trace-out breeding facility, [~~Tier 1 breeding facility,~~] or trace-in breeding facility subject to the provisions of this section.

(b) - (d) (No change.)

(e) Category B trace-out breeding facility.

(1) (No change.)

(2) Immediately upon notification by the department of Category B status; a facility is automatically NMQ and the permittee shall:

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

(F) The tissues samples required by subparagraph (E) of this paragraph shall be submitted within 60 days of notification by the department of Category B status.

(3) - (6) (No change.)

[~~(f) Tier 1 facility.~~]

[~~(1) Upon notification by the department of Tier 1 status, a facility is automatically NMQ and the permittee shall:~~]

[~~(A) inspect the facility daily for mortalities;~~]

[~~(B) immediately report all test-eligible deer mortalities that occur within the facility; and~~]

[~~(C) immediately collect test samples from all test-eligible deer mortalities that occur within the facility and submit for post-mortem testing within one business day of collection.~~]

[~~(2) A permittee may request the development of a custom testing plan as provided in subsection (h) of this section; provided, however, the permittee must comply with the provisions of paragraph (1)(A) - (C) of this subsection.~~]

[~~(3) The department will not restore MQ status unless the permittee has complied with all applicable requirements of this subsection and this division, and any one of the following:~~]

[~~(A) post-mortem results of "not detected" have been submitted for every exposed deer received from a trace facility; or~~]

[~~(B) the department has restored MQ status to all trace facilities from which deer were received; or~~]

[~~(C) the permittee has conducted ante-mortem testing as specified in subsection (e)(2)(E) of this section; or~~]

[~~(D) the permittee has conducted testing as specified in compliance with the provisions of a custom testing plan under the provisions of subsection (h) of this section to the satisfaction of the department and TAHC.~~]

[~~(4) The department in consultation with TAHC may decline to authorize a custom testing plan under subsection (h) of this section if an epidemiological assessment determines that a custom testing plan is inappropriate.~~]

(f) [~~(g)~~] Trace-in breeding facility. Immediately upon notification by the department of trace-in facility status, a facility is automatically NMQ.

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

(4) In lieu of the testing requirements prescribed in this subsection, a permittee may request the development of a custom testing plan as provided in subsection (g) [~~(h)~~] of this section; provided however, the permittee must comply with the requirements of paragraph (1) of this subsection.

(5) The department in consultation with TAHC may decline to authorize a custom testing plan under subsection (g) [~~(h)~~] of this section if an epidemiological assessment determines that a custom testing plan is inappropriate.

(6) (No change.)

(g) [~~(h)~~] Custom Testing Plan. Within seven days of being notified by the department that a breeding facility has been designated a Category A, Category B, or trace-in facility, [~~or Tier 1 facility,~~] a permittee may, in lieu of meeting the applicable testing requirements of subsections (d) - (f) [~~(d)~~ - ~~(g)~~] of this section, request the development

of a custom testing plan by the department in consultation with TAHC based upon an epidemiological assessment conducted by the department and TAHC. A custom testing plan under this subsection is not valid unless it has been approved by the department and TAHC.

(1) The department shall temporarily suspend the applicable testing provisions of subsections (d)(2)(A), (e)(2)(A) and (E), and (f) [~~(g)~~] of this section while the epidemiological assessment and custom testing plan development under this subsection take place.

(2) Upon the development of a custom testing plan under the provisions of this subsection, the department shall provide the permittee with a copy of the custom testing plan and the permittee shall, within seven days:

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

(C) If a permittee chooses to decline participation in a custom testing plan under this subsection, the provisions of subsections (d)(2)(A), (e)(2)(A) and (E), and (f) [~~(g)~~] of this section take effect as of the date of the notification required by subparagraph (B) of this paragraph and all time-dependent calculations of those subsections begin.

(D) If a permittee agrees in writing to comply with the provisions of a custom testing plan under this subsection, the custom testing plan replaces the testing provisions of subsections (d)(2)(A), (e)(2)(A) and (E), and (f) [~~(g)~~] of this section.

(3) A breeding facility designated by the department as Category A, Category B, or trace-in[~~, or Tier 1~~] is NMQ as of the date of such notification and remains NMQ until the provisions of the custom testing plan under this subsection have been satisfied.

(4) If for any reason the permittee does not comply with the provisions of a custom testing plan under this subsection, the provisions of subsections (d) - (f) [~~(g)~~] of this section resume applicability.

(5) (No change.)

[~~(i) Nursing facilities.~~]

[~~(1) Notwithstanding NMQ status, deer less than 120 days of age in any Category A, Category B, trace-in, and or Tier 1 facility may be transferred to a registered nursing facility, provided:~~]

[~~(A) the facility from which the deer are transferred was MQ at the time the facility was designated Category A, Category B, trace-in, or Tier 1; and~~]

[~~(B) no deer from any other breeding facility are or have been present in the nursing facility during the current reporting year.~~]

[~~(2) A registered nursing facility is prohibited from accepting deer from more than one breeding facility in one reporting year.~~]

[~~(3) No person may possess deer older than 120 days of age in a nursing facility.~~]

(h) [~~(j)~~] Upon notification by the department that CWD is suspected in a deer as a result of ante-mortem testing in a facility, the facility is automatically NMQ and the permittee shall:

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

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

Filed with the Office of the Secretary of State on April 8, 2024.

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James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 19, 2024
For further information, please call: (512) 389-4775

SUBCHAPTER W. SPECIAL PERMITS

31 TAC §65.907

The Texas Parks and Wildlife Department proposes new 31 TAC §65.907, concerning Special Take Authorization - White-tailed and Mule Deer.

The proposed new section would create provisions governing the take of white-tailed or mule deer by landowners and their agents as authorized by the department when necessary to aid or assist the department's efforts to respond to chronic wasting disease (CWD).

The Texas Legislature during the most recent regular session passed House Bill 3065, which allows the take of wildlife by persons authorized by the department to do so "as part of a program or event designated by the executive director as being conducted for the diagnosis, management, or prevention of a disease in wildlife." The proposed rule would set forth a carefully controlled and highly regulated process under which the department would authorize persons not employed by the department to take native deer as part of department-sponsored research and management activities. Prior to the passage of H.B. 3065, if the take of a species of wildlife was regulated by a season, time of day, bag limit, or means established by the commission, only department employees or academics conducting activities under a research permit could take such wildlife in contravention of those limitations. The emergence and spread of CWD from deer breeding facilities to release sites has presented a unique challenge to the department, in terms of being able to facilitate the quick identification and removal of "trace deer" (deer that at some point were in a deer breeding facility where CWD was subsequently detected (positive facility) or that have become epidemiologically linked to a positive facility) at locations that have received deer from deer breeding facilities. The more expeditiously trace deer can be removed from the landscape and tested, the less likely it is that the deer, if infected with CWD, will have been able to infect additional animals or shed infectious prions at the release site. Additionally, such activities add to the department's understanding of the nature of CWD, its transmission, progression, and presence in the environment. Thus, if a release site becomes epidemiologically linked to a positive facility at a time of year when hunting is not lawful, there was no mechanism for the department to authorize persons not employed by the department to take deer to assist the department in disease management and research. The department also could use this authority to conduct epidemiological investigations at locations that were not release sites for breeder deer, as part of broader sampling and monitoring efforts.

The activities of a special take authorization are not recreational hunting or traditional wildlife management, they are part of the department's management efforts to study and control CWD. Therefore, the provisions of the rules contain strict provisions to eliminate any possible confusion on the part of the public or persons involved with respect to the purpose or intent of a special take authorization.

Proposed new subsection (a) would set forth the application and issuance process for special take authorizations, to include a site inspection (if deemed necessary by the department) and a stipulation that special take authorizations will be issued to named individuals only, and not to a corporation, association, or group. The department issues permits and licenses to named individuals only because it facilitates enforcement and compliance.

Proposed new subsection (b) would condition the validity of a special take authorization upon the recipient's acknowledgement, in writing, that he or she and any authorized agents have read and understand all provisions and conditions of the special take authorization. By obtaining written acknowledgment that a person to whom a special take authorization is issued (including any authorized agents) understands the rules and the conditions under which the activity is being authorized, the possibility of confusion, misunderstanding or disagreement will be reduced. The proposed new subsection would also include a provision conditioning the validity of a special take authorization on the approval of the director of the department's law enforcement division, or designee, and the director of the department's wildlife division, or designee.

Proposed new subsection (c) would stipulate that a special take authorization will identify the specific deer or number of deer to be removed for testing. Trace deer, because they were breeder deer exposed to CWD prior to release, are of primary importance in an epidemiological investigation; however, if all or some trace deer cannot be located it is necessary to post-mortem test additional free-ranging non-trace deer for CWD to develop an indication of whether CWD has been spread to the release site and if so, the disease prevalence. Therefore, a special take authorization would identify specific trace deer and/or a number of other deer to be removed for testing.

Proposed new subsection (d) would provide for the times, places, means, methods, and other measures to be stipulated in a special take authorization. The rule as proposed would impose limitations on the means and times of take to reduce wounding loss while still providing an efficient path for the removal of deer from the landscape; however, the high variability of geography and habitat across the state could make it necessary in some cases to authorize extraordinary means to quickly locate and dispatch deer. The proposed new subsection would stipulate that the activities authorized under a special take authorization must be conducted only by the person to whom the special take authorization is issued and any persons named in the special take authorization as agents. As noted previously, because the threat of CWD to indigenous deer populations creates a need to remove trace deer or other deer of epidemiological interest from the landscape quickly, the rules as proposed would allow activities that are otherwise unlawful. To ensure that those activities are conducted appropriately, the department believes it is necessary to identify every person who would be involved.

Proposed new subsection (e) would establish an initial period of validity of 14 days for persons to whom a special take authorization is issued to remove the deer identified in the authorization. The proposed new subsection also would provide for extensions of validity in situations where specific deer cannot be located.

Proposed new subsection (f) would stipulate the types of tissue samples to be collected and submitted under a special take authorization, require the submission of any identifying tags, and prescribe deadlines for the submission of those items. The department believes that prompt submission of properly collected and identified, epidemiologically valuable materials is crucial to the department's ability to determine disease prevalence, if any, at a release site or other location.

Proposed new subsection (g) would stipulate that the owner of any tract of land where prospective special take authorization activities are to take place be in compliance with all applicable provisions of the Chapter 65, Subchapter A and Subchapter B as a condition of issuance of a special take authorization for the property, unless the department determines that the disease management value of the prospective activities warrants approval. Under current rule, a release site that is epidemiologically connected to a positive deer breeding facility is prohibited from receiving additional deer until the department has determined that CWD has not been spread to or at that location. The department believes that any person who is not compliant with applicable rules governing surveillance at release sites should not be able to obtain a benefit from the issuance of a special take authorization, unless it is in the interests of protecting a public resource to do so.

Proposed new subsection (h) would require the recipient of a special take authorization to notify the department within 24 hours of take of each deer taken under the special take authorization, which is necessary for the department to accurately and timely monitor authorized activities.

Proposed new subsection (i) would prescribe disposal methods for carcasses of deer taken under a special take authorization. Because carcasses of deer taken from a location where the department believes CWD could be present have the potential to be infectious and because there is an amount of time between take and the receipt of test results, the department believes it prudent to prescribe carcass disposal requirements to minimize infectivity of carcasses. The proposed rule would therefore require carcasses to be disposed of by burial at a depth of at least three feet below ground level on the property where the take occurred, delivery to a landfill authorized by the Texas Commission on Environmental Quality to receive such wastes; or as otherwise directed by the department in the special take authorization.

Proposed new subsection (j) would condition the issuance of a special take authorization on the applicant's agreement in writing not to record by means of video, photograph, or other electronic media the act of taking or attempting to take deer under a special take authorization, or to allow such recordings, or to make such recordings available to the public. As mentioned previously in this preamble, the department intends for the rules to function solely as a means to assist the department in disease management, research, and prevention and does not intend for the rules to provide any kind of opportunity for commercial or entertainment exploitation.

Proposed new subsection (k) would, for purposes of explicit clarification and emphasis, provide that nothing in the rules is to be construed to relieve any person of the obligation to comply with any applicable municipal, county, state, or federal law, except as may be specifically authorized with respect to Parks and Wildlife Code and the regulations of the commission.

Proposed new subsection (l) would explicitly identify acts that the department considers serious enough to warn the recipients of special take authorizations not to engage in.

Proposed new subsection (m) would condition the validity of a special take authorization on the conduct of the person to whom the special take authorization is issued and agents of that person and provide that failure to abide by or comply with any provision

of a special take authorization, as determined by the department, automatically invalidates the authorization and subjects the violator to prosecution for applicable violations of Parks and Wildlife Code, Chapters 42, 43, 61, 62, or 63 and any department regulations related to the take of deer. The department believes that it is imperative for the public to be assured that non-recreational take of a public resource is taken by the department as a serious matter, and that persons who exhibit reckless, intentional, or negligent disregard for that resource should be held to account.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to the department or other units of state government as a result of administering the rule, as there will likely be few special take authorizations issued and department employees will administer and enforce the rule as part of currently budgeted and appropriated job duties.

There will be no fiscal implications on persons required to comply with the rule as proposed, as the decision to apply for and execute activities under a special take authorization is completely voluntary, no person is required under any provision of current law to obtain a special take authorization, and deer can still be removed by lawful hunting during an open season.

Mr. Macdonald also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be mitigating the spread of CWD.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), in April 2008, the Office of the Attorney General issued guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that because the rule as proposed does not directly regulate any small business, microbusiness, or rural community, there will be no adverse economic impact on small businesses, microbusinesses, or rural communities as a result of the proposed rule.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of a fee; create a new regulation (to implement a process for persons to remove protected wildlife under department supervision to support department disease management efforts); not expand an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Assistant Commander Stormy King, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4853; email: stormy.king@tpwd.texas.gov or via the department website at www.tpwd.texas.gov.

The new rule is proposed under Parks and Wildlife Code, §12.013, which authorizes the commission to adopt rules governing the take of wildlife under the supervision of a department employee in a program or event designated by the director as being conducted for the diagnosis, management, or prevention of a disease in wildlife.

The proposed new rule affects Parks and Wildlife Code, Chapter 12.

§65.907. Special Take Authorization - White-tailed and Mule Deer.

(a) The department may issue a special take authorization for the take of white-tailed or mule deer (hereinafter, "deer") for purposes of assisting the department in conducting wildlife disease diagnosis, management, or prevention (hereinafter, "special take authorization"), as provided in this subsection. A person may request a special take authorization by completing and submitting an application on a form supplied or approved by the department for that purpose.

(1) The department will not consider an incomplete application for a special take authorization.

(2) The department may, at its discretion, conduct a site inspection as a condition of issuance of a special take authorization.

(3) A special take authorization shall be issued only to a named individual and not in the name of any corporation, business, association, or group.

(b) A special take authorization is not valid until:

(1) the applicant has acknowledged, in writing via email to the department employee identified as the supervisory point of contact, that the applicant and all agents of the applicant have read and understand all:

(A) provisions of the special take authorization; and

(B) all attendant obligations of the person to whom the special take authorization is issued and that person's agents; and

(2) it has been approved in writing by the director of the department's Wildlife Division or designee and the director of the department's Law Enforcement Division or designee.

(c) A special take authorization shall specify the number and type of deer to be taken. No deer other than the specified deer or number of deer authorized for take shall be taken.

