

# PROPOSED RULES

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

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

## TITLE 1. ADMINISTRATION

### PART 3. OFFICE OF THE ATTORNEY GENERAL

#### CHAPTER 54. SPECIAL PROGRAMS

#### SUBCHAPTER C. HUMAN TRAFFICKING PREVENTION SIGNS [~~SIGN~~]

##### 1 TAC §54.80, §54.81

The Office of the Attorney General (OAG) proposes an amendment to §54.80 and a new rule, §54.81. The proposed change to §54.80 amends the title of the rule to include the type of business to which §54.80 applies. Proposed §54.81 concerns the posting of human trafficking prevention signs at transportation hubs. Proposed §54.81 will implement Government Code §402.0351, which requires the OAG to prescribe the design, content, and manner of display for signs posted at transportation hubs.

Angela Goodwin, Associate Deputy for Criminal Justice, has determined that for each of the first five years the proposed rules are in effect, there are no foreseeable fiscal implications for state or local governments as a result of enforcing or administering the rules. Ms. Goodwin has determined that for each of the first five years the proposed rules are in effect, the anticipated public benefit will be to increase awareness of resources to victims of human trafficking. Ms. Goodwin has determined: there is no probable economic cost to persons required to comply with the proposed rules; the proposed rules will not impact local economies; and the proposed rules will not have an adverse economic effect on small businesses, micro-businesses, or rural communities.

In compliance with Government Code §2001.0221, the OAG has prepared the following government growth impact statement. During the first five years the proposed rules are in effect, the proposed rules: 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 OAG; 4) will not require an increase or decrease in fees paid to the OAG; 5) will create the new regulation that Government Code §402.0351 requires the OAG to adopt; 6) will not expand, limit, or repeal an existing regulation; 7) will not increase or decrease the number of individuals subject to Business and Commerce Code §102.101 or Government Code §402.0351; and 8) will not positively or adversely affect the state's economy.

Written comments on the proposed rules may be submitted for 30 days following the publication of this notice to Angela Goodwin, Associate Deputy for Criminal Justice, Office of the Attor-

ney General, P.O. Box 12548, Austin, Texas 78711-2548, Angela.Goodwin@oag.texas.gov.

The amendment to §54.80 is proposed in accordance with Business and Commerce Code §102.101, which requires the OAG to adopt rules prescribing the design, content, and manner of display for human trafficking prevention signs posted at sexually oriented businesses. Section 54.81 is proposed in accordance with Government Code §402.0351, which requires the OAG to adopt rules prescribing the design, content, and manner of display for human trafficking prevention signs posted at transportation hubs.

No other code, article, or statute is affected by this proposal.

*§54.80. Sexually Oriented Business Sign Design, Content, and Manner of Display.*

(a) The attached graphic prescribes the design and content of the human trafficking prevention sign required by Business and Commerce Code §102.101.

Figure: 1 TAC §54.80(a) (No change.)

(b) A sexually oriented business, as defined by Local Government Code §243.002, shall conspicuously post the sign prescribed in subsection (a) of this section, which must be at least 11 inches by 17 inches in size, by the sink area in each restroom on the premises of the sexually oriented business.

*§54.81. Transportation Hub Sign Design, Content, and Manner of Display.*

(a) The attached graphic prescribes the design and content of the human trafficking prevention sign required by Government Code §402.0351.

Figure: 1 TAC §54.81

(b) A transportation hub, as defined by Government Code §402.0351, will post the sign prescribed in subsection (a) of this section on the premises of the transportation hub. The transportation hub will post the sign:

(1) in a place near its public entrance or in another location in clear view of the public; and

(2) in each public restroom or shower facility.

(c) The sign posted at a transportation hub must be at least 8 1/2 inches by 11 inches in size.

(d) The Office of the Attorney General shall post the sign on its website and shall distribute the sign electronically to transportation hubs.

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

Filed with the Office of the Secretary of State on August 14, 2020.

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**TITLE 19. EDUCATION**

**PART 2. TEXAS EDUCATION AGENCY**

**CHAPTER 61. SCHOOL DISTRICTS**

**SUBCHAPTER AA. COMMISSIONER'S  
RULES ON SCHOOL FINANCE**

**19 TAC §61.1019**

The Texas Education Agency (TEA) proposes an amendment to §61.1019, concerning additional state aid for ad valorem tax credits under the Texas Economic Development Act. The proposed amendment would update cross references to statute and modify the method of filing requests for additional state aid for ad valorem tax credits.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Section 61.1019 implements the provisions of Texas Education Code (TEC), §48.254. Specifically, the rule addresses the procedures for filing a request for aid and describes the forms to be used to make a request for aid. The proposed amendment to subsection (d)(1) would update the method of filing from mail to electronic format to streamline the application process.

House Bill 3, 86th Texas Legislature, 2019, recodified TEC, Chapters 41 and 42, to Chapters 48 and 49, respectively. The proposed amendment to §61.1019 would update the statutory references to conform to the recodification.

**FISCAL IMPACT:** Leo Lopez, associate commissioner for school finance, 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 not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, 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:** Mr. Lopez 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 continuing to provide an incentive to school districts to provide tax credits to businesses, thus encouraging capital investment, job creation, and an expansion of the state's ad valorem property tax base. In addition, the proposal would reflect correct statutory references and streamline the application process. 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 new 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 August 28, 2020, and ends October 12, 2020. 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 August 28, 2020. 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/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §48.004, as transferred, redesignated, and amended by House Bill (HB) 3, 86th Texas Legislature, 2019, which authorizes the commissioner to adopt rules to implement and administer the provision of additional state aid under TEC, §48.254, including aid for school districts otherwise ineligible for state aid, in order to offset tax credits issued by school districts under the Texas Tax Code, Chapter 313; TEC, §48.254, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which entitles a school district, including a school district that is otherwise ineligible for state aid under TEC, Chapter 48, to state aid in an amount equal to the amount of all tax credits credited against ad valorem taxes of the district in that year under former Subchapter D, Chapter 313, Tax Code; and Texas Tax Code, Chapter 313 (the Texas Economic Development Act), which permits school districts to offer appraised value limitations on property and tax credits to certain capital-intensive industries that meet dollar and job creation requirements in order to encourage large-scale capital investments in Texas. School districts that have active agreements under the Texas Tax Code, Chapter 313, and that have companies subject to tax credits must net those credits against taxes paid.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §48.004 and §48.254, and Texas Tax Code, Chapter 313.

*§61.1019. Additional State Aid for Ad Valorem Tax Credits under the Texas Economic Development Act.*

(a) General provisions. This section implements the Texas Education Code (TEC), §48.254 [§42.2515] (Additional State Aid for Ad Valorem Tax Credits Under Texas Economic Development Act). In accordance with the TEC, §48.254 [§42.2515], a school district, including a school district that is otherwise ineligible for state aid under the TEC, Chapter 48 [42], is entitled to state aid in an amount equal to the amount of all tax credits applied against ad valorem taxes of the school district in each year that tax credits were applied pursuant to the Texas Tax Code, Chapter 313, also known as the Texas Economic Development Act. School districts eligible to receive additional state aid under the TEC, §48.254 [§42.2515], must apply to the commissioner of education in order to receive additional state aid equal to the qualifying ad valorem tax credits issued under the Texas Tax Code, Chapter 313, Subchapter D, as that subchapter existed prior to repeal by House Bill (HB) 3390, 83rd Texas Legislature, Regular Session, 2013, subject to certain annual limitations.

(b) (No change.)

(c) Eligibility for additional state aid.

(1) A school district may be eligible for additional state aid under the TEC, §48.254 [§42.2515], only pursuant to the provisions of the TEC, §48.254 [§42.2515], and the Texas Tax Code, Chapter 313.

(2) (No change.)

(3) A school district must be in compliance with the reporting requirements set forth in 34 Texas Administrative Code Chapter 9, Subchapter F (relating to Limitation on Appraised Value on Certain Qualified Property), to be eligible for additional state aid under the TEC, §48.254 [§42.2515].

(d) Procedures for filing request for additional state aid for ad valorem tax credits.

(1) Method of filing. All requests for additional state aid under the TEC, §48.254 [§42.2515], must be filed electronically [by mail] with the TEA [; 1701 North Congress Avenue, Austin, Texas 78701;] in accordance with instructions on the application.

(2) Information required for first year of tax credit. A school district's initial request for additional state aid under the TEC, §48.254 [§42.2515], must include:

(A) - (E) (No change.)

(3) Information required for subsequent years of tax credit. For each year subsequent to the year in which the initial request for the tax credit was approved, the request for additional state aid under the TEC, §48.254 [§42.2515], must include:

(A) - (C) (No change.)

(e) - (f) (No change.)

(g) Determination of additional state aid. For any tax year for which additional state aid authorized by the TEC, §48.254 [§42.2515], is approved, additional state aid will be limited to the amount of the tax credit due to the taxpayer for a qualified property that is receiving a limitation on appraised value for that year as determined in the Texas Tax Code, §313.104, as that section existed prior to the repeal of the Texas Tax Code, Chapter 313, Subchapter D, by HB 3390, 83rd Texas Legislature, Regular Session, 2013.

(h) Erroneous tax credits and recovery of state aid for erroneous tax credits. If the comptroller of public accounts or the governing body of the school district determines that an entity that received a tax credit was ineligible to have received it or received more credit than the entity should have received, the school district must provide a notification of the facts to the commissioner within 30 days of the official action. If the TEA determines that an entity that received a tax credit was ineligible to have received it or received more credit than the entity should have received, the commissioner will notify the school district within 30 days of the determination. Any overpayment of additional state aid provided to the school district based on issuance of an erroneous tax credit by the school district will be fully recovered by the TEA pursuant to the TEC, §48.272 [§42.258].

(i) - (j) (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 August 17, 2020.

TRD-202003385

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: September 27, 2020

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



## CHAPTER 129. STUDENT ATTENDANCE SUBCHAPTER AA. COMMISSIONER'S RULES

### 19 TAC §129.1025

The Texas Education Agency (TEA) proposes an amendment to §129.1025, concerning student attendance. The proposed amendment would adopt by reference the *2020-2021 Student Attendance Accounting Handbook*. The handbook provides student attendance accounting rules for school districts and charter schools.

BACKGROUND INFORMATION AND JUSTIFICATION: TEA has adopted its student attendance accounting handbook in rule since 2000. Attendance accounting evolves from year to year, so the intention is to annually update 19 TAC §129.1025 to refer to the most recently published student attendance accounting handbook.

Each annual student attendance accounting handbook provides school districts and charter schools with the Foundation School Program (FSP) eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, and details the responsibilities of all district personnel involved in student attendance accounting. The TEA distributes FSP resources under the procedures specified in each current student attendance accounting handbook. The final version of the student attendance accounting handbook is published on the TEA website. A supplement, if necessary, is also published on the TEA website.

The proposed amendment to 19 TAC §129.1025 would adopt by reference the student attendance accounting handbook for the 2020-2021 school year. The proposed handbook is available on

the TEA website at <https://tea.texas.gov/finance-and-grants/financial-compliance/student-attendance-accounting-handbook>.

Significant changes to the *2020-2021 Student Attendance Accounting Handbook* would include the following.

#### *Section 1, Overview*

Language would be added to recognize the authority of the commissioner to waive requirements for ADA and specify the necessity for a local education agency to meet the prerequisites for receipt of such a waiver.

#### *Section 2, Audit Requirements*

Texas Education Code (TEC), Chapter 48, specifically §48.270, establishes the requirements for violation of presenting reports that contain false information. TEC, §44.008, authorizes the commissioner to require audit reports to be submitted for review and analysis. TEC, §44.010, allows for the review of budget, fiscal, and audit reports to determine whether all legal requirements have been met. The following changes implement reporting for audit requirements to account for attendance and funding.

Language would be added to include additional requirements for reporting eligible days and other reporting elements that pertain to attendance data reported in the Student Detail Reports, Campus Summary Reports, and District Summary Reports.

Language would be added to include documentation to support a student's economically disadvantaged status as required documentation to be submitted in the event of an audit.

#### *Section 3, General Attendance Requirements*

TEC, §25.081, and Chapter 48, specifically §48.005, establish the general parameters for attendance and school operation. The following changes would implement reporting requirements for attendance and funding.

Language would be added to specify that official attendance can be taken by a paraprofessional who meets educational aide certification requirements.

Language would be added to state that the attendance data reported in the Texas Student Data System Public Education Information Management System (TSDS PEIMS) for students who attend magnet programs or magnet campuses must be reported for the campus that provides half-day or full-day instruction and also state that attendance must not be reported for a student's home campus if the student receives instruction at a different campus that houses the magnet program. For campuses that house multiple programs, such as a magnet program, attendance is counted for all students on the campus.

#### *Section 4, Special Education*

TEC, Chapter 48, specifically §48.102, authorizes funding for special education in certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for special education to account for attendance and funding.

Language would be revised to define/clarify specific report names/titles used to report student data to TSDS PEIMS.

#### *Section 5, Career and Technical Education (CTE)*

TEC, Chapter 48, including §48.106, authorizes funding for CTE in certain circumstances. TEC, Chapter 29, Subchapter F, establishes general parameters for CTE programs. TEC,

§48.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following changes would implement reporting for CTE to account for attendance and funding.

Language would be added to state that students in Grades 7-12 are eligible for CTE contact hours when enrolled in a course referenced by 19 TAC Chapter 127, Subchapter B, or 19 TAC Chapter 130 that grants high school credit.

Language would be added to state that school districts may receive state weighted funding for all CTE innovative courses approved by TEA for students in Grades 7-12.

Language would be added to state that a district is eligible to receive funding in the amount of \$50 for each student full-time equivalent (FTE) enrolled in two or more advanced CTE courses, identified as Level 3 or Level 4 in a statewide CTE program of study, for a total of three or more credits.

Language would be revised to clarify that the CTE contact hours must not be claimed when a student receiving CTE services is placed in a disciplinary setting.

Language would be added to state that for districts providing block schedules, the classroom component must address all the Texas Essential Knowledge and Skills (TEKS) for the course. The new language would also state that the training site will provide students with a variety of learning experiences that will give them the broadest possible understanding of the business industry.

Language would be added to the special instructions for districts operating block schedules that in a practicum instructional arrangement, related classroom instruction must average one class period per week during the school year.

The entire Section 5.9 Career and Technical Education for Disabled (CTED) Courses would be deleted.

#### *Section 6, Bilingual/English as a Second Language (ESL)*

TEC, Chapter 48, specifically §48.105, authorizes funding for bilingual or special language programs in certain circumstances. TEC, Chapter 29, Subchapter B, establishes general parameters for bilingual and special language programs. TEC, §48.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following changes would implement reporting for bilingual and special language programs to account for attendance and funding.

Language would be added to state that in cases where a parent indicates more than one language in the Home Language Survey (HLS), it is the district's responsibility to contact the parent and explain to the parent that the question is asking which language is used in the home most of the time and seek clarification in a language the parent understands.

Language would be added to state that the parent may request a correction on the HLS only if the student has not yet been assessed for English proficiency.

Language would be added to state that if the sending district cannot find the original HLS, a new HLS should not be administered if there is sufficient Language Proficiency Assessment Committee (LPAC) documentation, such as Texas English Language Proficiency Assessment System (TELPAS) scores and/or TSDS PEIMS data, from the sending district that shows the student was identified as an English learner.

Language would be added to clarify that eligible students who are no longer being served in the program must be assessed annually in the TELPAS until the student meets reclassification criteria.

#### *Section 7, Prekindergarten (Pre-K)*

TEC, Chapter 29, Subchapter E, establishes special general parameters for prekindergarten programs. TEC, Chapter 48, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for prekindergarten to account for attendance and funding.

Language would be added to specify that if a child is automatically eligible for a four-year-old prekindergarten program due to being eligible and enrolled in a three-year-old prekindergarten program, a district should still ensure the child is appropriately coded as economically disadvantaged or identified as limited English proficient (LEP).

Language would be added to specify that a uniform definition has been established for "homeless children and youth" and "homeless child" as used in the prekindergarten statute that is aligned with the criteria found in 42 U.S.C., §1143a, within the TEC.

#### *Section 9, Pregnancy-Related Services (PRS)*

TEC, Chapter 48, including §42.152, authorizes funding for students who are pregnant under certain circumstances. TEC, §48.004, authorizes the commissioner to adopt reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for PRS to account for attendance and funding.

Language would be added to state that a special education student who qualifies for PRS may also receive homebound instruction on campus if the district has an approved on-campus instruction waiver. In such an instance, the Admission, Review, and Dismissal (ARD) committee would change the student's coding to reflect homebound setting, even though the student would be served on campus.

#### *Section 11, Nontraditional Programs*

TEC, Chapter 29, Subchapter A, establishes special general parameters for nontraditional programs. TEC, Chapter 42, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes implement reporting for nontraditional programs to account for attendance and funding.

Language would be revised to clarify that the rules for Early College High School (ECHS); Pathways in Technology Early College High School (P-TECH); and Texas Science, Technology, Engineering, and Mathematics (T-STEM) programs prohibit requiring a student enrolled in an ECHS course for high school graduation credit to pay for tuition, fees, or required textbooks.

Language would be added to state that for funding purposes, the Optional Flexible School Day Program (OFSDP) attendance for a student for a 12-consecutive-month school year cannot exceed the equivalent of one student in ADA with perfect attendance.

Language would be added to state that each online dropout recovery education program course is considered 60 minutes of

daily classroom time for purposes of the two-through-four-hour rule.

Language would be added to state that TEA determines ADA eligibility using course completion data. If a student did not complete an online dropout recovery education program course, TEA will make adjustments to the student's ADA eligibility and resulting adjustments to the district's FSP funding will be made in the following school year.

#### *Section 12, Virtual, Remote, and Electronic Instruction*

TEC, Chapter 30A, establishes the general parameters for the Texas Virtual School Network (TXVSN). TEC, §30A.153, authorizes funding for the TXVSN for the FSP under certain circumstances. TEC, §48.004, authorizes the commissioner to adopt reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for the TXVSN to account for attendance and funding.

Language would be added to clarify the definition of *successful completion* as completion of the TXVSN semester course and demonstrated academic proficiency with a passing grade sufficient to earn credit for the online semester course, and that course credit for high school graduation may be earned only if the student received a grade that is the equivalent of 70 on a scale of 100, based upon the essential knowledge and skills for each course.

Language would be added to include live audio/video streaming as examples of technology that may be used to provide remote instruction that is not delivered through the TXVSN.

Language would be revised to state that for computing CTE contact hours relating to on-campus online classes not provided through the TXVSN, a student must be regularly scheduled for and attending the online state-approved technology application course in cybersecurity included in the cybersecurity pathway.

Language would be revised to clarify that for self-paced computer courses, a certified teacher must be present for the duration of the instructional period and for the duration of the course.

#### *Glossary*

The definition of *homeless students* would be revised to include the uniform definition in TEC.