(d) The take of deer under a special take authorization shall be:

(1) performed only by the person to whom the special take authorization is issued and/or persons identified by name on the special take authorization as agents of the person to whom the special take authorization is issued;

(2) by firearm using centerfire ammunition only;

(3) conducted during the time between 30 minutes before sunrise and 30 minutes after sunset, unless specifically authorized in writing by the department; or

(4) any other method of take as may be authorized by the department to remove specific deer.

(e) A special take authorization is valid for 14 days from the date specified in the special take authorization. The department may extend the period of validity based on extenuating or unavoidable circumstances (including inability to locate specific deer); however, a request for extension must be submitted to the department via email and approved by the department prior to the take of deer. A copy of the special take authorization or a reproduction of the special take authorization on an electronic device (such as a cell phone or tablet) shall be produced upon request of a department employee in the discharge of their official duties. A copy of the email from the department granting an extension of a special take authorization or a reproduction of that email on an electronic device (such as a cell phone or tablet) shall be produced upon request of a department employee in the discharge of their official duties.

(f) For each deer taken under a special take authorization, the following must be submitted to the Texas A&M Veterinary Medical Diagnostic Laboratory:

(1) the whole head, accompanied by all visible forms of identification borne by the deer at the time the deer was taken, including but not limited to ear tags, tattoos, RFID tags, or any other forms of identification;

(2) the medial retropharyngeal lymph nodes (MRLN), which must be collected by an accredited veterinarian, authorized department employee, or TAHC-certified CWD sample collector; and

(3) any other tissue samples, as directed by the department.

(4) A properly executed TVMDL accession form must accompany the head or tissue samples submitted under the requirements of this subsection.

(5) All tissue samples and body parts required to be submitted under this subsection must be submitted to TVMDL within two business days of completion of removal of all deer or within two business days upon conclusion of the last authorized collection date, whichever is sooner.

(6) It is an offense to remove an ear tag or deface or remove a tattoo prior to submission of deer head under this subsection.

(g) The department will not issue a special take authorization for the take of deer on any tract of land unless:

(1) the owner of the land is in compliance with all applicable provisions of Chapter 65, Subchapter A and Subchapter B, of this title; or

(2) the department determines that the disease management value of the prospective activities is a factor of such significance that approval is warranted.

(h) A deer taken during the period of validity of a special take authorization shall be reported to the department within 24 hours of removal via email or other department approved notification method to the department's wildlife division representative coordinating the authorization.

(i) Following submission to the department of any tissues or parts necessary as directed in a special take authorization, a person to whom the special take authorization or an agent thereof shall dispose of all remaining portions or parts of a deer taken under a special take authorization, either by:

(1) burial at a depth of at least three feet below ground level on the property where the take occurred;

(2) delivery to a landfill authorized by the Texas Commission on Environmental Quality to receive such wastes; or

(3) as directed otherwise by the department in the special take authorization.

(j) The department will not issue a special take authorization unless the applicant agrees in writing not to record by means of video, photograph, or other electronic media the act of taking or attempting to take deer under a special take authorization, or allow such recordings, or to make such recordings available to the public.

(k) This section shall not be construed to relieve any person of the obligation to comply with any applicable municipal, county, state, or federal law, except as may be specifically authorized with respect to Parks and Wildlife Code and the regulations of the commission.

(l) It is an offense for any person to:

(1) take or attempt to take a deer under a special take authorization without possessing a hunting license valid for the take of deer in Texas;

(2) sell, barter, offer to sell or barter, or otherwise give or receive anything of value in exchange for taking or allowing the take of deer or any parts of the animal, including antlers, under a special take authorization.

(m) The validity of a special take authorization is completely conditioned on the conduct of the person to whom the special take authorization is issued and agents of that person. Failure to abide by or comply with any provision of a special take authorization, as determined by the department, automatically invalidates the authorization and subjects the violator to prosecution for applicable violations of Parks and Wildlife Code, Chapters 42, 43, 61, 62, or 63 and any department regulations related to the take of deer.

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

Filed with the Office of the Secretary of State on April 8, 2024.

TRD-202401416
James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 19, 2024
For further information, please call: (512) 389-4775

SUBCHAPTER X. MOUNTAIN LIONS

31 TAC §65.950

The Texas Parks and Wildlife Department proposes new 31 TAC §65.950, concerning Mountain Lions.

In 2022, the department received a petition for rulemaking concerning mountain lion monitoring and management. In response, the Chairman of the Commission directed the formation of a Mountain Lion Stakeholder Working Group consisting of landowners, livestock producers, private land managers, trappers, and natural resource professionals. The group was

charged with making recommendations on the abundance, status, distribution, and persistence of mountain lions in Texas; development of a mountain lion management plan for Texas; harvest reporting; trap/snare check standards; harvest/bag limits; and "canned" hunts.

Following a number of meetings throughout 2023, the Working Group's initial report recommended that the commission initiate rulemaking to prohibit "canned" hunting and to establish trapping standards. "Canned" hunting is regulated or prohibited in many states and countries, including Texas, where it is unlawful to conduct canned hunts for certain exotic species (African or Asiatic lion, tiger, leopard, cheetah, hyena, bear, elephant, wolf, or rhinoceros, or any subspecies or hybrid of these animals), but not mountain lions.

Proposed new §65.950, concerning Mountain Lions, would prohibit "canned" hunting and establish trapping standards for mountain lions.

Proposed new subsection (a) would define "captivity" as "the state of being held under control, or kept caged, penned, or trapped," which is necessary to establish the conditions under which "canned" hunting may be presumed to be occurring.

Proposed new subsections (b)(1) and (2) would prohibit the hunting of mountain lions in captivity as well as the release of captive mountain lions for purposes of being hunted or training dogs. The proposed provision would prohibit "canned" hunting of mountain lions, which is necessary to protect the species.

Proposed new subsection (b)(3) would create an offense for a person to allow a live mountain lion to be captured in a trap or snare for more than 36 hours. The department has determined that allowing a trapped or snared mountain lion to remain in that state for longer than 36 hours is inhumane and if the practice is allowed to be indiscriminately employed, will negatively affect the ability of mountain lion populations to successfully perpetuate themselves.

Proposed new subsection (b)(4) would create an offense for the act of conducting, promoting, assisting, or advertising an activity prohibited by the section. The department believes that persons who aid, assist, encourage, or otherwise act as a party to the commission of an offense should be held accountable in addition to the person who commits the offense.

Proposed new subsection (c) would expressly state that the section does not apply to the humane dispatch of lawfully trapped mountain lions or apply to the use of snares designed to cease functionality if 285 pounds of force are applied to its mechanism. The department does not wish to interfere with lawful trapping activities conducted for other species and specifically wishes to allow the use of special snares that a large animal such as a mountain lion or bear can escape.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule as proposed.

Mr. Macdonald also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be the protection of nongame species, which are crucial to healthy, balanced, and functional wildlife systems.

The rule as proposed could result in adverse economic impacts to persons required to comply. Those impacts are identical to the impacts to small and microbusinesses described elsewhere in this preamble.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, and rural communities. As required by Government Code, §2006.002(g), in April 2008, the Office of the Attorney General issued guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the proposed rule could result in a direct economic cost to small businesses and micro-businesses. There are persons in the state who trap mountain lions (among other species) for profit; the precise number is unknown but is believed to be in the hundreds. The adverse economic impact to those persons would consist of the cost of increased frequency of the checking of traps/snares in order to ensure that traps or snares set for mountain lions, if successful, do not hold the target for longer than 36 hours. This cost would be related to the cost of fuel used while traveling to check traps. Given the large sizes of properties in mountain lion habitats, the magnitude of trapping effort in any given location, the variety of vehicles used, and the number of places where a person may have set traps for mountain lions, it is difficult if not impossible to estimate what that cost might be; however, the department believes it to be less than $500 per year. The department notes that in many cases, traps can be checked in the process of other activities that would be occurring anyway, which would reduce the cost of compliance. In addition, technology is available that would allow traps to be checked remotely.

The department considered several alternatives to the rule as proposed.

One alternative was to do nothing. This alternative was rejected because the department has a statutory duty to protect nongame wildlife. Doing nothing would frustrate that duty.

Another alternative considered was mandatory reporting of all mountain lion take, which would allow the department to develop specific data to inform future management options. This alternative was rejected because the department determined that cooperation and compliance issues would complicate the department's ongoing efforts to comply with the recommendations of the Working Group.

Another alternative considered was to create a season and bag limit for the take of mountain lions. This alternative was also rejected because of the potential to interfere with department's ongoing efforts to comply with the recommendations of the Working Group, particularly the development of a mountain lion management plan, which requires the cooperation and inclusion of landowners, land managers, and trappers.

The department has determined that the rule as proposed will not affect rural communities, as it does not directly regulate any rural community.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will not create a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; create a new regulation (to prohibit "canned" hunting of mountain lions and establish trapping rules); not expand an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Richard Heilbrun, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8104; email: richard.heilbrun@tpwd.texas.gov or via the department website at www.tpwd.texas.gov.

The new rule is proposed under the authority of Parks and Wildlife Code, §67.004, which requires the commission by regulation to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

The proposed new rule affects Parks and Wildlife Code, Chapter 67.

§65.950. Mountain Lions (Puma concolor).

(a) In this section "captivity" means the state of being held under control, or kept caged, penned, or trapped.

(b) No person in this state may:

(1) hunt a mountain lion that is in captivity;

(2) release a mountain lion from captivity for purposes of:

(A) being hunted;

(B) training dogs;

(3) allow a live mountain lion to be captured in a trap or snare for more than 36 hours; or

(4) conduct, promote, assist, or advertise an activity prohibited by this subsection.

(c) This section does not:

(1) prohibit a person from humanely dispatching a lawfully trapped mountain lion; or

(2) apply to the use of snares designed to break away or disassemble with 285 pounds of force or less.

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

Filed with the Office of the Secretary of State on April 8, 2024.

TRD-202401417
James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 19, 2024
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.334

The Comptroller of Public Accounts proposes the repeal of §3.334, concerning local sales and use taxes. The comptroller repeals existing §3.334 to replace it with new §3.334. The repeal of §3.334 will be effective the date the new §3.334 takes effect.

Brief explanation of the proposed rulemaking.

It has been called to the comptroller's attention that the October 27, 2023 notice of proposed rulemaking did not contain a statement of fiscal implications for small businesses or rural communities as required by Government Code, Chapter 2006. See (48 TexReg 6340) (October 27, 2023). Therefore, the comptroller is proposing to repeal the adopted rule as proposed in the October 27, 2023 notice of proposed rulemaking. The comptroller is simultaneously proposing to readopt the text of the rule effective on January 5, 2024, with amendments, under the same number and title, with the repeal to be effective as of the date of the adopted rule.

Fiscal note.

Brad Reynolds, Chief Revenue Estimator, has determined that repeal of the current rule is of no consequence apart from facilitation of adoption of a new substitute §3.334 and has no fiscal implications in and of itself. The fiscal implications of the repeal are the same as the fiscal implication of the proposed new substitute §3.334. The statements in this fiscal note are supplemented by the additional statements in the preamble to the proposed new §3.334, which the comptroller will propose to adopt concurrently with this proposed repeal.

Brad Reynolds has determined the following for each year of the first five years that the proposed repeal and the substitute new rule will be in effect.

The additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule.

There will be no additional estimated cost to the state and to local governments expected as a result of enforcing or administering the proposed repeal of the existing rule and concurrent new rule.

The proposed amendments explain the manner in which the comptroller intends to apply the consummation statutes. The explanation should lead to greater taxpayer compliance, and less audit resources required to enforce or administer the rule.

The estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule.

There will be no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the proposed repeal of the existing rule and the concurrent new rule. Local governments do not administer the tax, and the comptroller will not be reducing the size of its audit staff as a result of the rule.

The estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule, and the foreseeable implications relating to cost or revenues of the state or local governments.

Change in sourcing of transactions subject to local sales taxation could result in net change in sales tax revenue of local taxing entities generally, which may be significant for some jurisdictions. Most, but not all, reductions in taxable transactions sourced to some jurisdictions would be increases in taxable transactions sourced to other jurisdictions. If the comptroller repeals the existing rule and concurrently adopts the proposed new rule, it is estimated that there could be a $28.5 million reduction in aggregate local sales tax levies sourced to unincorporated areas without local sales tax or with cumulative local county and special district tax rates less than the cumulative local rates that applied at the locations where the taxable transactions were formerly sourced. A $28.5 million reduction in aggregate local tax levies would result in reduced state service charge revenue of $570,000.

Reliable estimates of net changes in revenue for each of the 1,759 local sales taxing jurisdictions that might stem from compliance with the proposed repeal of the existing rule and concurrent adoption of new rule cannot feasibly be produced by the comptroller.

Public benefits and costs.

Brad Reynolds, Chief Revenue Estimator, has determined the following for each year of the first five years that the existing rule will be repealed and the proposed new rule will be in effect.

The public will benefit from greater clarity regarding the consummation standards, making compliance easier.

There may be additional economic costs to a person required to comply with the proposed repeal of the existing rule and adoption of the new rule. The rule may cause some vendors to realize that they are noncompliant. If the vendors come into compliance by changing from single-location reporting to multiple-location reporting, their compliance burden may increase. And if vendors change from multiple-location reporting to single-location reporting, their compliance burden may diminish.

Local employment impact statement.

For the first five years that the existing rule will be repealed and the proposed new rule will be in effect, the effect on local economies and employment, if any, cannot be determined. To the extent that the repeal of the existing rule and the proposed new rule leads to greater awareness and compliance with the local tax consummation standards, some vendors may change their reporting methods, which might positively or negatively affect the tax revenue of particular local tax jurisdictions. Whether a change in local tax revenue might increase or decrease the provision of local government services to an extent that would affect local economic activity or employment would depend on discretionary actions of the governing body or the electorate of an affected jurisdiction, and cannot be determined.

Government growth impact statement.

Brad Reynolds, Chief Revenue Estimator, has determined the following for each year of the first five years that the existing rule will be repealed and the proposed new rule will be in effect: the amendment will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the comptroller; will not require an increase or decrease in fees paid to the comptroller; will not create a new regulation; will increase the number of individuals subject to the rule's applicability because sellers without a physical presence in a local tax jurisdiction will be required to collect local use tax if they are required to collect state use tax; and will not positively or adversely affect this state's economy.

Economic impact statement and regulatory flexibility analysis.

A "rural community" is a municipality with a population of less than 25,000. The comptroller estimates that there are 1,098 such rural communities, of which 1,017 impose a sales tax and may have revenue affected by compliance with the rule.

A "small business" is a legal entity, including a corporation, partnership, or sole proprietorship, that: (A) is formed for the purpose of making a profit; (B) is independently owned and operated; and (C) has fewer than 100 employees or less than $6 million in annual gross receipts. The Comptroller estimates that there are 470,000 businesses with fewer than 100 employees, and 377,000 businesses with annual gross receipts less than $6 million; the sum of these two estimates would overstate the number of small businesses, as many businesses would be expected to have both fewer than 100 employees and less than $6 million in annual gross receipts.