FISCAL IMPACT: Leo Lopez, associate commissioner for school finance, 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 expand and limit an existing regulation. The proposed changes to the *2020-2021 Student Attendance Accounting Handbook* would amend requirements and provide clarity regarding student attendance accounting procedures. In some instances, the proposed changes would add information, and in some instances, information would be removed.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not 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:** Mr. Lopez 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 continuing to inform the public of the existence of annual publications specifying attendance accounting procedures for school districts and charter schools. 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:** The 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 August 28, 2020, and ends September 28, 2020. 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 August 28, 2020. 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/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §7.055(b)(35), which states that the commissioner shall perform duties in connection with the Foundation School Program (FSP) as prescribed by the TEC, Chapter 48; TEC, §25.081, as amended by HB 3, 86th Texas Legislature, 2019, which states that for each school year, each school district must operate for at least 75,600 minutes, including time allocated for instruction, intermissions, and recesses, for students. TEC, §25.081(d), authorizes the commissioner to adopt rules to implement the section. TEC, §25.081(g), states that a school district may not provide student instruction on Memorial Day but that if a school district would be required to provide student instruction on Memorial Day to compensate for

minutes of instruction lost because of school closures caused by disaster, flood, extreme weather conditions, fuel curtailment, or another calamity, the commissioner shall approve the instruction of students for fewer than the number of minutes required under TEC, §25.081(a); TEC, §25.0812, which states that school districts may not schedule the last day of school for students before May 15; TEC, §25.087, which requires that a school district excuse a student who is 17 years of age or older from attending school to pursue enlistment in a branch of the armed services of the United States or the Texas National Guard, provided that (1) the district may not excuse for this purpose more than four days of school during the period the student is enrolled in high school; and (2) the district verifies the student's activities related to pursuing enlistment in a branch of the armed services or the Texas National Guard. The statute requires each school district to adopt procedures to verify a student's activities as described by TEC, §25.087(b-5); TEC, §29.0822, which enables a school district to provide a program under this section that meets the needs of students described by TEC, §29.0822(a), for a school district that meets application requirements, including allowing a student to enroll in a dropout recovery program in which courses are conducted online. TEC, §29.0822, authorizes the commissioner to adopt rules for the administration of the section; TEC, §30A.153, as amended by HB 3, 86th Texas Legislature, 2019, which states that, subject to the limitation imposed under the TEC, §30A.153(a-1), a school district or open-enrollment charter school in which a student is enrolled is entitled to funding under the TEC, Chapter 48, or in accordance with the terms of a charter granted under the TEC, §12.101, for the student's enrollment in an electronic course offered through the state virtual school network in the same manner that the district or school is entitled to funding for the student's enrollment in courses provided in a traditional classroom setting, provided that the student successfully completes the electronic course. TEC, §30A.153(d), authorizes the commissioner to adopt rules necessary to implement the section, including rules regarding student attendance accounting; TEC, §48.004, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which states that the commissioner shall adopt rules, take action, and require reports consistent with the TEC, Chapter 48, as necessary to implement and administer the FSP; TEC, §48.005, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which states that average daily attendance (ADA) is the quotient of the sum of attendance for each day of the minimum number of days of instruction as described under the TEC, §25.081(a), divided by the minimum number of days of instruction. TEC, §48.005(m), authorizes the commissioner to adopt rules necessary to implement the section; TEC, §48.102, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which states that for each student in average daily attendance in a special education program under the TEC, Chapter 29, Subchapter A, in a mainstream instructional arrangement, a school district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 1.15. For each full-time equivalent student in average daily attendance in a special education program under the TEC, Chapter 29, Subchapter A, in an instructional arrangement other than a mainstream instructional arrangement, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by a weight determined according to its instructional arrangement; TEC, §48.103, as added by HB 3, 86th Texas Legislature, 2019, which states that for each student that a district serves who has been identified as having dyslexia or a related disorder, the district is entitled

to an annual allotment equal to the basic allotment multiplied by 0.1 or a greater amount provided by appropriation; TEC, §48.104, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which states that for each student who does not have a disability and resides in a residential placement facility in a district in which the student's parent or legal guardian does not reside, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.2 or, if the student is educationally disadvantaged, 0.275. For each full-time equivalent student who is in a remedial and support program under TEC, §29.081, because the student is pregnant, a district is entitled to an annual allotment equal to the basic allotment multiplied 2.41; TEC, §48.105, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which states that for each student in average daily attendance in a bilingual education or special language program under the TEC, Chapter 29, Subchapter B, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 0.1 or 0.15 if the student is in a bilingual education program using a dual language immersion/one-way or two-way program model, and for students not described in subdivision (1), 0.05 if the student is in bilingual education program using a dual language immersion/two-way program model; TEC, §48.106, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which states that for each full-time equivalent student in average daily attendance in an approved career and technology education program in Grades 7-12 or in career and technology education programs, a district is entitled to an annual allotment equal to the basic allotment multiplied by a weight of 1.35 and \$50 for each student that is enrolled in two or more advanced career and technology classes for a total of three or more credits; a campus designated as a P-TECH school under TEC, §29.556; or a campus that is a member of the New Tech Network and that focuses on project-based learning and work-based education; and TEC, §48.108, as added by HB 3, 86th Texas Legislature, 2019, which states that for each student in average daily attendance in kindergarten through third grade, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.1 if the student is educationally disadvantaged or a student of limited English proficiency, as defined by TEC, §29.052, and in bilingual education or special language program under TEC, Chapter 29, Subchapter B.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §§7.055(b)(35); 25.081, as amended by HB 3, 86th Texas Legislature, 2019; 25.0812; 25.087; 29.0822; and 30A.153, 48.004, 48.005, 48.102, 48.103, 48.104, 48.105, 48.106, and 48.108, as added or transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019.

*§129.1025. Adoption by Reference: Student Attendance Accounting Handbook.*

(a) The student attendance accounting guidelines and procedures established by the commissioner of education under §129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes) and the Texas Education Code, §48.004, to be used by school districts and charter schools to maintain records and make reports on student attendance and student participation in special programs will be published annually.

(b) The standard procedures that school districts and charter schools must use to maintain records and make reports on student attendance and student participation in special programs for school year 2020-2021 [2019-2020] are described in the official Texas Education

Agency (TEA) publication 2020-2021 [2019-2020] *Student Attendance Accounting Handbook* [:- *Version 2*], dated August [January] 2020, which is adopted by this reference as the agency's official rule. A copy of the 2020-2021 [2019-2020] *Student Attendance Accounting Handbook* [:- *Version 2*], dated August [January] 2020, is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. In addition, the publication can be accessed from the TEA official website. The commissioner will amend the 2020-2021 [2019-2020] *Student Attendance Accounting Handbook* [:- *Version 2*], dated August [January] 2020, and this subsection adopting it by reference, as needed.

(c) Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.

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

Filed with the Office of the Secretary of State on August 17, 2020.

TRD-202003388

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: September 27, 2020

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



## **TITLE 22. EXAMINING BOARDS**

### **PART 23. TEXAS REAL ESTATE COMMISSION**

#### **CHAPTER 531. CANONS OF PROFESSIONAL ETHICS AND CONDUCT**

##### **22 TAC §531.18**

The Texas Real Estate Commission (TREC) proposes an amendment to 22 TAC §531.18, Consumer Information, in Chapter 531, Canons of Professional Ethics and Conduct. The proposed amendment to §531.18 and the form adopted by reference were recommended by the Texas Real Estate Inspector Committee. The proposed amendment to the Consumer Protection Notice adds a statement to alert consumers that inspectors licensed by TREC are required to maintain errors and omissions insurance to cover losses arising from the performance of a real estate inspection in a negligent or incompetent manner. Real estate license holders are required to post this notice at their place of business and on their website.

Vanessa E. Burgess, General Counsel, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendment. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be greater consumer protection.

For each year of the first five years the proposed amendment is in effect the amendment 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 or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Vanessa E. Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to [general.counsel@trec.texas.gov](mailto:general.counsel@trec.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendment is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendment.

#### §531.18. *Consumer Information.*

(a) The Commission adopts by reference the Consumer Protection Notice TREC No. CN 1-3 [CN 4-2]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, [www.trec.texas.gov](http://www.trec.texas.gov).

(b) - (d) (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 August 11, 2020.

TRD-202003316

Vanessa Burgess

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: September 27, 2020

For further information, please call: (512) 936-3284



## CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

### 22 TAC §§537.20, 537.28, 537.30 - 537.32, 537.37, 537.43, 537.58, 537.59

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §537.20, Standard Contract Form TREC No. 9-13; §537.28, Standard Contract Form TREC No. 20-14; §537.30, Standard Contract Form TREC No. 23-15; §537.31, Standard Contract Form TREC No. 24-15; §537.32, Standard Contract Form TREC No. 25-12; §537.37, Standard Contract Form TREC No. 30-13; §537.43, Standard Contract Form TREC No. 36-8; and new rules §537.58, Standard Contract form TREC No. 51-0; §537.59, and Standard Contract Form TREC No. 52-0, in Chapter 537, Professional Agreements and Standard Contracts. Texas real estate license holders are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property. These forms are drafted and recommended for adoption by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and one public member appointed by the governor. The Broker Lawyer Committee recommended revisions to the contract forms adopted by reference under the proposed amendments and new rules to Chapter 537 to address issues that have arisen since the last contract revisions. Prior versions of these rules changes and new forms were posted in the June 12, 2020 issue of the *Texas Register*. At its July 17, 2020, meeting, the Broker Lawyer Committee considered comments submitted by members of the public and made significant revisions to these items. Because such changes were substantive in nature, the Broker Lawyer Committee withdrew the prior version of these items posted in the June 12, 2020 issue of the *Texas Register* and now re-proposes these items as amended. The changes listed below apply to all contract forms unless specified otherwise. Paragraph numbers referenced are from the *One to Four Family Residential Contract (Resale)*.

Paragraph 2 is amended to remove quotes and add a parenthetical around the word "Property."

Paragraph 2.C is amended security systems and "Controls" as Accessories and defines "Controls."

The language of Paragraph 4 was moved to the end of Paragraph 8, which is retitled "License Holders."

Language was added to Paragraph 4 to address leases to which the Seller is a party, and requires the Seller to acknowledge that Buyer has received a copy of all Leases or will receive a copy within 3 days after the Effective Date. The Buyer may terminate the contract after receipt of the Leases within a period of days set in the contract. Paragraph 4 also prohibits the Seller from executing any new lease or amending any Lease without Buyer's written consent after the effective date of the contract.

Paragraph 4 is also amended to include language regarding disclosure of existing leases and prohibits, without Buyer's consent, any new leases, amendments to existing leases, or conveyance of interest in the property. Language also requires disclosure of Residential Leases, Fixture leases, or Natural Resources Leases within 3 days after the effective date.

Paragraph 5 is amended is authorize payment of option fee to escrow agent separately or combined with earnest money in single payment. Clarifies order application of funds to be credited first to Option Fee and then to earnest money. Authorizes release of option money without further consent from Buyer. Paragraph 5 also now incorporates language previously found in Paragraph



23 relating to remedy for failure to timely deliver Option Fee and earnest money.

Paragraph 10.B is amended to remove redundancies found in Paragraph 4 by striking all language except "After the Effective Date, Seller may not convey any interest in the Property without Buyer's written consent."

Paragraph 10.C is amended to include definition of Smart Device and require delivery of access codes to Buyer and removal of seller access points.

Paragraph 18.A is amended to allow escrow agent to require any disbursement made under the contract to be made in good funds.

Paragraph 18.B is amended to further define expenses that an escrow agent may deduct.

Paragraph 23 is deleted in its entirety.

Paragraph 24 is renumbered to Paragraph 23.

The Option Fee Receipt is amended to strike reference to Seller/Broker and replace with Escrow Agent.

Language was deleted from the Broker Information page of all forms except the Farm and Ranch Contract form: "Listing Broker has agreed to pay Other Broker \_\_\_\_ of the total sales price when the Listing Broker's fee is received. Escrow agent is authorized and directed to pay Other Broker from Listing Broker's fee at closing." Language was added for informational purposes to disclose there is a separate commission agreement between the Listing Broker and Other Broker.

Language was added to the Incomplete Construction Contract to mirror the language in the Complete Construction Contract Paragraph 7.I. regarding Residential Service Contracts. The language was added to the Incomplete Construction Contract as Paragraph 7.J.

In the Residential Condominium Contract, all references to a survey were removed from Paragraph 6.

The Addendum for Property Subject to Mandatory Membership in a Property Owners Association adopted by reference in §537.43 is amended to add deposits and reserves to the list of payments the Buyer will make in association with the transfer of the property.

The Addendum Regarding Residential Leases is adopted by reference in §537.58 is a new form that supplements changes made to Paragraph 4 regarding required consent to enter into any new leases, amendments to exiting leases, or conveyance of interest in the property.

The Addendum for Disclosure of Fixture Leases adopted by reference in §537.59 is a new form protects the parties regarding fixture leases in place on the property at the time of contract execution.

Vanessa E. Burgess, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed

amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the sections as proposed are in effect, the public benefits anticipated as a result of enforcing the sections as proposed will be improved clarity and greater transparency for members of the public and license holders, as well as requirements that are consistent with the statute and easier to understand, apply and process.

For each year of the first five years the proposed amendments are in effect the amendments and new rules 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 or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Vanessa E. Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to [general.counsel@trec.texas.gov](mailto:general.counsel@trec.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments and new rules are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by these amendments and new rules is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments and new rules.

*§537.20. Standard Contract Form TREC No. 9-14[9-13].*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 9-14[9-13] approved by the Commission in 2020[2018] for use in the sale of unimproved property where intended use is for one to four family residences.

*§537.28. Standard Contract Form TREC No. 20-15[20-14].*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 20-15[20-14] approved by the Commission in 2020[2018] for use in the resale of residential real estate.

*§537.30. Standard Contract Form TREC No. 23-16[23-15].*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 23-16[23-15] approved by the Commission in 2020 [2018] for use in the sale of a new home where construction is incomplete.

*§537.31. Standard Contract Form TREC No. 24-16[24-15].*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 24-16[24-15] approved by the Commission in 2020 [2018] for use in the sale of a new home where construction is completed.

§537.32. *Standard Contract Form TREC No. 25-13[25-12].*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 25-13[25-12] approved by the Commission in 2020[2018] for use in the sale of a farm or ranch.

§537.37. *Standard Contract Form TREC No. 30-14[30-13].*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 30-14[30-13] approved by the Commission in 2020[2018] for use in the resale of a residential condominium unit.

§537.43. *Standard Contract Form TREC No. 36-9[36-8].*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 36-9[36-8] approved by the Commission in 2020[2014] for use as an addendum to be added to promulgated forms in the sale of property subject to mandatory membership in an owners' association.

§537.58. *Standard Contract Form TREC No. 51-0.*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 51-0 approved by the Commission in 2020 for use as an addendum to be added to promulgated forms of contracts as related to lease agreements.

§537.59. *Standard Contract Form TREC No. 52-0.*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 52-0 approved by the Commission in 2020 for use as an addendum to be added to promulgated forms as related to fixture leases.

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

Filed with the Office of the Secretary of State on August 11, 2020.

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Vanessa Burgess

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3284



## **TITLE 25. HEALTH SERVICES**

### **PART 1. DEPARTMENT OF STATE HEALTH SERVICES**

#### **CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES**

##### **SUBCHAPTER R. ADVISORY COMMITTEES**

###### **25 TAC §37.350**

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes an amendment to §37.350, concerning the Texas School Health Advisory Committee (committee).

###### **BACKGROUND AND PURPOSE**

The purpose of the proposal is to review and update §37.350 in accordance with Texas Government Code, §2001.039 regarding Agency Review of Existing Rules. The proposal updates the

statutory reference establishing the committee and clarifies committee composition, roles, and responsibilities.

###### **SECTION-BY-SECTION SUMMARY**

The proposed amendment to §37.350 adds the word "Texas" to the title of the section, to clarify that the name of the committee is the Texas School Health Advisory Committee.

The proposed amendment to §37.350(a) adds "Texas" to School Health Advisory Committee for clarity and consistency and removes the sentence referencing Texas Health and Safety Code, §11.016, as this citation is no longer accurate.

The proposed amendment to §37.350(b) adds Texas Education Code, §38.104(c), which authorizes the committee to review the analysis of the required student physical fitness assessment adopted by the Texas Education Agency and develop recommendations based on the review. The amendment adds "Texas" for consistency in references to statutes.

The proposed amendment to §37.350(c) removes the language referencing the State Health Services Council (council). The council was abolished in 2016. Subsection (c) also adds language to clarify that the committee is to review the analysis of the required student physical fitness assessment adopted by the Texas Education Agency and make recommendations on coordinated school health as outlined in Texas Education Code, §38.104(c).

The proposed amendment to §37.350(d)(1) adds the acronym for the Texas Education Agency and removes the language referencing the representative from the Governor's Advisory Council on Physical Fitness (GACPF). The GACPF was abolished in 2017. The proposed amendment also abbreviates "Health and Human Services Commission" as "commission" for consistency.

The proposed amendment to §37.350(d)(1)(A) replaces "school administrators" with assistant superintendents, school principals, or assistant principals to clarify who is eligible for the committee.

The proposed amendment to §37.350(d)(1)(B) adds clarifying language to state that the registered nurse must be working in a school as a school nurse or school nurse administrator. This change is consistent with language found in other member categories.

The proposed amendment to §37.350(d)(1)(D) adds language to clarify that the physician, physician's assistant, or nurse practitioner must be currently providing services to school-aged children.

The proposed amendment to §37.350(d)(1)(E) clarifies that the representative may be a school counselor, school psychologist, school social worker, or other school-based mental health professional and must be working in a school as a school counselor. This change is consistent with language found in other member categories.

The proposed amendment to §37.350(d)(1)(F) adds language to clarify that four members must be representing an agency or organization classified as a nonprofit or not-for-profit entity. The agency or organization must support student learning, development, mental health, substance abuse, and health-related activities. The proposed amendment also limits the number of representatives from institutions of higher education to no more than one member.

The proposed amendment to §37.350(d)(1)(G) adds clarifying language to state that the representative must be working in a school as a physical educator or physical education administrator. This change is consistent with language found in other member categories.

The proposed amendment to §37.350(d)(1)(H) adds clarifying language to state that the representative must be working in a school as a health educator or health education administrator. This change is consistent with language found in other member categories.

The proposed amendment to §37.350(d)(1)(I) replaces the word "services" with "program" to be consistent with a district's school nutrition program.

The proposed amendment to §37.350(d)(2) clarifies the special consideration regarding the committee by listing the information.

The proposed amendment to §37.350(d)(3) adds language to clarify that members and alternates are appointed, removes language regarding when an alternate takes the place of a member, and adds language regarding fulfilling a member's unexpired term.

The proposed amendment to §37.350(e)(2) removes paragraph (2), as alternate appointments are addressed in §37.350(d)(3).

The proposed amendment to §37.350(e)(3) renumbers paragraph (3) to paragraph (2) because the previous paragraph was removed.

The proposed amendment to §37.350(f) adds language stating that the presiding officer and assistant presiding officer positions will be appointed to a two-year term.

The proposed amendment to §37.350(f)(1) removes language related to officers holding over their position.

The proposed amendment to §37.350(f)(2) removes duplicative language regarding submitting reports to the Executive Commissioner of HHSC, addressed in §37.350(m).

The proposed amendment to §37.350(f)(3) clarifies that the assistant presiding officer assumes the presiding officer's role in the presiding officer's absence or when the presiding officer is no longer able to serve on the committee.

The proposed amendment to §37.350(f)(4) clarifies that the committee may fill the assistant presiding officer's vacancy by vote. This change is consistent with DSHS and HHSC policies and procedures.

The proposed amendment to §37.350(f)(5) clarifies that a member cannot serve more than two terms as an officer. The amendment removes the word "consecutive" for clarity.

The proposed amendment to §37.350(g)(3) clarifies language to indicate that meetings will be announced and conducted in accordance with Open Meetings Act requirements under Texas Government Code, Chapter 551. This change is consistent with DSHS and HHSC policies and procedures.

The proposed amendment to §37.350(g)(4) replaces "five" with "ten" working days to be consistent with DSHS and HHSC policies and procedures.