To the extent that the repeal of the existing rule and the adoption of the proposed new rule leads to greater awareness and compliance with the local tax consummation standards, some vendors may change their reporting methods, which might positively or negatively affect the tax revenue of particular local tax jurisdictions. As previously explained, the comptroller does not have sufficient data on the business operations of each business to identify and quantify the businesses and transactions that might be affected, and the positive or negative revenue impact on each tax jurisdiction.

It is conceivable that repeal of the existing rule and adoption of the proposed new rule may cause some vendors, small or large, to realize that they are noncompliant. If the vendors come into compliance by changing from single-location reporting to multiple-location reporting, their compliance burden may increase.

The repeal of the existing rule and the adoption of the proposed new rule will expand the local tax collection obligations of remote sellers - out-of-state sellers that collect state use tax must also collect local sales tax. The expansion of the remote seller local tax collection obligation may benefit small businesses in Texas by reducing the perception of customers that purchases from out-of-state sellers are preferable because out-of-state sellers charge less sales or use tax than the small businesses in Texas.

The proposed new rule adds subsection (b)(6):

"If a small business or a micro-business operates a single location out of which it conducts all of its business activities, the

comptroller will presume that the location is a place of business of the seller."

To the extent that repeal of the existing rule facilitates the adoption of the proposed new rule, the repeal will simplify the collection of local sales tax for many small businesses and micro-businesses.

Public hearing

The comptroller will hold a hearing to take public comments, on May 9, 2024, at 9:00 a.m. in Room 2.034 of the Barbara Jordan Building, 1601 Congress Avenue, Austin, Texas 78701. Interested persons may sign up to testify beginning at 8:30 a.m. and testimony will be heard on a first come first serve basis beginning at 9:00 a.m. All persons will have 10 minutes to present their testimony and shall also provide their testimony in writing prior to their oral testimony.

Comments

You may submit comments on the proposal to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: tp.rule.comments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

Statement of the statutory or other authority under which the rule-making is proposed.

The repeal is proposed under Tax Code, §§111.002 (Comptroller's Rule; Compliance; Forfeiture), 321.306 (Comptroller's Rules), 322.203 (Comptroller's Rules), and 323.306 (Comptroller's Rules), which authorize the comptroller to adopt rules to implement the tax statutes.

Sections or articles of the code affected.

The repeal affects Tax Code, §151.0595 (Single Local Tax Rate for Remote Sellers); Tax Code, Chapter 321, Subchapters A, B, C, D, and F; Tax Code, Chapter 322; and Tax Code, Chapter 323.

§3.334. Local Sales and Use Taxes.

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

Filed with the Office of the Secretary of State on April 8, 2024.

TRD-202401426
Jenny Burleson
Director, Tax Policy Division
Comptroller of Public Accounts
Earliest possible date of adoption: May 19, 2024
For further information, please call: (512) 475-2220

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34 TAC §3.334

The Comptroller of Public Accounts proposes new §3.334, concerning local sales and use taxes. The comptroller proposes new §3.334 to readopt the text of existing §3.334 proposed for repeal, with the addition of paragraph (b)(6).

Brief explanation of the proposed rule.

In January 2020, the comptroller initiated a rulemaking to update its local sales and use tax rule. The comptroller subsequently adopted amendments in 2020, 2023, and 2024. (49 TexReg 53) (January 5, 2024), (48 TexReg 391) (January 27, 2023), (45 TexReg 3499) (May 22, 2020). The amendments implemented House Bill 1525, 86th Legislature, 2019, which placed local sales and use tax collection responsibilities on marketplace providers. The amendments also implemented House Bill 2153, 86th Legislature, 2019, which set a single local use tax rate that remote sellers may elect to use. The amendments also expanded the local sales tax collection responsibilities of sellers based on the United States Supreme Court decision in *South Dakota v. Wayfair, Inc.,* 138 S. Ct. 2080 (June 21, 2018). These amendments have been noncontroversial.

The rulemaking made other revisions to the text, which are now the subject of litigation in Cause No. D-1-GN-21-003198, *City of Coppell, Texas, et al. v. Glenn Hegar,* in the 201st District Court of Travis County Texas. The Plaintiff cities claim that the agency did not comply with the rulemaking procedures in Government Code, §2001.024 and Government Code, Chapter 2006. The purpose of this rulemaking is to address those claims by proposing the readoption of the rule, with amendments, and a more complete statement of the elements required by Government Code, §2001.024 and Government Code, Chapter 2006.

The comptroller proposes to add the following definitions:

"Micro-business--a legal entity, including a corporation, partnership, or sole proprietorship, that:

(A) is formed for the purpose of making a profit;

(B) is independently owned and operated; and

(C) has not more than 20 employees."

"Small business--a legal entity, including a corporation, partnership, or sole proprietorship, that:

(A) is formed for the purpose of making a profit;

(B) is independently owned and operated; and

(C) has fewer than 100 employees or less than $6 million in annual gross receipts."

The definition of "independently owned and operated business" is taken from the Attorney General of Texas' Government Code Chapter 2006 Small Businesses and Rural Communities Impact Guidelines updated in December 2017.

The definitions of "micro-business" and "small business" are taken from Government Code, Chapter 2006.

The comptroller further proposes to add subsection (b)(6):

"If a small business seller or a micro-business seller operates a single location out of which it conducts all of its business activities, the comptroller will presume that the location is a place of business of the seller."

Fiscal note.

Brad Reynolds, Chief Revenue Estimator, has determined the following for each year of the first five years that the rule will be in effect. The fiscal note considers the effect of the prior 2020, 2023, and 2024 amendments to the rule, as well as the amendments in this proposal.

The additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule.

There will be no additional estimated cost to the state and to local governments expected as a result of enforcing or administering the proposed rule. The proposed amendments explain the man-

ner in which the comptroller intends to apply the consummation statutes. The explanation should lead to greater taxpayer compliance, and less audit resources required to enforce or administer the rule.

The estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule.

There will be no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule amendments. Local governments do not administer the tax, and the comptroller will not be reducing the size of its audit staff as a result of the rule.

The estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule, and the foreseeable implications relating to cost or revenues of the state or local governments.

Change in sourcing of transactions subject to local sales taxation could result in net change in sales tax revenue of local taxing entities generally, with the net change quite significant for some jurisdictions. Most, but not all, reductions in taxable transactions sourced to some jurisdictions would be increases in taxable transactions sourced to other jurisdictions. But to the extent that transactions previously sourced within an incorporated municipality would be sourced to an unincorporated area without a cumulative local tax rate levied by municipal (pursuant to a limited purpose annexation agreement), county, and/or special purpose taxing authorities commensurate with the cumulative local tax rate levied by the municipal, county, and/or special purpose taxing authorities applicable where the transactions were formerly sourced, there would be a reduction in aggregate local sales tax levies and consequent reduction in state service charge revenues under §§ 321.503, 322.303, and 323.503, Tax Code.

For reasons further discussed, reliable estimates of net changes in revenue by individual jurisdictions for the 1,759 local sales taxing jurisdictions that might stem from compliance with the rule cannot feasibly be produced by the comptroller. Even if the requisite audits of potentially affected sales tax permittees in every jurisdiction could be timely performed to support such estimation, the sales tax permittees are not static entities. It would not be plausible to assume that those who currently source local tax to a location that is not a place of business as defined in the rule would not adjust their operations to qualify such locations as places of business and consequently not be obligated to change the sourcing of local tax.

Plaintiff cities allege that portions of the proposed rule are invalid, that the proposed rule "dramatically" or "fundamentally" changes the former rule, that compliance with the proposed rule will require vendors to change to existing reporting methods, and that the changes to existing reporting methods will result in the loss of revenue to the cities.

One consultant estimated that the City of Carrollton would have a likely net loss of $1.1 to $2 million; that the City of Coppell would have a likely net loss of $18.8 million of $30.8 million, that the City of DeSoto would have a likely net loss of $5.1 million, that the City of Farmers Branch would have a likely net loss of $600,000 to $1.8 million, and the City of Humble would have a likely net loss of $5.6 million. The consultant did not provide the comptroller with data to support these calculations and he declined to identify the vendors that he predicted would have to change their reporting methods.

The comptroller does not have sufficient data to verify these calculations or to make similar estimates for other jurisdictions. The agency does have data regarding the amount of sales tax receipts that that a vendor reports to local jurisdictions. But, that data does not prove that the vendor is incorrectly reporting, that the vendor would change its reporting as a result of the rule amendments, or that specific jurisdictions would gain or lose tax revenue as a result of the rule amendments. Those determinations would require an understanding of the business operations of the vendor to determine which business locations were "places of business" for purposes of local tax sourcing. Then, the comptroller would have to examine individual transactions to determine the location where the orders were received, the location where the orders were fulfilled, and the location where the order was delivered, since all three locations are potential sourcing locations. Then, the comptroller would have to compare that information with how the vendor has been reporting local tax on each transaction, identify the circumstances, if any, that would require the vendor to change its methods of reporting as a result of the rule, and determine the dollar value for each transaction. The comptroller does not have sufficient information on the individual vendors to make this determination.

The consultant's explanation of his methodology confirms that the comptroller does not have sufficient data on hand, and that the comptroller could not reasonably acquire the necessary data to perform a study for every jurisdiction. The consultant identified and researched the "top tier" taxpayers for the cities in his study, and then conducted research to determine who they were selling to and whether any sales were made other than through websites. The research ranged from interviews with local employees, to passive research on web pages, job postings, certificate of occupancy maps/filings, and in some instances, purchases were made as well as physical visits to the taxpayer's locations. From this research, the consultant identified "suspect" taxpayers and estimated the value of their shipment outside of the city. In doing this work, the consultant estimated that he spent forty hours per jurisdiction. The comptroller does not have the time or resources to conduct what is essentially an audit of the tens of thousands of permitted taxpayers to identify noncompliant taxpayers and then estimate the extent of their noncompliance.

With the exception of the City of Round Rock, the Plaintiff cities have alleged that their jurisdictions have a particular type of taxpayer that is primarily affected - "fulfillment centers" that ship orders to customers. According to the cities, the fulfillment centers are sourcing local tax to the cities in which they are located, pursuant to Tax Code, §321.203(c-1)(1), which provides that a sale is consummated at the place of business of the retailer from which the retailer ships or delivers the item. For subsection (c-1)(1) to apply, a fulfillment center has to be a "place of business of the retailer" for local sales tax sourcing purposes. The term "place of business of the retailer" (hereinafter "place of business") is defined by Tax Code, §321.002(a)(3)(A) to include a location at which three or more orders are received during a calendar year.

The Plaintiff cities contend that the fulfillment centers are properly sourcing local tax to the cities in which they are located because every fulfillment center is automatically a "place of business." The theory is that a fulfillment center is automatically a "place of business" because it has to "receive" orders as a necessary prerequisite to fulfilling the orders, and a fulfillment center can be expected to "receive" three or more orders in a calendar year.

Subsection (c)(7) of the proposed rule now explicitly states that the location where an order is "received" for purposes of local sales tax sourcing is the location where the order is *initially* received. Therefore, under the proposed rule, a fulfillment center that processes orders forwarded from another location is not automatically a "place of business" for local tax sourcing. The Plaintiff cities contend that if the fulfillment centers in their jurisdiction begin sourcing local sales tax to other cities, they will lose millions of dollars in tax revenue.

The merits of the conflicting interpretations are discussed in the preambles of the previous rulemakings. The issue here is the effect on local tax revenue, and whether the comptroller can reliably estimate the effect on cities, individually or collectively. The estimates of the Plaintiff cities and the fulfillment centers in those cities cannot be reliably projected to other cities. The comptroller does not have data to identify the "fulfillment centers" in any particular jurisdiction or statewide - it is not a characteristic that is reported to the agency.

And, even if agency could identify "fulfillment centers" from its data, the agency could not assume that the fulfillment centers in other cities are sourcing local tax like the Plaintiff cities' fulfillment centers purportedly are sourcing. For reasons enumerated to the Revenue Estimating Division by agency counsel, it is comptroller's opinion that a fulfillment center could reasonably reach a different conclusion, and conclude that it was not automatically a "place of business" for local tax sourcing purposes, as claimed by the Plaintiff cities.

First, the text of former §3.334(h)(3) indicated that a fulfillment center is not automatically a "place of business" for local sourcing (emphasis added):

"(3) Consummation of sale. The following rules, taken from Tax Code, §321.203 and §323.203, apply to all sellers engaged in business in this state, regardless of whether they have a place of business in Texas or multiple places of business in the state.

...

(B) Order received at a place of business in Texas, fulfilled at a location that is not a place of business. When an order that is placed over the telephone, through the Internet, or by any means other than in person is received by the seller at a place of business in Texas, and the seller *fulfills the order at a location that is not a place of business of the seller in Texas, such as a warehouse or distribution center,* the sale is consummated at the place of business at which the order for the taxable item is received.

...

(D) Order fulfilled within the state at a location that is not a place of business. When an order is received by a seller at any location other than a place of business of the seller in this state, and

the seller *fulfills the order at a location in Texas that is not a place of business of the seller,* then the sale is consummated at the location in Texas to which the order is shipped or delivered, or the location where it is transferred to the purchaser."

(41 TexReg 260, 265) (2016) (former 34 Tex. Admin. Code §3.334(h)(3), emphasis added); (39 TexReg 9597, 9606) (2014) (former 34 Tex. Admin. Code §3.334(h)(3), emphasis added).

Second, the consummation rules in former §3.334(h)(3) were augmented with an explicit provision for fulfillment centers, which the former rule referred to as "distribution centers" (emphasis added):

"(2) *Distribution centers,* manufacturing plants, storage yards, warehouses, and similar facilities.

(A) A *distribution center,* manufacturing plant, storage yard, warehouse, or similar facility operated by a seller at which the seller receives three or more orders for taxable items during the calendar year is a place of business.

(B) If a salesperson who receives three or more orders for taxable items within a calendar year is assigned to work from, or to work at, a *distribution center,* manufacturing plant, storage yard, warehouse, or similar facility operated by a seller, *then* the facility is a place of business.

(C) If a location that is a place of business of the seller, such as a sales office, is in the same building as a *distribution center,* manufacturing plant, storage yard, warehouse, or similar facility operated by a seller, *then* the entire facility is a place of business of the seller."

(41 TexReg 260, 263) (2016) (former 34 Tex. Admin. Code §3.334(e)(2), emphasis added); (39 TexReg 9597, 9605) (2014) (former 34 Tex. Admin. Code §3.334(e)(2), emphasis added).

If a distribution center were automatically a "place of business" for local tax sourcing as the Plaintiff cities contend, subparagraphs (B) and (C) would not be required - there would be no need for a salesperson or a sales office to "then" make the distribution center a "place of business" for local tax sourcing purposes.

Third, in addition to its rule, the comptroller distributed Publication 94-105, sometimes called the "Local Sales and Use Tax Bulletin - Guidelines for Collecting Local Sales and Use Tax," or "Tax Topics - Guidelines of Collecting Local Sales and Use Tax" (Guidelines). These Guidelines were posted on the comptroller's website and indexed in the comptroller's State Tax Automated Research System. Since at least 2007, the Guidelines referred to a "location within the state that is not a place of business (such as a warehouse or distribution center)." *E.g.,* STAR Accession No. 200902596L (February 2009). The Guidelines were intended as a general guide and not as a comprehensive resource. But, an ordinary reader would not walk away with the impression that a taxpayer's fulfillment center was automatically a "place of business" for purposes of local tax sourcing.