The proposed amendment to §37.350(g)(5) clarifies that a simple majority of committee members is considered to be a quorum.

The proposed amendment to §37.350(h)(1) aligns the notification with committee bylaws, as a member must only notify the committee contact at DSHS.

The proposed amendment to §37.350(h)(3) replaces "his/her" with "the member's" for grammatical purposes and removes "representative category" to clarify that the alternate member will serve out the remaining term of the member leaving the committee.

The proposed amendment to §37.350(j)(2) adds language to clarify that committee recommendations must be adopted pursuant to a simple majority vote on a motion duly made and seconded. This change is consistent with DSHS and HHSC policies and procedures. The proposed amendment to subsection (j) also renumbers the remaining paragraphs.

The proposed amendment to §37.350(j)(3) renumbered to (j)(4) removes the language related to the GACPF, as it was abolished in 2017.

The proposed amendment to §37.350(j)(5)(B) renumbered to (j)(6)(B) clarifies that meeting minutes will be posted to DSHS's website within 30 days of approval and signature.

The proposed amendment to §37.350(k)(1) adds language to clarify that the presiding officer may seek volunteers or appoint members to serve on subcommittees.

The proposed amendment to §37.350(l)(1) removes the reference to the "council" for clarity and consistency.

The proposed amendment to §37.350(l)(2) clarifies that committee members may not advocate on behalf of DSHS or HHSC and removes the reference to the "council."

The proposed amendment to §37.350(m) replaces "council" with "commissioner," as the council was abolished. The reports will be submitted to the commissioner of DSHS according to the requirements in DSHS policy. The proposed amendment also clarifies that the committee will post meeting dates, subcommittee dates, meeting minutes, and meeting agendas to the DSHS's website.

The proposed amendment to §37.350(m)(1) - (3) removes the specified reporting requirements as the advisory committee activity reports will be created and submitted per DSHS policy to include meeting dates of the committee and subcommittees (if applicable) and any activities or recommendations of the committee on the annual reporting template.

The proposed amendment to §37.350(n) adds "Texas" for consistency in reference to a statute.

The proposed amendment to §37.350(n)(3) removes this requirement as nonmembers are not allowed to serve on the committee. The amendment to subsection (n) renumbers the remaining paragraphs.

The proposed amendment to §37.350(n)(4) renumbered to (n)(3) clarifies that reimbursement documentation is submitted to DSHS staff and will be processed according to program guidelines. The amendment replaces "staff" with "guidelines" to clarify that guidelines determine allowable expenses. These changes are consistent with DSHS and HHSC policies and procedures.

#### FISCAL NOTE

Donna Sheppard, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect,

enforcing or administering the rule does not have 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 rule will be in effect

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

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

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

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons.

#### PUBLIC BENEFIT AND COSTS

Dr. Manda Hall, Associate Commissioner, has determined that for each year of the first five years the rule is in effect, the public will benefit from adoption of the rule. The public benefit anticipated as a result of enforcing or administering the rule will be the committee's continued ability to make recommendations in supporting a leadership role for DSHS in coordinated school health programs and services for Texas schools. The research and recommendations provided by the committee provide support for local school health advisory councils, school boards, school administrators and school personnel in developing school health programs and services.

Donna Sheppard has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because there are no new costs associated with the proposed amendment.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Anita Wheeler, School Health Coordinator, at (512) 776-7279.

Written comments on the proposal may be submitted to Anita Wheeler, P.O. Box 149347, Austin, Texas 7714-9347; 1100 W. 49th Street, Austin, Texas 78756-3101; or by email to SchoolHealth@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 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 19R012" in the subject line.

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Health and Safety Code, §1001.0711 which requires a rule to establish a committee to provide assistance to DSHS in establishing a leadership role for DSHS in support for and delivery of coordinated school health programs and school health services. This amendment is also authorized by Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS, and for the administration of Texas Health and Safety Code, Chapter 1001.

The amendment affects Texas Government Code §531.0055; Texas Health and Safety Code, Chapter 1001; and Texas Education Code §38.104(c).

§37.350. *Texas School Health Advisory Committee.*

(a) The committee. The Texas School Health Advisory Committee (committee) shall be appointed under and governed by this section. [~~The committee is established under the Health and Safety Code, §11.016, which allows the Health and Human Services Commission (commission) to establish advisory committees.~~]

(b) Applicable law. Texas Government Code, §2110.008, does not apply to a committee created under this section. The committee is subject to the Texas Health and Safety Code, §1001.0711, concerning the School Health Advisory Committee and the Texas Education Code, §38.104(c).

(c) Purpose. The purpose of the committee is to provide assistance [~~to the State Health Services Council (council)]~~ in establishing a leadership role for the Department of State Health Services (department) in support for and delivery of coordinated school health programs and school health services. In addition, the committee is to review the analysis of the required student physical fitness assessment adopted by the Texas Education Agency (TEA) and develop recommendations as outlined in Texas Education Code, §38.104(c).

(d) Composition.

(1) The committee shall be composed of one representative from the Texas Department of Agriculture (TDA), appointed by the Commissioner of Agriculture; one representative from TEA [the Texas Education Agency (TEA)], appointed by the Commissioner of Education; the department's School Health Program Coordinator or other department representative; [~~one representative from the Governor's Advisory Council on Physical Fitness (GACPF), to be designated by the~~]

GACPE;] and 17 members appointed by the Executive Commissioner of the Health and Human Services Commission (commission) which shall consist of:

(A) two individuals representing school superintendents, assistant superintendents, school principals, assistant principals, or [other school administrators; and/or] school district board members;

(B) one registered nurse working in a school as a school nurse or school nurse administrator [with school district or school health administrative nursing experience];

(C) five consumer members who are parents of school-age children with at least one parent of a child with special needs;

(D) one physician, or physician's assistant, or nurse practitioner currently providing health services to school-aged children;

(E) one representative working in a school as a school counselor, school psychologist, school social worker or other school-based mental health professional, [the school setting] with certification in student counseling and guidance or [and/or] safety;

(F) four members representing a nonprofit or not-for-profit entity directly working with schools or school-aged children to support student learning, development, mental health, substance abuse, and health-related activities with no more than one member representing an institution of higher education [four members representing organizations and/or agencies involved with the health of school children];

(G) one representative working in a [the] school as a physical educator or physical education administrator [setting] with certification as a physical educator;

(H) one representative working in a [the] school as a health educator or health education administrator [setting] with certification as a health educator; and

(I) one representative working in the school setting as part of the district's school nutrition program [services].

(2) In [During all phases of the membership selection process, the following information will be regarded with special consideration in] an effort to build a committee reflective of the current Texas population, special consideration will be given to:

(A) race, gender, age, and ethnic diversity;

(B) urban, rural, and suburban diversity; and[;]

(C) a broad statewide geographic representation whenever possible.

(3) Membership appointments shall include one alternate member for each appointed position [category representing a component of comprehensive school health]. The alternate will automatically be appointed as a member if the designated appointee is unable or unwilling to fulfill that role; or, whenever there is a vacancy [in a membership category before the end of a member's term. The appointed alternate will take the place of the member only during the term of office when the vacancy occurred]. The appointed alternate will perform the same duties and have the same privileges as the appointed member in fulfilling the unexpired term.

(e) Terms of office. The term of office of each member shall be four years. Members shall serve after expiration of their term until a replacement is appointed.

(1) Members shall be appointed for staggered terms so that the terms of a substantially equivalent number of members will expire on July 31 of each year.

[(2) If a vacancy occurs before the expiration of a member's term, the most currently appointed alternate for the category where the vacancy has occurred may assume the unexpired portion of that term.]

(2) [(3)] A member whose term is expiring has the option to apply for appointment for one additional term.

(f) Officers. The committee members shall elect a presiding officer and an assistant presiding officer to begin serving a two-year term on August 1 of their term.

(1) Each officer shall serve until July 31 of their two-year term. [Each officer may hold over until the committee members elect his or her replacement.]

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary[, and cause proper reports to be made to the Executive Commissioner of the Health and Human Services Commission]. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall act for the presiding officer during the presiding officer's [his/her] absence and shall assume the office of presiding officer in the event of a vacancy. [When the unexpired term of the presiding officer is less than one-half, the assistant presiding officer shall complete the unexpired term of the presiding officer and the presiding officer will be installed to begin serving a two-year term as presiding officer with all the duties and privileges of the presiding officer as described in paragraph (2) of this subsection.]

(4) If the office of assistant presiding officer becomes vacant, it may be filled [temporarily] by a vote of the committee [until the Executive Commissioner of the Health and Human Services Commission appoints a successor].

(5) A member shall serve no more than two [consecutive] terms as an [presiding] officer [and/or assistant presiding officer].

(6) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(g) Meetings. The committee shall meet at least twice each year.

(1) A meeting may be called by agreement of the department staff and either the presiding officer or at least three members of the committee.

(2) The department shall make meeting arrangements and shall contact committee members to determine availability for a meeting date and place.

(3) Meetings shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551. [The committee is not a "governmental body" as defined in the Open Meetings Act, Government Code, Chapter 551. However, in order to promote public participation, each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.]

(4) Each member of the committee shall be informed of a committee meeting at least ten [five] working days before the meeting.

(5) A simple majority [Ten members] of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with a quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(h) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify ~~[the presiding officer or]~~ appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term, is absent for more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings. If the absences are determined to be reasonable, the member shall remain on the committee.

(3) If a member is removed from the committee before the end of the member's ~~[his/her]~~ term, the alternate appointee for the position ~~[representative category]~~ will serve out the remaining portion of the term.

(4) The validity of an action of the committee is not affected by the fact that it is taken when grounds for removal of a member exist.

(i) Staff. The department shall provide administrative support for the committee.

(j) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any committee action must be approved with a quorum present and by a majority vote or consensus of the members present.

(2) Any committee recommendations must be adopted pursuant to a simple majority vote on a motion duly made and seconded.

~~(3) [(2)]~~ Each member shall have one vote.

~~(4) [(3)]~~ A member may not authorize another individual to represent the member by proxy with the exception of the TDA, TEA, and department representatives appointed by the commissioners of these agencies ~~[and the GACPF representative designated by the GACPF]~~. The commissioners of these agencies ~~[and the GACPF]~~ may appoint alternates to attend and vote.

~~(5) [(4)]~~ The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

~~(6) [(5)]~~ Minutes of each committee meeting shall be taken by the department staff.

(A) After approval by the committee, the minutes shall be signed by the presiding officer.

(B) A copy of the minutes approved by the committee and signed by the presiding officer shall be posted to the department's website at dshs.texas.gov [provided to the council] within 30 days of approval and signature ~~[each meeting]~~. Committee members will receive minutes of each meeting at least five days before [prior to] the following meeting.

(k) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall ask for volunteers and appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. ~~[The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.]~~

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the committee at each of its meetings or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(l) Statement by members.

(1) The commission, ~~[the council,]~~ the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the commission, ~~[council,]~~ department, or committee.

(2) The committee and its members may not participate in legislative or advocacy activities ~~[activity]~~ in the name of the commission, ~~[the council,]~~ the department or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process. The committee will make recommendations per statutory requirements.

(m) Reports to commissioner of the department [council]. The committee shall file an annual written report of the committees' activities to the commissioner according to department policy [council]. The committee shall post the meeting dates of the committee and any subcommittees, meeting agendas, and meeting minutes on the department's website at dshs.texas.gov.

~~[(1) The report shall list the meeting dates of the committee and any subcommittees; the attendance records of its members; a brief description of actions taken by the committee; a description of how the committee has accomplished the tasks given to the committee by the council; the status of any rules which were recommended by the committee to the council and anticipated activities of the committee for the next year.]~~

~~[(2) The report shall identify the costs related to the committee's existence; including the cost of agency staff time spent in support of the committee's activities.]~~

~~[(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the council each June. The presiding officer and appropriate department staff shall sign it.]~~

(n) Reimbursement for expenses. In accordance with the requirements set forth in the Texas Government Code, Chapter 2110, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

(1) No compensatory per diem shall be paid to members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

~~[(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.]~~

(3) [(4)] Each member who is eligible to be reimbursed for expenses shall submit to department staff the member's receipts for allowable expenses as determined by school health program guidelines [staff], and any required official forms not later than 14 days after each committee meeting.

(4) [(5)] Requests for reimbursement of expenses shall be made on official state vouchers prepared by department staff.

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

Filed with the Office of the Secretary of State on August 14, 2020.

TRD-202003367

Barbara L. Klein

General Counsel

Department of State Health Services

Earliest possible date of adoption: September 27, 2020

For further information, please call: (512) 776-7279



## CHAPTER 85. HEALTH AUTHORITIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes the repeal of §85.1, concerning Health Authorities; and proposes new §85.1, concerning Definitions; new §85.3, concerning Health Authorities; and new §85.4, concerning Public Health Data Review Process.

### BACKGROUND AND PURPOSE

The proposal complies with House Bill 3704, 86th Legislature, Regular Session, 2019, which added Texas Health and Safety Code, §1001.089(e). The new law requires DSHS to establish a review process for a local public health entity that requests public health data maintained by DSHS. The review process applies to public health data requests for which there is not an existing agreement to share data. The proposed new rule allows DSHS to enter into an agreement with a local public health entity to share public health data that are necessary to fulfill its essential public health services in compliance with federal and state law.

The proposal also reorganizes the structure of the chapter and defines terms to improve clarity. The proposal also serves as the four-year review of rules in compliance with Texas Government Code, §2001.039.

### SECTION-BY-SECTION SUMMARY

The proposal to Chapter 85 revises the current title of "Health Authorities" to "Local Public Health" to clarify the broader focus of the chapter. The proposal also removes the Subchapter A title because it is reflected in the chapter title.

The proposed repeal of §85.1, Health Authorities, deletes the rule because the rule text is included in a proposed new §85.3.

Proposed new §85.1, Definitions, creates definitions to provide clarity with terminology used in this chapter.

Proposed new §85.3, Health Authorities, incorporates the functions of a health authority from repealed §85.1. Most language from the repealed §85.1 is retained in new §85.3. The terms "health authority," "region," and "regional director" are clarified as definitions in new §85.1.

Proposed new §85.4, Public Health Data Review Process, complies with Texas Health and Safety Code, §1001.089(e). The new rule outlines a data request review process for local health entities seeking public health data from DSHS.

### FISCAL NOTE

Donna Sheppard, 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

DSHS 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 DSHS 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 DSHS;
- (5) the proposed rules will create new rules;
- (6) the proposed rules will repeal an existing rule;
- (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

Donna Sheppard has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules apply to local health entities, and do not apply to small businesses or micro-businesses. The rules are intended to have a positive impact to local health entities across the state, including in rural communities, as the new §85.3 clarifies functions performed by a health authority and the new process outlined in §85.4 is proposed to improve the public health data request process for local health entities.

### 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; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

### PUBLIC BENEFIT AND COSTS

Lara Lamprecht, Assistant Deputy Commissioner of the Department of State Health Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be improved processes for providing timely and accurate public health data to local health entities, which will better inform essential public health services provision and decisions to address community health needs. Responsive services and timely decisions will result in safer and healthier communities.

Donna Sheppard 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. Participation in the data request process outlined in the rule is optional and does not impose any additional costs to those who choose to participate in the process.

#### REGULATORY ANALYSIS

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

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Peter Hajmasy at (512) 776-6537 in the DSHS Center for Health Policy and Performance.

Written comments on the proposal may be submitted to Peter Hajmasy, Director, DSHS Center for Health Policy and Performance, Mail Code 1911, P.O. Box 149347, Austin, Texas 78714-9347; street address 1100 West 49th Street, Austin, Texas 78756; or by email to PublicHealthPolicy@dshtexas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R003" in the subject line.

### SUBCHAPTER A. LOCAL PUBLIC HEALTH

#### 25 TAC §§85.1

##### STATUTORY AUTHORITY

The repeal is authorized by Texas Health and Safety Code, §1001.089(e), which requires DSHS to establish a review process for public health data requests from local health entities; and 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, including by DSHS. Under Texas Health and Safety Code, Chapter 1001, the DSHS Commissioner is authorized to assist the Executive Commission in the development of rules relating to the matters within DSHS jurisdiction. Review of the rules implements Texas Government Code, §2001.039.

The repeal implements Texas Health and Safety Code, Chapter 1001.

##### §85.1. Health Authorities.

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

Filed with the Office of the Secretary of State on August 11, 2020.

TRD-202003306

Barbara L. Klein

General Counsel

Department of State Health Services

Earliest possible date of adoption: September 27, 2020

For further information, please call: (512) 776-6537



### CHAPTER 85. LOCAL PUBLIC HEALTH

#### 25 TAC §§85.1, 85.3, 85.4

##### STATUTORY AUTHORITY

The new sections are authorized by Texas Health and Safety Code, §1001.089(e), which requires DSHS to establish a review process for public health data requests from local health entities; and 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, including by DSHS. Under Texas Health and Safety Code, Chapter 1001, the DSHS Commissioner is authorized to assist the Executive Commission in the development of rules relating to the matters within DSHS jurisdiction. Review of the rules implements Texas Government Code, §2001.039.

The new sections implement Texas Health and Safety Code, Chapter 1001.

##### §85.1. Definitions.

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

- (1) Department--Department of State Health Services.
- (2) Essential public health services--As defined by Texas Health and Safety Code, Chapter 121.
- (3) Health authority--A physician who administers state and local laws relating to public health, appointed under the Local Public Health Reorganization Act, Texas Health and Safety Code, Chapter 121, by the governing body of a city, county, or public health district.
- (4) Local public health entity--A local health unit, local health department, or public health district.
- (5) Public health data--Any data relating to:
  - (A) the health status of people, living or dead;
  - (B) health, including data on the extent and nature of the disease, illness, disability, injury, and other aspects of well-being;
  - (C) environmental, behavioral, occupational, social, and other health hazards; and
  - (D) determinants of health.
- (6) Region--A geographic area in the State of Texas designated by the department.



(7) Regional Director--A physician who is employed by the department and serves as the chief administrative officer of a region.

§85.3. Health Authorities.

(a) A health authority must be appointed in a municipality or county that has established a local health department or public health district.

(1) The director of a local health department or public health district, if the director is a physician, shall be the health authority within the jurisdiction of the local health department or public health district.

(2) If a non-physician serves as the director of a local health department or public health district, the director shall appoint a physician to serve as the health authority within the jurisdiction of such local health department or public health district, subject to the approval of the governing body of the local health department or public health district. No action is required by the department to further approve the appointment.

(b) A health authority may be appointed, but is not required to be appointed, in a municipality or county that has not established a local health department or public health district. The governing body of the municipality or the commissioners court of the county may appoint the health authority within its jurisdiction.

(c) A health authority serves for a term of two years and may be appointed to successive terms.

(d) A regional director of the department shall perform the duties of a health authority when there is no health authority for a municipality, county, public health district, or entity authorized to appoint a health authority in a jurisdiction in the regional director's region.

(e) A regional director of the department may perform some or all of the duties of a health authority, if an appointed health authority fails to perform duties prescribed by the department in this section. At the request of the appointing authority, a regional director may serve as a health authority because of the absence or incapacity of the appointed health authority. No action by the department is necessary to further approve a regional director's performance or service.

(f) A health authority shall perform each duty that is necessary to implement and enforce a law to protect the public health, as stated in the Texas Health and Safety Code, §121.024.

(g) An appointed health authority shall take the official oath required by the Texas Constitution, Article 16, §1, including the statement of appointed officer, and file a copy of the oath and appointment with the appropriate regional office within 10 working days of the date of taking the oath.

(h) If a health authority ceases to hold office for any reason, the appointing authority shall immediately notify the department and appropriate regional director. When a new health authority has been appointed, the person takes the action outlined in subsection (g) of this section and notifies the appropriate regional office of the change.

§85.4. Public Health Data Review Process.

(a) For any public health data request not subject to an existing agreement with the department, the local public health entity submits a request to the department using procedures posted on the department's website.

(b) The local public health entity must provide sufficient information in its data request for the department to determine if the data will be used in the provision of essential public health services.

(c) The department evaluates all requests timely to ensure the requests are processed as expeditiously and consistently as department resources allow.

(d) Requests are evaluated on the following criteria:

(1) the public health benefit and purpose of the request;

(2) the privacy of the individuals whose data is requested;

(3) the management of the data by the requestor, including management of public health data released to the requestor in previous requests; and

(4) other relevant state and federal laws regarding the confidentiality of data.

(e) The department may require the local public health entity to enter into a written agreement before the release of data.

(f) The department notifies a requesting local public health entity in writing of any denied request and the reason for the denial.

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

Filed with the Office of the Secretary of State on August 11, 2020.

TRD-202003307

Barbara L. Klein

General Counsel

Department of State Health Services

Earliest possible date of adoption: September 27, 2020

For further information, please call: (512) 776-6537



## CHAPTER 221. MEAT SAFETY ASSURANCE

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes amendments to §221.1, concerning General Provisions; §221.2, concerning Definitions; §221.3, concerning Registration Requirements, Exemptions, and Procedures; §221.11, concerning Federal Regulations on Meat and Poultry Inspection; §221.12, concerning Meat and Poultry Inspection; §221.14, concerning Custom Exempt Slaughter and Processing; Low-Volume Poultry or Rabbit Slaughter Operations; §221.15, concerning Inspection of Alternate Source Food Animals; the repeal of §221.4, concerning Vehicles, Identification of Vehicles and Vehicle Permit Decals; §221.5, concerning Records; §221.6, concerning Rendering Business Construction, Operational Requirements and Grounds; §221.7, concerning Prohibited Acts; §221.8, concerning Assessment of Administrative Penalties; and §221.9, concerning Denial, Suspension or Revocation of License or Permit and Enforcement Provisions; and new §221.16, concerning Fees.

### BACKGROUND AND PURPOSE

The proposal complies with Senate Bill (S.B.) 202, 84th Legislature, Regular Session, 2015, which amended Texas Health and Safety Code, Chapter 144, relating to the requirements for rendering operations. S.B. 202 repealed Texas Health and Safety Code, §144.021(b), which provided DSHS with the authority to license and implement rules prescribing reasonable and appropriate construction, operational, maintenance, and inspection re-

quirements for facilities engaging in rendering activities. These requirements are being removed from Subchapter A.

The proposal also complies with House Bill (H.B.) 410, 86th Legislature, Regular Session, 2019, which amended Texas Health and Safety Code, Chapter 433, relating to the regulation of certain low-volume poultry and rabbit processing establishments. H.B. 410 exempts low-volume livestock processing establishments that are exempt from federal inspection and that are processing fewer than 500 domestic rabbits in a calendar year from the requirement to register with DSHS and the requirement to develop a sanitary operation procedures plan. For the purposes of requirements for such establishments, H.B. 410 redefines "low-volume livestock processing establishment" as producers that slaughter more than 500 but fewer than 10,000 domestic rabbits or more than 1,000 but fewer than 10,000 poultry, of their own raising each year.

Texas Health and Safety Code, Chapter 433 requires a livestock inspector to be present to perform inspection activities for the slaughtering and processing of livestock for intrastate commerce. A new fee rule is being proposed to revise the overtime rate charged to businesses that choose to conduct more than 40 hours of processing or slaughtering of livestock per week.

The rules are also being revised to comply with Texas Government Code, §2001.039, which requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Chapter 221 has been reviewed, and DSHS has determined that reasons for adopting the sections exist because the rules are needed to administer the program effectively.

#### SECTION-BY-SECTION

Subchapter A concerns Transporting Dead Animals and Rendering.

The proposal removes all references to licensing, updates federal and state law, includes references to registration, updates legacy agency names, and corrects minor grammatical wording throughout the subchapter.

The proposed amendment to §221.1 removes the license requirements for businesses, adds the registration of businesses, and updates the statutory authorities.

The proposed amendment to §221.2 removes the definitions of "Act," "authorized agent," "operating license," and "vehicle permit decal" as these definitions are no longer necessary. The proposed amendment also adds new definitions for "department" and "department representative." The amendment rennumbers the rule due to these changes.

The amendment to §221.3 revises the title of the rule to "Registration Requirements, Exemptions, and Procedures." The amendment updates the registering requirements, exemptions from registering, and procedures for registration. The amendment also removes all references to license or licensing.

The repeal of §§221.4 - 221.9 removes rules that are no longer necessary.

Subchapter B concerns Meat and Poultry Inspection.

The proposal updates federal and state law, updates legacy agency names, and corrects minor grammatical wording throughout the subchapter.

The proposed amendment to §221.11 updates federal laws for meat and poultry inspection, and updates a website for DSHS.

The proposed amendment to §221.12 updates the definitions for "Act," "alternate source food animals," "bison," "buffalo meat," "change in ownership," "Commissioner," "custom exempt operation," "custom processor," "custom slaughterer," "department," "exotic animal," "federal regulations," "feral swine," "game animals," "Grant of Custom Exemption," and "Grant of Inspection." The proposed amendment adds new definitions for "Grant of Voluntary Inspection," "granted establishment," "low-volume livestock operation," "Meat Safety Assurance Section," "Poultry or Rabbit Exemption," "slaughter," and "state director." The proposed amendment also removes the definitions of "director," "grant of poultry/rabbit exemption," and "very low volume poultry/rabbit processing establishments." The amendment updates Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption requirements and adds the meat and poultry establishments and related industries duties for inspection. The proposed amendment removes special fees for inspection services.

The proposed amendment to §221.14 revises the title of the rule to "Custom Exempt Slaughter and Processing; Low-Volume Poultry or Rabbit Slaughter Operations." The proposed amendment also updates the custom slaughter requirements, custom processing requirements, and low-volume poultry or rabbit slaughter operations requirements. The amendment adds a website for Time/Temperature Guidelines for Cooling Heated Products.

The proposed amendment to §221.15 updates a rule reference for fees and handwashing requirements.

New §221.16 adds special fees for inspection services.

#### FISCAL NOTE

Donna Shepperd, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, there will be an estimated increase in revenue to state government as a result of enforcing and administering the rules as proposed.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated increase in revenue of \$59,260 in fiscal year (FY) 2021, \$59,260 in FY 2022, \$59,260 in FY 2023, \$59,260 in FY 2024, and \$59,260 in FY 2025.

Enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of local government.

#### GOVERNMENT GROWTH IMPACT STATEMENT

DSHS 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 DSHS employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will require an increase in fees paid to DSHS;
- (5) the proposed rules will create a new rule;

(6) the proposed rules will repeal existing rules to remove DSHS' licensing authority of rendering operations and modify the low-volume exemption; and

(7) the proposed rules will decrease the number of individuals subject to the rules because low volume poultry and rabbit processors will be exempt from certain state regulations.

DSHS has insufficient information to determine the proposed rules' effect on the state's economy.

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

Donna Shepperd has also determined that there will not be an adverse economic effect on small businesses, micro-businesses, or rural communities.

Small and micro-businesses which choose to conduct more than 40-hours of processing or slaughtering per week would incur an additional cost to reimburse DSHS for all inspection-related activities.

DSHS estimates that the number of small businesses and micro-businesses subject to the proposed rule is 58. The projected economic impact for a small business or micro-business which request overtime inspection would be approximately \$1021.72 per establishment per fiscal year.

DSHS determined that alternative methods to achieve the purpose of the proposed rules for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of consumers of meat and poultry products in Texas.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; the rules are amended to reduce the burden or responsibilities imposed on regulated persons by the rules; and the rules are necessary to implement legislation that does not specially state that §2001.0045 applies to the rule.

#### PUBLIC BENEFIT AND COSTS

Stephen Pahl, Associate Commissioner, Consumer Protection Division, has determined that for each year of the first five years the rules are in effect, the public benefit will be a decrease in regulation by DSHS on low-volume poultry and rabbit establishments and rendering establishments.

Donna Shepperd has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs because any business which chooses to conduct more than 40-hours of processing or slaughtering per week would incur additional costs to reimburse DSHS for all inspection-related activities.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Brandon Rudloff, at (512) 834-4554 in the DSHS PSQA Meat Compliance Unit.

Written comments on the proposal may be submitted to Brandon Rudloff, Department of State Health Services, PSQA Meat Compliance Unit, Mail Code 1987, 8407 Wall Street, Austin, Texas 78754; Exchange Building, 8407 Wall Street, Austin, Texas 78754; or email to [meat.regulatory@dshs.texas.gov](mailto:meat.regulatory@dshs.texas.gov). When emailing comments, please indicate "Comments on Proposed Rule 20R013" in the subject line.

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

## SUBCHAPTER A. TRANSPORTING DEAD ANIMALS AND RENDERING

### 25 TAC §§221.1 - 221.3

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Health and Safety Code, §433.008, which provides that the Executive Commissioner of HHSC shall adopt rules necessary for the efficient execution of this chapter; Texas Health and Safety Code, Chapter 144; and 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, including by DSHS. Under Texas Health and Safety Code, Chapter 1001, the DSHS Commissioner is authorized to assist the Executive Commission in the development of rules relating to the matters within DSHS jurisdiction. The rules are also being revised in compliance with Texas Government Code, §2001.039.

The amendments implement Texas Health and Safety Code, Chapters 144 and 433.

#### §221.1. General Provisions.

(a) This subchapter provides [~~These sections provide~~] for the registration [~~licensing and regulation~~] of rendering businesses; transporters of renderable raw materials and dead animals; and locations where a rendering business is conducted.

(b) The Texas Meat and Poultry Inspection Act, Texas Health and Safety Code, Chapter 433 [~~Texas Renderers' Licensing Act, Health and Safety Code, Chapter 144~~], provides the department with the authority to adopt rules consistent with the chapter as necessary pursuant to the enforcement of this chapter.

(c) No person may cause, suffer, or allow the operation, management, or maintenance of a rendering business or rendering business location without registering with [~~a license issued by~~] the department in accordance with this subchapter [~~these sections~~].

(d) All rendering businesses and rendering business locations shall comply with the minimum standards specified in this subchapter [~~these sections~~] in addition to existing standards contained in Texas Health and Safety Code, Chapter 144 [~~the Texas Renderers' Licensing Act~~] and the Texas Meat and Poultry Inspection Act, Texas Health and Safety Code, Chapter 433, relating to adulteration and misbranding.

(e) Any person who transports renderable raw materials or ~~[and/or]~~ dead animals from any place within this state to any place outside of the borders of this state must be registered with ~~[have a valid rendering business license issued by]~~ the department.

~~[(f) As a condition of licensing, the department may prescribe other responsible and appropriate construction, operational, maintenance and inspection requirements to ensure compliance with this chapter and other applicable rules of the department.]~~

*§221.2. Definitions.*

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

~~[(1) Act--The Texas Renderers' Licensing Act, Texas Health and Safety Code, Chapter 144.]~~

~~[(2) Authorized agent--An employee of the department designated by the commissioner to enforce the Act].~~

~~(1) [(3)] Commissioner--Commissioner of the [Texas] Department of State Health Services [or his successor].~~

~~[(4) Department--The Department of State Health Services.]~~

~~(2) [(5)] Dead animal--The whole or substantially whole carcass of a dead or fallen domestic animal, or domesticated wild animal, that was not slaughtered for human consumption.~~

~~(3) [(6)] Dead animal hauler--A person who collects and disposes of dead animals for commercial purposes.~~

~~(4) Department--The Department of State Health Services~~

~~(5) Department representative--An employee of the department designated by the commissioner to enforce Texas Health and Safety Code, Chapter 144, and the Texas Meat and Poultry Inspection Act, Texas Health and Safety Code, Chapter 433.~~

~~(6) [(7)] Disposal--The burying, burning, cooking, processing, or rendering of dead animals or of renderable raw materials.~~

~~(7) [(8)] Employee--A person who:~~

~~(A) is a legal employee of a rendering establishment; and~~

~~(B) handles or operates rendering equipment, utensils, containers, packaging materials or vehicles, owned or leased by the rendering establishment which are used to transport renderable raw material, recyclable cooking oil and/or waste cooking grease, and dead animals.~~

~~(8) [(9)] Feed grade fats and oils--Those fats or oils which have been obtained from edible fat and oil processing and include fatty acid products that result from the commercial rendering of animal tissues and from the processing of edible vegetables and plants.~~

~~(9) [(10)] Grease trap (brown grease)/grit trap waste--Industrial grade oil as defined in paragraph (10) [(11)] of this section and as such is not suitable for use as animal feed or topical cosmetics.~~

~~(10) [(11)] Industrial grade oil--A product not suitable for use in livestock feeds, and includes:~~

~~(A) tall oils--resinous by-product from the manufacturing of chemical wood pulp;~~

~~(B) by-products which have been used in or derived from nonfood manufacturing processes;~~

(C) salvage or sludge type oils which may consist in part of feed grade material, but which may also contain potential contaminants from a manufacturing process or the environment; and

(D) oils exposed to pesticides, polychlorinated biphenyls (PCBs), industrial chemicals, heavy metals, or other adulterants.

(11) [(12)] Inedible kitchen grease--Any unprocessed or partially processed grease, fat, or oil previously used in the cooking or preparation of food for human consumption and no longer suitable for such use.

(12) [(13)] Nuisance--Any situation or condition that constitutes a nuisance under the Texas Health and Safety Code, §341.011.

~~[(14) Operating license--A valid operating license issued by the department for each of the following:]~~

~~[(A) a rendering establishment;]~~

~~[(B) a related station;]~~

~~[(C) a transfer station;]~~

~~[(D) a renderable raw material hauler;]~~

~~[(E) a dead animal hauler; or]~~

~~[(F) a combination dead animal and renderable raw material hauler.]~~

(13) [(15)] Person--An individual, firm, partnership, association, corporation, trust, company, or organization, and includes an agent, officer, or employee of that individual or entity.

(14) [(16)] Pests--Any objectionable animal or insect, including[, but not limited to:] rodents, flies, larvae, and birds.

(15) [(17)] Processing--An operation or combination of operations through which materials derived from a dead animal or renderable raw material sources are:

(A) prepared for disposal at a rendering establishment;

(B) stored; or

(C) treated for commercial use or disposition, other than as food for human consumption.

(16) [(18)] Recyclable cooking oil--Any unprocessed or partially processed grease, fat, or oil previously used in the cooking or preparation of food for human consumption and intended for recycling by being used or reused as:

(A) an ingredient in a process to make a product; or

(B) an effective substitute for a commercial product.

(17) [(19)] Related station--An operation or facility that is necessary, useful, or incidental to the operation of a rendering establishment and that is operated or maintained separately from the rendering establishment.

(18) [(20)] Rendering business--The collection, transportation, disposal, or storage of dead animals or renderable raw materials for commercial purposes at locations where dead animals or renderable raw materials are rendered, boiled, processed, stored, transferred, or otherwise prepared, either as a separate business or in connection with any other established business.

(19) [(21)] Rendering establishment--An establishment or part of an establishment, a plant, or any other premise ~~[premises]~~ at which dead animals or renderable raw materials are rendered, boiled, processed, or otherwise prepared to obtain a product for commercial

use or disposition, other than as food for human consumption. The term includes all other operations and facilities that are necessary or incidental to the establishment.

(20) [(22)] Renderable raw material--Any unprocessed or partially processed material of animal or plant origin, other than a dead animal, that is to be processed by rendering establishments. The term includes:

(A) animals, poultry, or fish slaughtered or processed for human consumption but that are unsuitable for that use;

(B) the inedible products and by-products of animals, poultry, or fish slaughtered or processed for human consumption;

(C) parts from dead animals;

(D) whole or partial carcasses of dead poultry or fish;

(E) waste cooking greases; and

(F) recyclable cooking oil.

(21) [(23)] Renderable raw material hauler--A person who collects or transports renderable raw materials for commercial purposes.

(22) [(24)] Renderable raw material hauling vehicle--Any motorized vehicle or detachable trailer used in the collection, receipt, transportation, delivery, transfer, or storage of renderable raw materials for commercial purposes.

(23) [(25)] Transfer station--A facility at which renderable raw materials are transferred from one conveyance to another.

[(26) Vehicle permit decal--A valid registration decal issued by the department.]

(24) [(27)] Waste cooking grease--Any unprocessed or partially processed grease, fat, or oil previously used in the cooking or preparation of food for human consumption and no longer suitable for such use, also defined as inedible kitchen grease.

(25) [(28)] Waste cooking grease hauler--Any person who collects, receives, transports, delivers, transfers, or stores incidental to such activities renderable raw material for commercial purposes, whether or not such person is required to register with the department [obtain a renderable raw material hauler license].

*§221.3. Registration [Licensing] Requirements, [Construction Permit Requirements,] Exemptions, [Fees] and Procedures.*

(a) Registering [Licensing] requirements. All rendering businesses, renderable raw material haulers and [and/or] dead animal haulers shall register with the department [obtain a license] unless an exemption applies in subsection (b) [(e)] of this section. [Licenses are issued for a one or two-year term as determined by the department.] A registration [separate license] is required for each business and [and/or] place of business operated as a:

(1) rendering establishment;

(2) related station;

(3) transfer station;

(4) renderable raw material hauler;

(5) dead animal hauler; or

(6) combination dead animal and renderable raw material hauler.

[(b) Construction permit requirements. A person shall, prior to construction, obtain a construction permit (except as provided by the Act, §144.042) to construct a new rendering business or initiate con-

struction involving replacement, addition, renovations or expansion of a rendering business as a:]

[(1) rendering establishment;]

[(2) related station; or]

[(3) transfer station.]

(b) [(e)] Exemptions from registering [licensing] requirements. Rendering business registering [licensing] requirements do not apply to the following:

(1) a person who slaughters, butchers, manufactures, or sells animal flesh or products only for use as food for human consumption, unless the person also performs rendering operations or processes as defined in this subchapter;

(2) a person who transports or disposes of the bodies of animals slaughtered for use as food for human consumption or the products of these bodies only for that purpose;

(3) an individual who disposes of the individual's own animal; or

(4) a governmental agency that collects, transports, or disposes of dead animals and renderable raw materials.

(c) Procedures for registration. To register as a rendering business, renderable raw material hauler or dead animal hauler, a person shall complete department registration forms, which can be obtained from the Department of State Health Services, Meat Safety Assurance Section. A rendering business, renderable raw material hauler or dead animal hauler must register with the department before accepting any renderable raw material.

[(d) Exemption from construction permit requirements. A construction permit fee is not required if the following conditions are met:]

[(1) The construction of a new rendering business is less than \$10,000;]

[(2) The construction at a licensed rendering business is less than \$10,000;]

[(e) The construction and layout requirements established under the Act applies to the construction.]

[(f) The department may prescribe other reasonable and appropriate construction, operational, and maintenance requirements to ensure compliance with the Act and rules of this chapter.]

(g) License fee. All rendering businesses, renderable raw material haulers and/or dead animal haulers operating in Texas shall obtain a license and pay a licensing fee for each business operated as follows:]

[(1) for each rendering establishment having gross annual sales not exceeding \$100,000:]

[(A) \$350 for a one-year license; or]

[(B) \$700 for a two-year license.]