Fourth, in 2016, the comptroller rewrote the Guidelines to be even more specific regarding fulfillment centers: "The warehouse from which the person ships those items is not a place of business, unless the warehouse separately qualifies as a place of business." STAR Accession No. 201606995L (June 1, 2016).

And, fifth, in 2019, a comptroller letter ruling discussed fulfillment centers, referring to the former rule, then in effect: "Scenario One: Taxpayer Retailer operates fulfillment centers in Texas that are not open to the public. ... When an order is received at a location that is not a place of business and is *fulfilled in Texas at a location that is not a place of business,* the sale is consummated at the location in Texas to which the order is shipped. *See* §3.334(h)(3)(D). For Scenario One, local sales and use tax is due based on the location where the order is delivered." STAR Accession No. 201906015L (June 13, 2019) (emphasis added).

If the Plaintiff cities and their consultant's study are right about how the various fulfillment centers in their cities reported local tax, those fulfillment centers must have either disregarded the comptroller's prior written guidance, overlooked the guidance, or interpreted the guidance as being the opposite of what the comptroller intended. But, it cannot be assumed that fulfillment

centers in other cities have also disregarded, overlooked, or interpreted the prior rulings in such a way that they will have to change their reporting as a result of the proposed rule. So, even if the comptroller could identify the permitted locations that are fulfillment centers, the revenue implications of the proposed rule cannot be reliably extrapolated from the study conducted on behalf of the Plaintiff cities.

Furthermore, the cities' calculations of revenue loss assume the proposed rule would force fulfillment centers to begin sourcing local tax to other cities, when that is not the case. The Legislature set a low threshold for a location to be a "place of business" for local tax sourcing - the receipt of three or more orders during a calendar year. A fulfillment center that is not a "place of business" under the proposed rule could easily become one by directly receiving three or more orders. The Plaintiff cities have alleged that it is easier to source local tax to one jurisdiction than to source to many. So, a fulfillment warehouse would have an incentive to become a "place of business." And, a fulfillment center with a tax sharing agreement with a city would have an even greater incentive to make the minor adjustments required to become a "place of business," so as to maintain the return on its revenue sharing agreement. Therefore, even if the potential tax revenue loss from fulfillment centers could be reliably measured, it is unreasonable to assume that no fulfillment center would take remedial efforts to continue its sourcing procedures.

The City of Round Rock has asserted claims that are different from or in addition to the claims of the other Plaintiff cities. The City has suggested that the proposed rule will radically change the way that Texas retailers with one place of business in Texas will source local tax. However, for enumerated reasons, agency counsel advises that it should be assumed that in most instances, the proposed rule will not change the sourcing of products sold by Texas retailers with one place of business in Texas.

First, the proposed rule does not change the comptroller's previous application of the statute, which does not recognize special treatment for vendors with a "single place of business" for purposes of local tax sourcing. Proposed subsection (c) states in relevant part:

"The following rules, taken from Tax Code, §321.203 and §323.203, apply to all sellers engaged in business in Texas, regardless of whether they have no place of business in Texas, a single place of business in Texas, or multiple places of business in Texas."

The language in the proposed rule has the same effect as the language in the prior 2014 and 2016 versions of the rule - no special treatment for vendors with a single "place of business":

"The following rules, taken from Tax Code, §321.203 and §323.203, apply to all sellers engaged in business in this state, regardless of whether they have a place of business in Texas or multiple places of business in the state."

(41 TexReg 260, 265) (2016) (former 34 Tex. Admin. Code §3.334(h)(3); (39 TexReg 9597, 9606) (2014) (former 34 Tex. Admin. Code §3.334(h)(3)).

Second, the proposed rule should have little impact on most businesses that are a single place of business in the ordinary sense of the word - *i.e.,* all operations are conducted at a single location. If orders are received and fulfilled in a single facility, local sales tax will continue to be sourced to that location. A typical example would be a retail store.

The City of Round Rock suggests that a single facility that conducts all transactions through automated shopping cart software may be affected, since a software application does not constitute a "place of business." However, the threshold for becoming a "place of business" is very low, including the receipt by sales personnel of three or more orders per year. If a vendor occasionally engages with a customer directly, such as by telephone or email, as the final step in receiving an order under subsection (c)(7), the vendor's location should be a "place of business" for local tax sourcing, even if orders are ordinarily processed by the vendor's automated software. To ease the burden on auditors, and on small businesses and micro-businesses that operate out of a single location, proposed subsection (b)(6) presumes that is the case.

Third, sales made by through a marketplace by a seller with a single place of business will not be affected because those orders are sourced to destination by Tax Code, §321.203(e-1).

The City of Round Rock claims that Dell Technologies has a single place of business in the city and suggests that Dell is sourcing all of its local sales tax collections to the City of Round Rock. The city further claims that it will lose a significant amount of local sales tax revenue under the proposed rule. However, when the comptroller served third party discovery on Dell to understand how Dell's current business operations would be affected by the proposed rule, both Round Rock and Dell objected. Dell insisted that the inquiry should only be "conducted under the applicable sections of the Texas Tax Code" in Chapter 111 -- in other words, an audit.

This discovery dispute illustrates the impracticability of preparing a revenue impact estimate for the City of Round Rock - it would require the audit of Dell and any other vendors from whom the city thinks there will be a revenue loss. A local sales tax audit of Dell would have to examine all the business locations of Dell to determine which, if any of the locations were a "place of business" for local tax sourcing purposes. And, if the comptroller verified that Dell in fact operated a single "place of business" in Texas, the comptroller would still have to audit the sourcing of Dell's sales to determine which sales were compliant and which sales were noncompliant with the proposed rule. For example, Dell purports to have a sales force in Round Rock. Assuming that orders generated by that sales force are received in Round Rock and not fulfilled from a "place of business" elsewhere in Texas, those sales would still be sourced to Round Rock. And, any orders fulfilled from Dell's "place of business" in Round Rock would still be sourced to Round Rock. And, any orders delivered in Round Rock would still be sourced to Round Rock. Therefore, to meaningfully determine the revenue impact of the proposed rule on the City of Round Rock, the comptroller would have to thoroughly audit Dell and any other vendors from whom Round Rock thinks there will be a revenue loss.

Repeating this audit exercise on a jurisdiction-by-jurisdiction basis across the state is infeasible. Audits are not quick or easy. Considerable time and effort is required to acquire and analyze taxpayer data. Taxpayers are understandably reluctant to furnish confidential business data. And, the data varies in degree of accessibility. The average duration of an audit in fiscal year 2023 was 450 days, and the average number auditor hours spent on an audit was 80.5 hours.

It is also possible that an audit of Dell or other vendors would identify noncompliance with sourcing provisions that are not involved in the disputed rulemaking. For example, if Dell were sourcing marketplace sales to the City of Round Rock rather than

to the delivery location specified by statute, Dell would have to change its sourcing methods and the City of Round Rock would suffer a revenue loss. But, that revenue loss should be attributed to the marketplace statute enacted by the Legislature, not the proposed comptroller rule.

This possibility is real. During the 2020 rulemaking, the City of San Marcos filed comments claiming that the proposed rule would cause the city to lose $7-8 million in local sales tax revenue generated by a Best Buy call center, with the net effect of economic development incentive revenue loss estimated at $3.4 million. Best Buy also filed comments stating that it created a subsidiary called Best Buy Texas.com LLC and sourced the local tax for all of its Internet and telephone sales to the City of San Marcos. This would mean that if a resident of the City of Houston placed an online order from Houston and picked up the item at an affiliated Best Buy Stores outlet in Houston, Best Buy Texas.com LLC would collect local sales tax for the City of San Marcos. However, it appears that the Best Buy website was actually operated by a different Best Buy affiliate, which would make it a marketplace provider as defined in Tax Code, §151.0242(a)(2). Under the marketplace statute, local tax is sourced to the location where the item is shipped or delivered or at which possession is taken by the purchaser. Thus, any loss to the City of San Marcos of local sales tax revenue from the sale to the Houston resident would be the result of compliance with the marketplace statute. And the loss of tax revenue would not be attributable to the rule. The loss resulting from compliance with the statute would occur without regard to whether the proposed rule was adopted.

The comptroller has considered various other comments of the Plaintiff cities and others to the effect that the proposed rule will dramatically change local tax sourcing and concluded that the comments do not accurately apply the proposed rule. The comptroller disagrees with the allegation that the proposed rule will "dramatically change where a sale is consummated if the Comptroller interprets the change to require destination sourcing when a sale is made online using a retailer's website, even if the retailer has only one place of business." And, the comptroller disagrees with the allegation that "sales made by way of websites using the Internet are treated as having been consummated where the taxable item is delivered to the buyer instead of where the order for the item is received and fulfilled by the seller." The consummation hierarchy in subsection (c) does not require the alleged results.

The comptroller has amended the definition of "place of business of the seller" in subsection (a)(18) to provide that the term does not include a computer server, Internet protocol address, domain name, website, or software application. While the discussion of computer servers was added to the rule in 2020, the comptroller had previously advised taxpayers that the location of the server does not create a "place of business" for purposes of the local tax collection and that orders placed on a website or though applications and processed and routed by servers are not "received at" a place of business. *See* STAR Accession Nos. 200510723L (October 6, 2005), 200605592L (May 17, 2006), and 201906015L (June 13, 2019).

The comptroller has also amended the definition of "place of business of the seller" in subsection (a)(18) to provide that staffing by one or more sales personnel is usually required. The statement is not a requirement, but an objective criterion that will often be an important factor in determining whether an outlet, office, or location is a "place of business." In the January 2023 rulemaking, the comptroller explained how the reference to sales personnel is a logical extension of prior comptroller statements, including prior statements regarding fulfillment warehouses and computer servers. *See* (48 TexReg 391, 398) (2023).

Agency counsel has advised that there are several instances in which the rule proposed for readoption is substantively different than the 2016 version of the rule. Subsection (c)(2)(B)(ii) provides that a seller required to collect state use tax must also collect local use tax. This provision expands the collection responsibilities of sellers, which, formerly were obligated to collect local use tax only if they were engaged in business in the local jurisdiction. This provision should have a positive, but indeterminant revenue effect on all local jurisdictions.

The proposed rule, as compared with the 2016 version, adds provisions that the sourcing of marketplace sales is based on destination, because the consummation statute was amended in 2019 by House Bill 1525 to require that result. The fiscal note for House Bill 1525 estimated a probable revenue gain for local governments. However, because House Bill 1525 was already in effect, and rulemaking is not required to effectuate the legislation, the comptroller is assigning no fiscal implication to the rule revision incorporating House Bill 1525, other than a potential increase in compliance with the statute.

The proposed rule, as compared with the 2016 version, also adds provisions for remote sellers to apply a single local tax rate, as authorized by House Bill 2153 in 2019. The fiscal note for House Bill 2153 stated:

"There would be no significant fiscal implications for local governments in the aggregate; there could be some variance in distribution of revenue among jurisdictions compared with the distribution that would occur were all remote sellers required to collect and remit tax at applicable local combined rates, but the extent of such variance cannot be determined and would not be expected to be significant in relation to the total allocations of local sales and use tax revenues."

The comptroller is assigning no fiscal implication to the rule revision incorporating House Bill 2153, since the statute went into effect before the rulemaking, and rulemaking was not required to implement the statute.

The proposed rule, as compared with the 2016 version, alters the treatment of a "traveling salesperson," which was previously defined as: "A seller, or an agent or employee of a seller, who visits potential purchasers in person to solicit sales, and who does not carry inventory ready for immediate sale, but who may carry samples or perform demonstrations of items for sale." Former §3.334(h)(4) provided: "Orders taken by traveling salespersons are received by the seller at the administrative office or other place of business from which the traveling salesperson operates." (41 TexReg 260, 265) (2016) (former 34 Tex. Admin. Code §3.334(h)(4)). The former rule did not further explain the location from which the traveling salesperson operates.

Subsection (b)(4) of the proposed rule replaces the traveling salesperson language with a provision for an order that is received by a salesperson who is not at a place of business when the salesperson receives the order. Subsection (b)(4) provides that the order is treated as being received at the location from which the salesperson operates. Subsection (b)(4) further provides that the location from which the salesperson operates is the principal fixed location where the salesperson conducts work-related activities.

Commenters have reported that the orders from some traveling salespersons have been sourced to the location to which the traveling salesperson is "assigned," even though the traveling salesperson may conduct principal work-related activities from another location. In these situations, the proposed rule might result in a change to local tax sourcing. However, the significance of this change is indeterminant. The comptroller does not have data to identify traveling salespersons as defined under the former rule, and does not have data to identify the instances in which a traveling salesperson has been "assigned" to a location from which the salesperson does not conduct principal work-related activities. And, if the agency could identify those instances, without conducting extensive audits, the agency would still not know which instances would result in a change of sourcing. For example, if the order is fulfilled from a "place of business," the location of the salesperson is irrelevant.

In summary, due to both to the number of taxing jurisdictions and lack of pertinent, detailed information regarding the specific circumstances of the myriad businesses reporting local sales and use taxes, estimation of fiscal effects of the proposed rule, whether of dollar amounts or merely sign of change, on an individual jurisdiction by jurisdiction basis is infeasible of execution.

The comptroller recognizes that compliance with the proposed rule could result in changes to the local tax reporting methods of some vendors. As a result, there could be loss or increase in revenue to individual local governments. A revenue loss to one local government will often but not always be a revenue gain to others. There will also be revenue gains experienced by all local tax jurisdictions from the expansion of the use tax collection obligations of remote, out-of-state sellers. For the reasons previously stated, the aggregate net gain or loss cannot be reliably estimated by the comptroller from available or reasonably accessible data.

The comptroller has been provided with estimates that some cities will experience net revenue losses. However, the comptroller has not been provided with sufficient information to verify the estimates, and the data from the estimates cannot be extrapolated to other local tax jurisdictions. That said, the estimates of anticipated revenue losses provided by Plaintiffs and others in comments to proposed rulemakings are accepted as valid good faith estimates and may serve as a basis for estimating a minimum amount of revenue from online sales associated with locations that are not places of business as defined in the rule, that will be subject to different sourcing if the affected sales tax permittees cannot or choose not to modify their procedures in order to qualify such business locations as places of business for purposes of local sales tax sourcing. As those estimates were constructed from 2020 data and there has been significant inflation as well as real economic growth since then, they are scaled up by a factor of 1.35 to yield a minimum estimate of $110 million on a current annual basis that may be lost to those cities, plus another $80 million that may be lost to the other local taxing jurisdictions imposing tax at the affected locations, for a total of $190 million of gross revenue reductions, of which 85% or $161.5 million would be estimated gains to other local taxing jurisdiction, and 15% or $28.5 million would be reduction in aggregate local sales tax levies sourced to unincorporated areas without local sales tax or with cumulative local county and special district tax rates less than the cumulative local rates that applied at the locations where the taxable transactions were formerly sourced. A $28.5 million reduction in aggregate local tax levies would result in reduced state service charge revenue of $570,000.

Public benefits and costs.

Brad Reynolds, Chief Revenue Estimator, has determined the following for each year of the first five years that the rule will be in effect.

The public will benefit from greater clarity regarding the consummation standards, making compliance easier.