[(2) for each rendering establishment having gross annual sales exceeding \$100,000 but not more than \$200,000:]

[(A) \$500 for a one-year license; or]

[(B) \$1,000 for a two-year license.]

[(3) for each rendering establishment having gross annual sales exceeding \$200,000 but not more than \$500,000:]

[(A) \$750 for a one-year license; or]

[(B) \$1,500 for a two-year license;]

[(4) for each rendering establishment having gross annual sales exceeding \$500,000 but not more than \$1 million;]

[(A) \$1,000 for a one-year license; or]

[(B) \$2,000 for a two-year license;]

[(5) for each rendering establishment having gross annual sales exceeding \$1 million;]

[(A) \$1,500 for a one-year license; or]

[(B) \$3,000 for a two-year license;]

[(6) for each related station license;]

[(A) \$400 for a one-year license; or]

[(B) \$800 for a two-year license;]

[(7) for each transfer station license;]

[(A) \$400 for a one-year license; or]

[(B) \$800 for a two-year license;]

[(8) for each dead animal hauler license;]

[(A) \$250 for a one-year license; or]

[(B) \$500 for a two-year license;]

[(9) for each renderable raw material hauler license;]

[(A) \$250 for a one-year license; or]

[(B) \$500 for a two-year license; and]

[(10) for each combination dead animal and renderable raw material hauler license;]

[(A) \$250 for a one-year license; or]

[(B) \$500 for a two-year license;]

[(h) Vehicle permit decal fee. Except as exempted under subsection (e) of this section, a renderable raw material and/or dead animal hauling vehicle shall not be allowed to collect and transport dead animals or renderable raw materials unless such vehicle displays a decal as prescribed by the department. A vehicle permit decal will be issued for a one or two-year term as determined by the department. The fees are as follows:]

[(1) \$25 for a one-year vehicle permit decal; or]

[(2) \$50 for a two-year vehicle permit decal;]

[(i) Construction permit fee. An application for a construction permit must be accompanied by a fee payable to the department and will be based on the dollar value of construction cost as listed in this paragraph. The applicant must provide validated information and any other information required by the department to verify the construction cost. If construction cost is:]

[(1) Less than \$10,000, then there is no permit fee required;]

[(2) \$10,000-\$49,999, the fee is \$250;]

[(3) \$50,000-\$99,999, the fee is \$500;]

[(4) \$100,000-\$249,999, the fee is \$1,000;]

[(5) \$250,000-\$499,999, the fee is \$1,500; and]

[(6) \$500,000 and over, the fee is \$2,500;]

[(j) License forms. License forms may be obtained by mail from the Meat Safety Assurance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3182, or from the Bureau of Food and Drug Safety website at <http://www.tdh.state.tx.us/bfds/lic/apps.html>.]

[(k) License applications and construction permits. A license or construction permit application for each rendering business, renderable raw material hauler and/or dead animal hauler shall be signed by the applicant and notarized, shall be made on the license application furnished by the department, shall be completed in its entirety, and shall be submitted with the license or construction permit fee.]

[(l) Issuance of license. The department may issue a license to the owner of a rendering business, renderable raw material hauler, and/or dead animal hauler after determining that the application is complete and the applicant is in compliance with the Act and rules in this chapter.]

[(1) A rendering business, renderable raw material hauler and/or dead animal hauler operating license is not prorated. The license is valid from the date of issuance until 12:00 midnight, December 31 of the calendar year in which the license was issued for a one-year license, and December 31 of the following calendar year for a two-year license.]

[(2) The license shall be displayed in a prominent place at the physical rendering business location.]

[(3) A photocopy of the license should be placed in each rendering business vehicle used to collect dead animals and/or renderable raw material.]

[(m) Renewal of license—applicable to all operations subject to the Act.]

[(1) A license holder shall renew a license in accordance with the requirements of this subsection.]

[(2) The license holder shall renew the license by filing an application for renewal on the form prescribed by the department accompanied by the required licensing fee set by the department. A licensee must file for renewal before the expiration date of the current license.]

[(3) If the renewal fee is not paid before the expiration of the 15th day after the date on which written notice of delinquency is provided to the license holder by the department, the license expires.]

[(4) If an operating license expires, a new application for an operating license must be submitted along with the appropriate fee.]

[(5) Failure to submit the renewal application may subject the rendering business to the enforcement provision of this chapter, §221.8 (relating to Assessment of Administrative Penalties) and §221.9 (relating to Denial, Suspension, or Revocation of License or Permit and Enforcement Provisions.)]

[(6) Falsification of an application will be grounds for denial or revocation of a license.]

[(n) Transferability of license. A rendering business license is not transferable.]

[(o) All license/permit fees paid under this section are non-refundable.]

[(p) A current license/permit shall only be issued when all past due fees are paid.]

[(q) Texas Online. Applicants may submit applications and renewal applications for a license under these sections electronically by the Internet through Texas Online at [www.texasonline.state.tx.us](http://www.texasonline.state.tx.us).

The department is authorized to collect fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application process through Texas Online.}]

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

Filed with the Office of the Secretary of State on August 11, 2020.

TRD-202003308

Barbara L. Klein

General Counsel

Department of State Health Services

Earliest possible date of adoption: September 27, 2020

For further information, please call: (512) 834-4554



## 25 TAC §§221.4 - 221.9

### STATUTORY AUTHORITY

The repeals are authorized by Texas Health and Safety Code, §433.008, which provides that the Executive Commissioner of HHSC shall adopt rules necessary for the efficient execution of this chapter; Texas Health and Safety Code, Chapter 144; and 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, including by DSHS. Under Texas Health and Safety Code, Chapter 1001, the DSHS Commissioner is authorized to assist the Executive Commission in the development of rules relating to the matters within DSHS jurisdiction. The rules are also being revised in compliance with Texas Government Code, §2001.039.

The repeals implement Texas Health and Safety Code, Chapters 144 and 433.

§221.4. *Vehicles, Identification of Vehicles and Vehicle Permit Decals.*

§221.5. *Records.*

§221.6. *Rendering Business Construction, Operational Requirements and Grounds.*

§221.7. *Prohibited Acts.*

§221.8. *Assessment of Administrative Penalties.*

§221.9. *Denial, Suspension or Revocation of License or Permit and Enforcement Provisions.*

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

Filed with the Office of the Secretary of State on August 14, 2020.

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Barbara L. Klein

General Counsel

Department of State Health Services

Earliest possible date of adoption: September 27, 2020

For further information, please call: (512) 834-4554



## SUBCHAPTER B. MEAT AND POULTRY INSPECTION

### 25 TAC §§221.11, 221.12, 221.14 - 221.16

### STATUTORY AUTHORITY

The amendments and new section are authorized by Texas Health and Safety Code, §433.008, which provides that the Executive Commissioner of HHSC shall adopt rules necessary for the efficient execution of this chapter; Texas Health and Safety Code, Chapter 144; and 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, including by DSHS. Under Texas Health and Safety Code, Chapter 1001, the DSHS Commissioner is authorized to assist the Executive Commission in the development of rules relating to the matters within DSHS jurisdiction. The rules are also being revised in compliance with Texas Government Code, §2001.039.

The amendments and new section implement Texas Health and Safety Code, Chapters 144 and 433.

§221.11. *Federal Regulations on Meat and Poultry Inspection.*

(a) The department adopts by reference the following federal regulations in the Code of Federal Regulations (CFR), as amended:

(1) 9 CFR, Part 301, Terminology; Adulteration and Misbranding Standards;

(2) 9 CFR, Part 303, Exemptions, except §303.1(a) [~~303.1(a)~~] and (b), [~~Exemptions~~];

(3) 9 CFR, Part 304, Application for Inspection; Grant of Inspection;

(4) 9 CFR, Part 305, Official Numbers; Inauguration of Inspection; Withdrawal of Inspection; Reports of Violation;

(5) 9 CFR, Part 306, Assignment and Authorities of Program Employees;

(6) 9 CFR, Part 307, Facilities for Inspection;

(7) 9 CFR, Part 309, Ante-Mortem Inspection;

(8) 9 CFR, Part 310, Post-Mortem Inspection;

(9) 9 CFR, Part 311, Disposal of Diseased or Otherwise Adulterated Carcasses and Parts;

(10) 9 CFR, Part 312, Official Marks, Devices[,] and Certificates;

(11) 9 CFR, Part 313, Humane Slaughter of Livestock;

(12) 9 CFR, Part 314, Handling and Disposal of Condemned or Other Inedible Products at Official Establishments;

(13) 9 CFR, Part 315, Rendering or Other Disposal of Carcasses and Parts Passed for Cooking;

(14) 9 CFR, Part 316, Marking Products and Their Containers;

(15) 9 CFR, Part 317, Labeling, Marking Devices, and Containers;

(16) 9 CFR, Part 318, Entry into Official Establishments; Reinspection and Preparation of Products;

(17) 9 CFR, Part 319, Definitions and Standards of Identity or Composition. The following requirements shall apply except in the case of restaurant menus and signs.

(A) The label of products prepared from bison meat must contain the words "bison meat," "North American bison meat," or "Native American bison meat."

(B) The label of products prepared from buffalo meat must contain the words "water buffalo meat," or "Asian buffalo meat."

- (18) 9 CFR, Part 320, Records, Registration, and Reports;
- (19) 9 CFR, Part 321, Cooperation with States and Territories;
- (20) 9 CFR, Part 322, Exports;
- (21) 9 CFR, Part 325, Transportation;
- (22) 9 CFR, Part 327, Imported Products;
- (23) 9 CFR, Part 329, Detention; Seizure and Condemnation; Criminal Offenses;
- (24) 9 CFR, Part 331, Special Provisions for Designated States and Territories; and for Designation of Establishments Which Endanger Public Health and for Such Designated Establishments;
- (25) 9 CFR, Part 335, Rules of Practice Governing Proceedings under the Federal Meat Inspection Act;
- (26) 9 CFR, Part 350, Special Services Relating to Meat and Other Products;
- (27) 9 CFR, Part 352, Exotic Animals and Horses; Voluntary Inspection;
- (28) 9 CFR, Part 354, Voluntary Inspection of Rabbits and Edible Products Thereof;
- (29) 9 CFR, Part 355, Certified Products for Dogs, Cats, and Other Carnivora; Inspection, Certification, and Identification as to Class, Quality, Quantity, and Condition;
- (30) 9 CFR, Part 362, Voluntary Poultry Inspection Regulations;
- (31) 9 CFR, Part 381, Poultry Products Inspection Regulations ~~[Regulation]~~, except §381.10(a)(3) through §381.10(c);
- (32) 9 CFR, Part 416, Sanitation;
- (33) 9 CFR, Part 417, Hazard Analysis and Critical Control Point (HACCP) Systems;
- (34) 9 CFR, Part 418, Recalls;
- (35) 9 CFR, Part 424, Preparation and Processing Operations;
- (36) 9 CFR, Part 430, Requirements for Specific Classes of Product;
- (37) 9 CFR, Part 441, Consumer Protection Standards: Raw Products; ~~[and]~~
- (38) 9 CFR, Part 442, Quantity of Contents Labeling and Procedures and Requirements for Accurate Weights; ~~and~~
- (39) 9 CFR, Part 500, Rules of Practice.

(b) Copies of these regulations are available via the Internet at <https://www.dshs.texas.gov/meat/laws-rules.aspx> [<http://www.dshs.state.tx.us/msa/>].

#### §221.12. Meat and Poultry Inspection.

(a) Introduction. The purpose of this subchapter ~~[section]~~ is to protect the public health by establishing uniform rules to assure that meat and poultry products are clean, wholesome and truthfully labeled.

(b) Definitions. The following words and terms, when used in this subchapter ~~[these sections]~~, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--The Texas Meat and Poultry Inspection Act, Texas Health and Safety Code, Chapter 433 [~~Civil Statutes, Article 4476-7~~].

(2) Adulterated--A carcass, part of a carcass, or a meat food product where:

(A) any part of it is the product of an animal that has died in a manner other than by slaughter;

(B) any part of it consists of a filthy, putrid, or decomposed substance or is for another reason unsound, unhealthy, unwholesome, or otherwise unfit for human food; or

(C) it contains, because of administration of any substance to a live animal or otherwise, an added poison or harmful substance that makes the carcass, part of the carcass, or meat food unfit for human food.

(3) Alternate source food animals--Animals slaughtered and processed for food that are amenable to inspection under the ~~[Texas Meat and Poultry Inspection]~~ Act but are not amenable to inspection under the Federal Meat Inspection Act (21 U.S.C §601 et seq.) or Federal Poultry Products Inspection Act (21 U.S.C. §451 et seq.) ~~[federal meat and poultry inspection acts]~~.

(4) Bison--An animal known by the scientific name *Bovidae bison bison*, commonly known as the North American prairie bison; or an animal known by the scientific name *Bovidae bison athabascæ*, commonly known as the Canadian ~~wood~~ ~~[woods]~~ bison.

(5) Bison meat--The meat or flesh of a bison.

(6) Buffalo--An animal known by the scientific name *Bovidae bubalus bubalus*, commonly known as the Asian Indian buffalo, water buffalo, or caraboa; an animal known by the scientific name *Bovidae syncerus caffer*, commonly known as the African buffalo or the Cape buffalo; an animal known by the scientific name *Bovidae anoa depressicornis*, commonly known as the Celebes buffalo; or an animal known by the scientific name *Bovidae anoa mindorensis*, commonly known as the Philippine buffalo or Mindoro buffalo.

(7) Buffalo meat--The ~~carcass, part of the carcass, or meat food product made in whole or part of a buffalo~~ ~~[meat or flesh of a buffalo]~~.

(8) Change in ownership--

(A) A change in the business organization operating the business which changes the legal entity responsible for operation of the business; or

(B) any change in control of the business. ~~[; or]~~

~~[(C) any change in ownership of the business which requires a reapplication to the Texas Department of Health for a grant of inspection and/or custom exemption to operate.]~~

(9) Commissioner--Commissioner of the Department of State Health Services ~~[or his successor]~~. For the purposes of this subchapter, the ~~[The]~~ term Secretary, ~~[secretary]~~ when used in 9 CFR, ~~[for the purposes of this subchapter,]~~ shall mean commissioner.

(10) Custom exempt operation ~~[operations]~~--The slaughtering of livestock or the processing of an uninspected carcass or parts thereof for the owner of that livestock animal, carcass, or parts, a member of the owner's household, or a nonpaying guest of the owner in accordance with Texas Health and Safety Code, §433.006; or the selling of livestock to be slaughtered and processed by the purchaser on premises owned or operated by the seller for the exclusive use of the purchaser, a member of the owner's household, or a nonpaying guest of the owner in accordance with Texas Health and Safety Code, §433.006.



(11) Custom processor--A person who prepares meat food products from uninspected livestock carcasses or parts thereof for the owner of those carcasses or parts for the exclusive use of the owner, a member of the owner's household, or a nonpaying guest of the owner in accordance with Texas Health and Safety Code, §433.006.

(12) Custom slaughterer--A person who slaughters livestock for the owner of the livestock animal for the exclusive use of the owner of the livestock or sells livestock to be slaughtered by the purchaser on premises owned or operated by the seller, for the exclusive use of the purchaser of the livestock, a member of the purchaser's (owner's) household, or a nonpaying guest of the purchaser (owner) in accordance with Texas Health and Safety Code, §433.006. Custom slaughter includes all activities related to slaughter, including restraining of livestock, cleaning or preparing any equipment used for slaughter such as tools and knives, and cleaning and preparing the slaughter facility.

(13) Department--The Department of State Health Services. For the purposes of this subchapter, the term United States Department of Agriculture, when used in federal regulations adopted by reference by the department in §221.11 of this title (relating to Federal Regulations on Meat and Poultry Inspection), shall mean the department.

((14) Director--Meat Safety Assurance Unit Director or his successor. The term Administrator, when used in 9 CFR, Parts 301-417, for the purpose of this section, shall mean director.]

(14) [(15)] Exotic animal--A member of a species of game not indigenous to this state, including [an] axis deer, nilgai antelope, or other cloven hoofed ruminant animal.

(15) [(16)] Federal regulations--The regulations adopted by reference by the department in §221.11 of this title [(relating to Federal Regulations on Meat and Poultry Inspection)].

(16) [(17)] Feral swine--Nondomestic descendants of domestic swine that have either escaped or were released and subsequently developed survival skills necessary to thrive in the wild. Some feral swine are outcrossed [out-crossed] with "Russian boar." Feral swine are subject to the same regulations as domestic swine.

(17) [(18)] Game animals--Wild animals that are indigenous to this state, not amenable to the Act, [hunted for food or recreational purposes and] for which the hunter must obtain a hunting license from the Texas Parks and Wildlife Department before [prior to] hunting animals, such [animals] as white-tailed deer, mule deer, pronghorn antelope, and big horn sheep.

(18) [(19)] Grant of Custom Exemption [eustom exemption]--An authorization from the department to engage in a business of custom slaughtering or [and/or] processing livestock for the owner of the livestock. This exemption includes the exclusive use of the owner, a member of the owner's household, or a nonpaying guest of the owner, in accordance with Texas Health and Safety Code, §433.006, provided that the following conditions are met: [for the owner's personal use:]

(A) the establishment slaughters only sound, healthy livestock and conducts all processing and handling under sanitary standards and procedures resulting in meat products that are not adulterated;

(B) the product meets the marking and labeling requirements as specified in §221.14 of this title (relating to Custom Exempt Slaughter and Processing; Low-Volume Poultry or Rabbit Slaughter Operations); and

(C) the establishment maintains records as specified in §221.14 of this title.

(19) [(20)] Grant of Inspection [inspection]--An authorization issued by the department to engage in a business subject to inspection under the Act.

(20) Grant of Voluntary Inspection--An authorization from the department to engage in a business subject to inspection of alternate source food animals under the Act.

(21) Granted establishment--Any establishment with a Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption.

((21) Grant of poultry/rabbit exemption--An authorization from the department for a person to engage in a very low volume business of slaughtering and processing poultry or rabbits of his/her own raising on his/her own property and personally distributing the carcasses and/or parts, to retail consumers, restaurants, or other retail establishments, provided that the following conditions are met:]

((A) the person slaughters less than 10,000 poultry, rabbits, or a combination thereof, in a calendar year;]

((B) the person does not buy and sell other poultry or rabbit products (except live chicks, baby rabbits, and/or breeding stock);]

((C) only sound, healthy poultry or rabbits are slaughtered and all processes and handling are conducted under sanitary standards and procedures resulting in poultry and rabbit products that are not adulterated;]

((D) the product bears the processor's name and address and the statement "Exempted P.L. 90-492"; (unless immediately sold to the household consumer); and]

((E) the poultry is not a ratite.])

(22) Heat-treated--Meat or poultry products that are ready-to-eat or have the appearance of being ready-to-eat because they received heat processing.

(23) Livestock--Cattle, sheep, swine, goats, horses, mules, other equines, poultry, domestic rabbits, exotic animals, or domesticated game birds.

(24) Low-volume livestock operation--For purposes of this subchapter, a low-volume livestock operation includes an establishment that processes fewer than 10,000 domestic rabbits or more than 1,000 but fewer than 10,000 poultry in a calendar year, but does not include an establishment that processes 1,000 or fewer poultry raised by the operator of the establishment in a calendar year, or processes fewer than 500 domestic rabbits in a calendar year.