There may be additional economic costs to a person required to comply with the rule. It is conceivable that the rule may cause some vendors to realize that they are noncompliant. If the vendors come into compliance by changing from single-location reporting to multiple-location reporting, their compliance burden may increase. And if vendors change from multiple-location reporting to single-location reporting, their compliance burden may diminish.

Local employment impact statement.

For the first five years that the rule will be in effect, the effect on local economies and employment, if any, cannot be determined. To the extent that the proposed rule leads to greater awareness and compliance with the local tax consummation standards, some vendors may change their reporting methods, which might positively or negatively affect the tax revenue of particular local tax jurisdictions. Whether a change in local tax revenue might increase or decrease the provision of local government services to an extent that would affect local economic activity or employment would depend on discretionary actions of the governing body or the electorate of an affected jurisdiction, and cannot be determined.

Government growth impact statement.

Brad Reynolds, Chief Revenue Estimator, has determined the following for each year of the first five years that the rule will be in effect: the amendment will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the comptroller; will not require an increase or decrease in fees paid to the comptroller; will not create a new regulation; will increase the number of individuals subject to the rule's applicability because sellers without a physical presence in a local tax jurisdiction will be required to collect local use tax if they are required to collect state use tax; and will not positively or adversely affect this state's economy.

Economic impact statement and regulatory flexibility analysis.

A statement of fiscal implications for small businesses or rural communities under Government Code, Chapter 2006 is normally not required for a comptroller rule because the rule is proposed under Tax Code, Title 2. In this instance, the rule is proposed under both Title 2 (State Taxation) and Title 3 (Local Taxation). So, the comptroller provides the following statement.

A "rural community" is a municipality with a population of less than 25,000. The comptroller estimates that there are 1,098 such rural communities, of which 1,017 impose a sales tax and may have revenue affected by compliance with the rule.

A "small business" is a legal entity, including a corporation, partnership, or sole proprietorship, that: (A) is formed for the purpose of making a profit; (B) is independently owned and operated; and (C) has fewer than 100 employees or less than $6 million in annual gross receipts. The Comptroller estimates that there are 470,000 businesses with fewer than 100 employees, and 377,000 businesses with annual gross receipts less than $6 million; the sum of these two estimates would overstate the num-

ber of small businesses, as many businesses would be expected to have both fewer than 100 employees and less than $6 million in annual gross receipts.

To the extent that the proposed rule leads to greater awareness and compliance with the local tax consummation standards, some vendors may change their reporting methods, which might positively or negatively affect the tax revenue of particular local tax jurisdictions. As previously explained, the comptroller does not have sufficient data on the business operations of each business to identify and quantify the businesses and transactions that might be affected, and the positive or negative revenue impact on each tax jurisdiction.

Although the fiscal implications for local tax jurisdictions cannot be quantified without additional information, several observations can be made. First, the cities asserting that the clarifications provided by the rule will result in changes in sourcing and reporting of local taxes, with consequent reductions in their revenues, tend to be cities with Local Government Code, Chapter 380 agreements involving rebates of local sales and use tax revenues. And, cities with Government Code, Chapter 380 agreements involving distribution or fulfillment centers tend to be larger than rural communities. Of the 1,017 rural communities imposing sales tax, 45 have Chapter 380 agreements involving sales tax on file with the comptroller. Almost all of those involve rebates of sales tax to physical shopping centers or restaurants, or of sales tax paid on equipment or building materials, and would unlikely be affected by a change in sourcing of online sales associated with locations that are not places of business; two of the 45 communities that are not party to the suit against the comptroller appear to involve distribution or fulfillment centers and could be affected if the centers will not qualify as places of business (in Grand Prairie and Waxahachie). Five of the six cities currently suing the Comptroller have populations greater than 25,000. The comptroller has not verified the assertions of revenue shifting. But, if the assertions are correct, the revenue shifting away from cities with Chapter 380 agreements may result in positive revenues for the smaller rural communities from whom the revenues have been diverted.

Second, although the comptroller does not have sufficient information to determine the number of small businesses that may change their local tax reporting as a result of greater awareness and compliance with the local tax consummation standards, it is reasonable to assume that many small businesses will not be affected. A small business that has all of its operations at a single location in Texas, including sales and fulfillment, is probably reporting local sales tax to the taxing jurisdiction where it is located, and it will continue that reporting. Non-marketplace orders fulfilled from that location will continue to be consummated at that location pursuant to §3.334(c)(1) or (c)(2)(A). And, sales of a small business that are through a marketplace are already subject to destination sourcing performed by the marketplace provider. Nevertheless, in some circumstances, it is conceivable that the rule may cause some vendors, small or large, to realize that they are noncompliant. If the vendors come into compliance by changing from single-location reporting to multiple-location reporting, their compliance burden may increase.

Third, the proposed rule expands the local tax collection obligations of remote sellers - out-of-state sellers that collect state use tax must also collect local sales tax. The expansion of the remote seller local tax collection obligation may benefit small businesses in Texas by reducing the perception of customers that purchases from out-of-state sellers are preferable because out-of-state sellers charge less sales or use tax than the small businesses in Texas.

Since the comptroller initiated its rulemaking in 2020, the agency has considered ways to minimize the potential adverse impact on small businesses. In the fall of 2020, the agency added a multi-address search capability to its local sales tax rate locator. And in the spring of 2021, the agency added downloadable address files to determine local tax rates. And, in the winter of 2023, the agency added map search and latitude/longitude search options.

In addition, the comptroller is proposing to add subsection (b)(6):

"If a small business or a micro-business operates a single location out of which it conducts all of its business activities, the comptroller will presume that the location is a place of business of the seller."

The comptroller cannot make a location a "place of business" by rule if the statute does not allow it. But, the agency can presume that a location is a "place of business" based on indicative facts, such as a small, independent business that conducts all of its business operations out of a single location. If extraordinary facts are presented to the agency, the presumption may be rebutted.

The agency has considered other alternatives to reduce the adverse impact on small businesses and micro-businesses, such as allowing small or micro-businesses to source local sales tax to their principal place of business, or establishing a single local sales tax rate for small or micro-businesses that would be distributed similar to the distribution of the single local sales tax collected by remote sellers. However, because these proposals would require amendments to the consummation statutes, the comptroller does not have the regulatory flexibility to implement these proposed methods.

Public hearing

The comptroller will hold a hearing to take public comments, on May 9, 2024, at 9:00 a.m. in Room 2.034 of the Barbara Jordan Building, 1601 Congress Avenue, Austin, Texas 78701. Interested persons may sign up to testify beginning at 8:30 a.m. and testimony will be heard beginning at 9:00 a.m. on a first come first serve basis. All persons will have 10 minutes to present their testimony and shall also provide their testimony in writing prior to their oral testimony.

Comments

You may submit comments on the proposal to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: tp.rule.comments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

Statement of the statutory or other authority under which the rule is proposed to be adopted.

Tax Code, §§111.002 (Comptroller's Rule; Compliance; Forfeiture), 321.306 (Comptroller's Rules), 322.203 (Comptroller's Rules), and 323.306 (Comptroller's Rules) authorize the comptroller to adopt rules to implement the tax statutes.

Sections or articles of the code affected.

Tax Code, §151.0595 (Single Local Tax Rate for Remote Sellers); Tax Code, Chapter 321, Subchapters A, B, C, D, and F; Tax Code, Chapter 322; and Tax Code, Chapter 323 are affected.

§3.334. Local Sales and Use Taxes.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Cable system--The system through which a cable service provider delivers cable television or bundled cable service, as those terms are defined in §3.313 of this title (relating to Cable Television Service and Bundled Cable Service).

(2) City--An incorporated city, municipality, town, or village.

(3) City sales and use tax--The tax authorized under Tax Code, §321.101(a), including the additional municipal sales and use tax authorized under Tax Code, §321.101(b), the municipal sales and use tax for street maintenance authorized under Tax Code, §327.003, the Type A Development Corporation sales and use tax authorized under Local Government Code, §504.251, the Type B Development Corporation sales and use tax authorized under Local Government Code, §505.251, a sports and community venue project sales and use tax adopted by a city under Local Government Code, §334.081, and a municipal development corporation sales and use tax adopted by a city under Local Government Code, §379A.081. The term does not include the fire control, prevention, and emergency medical services district sales and use tax authorized under Tax Code, §321.106, or the municipal crime control and prevention district sales and use tax authorized under Tax Code, §321.108.

(4) Comptroller's website--The comptroller's website concerning local taxes located at: https://comptroller.texas.gov/taxes/sales/.

(5) County sales and use tax--The tax authorized under Tax Code, §323.101, including a sports and community venue project sales and use tax adopted by a county under Local Government Code, §334.081. The term does not include the county health services sales and use tax authorized under Tax Code, §324.021, the county landfill and criminal detention center sales and use tax authorized under Tax Code, §325.021, or the crime control and prevention district sales and use tax authorized under Tax Code, §323.105.

(6) Drop shipment--A transaction in which an order is received by a seller at one location, but the item purchased is shipped by the seller from another location, or is shipped by the seller's third-party supplier, directly to a location designated by the purchaser.

(7) Engaged in business--This term has the meaning given in §3.286 of this title (relating to Seller's and Purchaser's Responsibilities).

(8) Extraterritorial jurisdiction--An unincorporated area that is contiguous to the corporate boundaries of a city as defined in Local Government Code, §42.021.

(9) Fulfill--To complete an order by transferring possession of a taxable item to a purchaser, or to ship or deliver a taxable item to a location designated by the purchaser. The term does not include receiving or tracking an order, determining shipping costs, managing inventory, or other activities that do not involve the transfer, shipment, or delivery of a taxable item to the purchaser or a location designated by the purchaser.

(10) Independently owned and operated business--A self-controlling entity that is not a subsidiary of another entity or otherwise subject to control by another entity, and that is not publicly traded.

(11) Itinerant vendor--A seller who travels to various locations for the purpose of receiving orders and making sales of taxable items and who has no place of business in this state. A person who sells items through vending machines is also an itinerant vendor. A salesperson that operates out of a place of business in this state is not an itinerant vendor.

(12) Kiosk--A small stand-alone area or structure:

(A) that is used solely to display merchandise or to submit orders for taxable items from a data entry device, or both;

(B) that is located entirely within a location that is a place of business of another seller, such as a department store or shopping mall; and

(C) at which taxable items are not available for immediate delivery to a purchaser.

(13) Local taxes--Sales and use taxes imposed by any local taxing jurisdiction.

(14) Local taxing jurisdiction--Any of the following:

(A) a city that imposes sales and use tax as provided under paragraph (3) of this subsection;

(B) a county that imposes sales and use tax as provided under paragraph (5) of this subsection;

(C) a special purpose district created under the Special District Local Laws Code or other provisions of Texas law that is authorized to impose sales and use tax by the Tax Code or other provisions of Texas law and as governed by the provisions of Tax Code, Chapters 321 or 323 and other provisions of Texas law; or

(D) a transit authority that imposes sales and use tax as authorized by Transportation Code, Chapters, 451, 452, 453, 457, or 460 and governed by the provisions of Tax Code, Chapter, 322.

(15) Marketplace provider--This term has the meaning given in §3.286 of this title.

(16) Micro-business--A legal entity, including a corporation, partnership, or sole proprietorship, that:

(A) is formed for the purpose of making a profit;

(B) is independently owned and operated; and

(C) has not more than 20 employees.

(17) Order placed in person--An order placed by a purchaser with the seller while physically present at the seller's place of business regardless of how the seller subsequently enters the order.

(18) Place of business of the seller - general definition--A place of business of the seller must be an established outlet, office, or location operated by a seller for the purpose of receiving orders for taxable items from persons other than employees, independent contractors, and natural persons affiliated with the seller. An "established outlet, office, or location" usually requires staffing by one or more sales personnel. The term does not include a computer server, Internet protocol address, domain name, website, or software application. The "purpose" element of the definition may be established by proof that the sales personnel of the seller receive three or more orders for taxable items at the facility during the calendar year. Additional criteria for determining when a location is a place of business of the seller are provided in subsection (b) of this section for distribution centers, manufacturing plants, storage yards, warehouses and similar facilities; kiosks; and purchasing offices. An outlet, office, facility, or any location that contracts with a retail or commercial business to process for that business invoices, purchase orders, bills of lading, or other equivalent records onto which sales tax is added, including an office operated for the purpose of buying and selling taxable goods to be used or consumed by the retail or commercial business, is not a place of business

of the seller if the comptroller determines that the outlet, office, facility, or location functions or exists to avoid the tax legally due under Tax Code, Chapters 321, 322, and 323 or exists solely to rebate a portion of the tax imposed by those chapters to the contracting business. An outlet, office, facility, or location does not exist to avoid the tax legally due under Tax Code, Chapters 321, 322, and 323 or solely to rebate a portion of the tax imposed by those chapters if the outlet, office, facility, or location provides significant business services, beyond processing invoices, to the contracting business, including logistics management, purchasing, inventory control, or other vital business services.

(19) Purchasing office--An outlet, office, facility, or any location that contracts with a retail or commercial business to process for that business invoices, purchase orders, bills of lading, or other equivalent records onto which sales tax is added, including an office operated for the purpose of buying and selling taxable goods to be used or consumed by the retail or commercial business.

(20) Remote Seller--As defined in §3.286 of this title, a remote seller is a seller engaged in business in this state whose only activity in the state is:

(A) engaging in regular or systematic solicitation of sales of taxable items in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, by means of print, radio, or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system for the purpose of effecting sales of taxable items; or

(B) soliciting orders for taxable items by mail or through other media including the Internet or other media that may be developed in the future.

(21) Seller--This term has the meaning given in §3.286 of this title and also refers to any agent or employee of the seller.

(22) Small business--A legal entity, including a corporation, partnership, or sole proprietorship, that:

(A) is formed for the purpose of making a profit;

(B) is independently owned and operated; and

(C) has fewer than 100 employees or less than $6 million in annual gross receipts.

(23) Special purpose district--A local governmental entity authorized by the Texas legislature for a specific purpose, such as crime control, a local library, emergency services, county health services, or a county landfill and criminal detention center.

(24) Storage--This term has the meaning given in §3.346 of this title (relating to Use Tax).

(25) Temporary place of business of the seller--A location operated by a seller for a limited period of time for the purpose of selling and receiving orders for taxable items and where the seller has inventory available for immediate delivery to a purchaser. For example, a person who rents a booth at a weekend craft fair or art show to sell and take orders for jewelry, or a person who maintains a facility at a job site to rent tools and equipment to a contractor during the construction of real property, has established a temporary place of business. A temporary place of business of the seller includes a sale outside of a distribution center, manufacturing plant, storage yard, warehouse, or similar facility of the seller in a parking lot or similar space sharing the same physical address as the facility but not within the walls of the facility.

(26) Transit authority--A metropolitan rapid transit authority (MTA), advanced transportation district (ATD), regional or subregional transportation authority (RTA), city transit department (CTD), county transit authority (CTA), regional mobility authority (RMA) or coordinated county transportation authority created under Transportation Code, Chapters 370, 451, 452, 453, 457, or 460.

(27) Two percent cap--A reference to the general rule that, except as otherwise provided by Texas law and as explained in this section, a seller cannot collect, and a purchaser is not obligated to pay, more than 2.0% of the sales price of a taxable item in total local sales and use taxes for all local taxing jurisdictions.

(28) Use--This term has the meaning given in §3.346 of this title.

(29) Use tax--A tax imposed on the storage, use or other consumption of a taxable item in this state.