(25) Meat Safety Assurance Section--The organization overseen by the state director, within the Department of State Health Services, responsible for meat safety in granted establishments in Texas. For the purposes of this subchapter, the term Food Safety and Inspection Service (FSIS), when used in federal regulations adopted by reference by the department in §221.11 of this title, shall mean Meat Safety Assurance Section.

(26) [(24)] Person--Any individual, partnership, association, corporation, or unincorporated business organization.

(27) [(25)] Poultry--A live or dead domesticated bird.

(28) Poultry or Rabbit Exemption--Registration with the department for a person to engage in a low-volume livestock operation of slaughtering and processing poultry, rabbits, or both of their own raising on their own property and personally distributing the carcasses and parts to retail consumers, restaurants, or other retail establishments, provided that the following conditions are met:

(A) the person slaughters more than 500 but fewer than 10,000 domestic rabbits and/or more than 1,000 but fewer than 10,000 poultry in a calendar year, January 1 through December 31 inclusive;

(B) the person does not buy or sell other poultry or rabbit products (except live chicks, baby rabbits, and/or breeding stock);

(C) the person slaughters only sound, healthy poultry or rabbits and conducts all processes and handling under sanitary standards and procedures resulting in poultry or rabbit products that are not adulterated;

(D) the product meets the marking and labeling requirements as specified in §221.14(c)(4) of this title;

(E) the poultry is not a ratite.

(29) [(26)] Ratite--Poultry such as ostrich, emus, or rhea.

(30) Slaughter--Methods of humane death, for the purpose of food, under sanitary conditions.

(31) State director--For the purposes of this subchapter, the term administrator, when used in federal regulations adopted by reference by the department in §221.11 of this title, shall mean state director.

[(27) Very low volume poultry/rabbit processing establishments--Producers that slaughter less than 10,000 poultry, rabbits, or a combination thereof, of their own raising each year.]

(c) Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption [Grant of inspection, custom exemption, and/or poultry/rabbit exemption.]

(1) Basic requirements.

(A) A person shall not engage in a business subject to the Act unless that person has met the standards established by the Act, the federal regulations as adopted by the department, and this subchapter [these sections], and has obtained the appropriate Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption [grant of inspection, custom exemption, and/or poultry/rabbit exemption] issued by the department.

(B) A person shall not engage in custom operations unless that person has met the standards established by the Act, the federal regulations, and this subchapter [these sections], and has obtained a Grant of Custom Exemption [grant of custom exemption] issued by the department.

(C) A person shall not engage in exempted poultry or rabbit slaughter and processing operations unless that person has met the standards established by the Act, the federal regulations, and this subchapter [these sections], and has registered with the department, if required [obtained a grant of poultry/rabbit exemption issued by the department].

(D) A person shall not engage in alternate food source livestock slaughter and processing operations unless that person has met the standards established by the Act, the federal regulations, and this subchapter, and has obtained a Grant of Voluntary Inspection issued by the department.

(E) The establishment shall display the Grant of Inspection, Grant of Voluntary Inspection, and Grant of Custom Exemption in a prominent place at the physical business location, easily visible to the public.

(2) Application. [To apply for a grant of inspection, custom exemption, and/or poultry/rabbit exemption, a person shall complete department application forms which can be obtained from the

Meat Safety Assurance Unit, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756.]

(A) To apply for a Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption, a person shall complete department application forms, which can be obtained from the Department of State Health Services, Meat Safety Assurance Section.

(B) Upon submission of an application for a Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption, the applicant must prove that the establishment meets all regulatory requirements for the grant.

(C) The department shall conduct an inspection to verify whether the establishment meets all regulatory requirements for the grant and shall notify the applicant of the results of the inspection within 45 working days of receiving a complete and accurate application.

(i) If the establishment meets all regulatory requirements on the date of inspection, the department will provide the applicant with the appropriate grant.

(ii) If the establishment does not meet all regulatory requirements on the date of inspection, the department will provide the applicant with a listing of the regulatory requirements that the establishment failed to meet. In this case, the applicant may reapply when the applicant is ready to support that the establishment meets all regulatory requirements for the grant.

(3) Duration. The applicant who has complied with the standards in the Act, the federal regulations, and this subchapter [these sections] will receive a Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption [grant of inspection, custom exemption, and/or poultry/rabbit exemption] for an indefinite period subject to the denial, suspension, and revocation provisions in paragraph (6) of this subsection.

(4) Non-transferable [Nontransferability]. A Grant of Inspection, Grant of Voluntary Inspection, and Grant of Custom Exemption [grant of inspection, custom exemption, and/or poultry/rabbit exemption] is not transferable to another person.

(5) Change of ownership. Any person operating a business under a Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption [grant of inspection, custom exemption, and/or poultry/rabbit exemption] from the department shall notify the department of any change in ownership of that business and, in such event, shall relinquish the current grant to the department. The new owner shall make application for a new grant on forms provided by the department. This notification and application shall be made before [prior to] the ownership change.

(6) Denial, suspension and revocation.

(A) The department may deny a Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption [grant of inspection, custom exemption, and/or poultry/rabbit exemption] to any applicant who does not comply with the standards of the Act, the federal regulations, and this subchapter [these sections].

(B) The department may suspend or revoke a Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption [grant of inspection, custom exemption, and/or poultry/rabbit exemption] of any person who violates the standards of the Act, the federal regulations, and this subchapter [these sections].

(C) The department may suspend a Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption if an establishment is inactive for a period in excess of 30 calendar days.

(D) An establishment, where a grant has been suspended, shall undergo reinspection before reinstatement of the grant.

(E) [(C)] A person whose grant has been denied, suspended, or revoked is entitled to an opportunity for a formal hearing in accordance with §§1.21, 1.23, 1.25, and 1.27 [§§1.21 -1.34] of this title (relating to Formal Hearing Procedures.)

(7) Meat and poultry establishments and related industries.

(A) For the purpose of conducting an inspection or performing any other inspection program duty, the department representatives must have access to the premises and to every part of an establishment that slaughters livestock or otherwise prepares or processes meat or poultry products subject to inspection, at all times, day or night, whether the establishment is being operated. The numbered official badge of a department representative is sufficient identification to entitle the representative to admittance to all parts of such an establishment and its premises.

(B) At all reasonable hours, any person subject to record keeping requirements under the Act or this chapter (whether holding or not holding a Grant of Inspection or exemption therefrom) must permit a department representative upon presentation of credentials, to enter the place of business to examine the facilities and inventory and to examine and copy the records specified in this chapter.

[(d) Special fees for inspection services.]

[(1) Scope and purpose. Fees shall be charged by the department for inspection services provided on a holiday or on an overtime basis, and/or for products which do not require inspection by state or federal law.]

[(2) Overtime and holiday rate. The overtime and holiday rate for inspection services provided pursuant to Health and Safety Code, Chapter 433, §433.009, shall be \$29.50 per hour, per program employee.]

[(3) Rate for inspections not required by state or federal meat and poultry inspection laws. The rate for inspections not required by state or federal meat and poultry inspection laws provided pursuant to Health and Safety Code, Chapter 433, §433.009, shall be \$29.50 per hour, per program employee.]

§221.14. Custom Exempt Slaughter and Processing; Low-Volume Poultry or Rabbit [Very Low Volume Poultry/Rabbit] Slaughter Operations.

(a) Custom slaughter requirements. The requirements of this section shall apply to the custom slaughter by any person of livestock, as defined in §221.12(b) of this title (relating to Meat and Poultry Inspection), delivered by or for the owner thereof for such slaughter, not for sale to the public and for the exclusive use of the owner, a member of the owner's household, or a nonpaying guest of the owner [exclusively for use, in the household of such owner, by him and members of his household and nonpaying guests]. The requirements of this section do not apply to hunter killed game animals, as defined in §221.12(b) of this title. The requirements of this section do not apply to processing of hunter killed exotic animals, or hunter killed feral swine, as defined in §221.12(b) of this title, provided persons engaged in such processing do not utilize the same facilities to engage in the receipt, storage, processing, or distribution of other meat and/or poultry food products.

(1) Animals for slaughter. [No adulterated animals as defined in §221.12(b)(2) of this title shall be accepted for custom slaughter.] Only healthy animals, exhibiting no abnormalities, may be accepted for custom slaughter at custom slaughter establishments. Unhealthy or unsound animals are those that exhibit any condition that is

not normally expected to be exhibited in a healthy and sound member of that species.

(A) Examples of abnormal or unsound animals include[, but are not limited to,] animals that are not able to get up, or animals that have a missing or abnormal eye, swellings, rectal or vaginal prolapse, ocular or nasal discharge, a cough, or a limp.

(B) Animals that have an obviously recent break of the lower leg (below the stifle or elbow) and are able to walk and stand are not considered to be unsound or unhealthy if no other abnormal conditions are noted.

(2) Record keeping.

(A) Operators of facilities conducting custom slaughter shall keep records for a period of two years, beginning on January 1 of the previous year plus the current year to date.

(B) The records shall be available to department representatives on request.

(C) Custom slaughter records shall contain the name, address, and telephone number of the owner of each animal presented, the date the animal was slaughtered, the species and brief description of the livestock. If a custom processor accepts farm slaughtered animals for custom processing, records shall contain a signed statement from the animal owner that the animal was healthy and exhibited no abnormalities, other than an obviously recent break to the lower leg (below the stifle or elbow) and was able to walk and stand at the time of slaughter.

(D) Additional records that must be kept include records such as bills of sale, invoices, bills of lading, and receiving and shipping papers for transactions in which any livestock or carcass, meat or meat food product is purchased, sold, shipped, received, transported or otherwise handled by the custom slaughter establishment [slaughterer].

(E) If the custom slaughter establishment also maintains a retail meat outlet, separate records as listed in subparagraph (D) of this paragraph, shall be maintained for each type of business conducted at the establishment.

(3) Sanitary methods. Custom slaughter operations [establishments] shall be maintained in sanitary condition. Each custom slaughter establishment shall comply with [all of] the requirements of 9 CFR, Part 416, adopted under §221.11 of this title (relating to Federal Regulations on Meat and Poultry Inspection). Establishments that accept farm slaughtered livestock must complete and document cleaning and sanitization of all surfaces and equipment used in the processing of the farm slaughtered livestock before those surfaces and equipment may be used to process other products.

(4) Humane treatment of animals.

(A) Livestock pens, driveways, and ramps shall be maintained in good repair and free from sharp or protruding objects which may cause injury or pain to the animals. Floors of livestock pens, ramps, and driveways shall be constructed and maintained so as to provide good footing for livestock.

(B) A pen sufficient to protect livestock from the adverse climatic conditions of the locale shall be required at those custom slaughter establishments that hold animals overnight or through the day.

(C) Animals shall have access to water in all holding pens and, if held longer than 24 hours, access to feed. There shall be sufficient room in the holding pen for animals held overnight to lie down.

(D) Livestock must [is to] be humanely slaughtered in accordance with this section and 9 CFR §313, Humane Slaughter of Livestock, adopted by reference in §221.11 of this title. The slaughtering of livestock by using captive bolt stunners, electrical stunners, and shooting with firearms, are designated as humane methods of stunning [slaughtering].

(i) The captive bolt stunners, electrical stunners, or delivery [deliver] of a bullet or projectile shall be applied to the livestock in a manner so as to produce immediate unconsciousness in the animal [animals] before they are shackled, hoisted, thrown, cast, or cut. The animal [animals] shall be stunned in such a manner that they will be rendered unconscious with a minimum of excitement and discomfort.

(ii) The driving of animals to the stunning area shall be done with a minimum of excitement and discomfort to the animals. Delivery of calm animals to the stunning area is essential since accurate placement of stunning equipment is difficult on nervous or injured animals. Electrical equipment shall be minimally used with the lowest effective voltage to drive the animal to the stunning area. Pipes, sharp or pointed objects, and other items which would cause injury or unnecessary pain to the animal shall not be used to drive livestock.

(iii) Immediately after the stunning blow is delivered, the animals shall be in a state of complete unconsciousness and remain in this condition throughout shackling, sticking, and rapid exsanguination [bleeding].

(iv) Stunning instruments must be maintained in good repair and available for inspection by a department representative.

(v) Inhumane treatment of animals is [shall be] prohibited and any observed inhumane treatment of animals shall be subject to the tagging provisions of paragraph (6)(C) of this subsection in addition to possible enforcement action.

(E) Establishments conducting ritual slaughter in accordance with 7 USC §1902(b).

(i) Establishments conducting ritual slaughter must have a completed document, that is signed and dated by an appropriate authority attesting to the conduct of ritual slaughter at that establishment. This document must list, by name, the individuals authorized to perform ritual slaughter at that establishment.

(ii) Establishments conducting ritual slaughter in accordance with 7 USC §1902(b) are exempt from the stunning requirements of this section and the requirements of 9 CFR §313.2(f), §313.5, §313.15, §313.16, §313.30, and §313.50(c) pertaining to stunning methods provided animals are humanely restrained and adequately restrained to prevent harm to the animal throughout the slaughter process.

(5) Containers used for meat food products, [product] paper, or other materials in contact with meat food products [product].

(A) To avoid contamination of product, containers shall be lined with suitable material of good quality before packing.

(B) Containers and trucks, or other means of conveyance in which any carcass or part is transported to the owner shall be kept in a clean and sanitary condition.

(C) Paper or other materials used for covering or lining containers and the cargo space of trucks, or other means of conveyance shall be of a kind which does not tear during use but remains intact and does not disintegrate when moistened by the product.

(6) Tagging insanitary equipment, utensils, rooms, and carcasses.

(A) A department representative may attach a "Texas Rejected" tag to any equipment, utensil, room, or compartment at a custom slaughter establishment that a department representative determines is insanitary and is a health hazard. No equipment, utensil, room, or compartment so tagged shall again be used until untagged or released by a department representative. Such tag [so attached] shall not be removed by anyone other than a department representative.

(B) A department representative that determines a carcass is adulterated, unfit for human food, is from an unhealthy or unsound animal, or could result in a health hazard, may attach a "Texas Retained" tag to the carcass and document the reason for attaching the tag on a form specified by the department and deliver the form to the operator of the custom slaughter establishment. The owner of the carcass shall be notified by the plant operator and advised of the potential health risk. The custom slaughter establishment [slaughterer] shall ensure that the owner of the carcass either authorizes the voluntary destruction and denaturing of the carcass and all parts or agrees to remove the carcass from the custom slaughter establishment.

(C) Inhumane treatment of animals that is observed by a department representative shall result in the attaching of a "Texas Rejected" tag to the deficient equipment, facility structure, or the stunning area causing the inhumane treatment. No equipment, area, or facility so tagged shall be used until untagged or released by the department representative.

(7) Marking and labeling of custom prepared products. Carcasses and parts therefrom that are prepared on a custom basis shall be marked at the time of preparation with the term "Not for Sale" in letters at least three-eighths inch in height, and shall also be identified with the owner's name or a code that allows identification of the carcass or carcass part to its owner. Ink used for marking such products must be labeled for such purpose. Ink containing FD&C Violet No. 1 shall not be used.

(8) Requirements concerning procedures.

(A) Heads from animals slaughtered by gunshot to the head shall not be used for food purposes. Such heads shall be denatured in accordance with paragraph (10) of this subsection and placed into containers marked "INEDIBLE." Heads with gunshot wounds may be returned to the owner only after they have been freely slashed and adequately denatured to preclude their use for human food.

(B) Cattle paunches and hog stomachs intended for use in the preparation of meat food products shall be emptied of their contents immediately upon removal from the carcass and thoroughly cleaned on all surfaces and parts.

(C) Carcasses shall not be adulterated, as defined in §221.12(b)(2) of this title, when placed in coolers.

(9) Requirements concerning ingredients. All ingredients and other articles used in the preparation of any carcass shall be clean, sound, healthful, wholesome, and will not result in the adulteration of the carcass. A letter of guaranty from the manufacturer stating that the ingredient or article is safe when used in contact with food shall be obtained by the custom slaughter establishment [slaughterer] and made available upon request to the department representative.

(10) Denaturing procedures. Carcasses, parts thereof, meat and meat food products that are adulterated or [and/or] not returned to the owner shall be adequately denatured or decharacterized to preclude their use as human food. Before the denaturing agents are applied, carcasses and carcass parts shall be freely slashed or sectioned. The

denaturing agent must be mixed with all of the carcasses or carcass parts to be denatured, and must be applied in such quantity and manner that it cannot ~~[easily and readily]~~ be removed by washing or soaking. A sufficient amount of the appropriate agent shall be used to give the material a distinctive color, odor, or taste so that such material cannot be confused with an article of human food.

(b) Custom processing requirements. The requirements of this section shall apply to the custom processing by any person of uninspected livestock carcasses or parts, delivered by or for the owner thereof for such processing, not for sale to the public and for the exclusive use of the owner, a member of the owner's household, or a nonpaying guest of the owner ~~[exclusively for use, in the household of such owner, by him and members of his household and nonpaying guests]~~. The requirements of this section shall not apply to processing hunter killed game animals, as defined in §221.12(b) of this title. The requirements of this section do not apply to processing of hunter killed exotic animals, or hunter killed feral swine, as defined in §221.12(b) of this title, provided persons engaged in such processing do not utilize the same facilities to engage in the receipt, storage, processing, or distribution of other meat and/or poultry food products.

(1) Carcasses and parts for processing. No adulterated carcasses or parts as defined in §221.12(b)(2) of this title shall be accepted for custom processing.

(2) Record keeping.

(A) Operators of facilities conducting custom processing shall keep records for a period of two years, beginning on January 1 of the previous year plus the current year to date.

(B) The records shall be available to the department representative on request.

(C) Custom processing records shall contain the name, address, and telephone number of the owner of each carcass or parts presented, the date the carcass or parts were delivered, the species and amount.

(D) Additional records such as bills of sale, invoices, bills of lading, and receiving and shipping papers for transactions in which any carcass, meat or meat food product is purchased, sold, shipped, received, transported or otherwise handled by the custom processor shall also be kept by the custom processor.

(E) If the custom processing establishment also maintains a retail meat outlet, separate records, as listed in subparagraph (D) of this paragraph, shall be maintained for each type of business conducted at the establishment.

(F) Temperature monitoring records shall be maintained by the custom processor, for heat treated or ready-to-eat products. These records shall include the temperature attained and time held during heating and the time and temperatures during the cool down process.

(3) Sanitary methods. Custom processing establishments shall be maintained in sanitary condition. Each custom processing establishment shall comply with the requirements of 9 CFR, Part 416, adopted under §221.11 of this title.

(4) Containers used for product; paper or other materials in contact with product.

(A) To avoid contamination of product, containers shall be lined with suitable material of good quality before packing.

(B) Containers and trucks, or other means of conveyance in which any product is transported to the owner shall be kept in a clean and sanitary condition.

(C) Boxes and any containers used as tote boxes shall be clean and stored off the floor in a manner that does not interfere with good sanitation.

(5) Tagging insanitary equipment, utensils, rooms, and carcasses.

(A) A department representative may attach a "Texas Rejected" tag to any equipment, utensil, room, or compartment at a custom processing establishment that a department representative determines is insanitary and is a health hazard. No equipment, utensil, room, or compartment so tagged shall again be used until untagged or released by a department representative. Such tag so attached shall not be removed by anyone other than a department representative.

(B) A department representative that determines a carcass is adulterated, unfit for human food, is from an unhealthy or unsound animal, or may be a health hazard, may attach a "Texas Retained" tag to the carcass and document the reason for attaching the tag on a form specified by the department and deliver the form to the operator of the establishment. The owner of the carcass shall be notified by the plant operator and advised of the potential health risk. The custom processor shall ensure that the owner of the carcass or parts either authorizes the voluntary destruction and denaturing of the carcass and all parts or agrees to remove the carcass from the custom processing establishment. Under no circumstances may the carcass be further processed at the establishment.

(6) Death by other means than slaughter. Carcasses, or parts thereof, derived from animals that have died otherwise than by slaughter. This includes animals, such as roadkill or animals that have died by disease, trauma, or other accident, may not enter, or be processed by a granted establishment.

(7) [(6)] Marking and labeling of custom prepared products.

(A) Products that are custom prepared must be packaged immediately after preparation and must be labeled with the term "Not For Sale" in lettering not less than three-eighths inch in height. Such custom prepared products or their containers shall also bear the owner's name and any additional labeling such as product cut or description.

(B) Safe handling instructions shall accompany every customer's raw or not fully cooked products. The information shall be in lettering no smaller than one-sixteenth of an inch in size and may be placed on each product package, each tote box or bag containing packaged product, or given as a flyer to the customer with the product. The safe handling instructions shall be placed immediately after the heading in subparagraph (A) of this paragraph and shall include the following or similar statements.

(i) "Some meat and meat products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions." [shall be placed immediately after the heading and before the safe handling statements.]

(ii) "Meat and poultry must be kept refrigerated or frozen. Thaw in refrigerator or microwave." However, any portion of this statement that is in conflict with the product's specific handling instructions may be omitted, e.g., instructions to cook without thawing. A graphic illustration of a refrigerator may be displayed next to this statement.

(iii) "Raw meat and poultry must be kept separate from other foods. Wash working surfaces including cutting boards, utensils, and hands after touching raw meat or poultry." A graphic il-

illustration of soapy hands under a faucet may be displayed next to this statement.

(iv) "Meat and poultry must be cooked thoroughly. Ground meat products should be cooked to an internal temperature of 160 degrees Fahrenheit or until the juices run clear. Other meat products should be cooked so that the external temperature reaches 160 degrees Fahrenheit." A graphic illustration of a skillet may be displayed next to this statement.

(v) "Hot foods must be kept hot. Refrigerate leftovers immediately or discard." A graphic illustration of a thermometer may be displayed next to the statement.

(8) [(7)] Requirements concerning procedures.

(A) Uninspected heads from custom slaughtered animals may not be sold or used in the preparation of meat food products unless prepared specifically for the owner of the animal for his personal use.

(B) Heads for use in the preparation of meat food products shall be split and the bodies of the teeth, the turbinates and ethmoid bones, ear tubes, and horn butts removed, and the heads then thoroughly cleaned.

(C) Bones and parts of bones shall be removed from product which is intended for chopping or grinding.

(D) Kidneys for use in the preparation of meat food products shall first be freely sectioned and then thoroughly soaked and washed.

(E) Clotted blood shall be removed from livestock hearts before they are used in the preparation of meat food products.

(F) Product shall not be adulterated as defined in §221.12(b)(2) of this title when placed in coolers or freezers.

(G) Frozen product may be defrosted in water or pickle in a manner that is not conducive to promoting bacterial growth or resulting in adulteration of the product.

(9) [(8)] Requirements concerning ingredients.

(A) All ingredients and other articles used in the preparation of any product shall be clean, sound, healthful, wholesome, and otherwise such as to not result in adulteration of product. A letter of guaranty from the manufacturer stating that the ingredient or article is safe when used as an ingredient or in contact with food shall be obtained by the custom processor and made available upon request to the department representative.

(B) Ingredients for use in any product may not contain any pesticide chemical or other residues in excess of levels permitted under the Federal Food, Drug, and Cosmetic Act.

(10) [(9)] Approval of substances for use.

(A) No substance may be used in the preparation of any product unless it is a Food and Drug Administration [an FDA] approved food additive.

(B) No product shall contain any substance which would render it adulterated.

(C) Nitrates shall not be used in curing bacon.

(i) Nitrites in the form of sodium nitrite may be used at 120 parts per million (ppm) ingoing (or in the form of potassium nitrite at 148 ppm ingoing) maximum for injected, massaged, or immersion cured bacon; and 550 ppm of sodium ascorbate or sodium erythor-

bate (isoascorbate) for injected, massaged, or immersion cured bacon shall be used.

(ii) Sodium or potassium nitrite may be used at 2 pounds to 100 gallons pickle at 10% pump level; 1 ounce to 100 pounds meat (dry cure).

(iii) Sodium ascorbate or sodium erythorbate (isoascorbate) may be used at 87.5 ounces to 100 gallons pickle at 10% pump level; 7/8 ounces to 100 pounds meat; or 10% solution to surfaces of cut meat.

(iv) Sodium nitrite shall not exceed 200 ppm ingoing or an equivalent amount of potassium nitrite (246 ppm ingoing) in dry cured bacon based on the actual or estimated skin-free green weight of the bacon belly.

(D) When curing products other than bacon, nitrites, nitrates, or combination shall not result in more than 200 ppm of nitrite in the finished product.

(i) Sodium or potassium nitrite may be used at 2 pounds to 100 gallons pickle at 10% pump level; 1 ounce to 100 pounds meat (dry cure); or 1/4 ounce to 100 pounds chopped meat and/or meat byproduct.

(ii) Sodium or potassium nitrate may be used at 7 pounds to 100 gallons pickle; 3 1/2 ounce to 100 pounds meat (dry cure); or 2 3/4 ounce to 100 pounds chopped meat. (Nitrates may not be used in bacon.)

(11) [(10)] Prescribed treatment of heat-treated meat and poultry products.

(A) All forms of fresh meat and poultry, including fresh unsmoked sausage and pork such as bacon and jowls are classified as products that are customarily well cooked in the home before being consumed. Therefore the treatment of such products for the destruction of pathogens is not required.

(B) Meat and poultry products, that are not customarily cooked or may not be cooked before consumption because they have the appearance of being fully cooked, must not contain pathogens.

(i) Heat-treated products and dry, semi-dry, and fermented sausages, that are less than three inches in diameter, are required to be heated to an internal temperature according to the following chart:

Figure: 25 TAC §221.14(b)(11)(B)(i)

[Figure: 25 TAC §221.14(b)(10)(B)(i)]

(ii) Heat treated products and dry, semi-dry, and fermented sausages, that are more than three inches in diameter, are required to be heated to an internal temperature according to the following chart:

Figure: 25 TAC §221.14(b)(11)(B)(ii)

[Figure: 25 TAC §221.14(b)(10)(B)(ii)]

(iii) Heat treated products that must be stored under refrigerated temperatures must be cooled quickly to prevent bacterial growth. During cooling, the product's maximum internal temperature should not remain between 130 degrees Fahrenheit and 80 degrees Fahrenheit for more than 1 1/2 hours nor between 80 degrees Fahrenheit and 40 degrees Fahrenheit for more than 5 hours. Custom processors may slowly cool cured products in accordance with Food Safety and Inspection Services (FSIS) Directive 7110.3, Time/Temperature Guidelines for Cooling Heated Products, which may be viewed at [www.fsis.usda.gov](http://www.fsis.usda.gov), or other substantiated support.

[(f)] The FSIS Directive 7110.3 may be viewed online via the Internet at <http://www.fsis.usda.gov/>]

~~[(H)]~~ Copies of the FSIS Directive 7110.3 may be purchased from the Scientific Services, Meat and Poultry Inspection, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250.]

(iv) Custom processors not utilizing a heating step as described in clauses (i), (ii), and (iii) of this subparagraph must submit an alternate procedure, describing the method utilized in determining safety, to a department representative.

(v) Custom processors may produce heat-treated or ready-to-eat custom products, including chorizo, at temperatures other than those listed in clauses (i), (ii), and (iii) of this subparagraph when requested to do so by the owner of the product. The custom processor must obtain a signed statement from the owner of the product stating that the risks associated with eating under-cooked meat products are understood.

(C) When necessary to comply with the requirements of this section, the smokehouses, drying rooms, and other compartments used in the treatment of meat and poultry products to destroy pathogens shall be suitably equipped, by the operator of the custom processing establishment with accurate automatic recording thermometers.

(12) ~~[(44)]~~ Denaturing procedures. Carcasses, parts thereof, meat and meat food products that are adulterated and/or not returned to the owner shall be adequately denatured or decharacterized to preclude their use as human food. Before the denaturing agents are applied, carcasses and carcass parts shall be freely slashed or sectioned. The denaturing agent must be mixed with all of the carcasses or carcass parts to be denatured, and must be applied in such quantity and manner that it cannot easily and readily be removed by washing or soaking. A sufficient amount of the appropriate agent shall be used to give the material a distinctive color, odor, or taste so that such material cannot be confused with an article of human food.

(c) Low-volume poultry or rabbit ~~[Very low poultry/rabbit]~~ slaughter operations requirements. ~~[The requirements of this section shall apply to any person who slaughters and sells poultry, rabbits, or both, and qualifies as a very low volume slaughter operation, as defined in §221.12(b)(27) of this title.]~~

(1) Animals for slaughter. No adulterated poultry or rabbits as defined in §221.12(b)(2) of this title shall be slaughtered for the purpose of selling its carcass or parts for food. Only healthy poultry and rabbits, exhibiting no abnormalities, may be slaughtered for sale as food. Unhealthy or unsound poultry and rabbits are those that exhibit any condition that is not normally expected to be exhibited in a healthy and sound member of that species. Examples of abnormal or unsound animals include~~;~~ but are not limited to, animals that are not able to get up, or animals that have any swellings, rectal or vaginal prolapse, ocular or nasal discharge, a cough, or a limp.

(2) Record keeping.

(A) Operators of facilities conducting slaughter under a Poultry or Rabbit Exemption ~~[the poultry/rabbit exemption]~~ shall keep records such as bills of sale, invoices, bills of lading, and receiving and shipping papers for transactions in which any livestock or carcass, meat or meat food product is purchased, sold, shipped, received, transported or otherwise handled for a period of two years, beginning on January 1 of the previous year plus the current year to date.

(B) The records shall be available to department representatives on request.

(3) Sanitary methods. Low-volume poultry or rabbit ~~[Very low volume poultry/rabbit]~~ slaughter operations shall be maintained in

sanitary condition. [Each operator shall comply with all of the requirements of 9 CFR, §§416.11 - 416.16, adopted under §221.11 of this title.]

~~[(4)]~~ Tagging insanitary equipment, utensils, rooms, and carcasses.]

~~[(A)]~~ A department representative may attach a "Texas Rejected" tag to any equipment, utensil, room, or compartment at a very low volume poultry/rabbit slaughter establishment that a department representative determines is insanitary and is a health hazard. No equipment, utensil, room, or compartment so tagged shall again be used until untagged or released by a department representative. Such tag so attached shall not be removed by anyone other than a department representative.]

~~[(B)]~~ A department representative that determines a carcass is adulterated, unfit for human food, is from an unhealthy or unsound animal, or could result in a health hazard, may attach a "Texas Retained" tag to the carcass and document the reason for attaching the tag on a form specified by the department and deliver the form to the operator of the establishment. The unfit carcass may not be used as human food and must either be voluntarily destroyed and denatured or otherwise precluded from use as human food.]

(4) ~~[(5)]~~ Marking and labeling of products. Carcasses and parts therefrom that are prepared under the Poultry or Rabbit Exemption [a grant of limited inspection for low volume poultry and rabbit producers to be sold through an off premise retail outlet,] shall be packaged and the container shall be marked with each of the following in letters at least one-quarter inch in height, unless otherwise stated:

(A) the slaughterer's name and address and the term "Exempted P.L. 90-492" and the statement "Not Produced Under Inspection;" [in letters at least one-quarter inch in height.]

(B) the common or usual name of the product, if any there be, and if there is none, a truthful descriptive designation of the product;

(C) a special handling label such as, "Keep Refrigerated," "Keep Frozen," "Keep Refrigerated or Frozen," "Perishable-Keep Under Refrigeration," or any other similar statement that the establishment has received approval from the department to use; and

(D) safe handling instructions shall be in lettering no smaller than one-sixteenth of an inch in size and shall be prominently placed with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use:

(i) Safe handling information. The safe handling information shall be presented on the label under the heading "Safe Handling Instructions," which shall be set in type size larger than the print size of the rationale statement and safe handling statement. The safe handling information shall be set off by a border and shall be one color type printed on a single color contrasting background whenever practical.

(ii) Rationale statement. The safe handling instructions shall include the following rationale statement, "This product was prepared from meat and/or poultry. Some food products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions." This statement shall be placed immediately after the heading for safe handling instructions in clause (i) of this subparagraph and before the safe handling statement in clause (iii) of this subparagraph.

(iii) Safe handling statement. The safe handling instructions shall include the following safe handling statements:

(I) "Keep refrigerated or frozen. Thaw in refrigerator or microwave." (Any portion of this statement that is in conflict with the product's specific handling instructions may be omitted, e.g., instructions to cook without thawing.) (A graphic illustration of a refrigerator shall be displayed next to the statement.);

(II) "Keep raw meat and poultry separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw meat or poultry." (A graphic illustration of soapy hands under a faucet shall be displayed next to the statement.);

(III) "Cook thoroughly." (A graphic illustration of a skillet shall be displayed next to the statement.); and

(IV) "Keep hot foods hot. Refrigerate leftovers immediately or discard." (A graphic illustration of a thermometer shall be displayed next to the statement.)

*§221.15. Inspection of Alternate Source Food Animals.*

(a) Requirements. Specific requirements of this section shall be in addition to those required by the rules adopted for inspection of livestock, under the Texas Meat and Poultry Inspection Act, and federal regulations as listed in §221.11 of this title (relating to Federal Regulations on Meat and Poultry Inspection).

(b) Fees. Fees shall be assessed in one-half hour increments for inspection services, provided by a department inspector to a facility holding a grant of inspection, as specified in §221.16 ~~§221.12(4)~~ of this title (relating to ~~Fees [Meat and Poultry Inspection]~~). Failure of a grant holder to promptly pay invoices will result in cessation of overtime inspection services. Inspection time includes~~;~~ ~~but is not limited to~~:

- (1) the inspector's time in the field during a hunt;
- (2) the inspector's time spent completing inspection records;
- (3) the inspector's time spent waiting for any purpose to facilitate the processor;
- (4) the inspector's time for travel between hunt sites; and
- (5) the inspector's time for travel from the inspector's official duty location to the field site and return.

(c) Sanitary dressing procedures. The following are general guidelines of sanitary dressing applicable to all species of livestock slaughtered.

(1) The person performing slaughter operations must not permit any contamination of edible portions of the carcass with materials such as feces, urine, hair, ingesta, milk, bile, pathological tissues and exudates, and other filth. All controls of slaughter and dressing procedures must be aimed at accomplishing this purpose.

(2) Slaughter operations must be conducted in a manner that precludes contamination, i.e., adequate separation of carcasses, parts, and viscera during dressing; routine cleaning and disinfection of certain equipment and hand tools; design and arrangement of equipment to prevent the contact of successive carcasses and parts; and appropriately located, functional lavatories and disinfection units.

(3) In the event that contamination does occur, it must be handled promptly and in a manner that ensures adequate protection to the remaining product. Contamination with feces, milk, pus, or pathological tissue or exudate must be promptly removed by trimming. Removal must be complete. Enough tissue must be removed so only clean meat remains. Scraping with the edge or back of a knife, wiping with a

cloth or towel, or the use of a water spray are unacceptable procedures for removal of this type of contamination.

(d) Exotic animal.

(1) Sanitation. All slaughter operations ~~;~~ ~~including field slaughter,~~ are to be conducted in a way that precludes contamination. The following conditions, as a minimum, shall be met.

(A) The slaughter facility ~~[or mobile slaughter]~~ unit shall be constructed of smooth and impervious material capable of being thoroughly cleaned and sanitized ~~before~~ ~~[prior to]~~ commencing operations and must be so maintained.

(B) Only potable water shall be used in conjunction with exotic animal slaughter procedures. Water from private water wells shall be tested for potability by an approved laboratory within six months prior to use. Water from portable water tanks shall be tested by an approved laboratory every six months to determine that potable water remains potable after being in the portable tanks. Results of such testing shall be made available to the department [TDH] inspector.

(C) Hot water at a temperature adequate to facilitate equipment and unit sanitization during pre-operational and operational sanitation procedures is required on the skinning/evisceration floor. A procedure utilizing chemical sanitization in lieu of hot water may be used.

(D) Mobile as well as fixed slaughter units shall provide adequate measures to control flies, other insects, and dust.

(E) Inedible by-products must be handled in a manner that does not create an insanitary condition or adulteration and ensures inedibles are not diverted to human food. When containers are used to remove inedibles from the premises, such containers shall be marked "INEDIBLE" in letters at least two inches high. An adequate amount of denaturant in accordance with 9 CFR §314.3 will be used on all products placed in the "INEDIBLE" containers.

(2) Ante-mortem procedures.

(A) The producer must certify by completing and signing form MSA-71, Microchip Certification and Drug Advisory For Alternate Food Animal Species, whether the animal(s) have been identified with a microchip device.

(B) For mobile and field slaughter, once an animal has been shot, the animal will be exsanguinated ~~[bled]~~ as soon as possible in the field with a properly sanitized knife. The assigned inspector will examine and inspect each animal ~~before~~ ~~[prior to]~~ its entry into the processing facility to assure that the animals being harvested appear to have been healthy and were killed by the harvester.

(C) For field slaughter, environmental temperature may affect the time that may lapse before it is necessary to return to the mobile slaughter unit or processing facility for skinning and eviscerating. High environmental temperature may shorten the time lapse ~~before~~ ~~[prior to]~~ dressing, as dressing must begin before the carcass becomes distended due to gas formation in the interstitial tissues or in the small intestine. The department inspector has the final decision in determining the actual time allowed between exsanguination ~~[bleeding]~~ and skinning; however, a two and one-half ~~[one half]~~ hour time lapse shall not be exceeded.

(3) Post-mortem procedures.

(A) The vehicle used for transporting the slaughtered exotic animals shall be clean ~~before~~ ~~[prior to]~~ use and shall be cleaned as needed, during the operation.



(B) Dressing procedures are to begin at the slaughter unit or facility as soon as practical after slaughter.

(C) Heads from animals slaughtered by gunshot to the head shall not be used for food purposes. Such heads shall be denatured and placed into inedible containers.

(D) In the event that an animal is shot in an area other than the head, the resulting wound area and ~~[and/or]~~ bruised areas must be trimmed of all contamination.

(E) The dressing of any animal whether it be the removal of a foot, head, or any part is strictly forbidden in any area other than inside the slaughter unit, regardless of the size of the animal. However, the removal of the antlers only is permitted before ~~[prior to]~~ entering the slaughter facility.

(4) Dressing procedures.

(A) Persons ~~[It is imperative that persons]~~ butchering an animal must keep their hands as clean as possible. Adequate hand washing[; adequate] facilities [for washing hands] must be readily available [accessible].

(B) Skinning operations must be conducted in a sanitary manner.

(C) As the pelt is removed, care must be taken to prevent contamination of the carcass by dirty hands, knife or pelt.

(D) If a pelt puller is used in such a manner that the carcass is raised to a horizontal position, the carcasses of the female animals must be checked closely for urine leakage.

(E) Heads must remain with the carcass until inspection is completed. Nasal and oral cavities should be flushed before heads are placed on inspection tables.

(F) Overall washing of carcasses should be accomplished before any openings are made for inspection or evisceration; however, any feces, ingesta, or milk must be trimmed before washing. The washer should take care to prevent filling the rectum with water during washing operations.

(G) The knife or other instrument used to open the breast must be disinfected after each use.