(b) Determining the place of business of a seller.

(1) Distribution centers, manufacturing plants, storage yards, warehouses, and similar facilities.

(A) A distribution center, manufacturing plant, storage yard, warehouse, or similar facility operated by a seller for the purpose of selling taxable items where sales personnel of the seller receive three or more orders for taxable items during the calendar year from persons other than employees, independent contractors, and natural persons affiliated with the seller is a place of business of the seller. Forwarding previously received orders to the facility for fulfilment does not make the facility a place of business.

(B) If a location that is a place of business of the seller, such as a sales office, is in the same building as a distribution center, manufacturing plant, storage yard, warehouse, or similar facility operated by a seller, then the entire facility is a place of business of the seller.

(2) Kiosks. A kiosk is not a place of business of the seller for the purpose of determining where a sale is consummated for local tax purposes. A seller who owns or operates a kiosk in Texas is, however, engaged in business in this state as provided in §3.286 of this title.

(3) Purchasing offices.

(A) A purchasing office is not a place of business of the seller if the purchasing office exists solely to rebate a portion of the local sales and use tax imposed by Tax Code, Chapters 321, 322, or 323 to a business with which it contracts; or if the purchasing office functions or exists to avoid the tax legally due under Tax Code, Chapters 321, 322, or 323. A purchasing office does not exist solely to rebate a portion of the local sales and use tax or to avoid the tax legally due under Tax Code, Chapters 321, 322, or 323 if the purchasing office provides significant business services to the contracting business beyond processing invoices, including logistics management, purchasing, inventory control, or other vital business services.

(B) In making a determination under subparagraph (A) of this paragraph, as to whether a purchasing office provides significant business services to the contracting business beyond processing invoices, the comptroller will compare the total value of the other business services to the value of processing invoices. If the total value of the other business services, including logistics management, purchasing, inventory control, or other vital business services, is less than the value of the service to process invoices, then the purchasing office will be presumed not to be a place of business of the seller.

(C) If the comptroller determines that a purchasing office is not a place of business of the seller, the sale of any taxable item is deemed to be consummated at the place of business of the seller from whom the purchasing office purchased the taxable item for resale and local sales and use taxes are due according to the following rules.

(i) When taxable items are purchased from a Texas seller, local sales taxes are due based on the location of the seller's place of business where the sale is deemed to be consummated, as determined in accordance with subsection (c) of this section.

(ii) When the sale of a taxable item is deemed to be consummated at a location outside of this state, local use tax is due based on the location where the items are first stored, used or consumed by the entity that contracted with the purchasing office in accordance with subsection (d) of this section.

(4) An order that is received by a salesperson who is not at a place of business of the seller when the salesperson receives the order is treated as being received at the location from which the salesperson operates. Examples include orders that a salesperson receives by mail, telephone, including Voice over Internet Protocol and cellular phone calls, facsimile, and email while traveling. The location from which the salesperson operates is the principal fixed location where the salesperson conducts work-related activities. The location from which a salesperson operates will be a place of business of the seller only if the location meets the definition of a "place of business of a seller" in subsection (a)(16) of this section on its own, without regard to the orders imputed to that location by this paragraph.

(5) A facility without sales personnel is usually not a "place of business of the seller." A vending machine is not "an established outlet, office, or location," and does not constitute a "place of business of the seller." Instead, a vending machine sale is treated as a sale by an itinerant vendor. See subsections (a)(10) and (c)(6) of this section. However, a walk-in retail outlet with a stock of goods available for immediate purchase through a cashier-less point of sale terminal at the outlet would be "an established outlet, office, or location" so as to constitute a "place of business of the seller" even though sales personnel are not required for every sale. A computer that operates an automated shopping cart software program is not an established outlet, office, or location," and does not constitute a "place of business of the seller." A computer that operates an automated telephone ordering system is not "an established outlet, office, or location," and does not constitute a "place of business of the seller."

(6) If a small business or a micro-business operates a single location out of which it conducts all of its business activities, the comptroller will presume that the location is a place of business of the seller.

(c) Local sales tax - Consummation of sale - determining the local taxing jurisdictions to which sales tax is due. Except for the special rules applicable to remote sellers in subsection (i)(3) of this section, direct payment permit purchases in subsection (j) of this section, and certain taxable items, including taxable items sold by a marketplace provider, as provided in subsection (k) of this section, each sale of a taxable item is consummated at the location indicated by the provisions of this subsection. The following rules, taken from Tax Code, §321.203 and §323.203, apply to all sellers engaged in business in Texas, regardless of whether they have no place of business in Texas, a single place of business in Texas, or multiple places of business in Texas.

(1) Consummation of sale - order received at a place of business of the seller in Texas.

(A) Order placed in person. Except as provided by paragraph (3) of this subsection, when an order for a taxable item is placed in person at a seller's place of business in Texas, including at a temporary place of business of the seller in Texas, the sale of that item is consummated at that place of business of the seller, regardless of the location where the order is fulfilled.

(B) Order not placed in person.

(i) Order fulfilled at a place of business of the seller in Texas. When an order is received at a place of business of the seller in Texas and is fulfilled at a place of business of the seller in Texas, the sale is consummated at the place of business where the order is fulfilled.

(ii) Order not fulfilled at a place of business of the seller in Texas. When an order is received at a place of business of the seller in Texas and is fulfilled at a location that is not a place of business of the seller in Texas, the sale is consummated at the place of business where the order is received.

(2) Consummation of sale - order not received at a place of business of the seller in Texas.

(A) Order fulfilled at a place of business of the seller in Texas. When an order is received at a location that is not a place of business of the seller in Texas or is received outside of Texas, and is fulfilled from a place of business of the seller in Texas, the sale is consummated at the place of business where the order is fulfilled.

(B) Order not fulfilled from a place of business of the seller in Texas.

(i) Order fulfilled in Texas. When an order is received at a location that is not a place of business of the seller in Texas and is fulfilled from a location in Texas that is not a place of business of the seller, the sale is consummated at the location in Texas to which the order is shipped or delivered, or at which the purchaser of the item takes possession.

(ii) Order not fulfilled in Texas. When an order is received by a seller at a location that is not a place of business of the seller in Texas, and is fulfilled from a location outside of Texas, the sale is not consummated in Texas. However, a use is consummated at the first point in Texas where the item is stored, used, or consumed after the interstate transit has ceased. A taxable item delivered to a point in Texas is presumed to be for storage, use, or consumption at that point until the contrary is established. Local use tax should be collected as provided in subsection (d) of this section. Except as provided in subsection (i)(3) of this section, a remote seller required to collect state use tax under §3.286(b)(2) of this title must also collect local use tax.

(3) Exception for qualifying economic development agreements entered into before January 1, 2009, pursuant to Tax Code, §321.203(c-4) - (c-5) or §323.203(c-4) - (c-5). This paragraph is effective until September 1, 2024. If applicable, the local sales tax due on the sale of a taxable item is based on the location of the qualifying warehouse, which is a place of business of the seller, from which the item is shipped or delivered or at which the purchaser of the item takes possession.

(4) Local sales taxes are due to each local taxing jurisdiction with sales tax in effect where the sale is consummated. Local use tax may also be due if the total amount of local sales taxes due does not reach the two percent cap, and the item purchased is shipped or delivered to a location in one or more different local taxing jurisdictions, as provided in subsection (d) of this section.

(5) Multiple special purpose district taxes, multiple transit authority sales taxes, or a combination of the two may apply to a single transaction. If the sale of a taxable item is consummated at a location within the boundaries of multiple special purpose districts or transit authorities, local sales tax is owed to each of the jurisdictions in effect at that location. For example, a place of business of the seller located in the city of San Antonio is within the boundaries of both the San Antonio Advanced Transportation District and the San Antonio Metropolitan Transit Authority, and the seller is required to collect sales tax for both transit authorities. Similarly, a place of business of the seller in Flower Mound is located within the boundaries of two special purpose districts,

the Flower Mound Crime Control District and the Flower Mound Fire Control District, and the seller is responsible for collecting sales tax for both special purpose districts.

(6) Itinerant vendors; vending machines.

(A) Itinerant vendors. Sales made by itinerant vendors are consummated at, and itinerant vendors must collect sales tax based upon, the location where the item is delivered or at which the purchaser of the item takes possession. Itinerant vendors do not have any responsibility to collect use tax.

(B) Vending machines. Sales of taxable items made from a vending machine are consummated at the location of the vending machine. See §3.293 of this title (relating to Food; Food Products; Meals; Food Service) for more information about vending machine sales.

(7) The location where the order is received by or on behalf of the seller means the physical location of a seller or third party such as an established outlet, office location, or automated order receipt system operated by or on behalf of the seller where an order is initially received by or on behalf of the seller and not where the order may be subsequently accepted, completed or fulfilled. An order is received when all of the information from the purchaser necessary to the determination whether the order can be accepted has been received by or on behalf of the seller. The location from which a product is shipped shall not be used in determining the location where the order is received by the seller.

(d) Local use tax. The provisions addressing the imposition of state use tax in §3.346 of this title also apply to the imposition of local use tax. For example, consistent with §3.346(e) of this title, all taxable items that are shipped or delivered to a location in this state that is within the boundaries of a local taxing jurisdiction are presumed to have been purchased for use in that local taxing jurisdiction as well as presumed to have been purchased for use in the state.

(1) General rules.

(A) When local use taxes are due in addition to local sales taxes as provided by subsection (c) of this section, all applicable use taxes must be collected or accrued in the following order until the two percent cap is reached: city, county, special purpose district, and transit authority. If more than one special purpose district use tax is due, all such taxes are to be collected or accrued before any transit authority use tax is collected or accrued. See subparagraphs (D) and (E) of this paragraph.

(B) If a local use tax cannot be collected or accrued at its full rate without exceeding the two percent cap, the seller cannot collect it, or any portion of it, and the purchaser is not responsible for accruing it.

(C) If a seller collects a local sales tax on an item, or a purchaser accrues a local sales tax on an item, a use tax for the same type of jurisdiction is not due on the same item. For example, after a city sales tax has been collected or accrued for an item, no use tax is due to that same or a different city on that item, but use tax may be due to a county, special purpose district, or transit authority. Similarly, if one or more special purpose district sales taxes have been collected or accrued for an item, no special purpose district use tax is due on that item, and if one or more transit authority sales taxes have been collected or accrued for an item, no transit authority use tax is due on that item.

(D) Collection or accrual of use tax for multiple special purpose districts. If more than one special purpose district use tax is in effect at the location where use of an item occurs, the special purpose district taxes are due in the order of their effective dates, beginning with the earliest effective date, until the two percent cap is met. The effective dates of all special purpose district taxes are available on the comptroller's website. However, if the collection or accrual of use tax for the district with the earliest effective date would exceed the two percent cap, the tax for that district is not due and the seller or purchaser should determine, following the criteria in subparagraphs (A) - (C) of this paragraph, whether use tax is due for the district that next became effective.

(i) If the competing special purpose district taxes became effective on the same date, the special purpose district taxes are due in the order of the earliest date for which the election in which the district residents authorized the imposition of sales and use tax by the district was held.

(ii) If the elections to impose the local taxes were held on the same date, the special purpose district taxes are due in the order of the earliest date for which the enabling legislation under which each district was created became effective.

(E) Collection or accrual of use tax for multiple transit authorities. If more than one transit authority use tax is in effect at the location where use of an item occurs, and the two percent cap has not been met, the transit authority taxes are due in the order of their effective dates, beginning with the earliest effective date, until the two percent cap is met. The effective dates of all transit authority taxes are available on the comptroller's website. However, if the collection or accrual of use tax for the authority with the earliest effective date would exceed the two percent cap, the tax for that authority is not due and the seller or purchaser should determine, following the criteria in subparagraphs (A) - (D) of this paragraph, whether use tax is due for the authority that next became effective.

(i) If the competing transit authorities became effective on the same date, the transit authority taxes are due in the order of the earliest date for which the election in which the authority residents authorized the imposition of sales and use tax by the authority was held.

(ii) If the elections to impose local taxes were held on the same date, the transit authority use taxes are due in the order of the earliest date for which the enabling legislation under which each authority was created became effective.

(2) General use tax rules applied to specific situations. The following fact patterns explain how local use tax is to be collected or accrued and remitted to the comptroller based on, and subject to, the general rules in paragraph (1) of this subsection.

(A) Sale consummated outside the state, item delivered from outside the state or from a location in Texas that is not operated by the seller - local use tax due. Except as provided in subsection (i)(3) of this section, if a sale is consummated outside of this state according to the provisions of subsection (c) of this section, and the item purchased is either shipped or delivered to a location in this state as designated by the purchaser from a location outside of the state, or if the order is drop shipped directly to the purchaser from a third-party supplier, local use tax is owed based upon the location in this state to which the order is shipped or delivered or at which the purchaser of the item takes possession. The seller is responsible for collecting the local use tax due on the sale. If the seller does not collect the local use taxes due on the sale, the purchaser is responsible for accruing such taxes and remitting them directly to the comptroller according to the provisions in paragraph (1) of this subsection. For example, if an order for a taxable item is received by a seller at a location outside of Texas, and the order is shipped to the purchaser from a location outside of the state, local use tax is due based upon the location to which the order is shipped or delivered or at which the purchaser of the item takes possession.

(B) Sale consummated in Texas outside a local taxing jurisdiction, item delivered into one or more local taxing jurisdictions - local use tax due. If a sale is consummated at a location in Texas that is outside of the boundaries of any local taxing jurisdiction according to the provisions of subsection (c) of this section, and the order is shipped or delivered to the purchaser at a location in this state that is within the boundaries of one or more local taxing jurisdictions, local use tax is due based on the location to which the items are shipped or delivered or at which the purchaser of the item takes possession. The seller is responsible for collecting the local use taxes due on the sale, regardless of the location of the seller in Texas. If the seller fails to collect any local use taxes due, the purchaser is responsible for accruing such taxes and remitting them directly to the comptroller.

(C) Sale consummated in any local taxing jurisdictions imposing less than 2.0% in total local taxes - local sales taxes and use taxes due. If a sale is consummated at a location in Texas where the total local sales tax rate imposed by the taxing jurisdictions in effect at that location does not equal 2.0% according to the provisions of subsection (c) of this section, and the item is shipped or delivered to the purchaser at a location in this state that is inside the boundaries of a different local taxing jurisdiction, additional local use tax may be due based on the location to which the order is shipped or delivered or at which the purchaser of the item takes possession, subject to the two percent cap. The seller is responsible for collecting any additional local use taxes due on the sale, regardless of the location of the seller in Texas. See subsection (i) of this section. If the seller fails to collect the additional local use taxes due, the purchaser is responsible for accruing such taxes and remitting them directly to the comptroller.

(i) Example one - if an order is received in person at a place of business of the seller, such that the sale is consummated at the location where the order is received as provided under subsection (c)(1)(A) of this section, and the local sales tax due on the sale does not meet the two percent cap, additional local use taxes are due based on the location to which the order is shipped or delivered or at which the purchaser of the item takes possession, subject to the provisions in paragraph (1) of this subsection.

(ii) Example two - if a seller receives an order for a taxable item at a seller's place of business in Texas, and the seller ships or delivers the item from an out-of-state location to a location in this state as designated by the purchaser, local sales tax is due based upon the location of the place of business of the seller where the order is received. If the local sales tax due on the item does not meet the two percent cap, use taxes, subject to the provisions in paragraph (1) of this subsection, are due based upon the location where the items are shipped or delivered or at which the purchaser of the item takes possession.

(e) Effect of other law.

(1) Tax Code, Title 2, Subtitles A (General Provisions) and B (Enforcement and Collection), Tax Code, Chapter 141 (Multistate Tax Compact) and Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax) apply to transactions involving local taxes. Related sections of this title and comptroller rulings shall also apply with respect to local taxes. This includes authorities such as court cases and federal law that affect whether an item is taxable or is excluded or exempt from taxation.

(2) Permits, exemption certificates, and resale certificates required by Tax Code, Chapter 151, shall also satisfy the requirements for collecting and remitting local taxes, unless otherwise indicated by this section or other sections of this title. For example, see subsection (n) of this section concerning prior contract exemptions.

(3) Any provisions in this section or other sections of this title related to a seller's responsibilities for collecting and remitting local taxes to the comptroller shall also apply to a purchaser if the seller does not collect local taxes that are due. The comptroller may proceed against the seller or purchaser for the local tax owed by either.

(f) Tax rates. Except as otherwise provided by law, no local governmental entity may adopt or increase a sales and use tax if, as a result of the adoption or increase of the tax, the combined rate of all sales and use taxes imposed by local taxing jurisdictions having territory in the local governmental entity would exceed 2.0% at any location within the boundaries of the local governmental entity's jurisdiction. The following are the local tax rates that may be adopted.

(1) Cities. Cities may impose sales and use tax at a rate of up to 2.0%.

(2) Counties. Counties may impose sales and use tax at rates ranging from 0.5% to 1.5%.

(3) Special purpose districts. Special purpose districts may impose sales and use tax at rates ranging from 0.125% to 2.0%.

(4) Transit authorities. Transit authorities may impose sales and use tax at rates ranging from 0.25% to 1.0%.

(g) Jurisdictional boundaries, combined areas, and city tax imposed through strategic partnership agreements.

(1) Jurisdictional boundaries.

(A) City boundaries. City taxing jurisdictional boundaries cannot overlap one another and a city cannot impose a sales and use tax in an area that is already within the jurisdiction of another city.

(B) County boundaries. County tax applies to all locations within that county.

(C) Special purpose district and transit authority boundaries. Special purpose districts and transit authorities may cross or share boundaries with other local taxing jurisdictions and may encompass, in whole or in part, other local taxing jurisdictions, including cities and counties. A geographic location or address in this state may lie within the boundaries of more than one special purpose district or more than one transit authority.

(D) Extraterritorial jurisdictions. Except as otherwise provided by paragraph (3) of this subsection concerning strategic partnership agreements and subsection (l)(5) of this section concerning the City of El Paso and Fort Bliss, city sales and use tax does not apply to taxable sales that are consummated outside the boundaries of the city, including sales made in a city's extraterritorial jurisdiction. However, an extraterritorial jurisdiction may lie within the boundaries of a special purpose district, transit authority, county, or any combination of the three, and the sales and use taxes for those jurisdictions would apply to those sales.

(2) Combined areas. A combined area is an area where the boundaries of a city overlap the boundaries of one or more other local taxing jurisdictions as a result of an annexation of additional territory by the city, and where, as the result of the imposition of the city tax in the area in addition to the local taxes imposed by the existing taxing jurisdictions, the combined local tax rate would exceed 2.0%. The comptroller shall make accommodations to maintain a 2.0% rate in any combined area by distributing the 2.0% tax revenue generated in these combined areas to the local taxing jurisdictions located in the combined areas as provided in Tax Code, §321.102 or Health and Safety Code, §775.0754. Combined areas are identified on the comptroller's website. Sellers engaged in transactions on which local sales or use taxes are due in a combined area, or persons who must self-accrue and remit tax directly to the comptroller, must use the combined area local code when reporting the tax rather than the codes for the individual

city, county, special purpose districts, or transit authorities that make up the combined area.

(3) City tax imposed through strategic partnership agreements.

(A) The governing bodies of a district, as defined in Local Government Code, §43.0751, and a city may enter into a limited-purpose annexation agreement known as a strategic partnership agreement. Under this agreement, the city may impose sales and use tax within all or part of the boundaries of a district. Areas within a district that are annexed for this limited purpose are treated as though they are within the boundaries of the city for purposes of city sales and use tax.

(B) Counties, transit authorities, and special purpose districts may not enter into strategic partnership agreements. Sales and use taxes imposed by those taxing jurisdictions do not apply in the limited-purpose annexed area as part of a strategic partnership agreement between a city and an authorized district. However, a county, special purpose district, or transit authority sales and use tax, or any combination of these three types of taxes, may apply at locations included in a strategic partnership agreement between a city and an authorized district if the tax is imposed in that area by the applicable jurisdiction as allowed under its own controlling authorities.

(C) Prior to September 1, 2011, the term "district" was defined in Local Government Code, §43.0751 as a municipal utility district or a water control and improvement district. The definition was amended effective September 1, 2011, to mean a conservation and reclamation district operating under Water Code, Chapter 49.

(h) Places of business of the seller and job sites crossed by local taxing jurisdiction boundaries.

(1) Places of business of the seller crossed by local taxing jurisdiction boundaries. If a place of business of the seller is crossed by one or more local taxing jurisdiction boundaries so that a portion of the place of business of the seller is located within a taxing jurisdiction and the remainder of the place of business of the seller lies outside of the taxing jurisdiction, tax is due to the local taxing jurisdictions in which the sales office is located. If there is no sales office, sales tax is due to the local taxing jurisdictions in which any cash registers are located.

(2) Job sites.

(A) Residential repair and remodeling; new construction of an improvement to realty. When a contractor is improving real property under a separated contract, and the job site is crossed by the boundaries of one or more local taxing jurisdictions, the local taxes due on any separately stated charges for taxable items incorporated into the real property must be allocated to the local taxing jurisdictions based on the total square footage of the real property improvement located within each jurisdiction, including the square footage of any standalone structures that are part of the construction, repair, or remodeling project. For more information about tax due on materials used at residential and new construction job sites, refer to §3.291 of this title (relating to Contractors).

(B) Nonresidential real property repair and improvement. When taxable services are performed to repair, remodel, or restore nonresidential real property, including a pipeline, transmission line, or parking lot, that is crossed by the boundaries of one or more local taxing jurisdictions, the local taxes due on the taxable services, including materials and any other charges connected to the services performed, must be allocated among the local taxing jurisdictions based upon the total mileage or square footage, as appropriate, of the repair, remodeling, or restoration project located in each jurisdiction. For more information about tax due on materials used at nonresidential real property repair and remodeling job sites, refer to §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance).

(i) Sellers' and purchasers' responsibilities for collecting or accruing local taxes.

(1) Sale consummated in Texas; seller responsible for collecting local sales taxes and applicable local use taxes. When a sale of a taxable item is consummated at a location in Texas as provided by subsection (c) of this section, the seller must collect each local sales tax in effect at the location. If the total rate of local sales tax due on the sale does not reach the two percent cap, and the seller ships or delivers the item into another local taxing jurisdiction, then the seller is required to collect additional local use taxes due, if any, based on the location to which the item is shipped or delivered or at which the purchaser of the item takes possession, regardless of the location of the seller in Texas. For more information regarding local use taxes, refer to subsection (d) of this section.

(2) Out-of-state sale; seller engaged in business in Texas. Except as provided in paragraph (3) of this subsection, when a sale is not consummated in Texas, a seller who is engaged in business in this state is required to collect and remit local use taxes due, if any, on orders of taxable items shipped or delivered at the direction of the purchaser into a local taxing jurisdiction in this state based upon the location in this state to which the item is shipped or delivered or at which the purchaser of the item takes possession as provided in subsection (d) of this section.

(3) Local use tax rate for remote sellers.

(A) A remote seller required to collect and remit one or more local use taxes in connection with a sale of a taxable item must compute the amount using:

(i) the combined tax rate of all applicable local use taxes based on the location to which the item is shipped or delivered or at which the purchaser of the item takes possession; or

(ii) at the remote seller's election, the single local use tax rate published in the *Texas Register.*

(B) A remote seller that is storing tangible personal property in Texas to be used for fulfillment at a facility of a marketplace provider that has certified that it will assume the rights and duties of a seller with respect to the tangible personal property, as provided for in §3.286 of this title, may elect the single local use tax rate under subparagraph (A)(ii) of this paragraph.

(C) Notice to the comptroller of election and revocation of election.

(i) Before using the single local use tax rate, a remote seller must notify the comptroller of its election using a form prescribed by the comptroller. A remote seller may also notify the comptroller of the election on its use tax permit application form. The remote seller must use the single local use tax rate for all of its sales of taxable items until the election is revoked as provided in clause (ii) of this subparagraph.

(ii) A remote seller may revoke its election by filing a form prescribed by the comptroller. If the comptroller receives the notice by October 1, the revocation will be effective January 1 of the following year. If the comptroller receives the notice after October 1, the revocation will be effective January 1 of the year after the following year. For example, a remote seller must notify the comptroller by October 1, 2020, for the revocation to be effective January 1, 2021. If the comptroller receives the revocation on November 1, 2020, the revocation will be effective January 1, 2022.

(D) Single local use tax rate.

(i) The single local use tax rate in effect for the period beginning October 1, 2019, and ending December 31, 2019, is 1.75%.

(ii) The single local use tax rate in effect for the period beginning January 1, 2020, and ending December 31, 2020, is 1.75%.

(E) Annual publication of single local use tax rate. Before the beginning of a calendar year, the comptroller will publish notice of the single local use tax rate in the *Texas Register* that will be in effect for that calendar year.

(F) Calculating the single local use tax rate. The single local use tax rate effective in a calendar year is equal to the estimated average rate of local sales and use taxes imposed in this state during the preceding state fiscal year. As soon as practicable after the end of a state fiscal year, the comptroller must determine the estimated average rate of local sales and use taxes imposed in this state during the preceding state fiscal year by:

(i) dividing the total amount of net local sales and use taxes remitted to the comptroller during the state fiscal year by the total amount of net state sales and use tax remitted to the comptroller during the state fiscal year;

(ii) multiplying the amount computed under clause (i) of this subparagraph by the rate provided in Tax Code, §151.051; and

(iii) rounding the amount computed under clause (ii) of this subparagraph to the nearest .0025.

(G) Direct refund. A purchaser may request a refund based on local use taxes paid in a calendar year for the difference between the single local use tax rate paid by the purchaser and the amount the purchaser would have paid based on the combined tax rate for all applicable local use taxes. Notwithstanding the refund requirements under §3.325(a)(1) of this title (relating to Refunds and Payments Under Protest), a non-permitted purchaser may request a refund directly from the comptroller for the tax paid in the previous calendar year, no earlier than January 1 of the following calendar year within the statute of limitation under Tax Code, 111.104 (Refunds).

(H) Marketplace providers. Notwithstanding subparagraph (A) of this paragraph, marketplace providers may not use the single local use tax rate and must compute the amount of local use tax to collect and remit using the combined tax rate of all applicable local use taxes.

(4) Purchaser responsible for accruing and remitting local taxes if seller fails to collect.

(A) If a seller does not collect the state sales tax, any applicable local sales taxes, or both, on a sale of a taxable item that is consummated in Texas, then the purchaser is responsible for filing a return and paying the tax. The local sales taxes due are based on the location in this state where the sale is consummated as provided in subsection (c) of this section.

(B) A purchaser who buys an item for use in Texas from a seller who does not collect the state use tax, any applicable local use taxes, or both, is responsible for filing a return and paying the tax. The local use taxes due are based on the location where the item is first stored, used, or consumed by the purchaser.

(C) For more information about how to report and pay use tax directly to the comptroller, see §3.286 of this title.

(5) Local tax is due on the sales price of a taxable item, as defined in Tax Code, §151.007, in the report period in which the taxable item is purchased or the period in which the taxable item is first stored, used, or otherwise consumed in a local taxing jurisdiction.

(6) A purchaser is not liable for additional local use tax if the purchaser pays local use tax using the rate elected by an eligible remote seller according to paragraph (3) of this subsection. The remote seller must be identified on the comptroller's website as electing to use the single local use tax rate. A purchaser must verify that the remote seller is listed on the comptroller's website. If the remote seller is not listed on the comptroller's website, the purchaser will be liable for additional use tax due in accordance to paragraph (4) of this subsection.

(j) Items purchased under a direct payment permit.

(1) When taxable items are purchased under a direct payment permit, local use tax is due based upon the location where the permit holder first stores the taxable items, except that if the taxable items are not stored, then local use tax is due based upon the location where the taxable items are first used or otherwise consumed by the permit holder.

(2) If, in a local taxing jurisdiction, storage facilities contain taxable items purchased under a direct payment exemption certificate and at the time of storage it is not known whether the taxable items will be used in Texas, then the taxpayer may elect to report the use tax either when the taxable items are first stored in Texas or are first removed from inventory for use in Texas, as long as use tax is reported in a consistent manner. See also §3.288(i) of this title (relating to Direct Payment Procedures and Qualifications) and §3.346(g) of this title.

(3) If local use tax is paid on stored items that are subsequently removed from Texas before they are used, the tax may be recovered in accordance with the refund and credit provisions of §3.325 of this title and §3.338 of this title (relating to Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers).

(k) Special rules for certain taxable goods and services. Sales of the following taxable goods and services are consummated at, and local tax is due based upon, the location indicated in this subsection.

(1) Amusement services. Local tax is due based upon the location where the performance or event occurs. For more information on amusement services, refer to §3.298 of this title (relating to Amusement Services).

(2) Cable services. When a service provider uses a cable system to provide cable television or bundled cable services to customers, local tax is due as provided for in §3.313 of this title. When a service provider uses a satellite system to provide cable services to customers, no local tax is due on the service in accordance with the Telecommunications Act of 1996, §602.

(3) Florists. Local sales tax is due on all taxable items sold by a florist based upon the location where the order is received, regardless of where or by whom delivery is made. Local use tax is not due on deliveries of taxable items sold by florists. For example, if the place of business of the florist where an order is taken is not within the boundaries of any local taxing jurisdiction, no local sales tax is due on the item and no local use tax is due regardless of the location of delivery. If a Texas florist delivers an order in a local taxing jurisdiction at the instruction of an unrelated florist, and if the unrelated florist did not take the order within the boundaries of a local taxing jurisdiction, local use tax is not due on the delivery. For more information about florists' sales and use tax obligations, refer to §3.307 of this title (relating to Florists).

(4) Landline telecommunications services. Local taxes due on landline telecommunications services are based upon the location of the device from which the call or other transmission originates. If the seller cannot determine where the call or transmission originates, local taxes due are based on the address to which the service is billed. For more information, refer to §3.344 of this title (relating to Telecommunications Services).

(5) Marketplace provider sales. Local taxes are due on sales of taxable items through a marketplace provider based on the location in this state to which the item is shipped or delivered or at which the purchaser takes possession. For more information, refer to §3.286 of this title.

(6) Mobile telecommunications services. Local taxes due on mobile telecommunications services are based upon the location of the customer's place of primary use as defined in §3.344(a)(8) of this title, and local taxes are to be collected as indicated in §3.344(h) of this title.

(7) Motor vehicle parking and storage. Local taxes are due based on the location of the space or facility where the vehicle is parked. For more information, refer to §3.315 of this title (relating to Motor Vehicle Parking and Storage).

(8) Natural gas and electricity. Any local city and special purpose taxes due are based upon the location where the natural gas or electricity is delivered to the purchaser. As explained in subsection (l)(1) of this section, residential use of natural gas and electricity is exempt from all county sales and use taxes and all transit authority sales and use taxes, most special purpose district sales and use taxes, and many city sales and use taxes. A list of the cities and special purpose districts that do impose, and those that are eligible to impose, local sales and use tax on residential use of natural gas and electricity is available on the comptroller's website. For more information, also refer to §3.295 of this title (relating to Natural Gas and Electricity).

(9) Nonresidential real property repair and remodeling services. Local taxes are due on services to remodel, repair, or restore nonresidential real property based on the location of the job site where the remodeling, repair, or restoration is performed. See also subsection (h)(2)(B) of this section and §3.357 of this title.

(10) Residential real property repair and remodeling and new construction of a real property improvement performed under a separated contract. When a contractor constructs a new improvement to realty pursuant to a separated contract or improves residential real property pursuant to a separated contract, the sale is consummated at the job site at which the contractor incorporates taxable items into the customer's real property. See also subsection (h)(2)(A) of this section and §3.291 of this title.

(11) Waste collection services. Local taxes are due on garbage or other solid waste collection or removal services based on the location at which the waste is collected or from which the waste is removed. For more information, refer to §3.356 of this title (relating to Real Property Service).

(l) Special exemptions and provisions applicable to individual jurisdictions.

(1) Residential use of natural gas and electricity.

(A) Mandatory exemptions from local sales and use tax. Residential use of natural gas and electricity is exempt from most local sales and use taxes. Counties, transit authorities, and most special purpose districts are not authorized to impose sales and use tax on the residential use of natural gas and electricity. Pursuant to Tax Code, §321.105, any city that adopted a local sales and use tax effective October 1, 1979, or later is prohibited from imposing tax on the residential use of natural gas and electricity. See §3.295 of this title.

(B) Imposition of tax allowed in certain cities. Cities that adopted local sales tax prior to October 1, 1979, may, in accordance with the provisions in Tax Code, §321.105, choose to repeal the exemption for residential use of natural gas and electricity. The comptroller's website provides a list of cities that impose tax on the residential use of natural gas and electricity, as well as a list of those cities that do not currently impose the tax, but are eligible to do so.

(C) Effective January 1, 2010, a fire control, prevention, and emergency medical services district organized under Local Government Code, Chapter 344 that imposes sales tax under Tax Code, §321.106, or a crime control and prevention district organized under Local Government Code, Chapter 363 that imposes sales tax under Tax Code, §321.108, that is located in all or part of a municipality that imposes a tax on the residential use of natural gas and electricity as provided under Tax Code, §321.105 may impose tax on residential use of natural gas and electricity at locations within the district. A list of the special purpose districts that impose tax on residential use of natural gas and electricity and those districts eligible to impose the tax that do not currently do so is available on the comptroller's website.

(2) Telecommunication services. Telecommunications services are exempt from all local sales taxes unless the governing body of a city, county, transit authority, or special purpose district votes to impose sales tax on these services. However, since 1999, under Tax Code, §322.109(d), transit authorities created under Transportation Code, Chapter 451 cannot repeal the exemption unless the repeal is first approved by the governing body of each city that created the local taxing jurisdiction. The local sales tax is limited to telecommunications services occurring between locations within Texas. See §3.344 of this title. The comptroller's website provides a list of local taxing jurisdictions that impose tax on telecommunications services.

(3) Emergency services districts.

(A) Authority to exclude territory from imposition of emergency services district sales and use tax. Pursuant to the provisions of Health and Safety Code, §775.0751(c-1), an emergency services district wishing to enact a sales and use tax may exclude from the election called to authorize the tax any territory in the district where the sales and use tax is then at 2.0%. The tax, if authorized by the voters eligible to vote on the enactment of the tax, then applies only in the portions of the district included in the election. The tax does not apply to sales made in the excluded territories in the district and sellers in the excluded territories should continue to collect local sales and use taxes for the local taxing jurisdictions in effect at the time of the election under which the district sales and use tax was authorized as applicable.

(B) Consolidation of districts resulting in sales tax sub-districts. Pursuant to the provisions of Health and Safety Code, §775.018(f), if the territory of a district proposed under Health and Safety Code, Chapter 775 overlaps with the boundaries of another district created under that chapter, the commissioners court of each county and boards of the counties in which the districts are located may choose to create a consolidated district in the overlapping territory. If two districts that want to consolidate under Health and Safety Code, §775.024 have different sales and use tax rates, the territory of the former districts located within the consolidated area will be designated as sub-districts and the sales tax rate within each sub-district will continue to be imposed at the rate the tax was imposed by the former district that each sub-district was part of prior to the consolidation.

(4) East Aldine Management District.

(A) Special sales and use tax zones within district; separate sales and use tax rate. As set out in Special District Local Laws Code, §3817.154(e) and (f), the East Aldine Management District board may create special sales and use tax zones within the boundaries of the District and, with voter approval, enact a special sales and use tax rate in each zone that is different from the sales and use tax rate imposed in the rest of the district.

(B) Exemptions from special zone sales and use tax. The sale, production, distribution, lease, or rental of; and the use, storage, or other consumption within a special sales and use tax zone of; a taxable item sold, leased, or rented by the entities identified in clauses (i) - (vi) of this subparagraph are exempt from the special zone sales and use tax. State and all other applicable local taxes apply unless otherwise exempted by law. The special zone sales and use tax exemption applies to:

(i) a retail electric provider as defined by Utilities Code, §31.002;

(ii) an electric utility or a power generation company as defined by Utilities Code, §31.002;

(iii) a gas utility as defined by Utilities Code, §101.003 or §121.001, or a person who owns pipelines used for transportation or sale of oil or gas or a product or constituent of oil or gas;

(iv) a person who owns pipelines used for the transportation or sale of carbon dioxide;

(v) a telecommunications provider as defined by Utilities Code, §51.002; or

(vi) a cable service provider or video service provider as defined by Utilities Code, §66.002.

(5) Imposition of city sales tax and transit tax on certain military installations; El Paso and Fort Bliss. Pursuant to Tax Code, §321.1045 (Imposition of Sales and Use Tax in Certain Federal Military Installations), for purposes of the local sales and use tax imposed under Tax Code, Chapter 321, the city of El Paso includes the area within the boundaries of Fort Bliss to the extent it is in the city's extraterritorial jurisdiction. However, the El Paso transit authority does not include Fort Bliss. See Transportation Code, §453.051 concerning the Creation of Transit Departments.

(m) Restrictions on local sales tax rebates and other economic incentives. Pursuant to Local Government Code, §501.161, Section 4A and 4B development corporations may not offer to provide economic incentives, such as local sales tax rebates authorized under Local Government Code, Chapters 380 or 381, to persons whose business consists primarily of purchasing taxable items using resale certificates and then reselling those same items to a related party. A related party means a person or entity which owns at least 80% of the business enterprise to which sales and use taxes would be rebated as part of an economic incentive.

(n) Prior contract exemptions. The provisions of §3.319 of this title (relating to Prior Contracts) concerning definitions and exclusions apply to prior contract exemptions.

(1) Certain contracts and bids exempt. No local taxes are due on the sale, use, storage, or other consumption in this state of taxable items used:

(A) for the performance of a written contract executed prior to the effective date of any local tax if the contract may not be modified because of the tax; or

(B) pursuant to the obligation of a bid or bids submitted prior to the effective date of any local tax if the bid or bids and contract entered into pursuant thereto are at a fixed price and not subject to withdrawal, change, or modification because of the tax.

(2) Annexations. Any annexation of territory into an existing local taxing jurisdiction is also a basis for claiming the exemption provided by this subsection.

(3) Local taxing jurisdiction rate increase; partial exemption for certain contracts and bids. When an existing local taxing jurisdiction raises its sales and use tax rate, the additional amount of tax that would be due as a result of the rate increase is not due on the sale, use, storage, or other consumption in this state of taxable items used:

(A) for the performance of a written contract executed prior to the effective date of the tax rate increase if the contract may not be modified because of the tax; or

(B) pursuant to the obligation of a bid or bids submitted prior to the effective date of the tax rate increase if the bid or bids and contract entered into pursuant thereto are at a fixed price and not subject to withdrawal, change, or modification because of the tax.

(4) Three-year statute of limitations.

(A) The exemption in paragraph (1) of this subsection and the partial exemption in paragraph (3) of this subsection have no effect after three years from the date the adoption or increase of the tax takes effect in the local taxing jurisdiction.

(B) The provisions of §3.319 of this title apply to this subsection to the extent they are consistent.

(C) Leases. Any renewal or exercise of an option to extend the time of a lease or rental contract under the exemptions provided by this subsection shall be deemed to be a new contract and no exemption will apply.

(5) Records. Persons claiming the exemption provided by this subsection must maintain records which can be verified by the comptroller or the exemption will be lost.

(6) Exemption certificate. An identification number is required on the prior contract exemption certificates furnished to sellers. The identification number should be the person's 11-digit Texas taxpayer number or federal employer's identification (FEI) number.

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

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Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
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TITLE 43. TRANSPORTATION

PART 3. MOTOR VEHICLE CRIME PREVENTION AUTHORITY

CHAPTER 57. MOTOR VEHICLE CRIME PREVENTION AUTHORITY

43 TAC §57.36

INTRODUCTION. The Motor Vehicle Crime Prevention Authority (MVCPA) proposes an amendment to 43 Texas Administrative Code (TAC) §57.36, concerning level of funding for grant projects. This amendment is necessary to implement Occupations Code §1006.151 and §1006.154 by providing financial support to law enforcement agencies for economic motor vehicle theft and fraud-related motor vehicle crime enforcement teams, and in lessening the financial burden on local city and county governments that may be unable to meet the current cash match requirements under 43 TAC §57.36.

EXPLANATION.

Transportation Code §1006.151(a) and §1006.154 provide the MVCPA with authority to issue grants in its own name by providing funding to law enforcement agencies for economic motor vehicle theft and fraud-related motor vehicle crime enforcement teams; to law enforcement agencies, local prosecutors, judicial agencies, and neighborhood, community, business and non-profit organizations for the programs designed to reduce the incidence of economic motor vehicle theft and fraud-related motor vehicle crime; for conducting educational programs designed to inform motor vehicle owners of methods of preventing motor vehicle burglary or theft and fraud-related motor vehicle crime; for equipment, for experimental purposes, to assist motor vehicle owners in preventing motor vehicle burglary or theft; and funding to establish a uniform program to prevent stolen motor vehicles from entering Mexico. Under current 43 TAC §57.36, a grantee must contribute a cash match of 20% of the total MVCPA award for each year of funding to be eligible for MVCPA grant funds.

During the 88th Texas Legislature, Regular Session, Senate Bill (SB) 224 passed and was signed into law. The focus of SB 224 was the detection and prevention of catalytic converter theft in Texas. SB 224 appropriated funding for the coordinated regulatory and law enforcement activities intended to detect and prevent catalytic converter theft, and provided that the funding may be appropriated to the MVCPA for the activities described in SB 224.

The MVCPA issued a Request for Applications (RFA) for SB 224 FY24 funding to solicit applications from law enforcement agencies and taskforces to apply for SB 224 FY24 grant funding. Prior to posting the SB 224 RFA, law enforcement agencies and taskforces informed the MVCPA that due to the timing of the SB 224 FY24 RFA posting and the current FY24 budgetary cycles in their cities and counties, the law enforcement agencies and taskforces would be unable to provide the 20% cash match required under 43 TAC §57.36. Many of the same law enforcement agencies and MVCPA taskforces had already provided a 20% cash match for MVCPA FY24 non-SB 224 grants. Lacking the ability to provide an additional 20% cash match for SB 224 FY24 grant funding, the law enforcement agencies and taskforces would not be able to be eligible for or secure SB 224 FY24 grant funding based on the rule as currently written. Without the ability of law enforcement agencies and taskforces to secure such funding, the legislative intent behind SB 224 would be impeded and unfulfilled. SB 224 recognized that law enforcement agencies and taskforces are vital to the success of detecting and preventing catalytic converter theft in Texas. The current rule has the effect of preventing law enforcement agencies and taskforces from serving in this vital role due to budgetary constraints.

An amendment to 43 TAC §57.36 is proposed to provide the MVCPA board with authority to address unforeseen grantee budgetary shortfalls by providing the board with greater flexibility in adjusting the cash match percentage required of law enforcement grantees seeking MVCPA grant funding. The proposed amendment would allow the MVCPA board to exercise its discretion in setting the percentage of cash match in each grant funding cycle by considering grantee budgetary factors. By providing the MVCPA board with discretion to set the percentage of cash match or waive the cash match requirement for a given fiscal year, the board can ensure that law enforcement agencies with decreased financial resources will have a realistic opportunity to apply for and secure MVCPA grant funding in furtherance of the MVCPA statutory mandates.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, Texas Department of Motor Vehicles has determined that for each year of the first five years the new section will be in effect, there will be a positive fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. William Diggs, Director of the Motor Vehicle Crime Prevention Authority (MVCPA) Division, has determined that there will be no potential measurable effect on local employment or the local economy.

PUBLIC BENEFIT AND COST NOTE. Mr. Diggs has also determined that, for each year of the first five years the new section is in effect, the public benefits anticipated as a result of the proposal will include increased funding for the city and county governments of MVCPA taskforces to combat catalytic converter theft in their communities.

Anticipated Costs to Comply with The Proposal. Mr. Diggs anticipates there will be no significant fiscal costs for grantees to comply with this rule.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by the Government Code, §2006.002, the department has determined that the proposed amendment will not have an adverse economic effect on small businesses, micro-businesses, and rural communities because the new section does not require small businesses, micro businesses, or rural communities to comply. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code, §2006.002.

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

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed new section is in effect, no government program would be created or eliminated. Implementation of the proposed amendments would not require the creation of new employee positions. The proposed amendment does not create a new regulation, or expand, or repeal an existing regulation. The proposed amendment may decrease the amount of cash match funding that an MVCPA grantee is required to provide in order to be eligible for MVCPA grant funding. Lastly, the proposed new section does not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on May 20, 2024. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The MVCPA proposes an amendment to 43 TAC §57.36 under Transportation Code §1006.101. Transportation Code §1006.101 authorizes the MVCPA to adopt rules that are necessary appropriate to implement the powers and the duties of the authority.

CROSS REFERENCE TO STATUTE. Art. 4413(37) §6.

§57.36. Level of Funding for Grant Projects.

For each grant, [~~A grantee must contribute a cash match of 20% of~~] the [~~total~~] MVCPA will determine whether to require grantees to contribute a cash match to be eligible [~~award,~~] for [~~each year of~~] funding. [~~, in order to be eligible for MVCPA funds.~~] If required, the cash match will be a percentage of the total MVCPA award, for each year of funding, not to exceed 20%. The cash match requirement for each grant will be stated in the grant application.

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

Filed with the Office of the Secretary of State on April 1, 2024.

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David Richards
General Counsel
Motor Vehicle Crime Prevention Authority
Earliest possible date of adoption: May 19, 2024
For further information, please call: (512) 465-1423

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