(H) The bung is not to be dropped until washing is completed. After opening the pelvic area, the neck of the bladder and the dropped bung should be grasped firmly and held until they clear the body cavity.

(I) Evisceration must be accomplished in a manner that precludes contamination of the carcass with contents from the bladder or intestine; viscera is to be placed in an inspection pan.

(J) If intestines are to be saved, contamination should be prevented by stripping and/or tying between the large and small intestine before removing from the table and sending to the next station.

(5) Processing. Processing of carcasses shall be conducted in a manner and location that complies with requirements for processing all livestock carcasses, including the provisions adopted under §221.11 of this title.

(e) Rabbits. See 9 CFR, Part 354, as adopted by §221.11 of this title.

(f) Migratory water fowl, game birds, squab. See 9 CFR, Part 362, as adopted by §221.11 of this title.

(g) Certified products for dogs, cats, and other carnivora. See 9 CFR, Part 355, as adopted by §221.11 of this title.

§221.16. Fees.

Special fees for inspection services.

(1) Inspection time. Inspection time may include:

(A) the inspector's time for performing inspection services;

(B) the inspector's time for completing inspection records;

(C) the inspector's time for waiting for any purpose to facilitate the slaughterer/processor to begin their regulated activity; and

(D) the inspector's time for traveling to perform inspection services.

(2) Fees. Fees shall be assessed in one-half hour increments for inspection services. Invoices are due upon receipt and become delinquent 30 calendar days from the date which is printed on the invoice. Inspection services will not be performed for any establishment having a delinquent account.

(3) Overtime and holiday rate. The overtime and holiday rate for inspection services shall be \$60 per hour, per program employee.

(4) Rate. Rate for inspections not required by state or federal meat and poultry inspection laws. The rate for special inspections shall be \$60 per hour, per program employee.

(5) Overtime and special inspection services. Overtime and special inspection services are subject to the availability of inspectors.

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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Department of State Health Services

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For further information, please call: (512) 834-4554



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 9. PROPERTY TAX ADMINISTRATION

##### SUBCHAPTER F. LIMITATION ON APPRAISED VALUE ON CERTAIN QUALIFIED PROPERTIES

###### 34 TAC §§9.1052, 9.1053, 9.1055

The Comptroller of Public Accounts proposes amendments to §9.1052 concerning forms, §9.1053 concerning entity requesting agreement to limit appraised value, and §9.1055 concerning comptroller application review and agreement to limit appraised value.

The amendments to §9.1052 propose changes to Form 50-296A, Application for Appraised Value Limitation on Qualified Property; Form 50-826, Texas Economic Development Act Agreement; and Form 50-825, Job Creation Compliance Report. Copies of these forms with proposed changes are available on the comptroller's website at <https://comptroller.texas.gov/economy/local/ch313/forms.php>.

Form 50-296A, Application for Appraised Value Limitation on Qualified Property, requires submission of a hard copy and an electronic copy of the completed form to the comptroller. To move toward paperless submissions, proposed Form 50-296A removes the requirement to submit a hard copy. As a part of this transition to only electronic submissions, §9.1053 is also modified accordingly. Specifically, the amendment to §9.1053 updates the language in subsection (a)(2) by incorporating the requirements in paragraphs (A) and (B) to submit a completed application and supporting documents but in an electronic format. In doing so, subsections (a)(2)(A) and (B) are no longer necessary and are, therefore, deleted.

Other changes are proposed to cleanup and clarify Form 50-296A. The instructions are updated as follows: "within seven days to the Comptroller of Public Accounts" is replaced with "within seven days to the Texas Comptroller of Public Accounts"; "original hard copy of the completed application to the Comptroller, as indicated on page 9 of this application, separating each section of the documents in addition to an electronic copy." is replaced with "completed application to the Comptroller, separating each section of the documents."; "Comptroller rule" is replaced with "Comptroller's rule"; "project, issue" is replaced with "project and issue"; "and prepare an economic impact evaluation" is deleted and "complete)," is replaced with "complete by the Comptroller)," . Additional cleanup changes proposed to the form include: question 5 of Section 1, which is no longer necessary, is deleted; "at time of" is replaced with "at the same time" in question 1 of Section 3; "List the" is deleted from questions 2 and 5 of Section 4; Section 5 is modified by deleting "Identify" from question 1, inserting "the most recently" to question 2a, and deleting "List the" from questions 2b and 2c; "(MM/DD/YYYY)" is replaced with "(YYYY)" in question 4 of Section 9; "Identify" is deleted from questions 1 and 2 of Section 10 and the first letter of "county" is capitalized in question 10; Section 12 is updated by replacing "RZ" with "reinvestment zone" in question 1c and formatting the note below question 1d; "question 1)" phrase is replaced with "statement 1)" and "question 2)" phrase is replaced with "statement 2)" in Section 13; Section 14 is revised by deleting "and TAC 9.1051(b)(1)" from question 3, replacing "TWC" with "Texas Workforce Commission" in question 4 and deleting the phrase "from the four quarterly periods for which data were available" from question 4; question 2 of Section 15 is modified by replacing "supplied by other than the Comptroller's Office;" with "supplied by an entity other than the Comptroller's office.;" and "Pages of the application..." sentence is deleted from the first row of the "Application Tab Order For Requested Attachments" table.

The proposed change to Form 50-826, Texas Economic Development Act Agreement, corrects a typographical error in Section 9.4A whereby the phrase "Section 7.2" is replaced with "Section 7.1." Another proposed change updates the date in the footer of every page.

A few changes are proposed to Form 50-825, Job Creation Compliance Report, which is a pdf form on the comptroller's website. These changes include: the year in the title of the form; new

instructions to clarify who should complete the form and what qualifying job information should be reported if a report was submitted in the previous year; the form submission deadline; an update to the "Report Prepared by" question whereby both the preparer's name and the company's name are required; a new field requesting the preparer's phone and email address for any inquiries. Other changes to Form 50-825 are: question 1 is replaced with "Date application determined complete by Comptroller's Office" in Section 1; a field for Texas taxpayer identification number of the agreement holder becomes the new question 2 as the audit division uses this information in its review; the other questions are renumbered accordingly; the old question 6 relating to listing other applicants and describing their relationships is deleted as extraneous information; "employee" is replaced with "authorized representative" in question 2 of Section 2, to allow individuals with legal capacity to act on behalf of the company; question 3 under Section 2 is revised by adding "and relevant dates of amendment to agreements" to track the chain of project amendments; new questions 4 and 5 are added to Section 2 requesting the name of any third party or contractor staffing the project along with their authorized representative that can verify the jobs; and the note on social security numbers under question 2 of Section 2 is repeated below new question 5 as it applies to the authorize representative of the third party or contractor staffing.

The creation of qualifying jobs section of Form 50-825, (i.e. Section 3) is amended as follows: question 1 is updated with "(See Schedule C filed with the application)" to assist with answering the question; question 2 along with parts a, b and c are deleted as extraneous information and a new question 2 requesting the number of new qualifying jobs on the qualified property created in the year covered by the report is added; question 3 is reworded to request verification documentation for those relying on a job waiver; the word "two" is replaced with "2" in question 4a along with deleting the comma and correcting the misspelling of "designated"; questions 6 and 6a relating to the minimum requirements set out in Section 313.021(3) are deleted for clarification purposes; the questions thereafter are renumbered; renumbered question 6 is modified by replacing "from one area" with "in one area" for grammatical correctness and parts a and b are added to obtain and identifying the number of jobs transferred from facilities; renumbered question 7 is updated to reference the applicable statute and parts 7a and 7b are added to obtain and identify the number of replacement jobs; questions 9 and 9b are reworded for simplification purposes to obtain the annual wage committed to pay in the application; and statements relating to the applicable statutes on qualifying jobs and the comptroller's role are included on page 3 following renumbered question 9.

The table on page 4 of the Form 50-825 is amended for efficiency and clarification as follows: two columns labeled new and old are created under the "Job #" heading to easily identify old and new jobs; the "Employee Name" column is replaced with two columns labeled "Employee Name (of Agreement Holder) First Initial and last name only" column and "Employee Name (of Contractor) First initial and last name only" to distinguish the agreement holder and contractor employees; the first note under the table is replaced with instructions for first-time filers to complete the table; the second note is replaced with instructions for repeat filers to complete the table; the third note is replaced with "See TAC §9.1051(21) for the definition of average weekly wage for manufacturing" and a fourth note is inserted providing "The agreement holder is responsible for providing sufficient documentation that will verify each job meets qualifying jobs re-

quirements." The certification statement is cleaned up and modernized by replacing it with "After this form 50-825 (including any other requested information) is completed it must be reviewed and certified by the agreement holder, or a designee authorized to act on behalf of the agreement holder. By signing below, I certify under penalty of perjury that I am authorized to execute this instrument and the information provided herein is true and correct to the best of my knowledge and belief." The statement below the signature block is updated to eliminate the hard copy submission requirement. The Excel spreadsheet version of the table reflects these proposed changes along with correcting the misspelling of compliance in the title.

One of the amendments to §9.1055 updates the language in subsection (b)(3) to include the requirement in paragraph (A) and to insert "the Texas Education Agency" as another notice recipient in lieu of sending it a copy of the completed application. In this regard, subsections (b)(3)(A) and (B) are deleted. Another amendment modifies subsection (c)(1)(A) to remove "by certified mail return receipt requested," which provides the comptroller with the flexibility to send determinations on ineligible properties by quicker means.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposal is in effect, the rule: 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 agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Currah also has determined that the proposed amendments would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amendments would benefit the public by improving the administration of local property valuation and taxation. There would be no anticipated significant economic cost to the public. The proposed amendments would have no significant fiscal impact on small businesses or rural communities.

Comments on the amendments may be submitted to John Villarreal, Manager, Data Analysis and Transparency Division, Comptroller of Public Accounts, at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Tax Code, §313.031, which authorizes the comptroller to adopt rules necessary for the implementation and administration of Tax Code, Chapter 313.

The amendments implement Tax Code, Chapter 313.

#### §9.1052. Forms.

(a) The comptroller adopts by reference the following forms:

- (1) Application for Appraised Value Limitation on Qualified Property (Form 50-296A);
- (2) Annual Eligibility Report (Form 50-772A);
- (3) Biennial Progress Report for Texas Economic Development Act; Three-Digit Tax Code, Chapter 313 Projects (Three-Digit Form 50-773A);

(4) Biennial Progress Report for Texas Economic Development Act: Four-Digit Tax Code, Chapter 313 Projects (Four-Digit Form 50-773B);

(5) Job Creation Compliance Report (Form 50-825);

(6) Texas Economic Development Act Agreement (Form 50-826);

(7) Three-Digit Biennial School District Cost Data Request (CDR) (Three-Digit Form 50-827A); and

(8) Four-Digit Biennial School District Cost Data Request (CDR) (Four-Digit Form 50-827B).

(b) Copies of the forms are available for inspection at the office of the *Texas Register* or may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528. The forms may be viewed or downloaded from the comptroller's website, at <https://www.comptroller.texas.gov/economy/local/ch313/forms.php>. Copies may also be requested by calling our toll-free number, (800) 531-5441, extension 34679.

(c) In special circumstances, a school district may obtain prior approval in writing from the comptroller to use an application or agreement form that requires additional information, or sets out the required information in different language or sequence than that which this section requires.

(d) The comptroller may periodically update the dates, form version numbers, and/or years in the appropriately marked sections of the forms described in subsection (a) of this section.

#### §9.1053. Entity Requesting Agreement to Limit Appraised Value.

(a) Initial application contents. To request a limitation on appraised value for school district maintenance and operations ad valorem tax purposes pursuant to Tax Code, Chapter 313, an applicant shall file a completed application with the school district in which the qualified property will be located.

(1) A completed application shall consist of, at a minimum, the following items:

(A) the comptroller's current application form and Schedules A1, A2, B and C attached to the application form with all information boxes filled in with the information on which applicant intends to rely including but not limited to:

(i) a specific and detailed description of the proposed qualified property to which the appraised value limitation will apply sufficient to clearly distinguish the subject property from property to which the limitation does not apply and to establish that the property meets the criteria of qualified property pursuant to these rules and Tax Code, §313.021(2);

(ii) a specific and detailed description of the investment described in Tax Code, §313.021(1) that is proposed to be made in the property subject to the appraised value limitation and sound, good faith estimates of the dollar value of intended investment sufficient to establish that the investment meets minimum criteria for qualified investment pursuant to Tax Code, §313.023 or §313.053 if applicable, during the proposed qualifying time period;

(iii) if the land upon which the qualified property will be located contains existing improvements or tangible personal property, a specific and detailed description of the tangible personal property, buildings, or permanent, non-removable building components (including any affixed to or incorporated into real property) on the land that is sufficient to distinguish existing property from the proposed new improvements and any proposed property that is not new improvements which may include maps, surveys, appraisal

district values and parcel numbers, inventory lists, property lists, model and serial numbers of existing property, or other information of sufficient detail and description to locate all existing property within the boundaries of the real property which is subject to the agreement; provided however, that the date of appraisal shall be within 15 days of the date the application is received by the school district;

(iv) the total number of any jobs related to construction or operation of the facility that the applicant chooses to disclose for the purpose of calculating the economic impact of the project;

(v) the total number of qualifying jobs the applicant commits to create and maintain during the full term of the agreement and a schedule which identifies the number of qualifying jobs created and maintained in each year of the agreement;

(vi) the wages, salaries, and benefits applicant commits to provide for each qualifying job;

(vii) the total number of non-qualifying jobs the applicant estimates it will create and maintain during the full term of the agreement and a schedule which identifies the number of non-qualifying jobs created and maintained in each year of the agreement;

(viii) the average wages the applicant estimates it will provide for non-qualifying jobs;

(ix) a statement:

(I) that for the purposes of this statement, "payments to the school district" include any and all payments or transfers of things of value made to the school district or to any person or persons in any form if such payment or transfer of thing of value being provided is in recognition of, anticipation of, or consideration for the agreement for limitation on appraised value; and

(II) as to whether:

(-a-) the amount of any and all payments or transfers made to the school district may result in payments that are or are not in compliance with Tax Code, §313.027(i); or

(-b-) as to whether the method for determining the amount may result in payments to the school district that are or are not in compliance with Tax Code, §313.027(i); and

(x) a description of the real property on which the intended investment will be made, identified additionally by the county appraisal district parcel number;

(B) such other written documents containing information on which applicant relies to qualify for and obtain a limitation on appraised value pursuant to Tax Code, Chapter 313;

(C) such other written documents containing information reasonably requested by either the school district or the comptroller which shall be provided within 20 days of the date of the request, provided however the applicant may request up to 10 additional days to provide the requested information;

(D) information identifying the applicant, and if applicant is a combined group, identifying each such combined group's members that intend to own a direct interest in the property subject to the proposed agreement, by:

(i) official name, street address, city, county, state and mailing address, if different from the street address, of the official place of business of the applicant and, if the applicant is a combined group, of each such combined group's members that intend to own a direct interest in the property subject to the proposed agreement;

(ii) designation of an authorized representative for the applicant and, if the applicant is a combined group, for each such

combined group's members that intend to own a direct interest in the property subject to the proposed agreement; and

(iii) for each authorized representative, and if the applicant is a combined group for each such combined group's members that intend to own a direct interest in the property subject to the proposed agreement, provide telephone number, email address, street address, city, county, state, and mailing address if different from the street address;

(E) the signature of applicant's authorized representative(s) by which applicant confirms and attests to the truth and accuracy of the information submitted in the application to the best knowledge and belief of applicant and its representative(s);

(F) the total application fee required by the school district with which the application will be filed;

(G) a statement as to whether or not the project is an expansion of an existing operation on the land which will become qualified property, and if so, a description of the nature of the existing operation, and the nature of the expansion, including an explanation of how the expansion affects or interacts with current operations;

(H) a statement specifying the beginning date of the limitation period, which must be January 1 of the first tax year that begins after one of the following:

(i) the date of the completed application;

(ii) the date of the end of the qualifying time period, provided however that such date will begin no later than the beginning of the limitation period; or

(iii) the date commercial operations are to begin at the site of the project;

(I) a statement regarding the location and nature of other facilities that the applicant operates in the state, and a detailed description of any such facilities that will provide inputs to or use outputs from the project that is the subject of the application;

(J) a detailed description of any state and local incentives for which the applicant intends to apply; and

(K) any information that the applicant requests the comptroller to consider in making the determination under Tax Code, §313.026(c)(2) that the limitation on appraised value is a determining factor in the applicant's decision to invest capital and construct the project in the state, which may include:

(i) other locations not in Texas that the applicant considered or is considering for the project;

(ii) capital investment and return on investment information in comparison with other alternative investment opportunities; or

(iii) information related to the applicant's inputs, transportation and markets.

(2) The completed application contents shall include an electronically digitized copy of the completed application formatted in searchable pdf format or other format acceptable to the comptroller; schedules A1, A2, B and C in Microsoft Excel format; and high-resolution maps and graphics (300 dpi or higher). [be provided in the following formats:]

[(A) one original hard copy of the completed application in a three ring binder with tabs separating each section of the documents submitted; and]

~~[(B) an electronically digitized copy, formatted in searchable pdf format or other format acceptable to the comptroller, certified by the applicant as containing the identical information, maps, and schedules as the original hard copy. The digitized copy shall include:]~~

~~[(i) schedules A1, A2, B and C in Microsoft Excel format; and]~~

~~[(ii) high-resolution maps and graphics (300 dpi or higher).]~~

(3) The application shall be submitted in any manner acceptable to the comptroller.

(b) Optional application requests. An applicant may include in an application:

(1) a request that the school district waive the requirement of Tax Code, §313.021(2)(A)(iv)(b) or §313.051(b), whichever is applicable, to create new jobs. In order for a completed application to include a job waiver request, applicant shall submit:

(A) a specific request to waive the job requirement of the applicable Tax Code section included with the application that includes all the minimum requirements set forth in subsection (a) of this section; and

(B) separated and clearly marked within the application materials, documentation on which applicant intends to rely that demonstrates that the applicable jobs creation requirement of the applicable Tax Code section exceeds the industry standard for the number of employees reasonably necessary for the operation of the facility of applicant that is described in the application; or

(2) a request to begin the qualifying time period on a date that is after the date that the application is approved. In order for a completed application to include a qualifying time period deferral request, applicant shall submit:

(A) specific information identifying the requested qualifying time period within an application that includes all the minimum requirements set forth in subsection (a) of this section; and

(B) all relevant economic information that is related to the impact of the investment during the proposed qualifying time period, the proposed limitation period, and a period of time after the limitation period considered appropriate by the comptroller.

(c) Application changes. At the request of the school district or the comptroller, or with the prior approval of the school district and the comptroller, applicant may submit an application amendment or application supplement at any time after the submission of the initial application. In order to be considered as part of the application, the application amendment or supplement shall:

(1) be submitted in the same form or schedule and manner as the information was initially submitted or should have been initially submitted;

(2) include a date for the submission and a sequential number identifying the number of submissions made by applicant;

(3) have the signature of the authorized representative(s) by which applicant confirms and attests to the truth and accuracy of the information submitted in the application amendment or supplement, as applicable, to the best knowledge and belief of applicant and its representative(s); and

(4) be submitted before the 120th day after the application was accepted by the school district or within another time period as provided in writing by the comptroller.

(d) Authorized representative(s). The person(s) identified in the application as applicant's authorized representative(s) shall serve as the person(s) to whom all correspondence and notifications from the school district and comptroller shall be sent. Notwithstanding subsection (c) of this section, applicant may change its authorized representative(s) if applicant submits to the school district and the comptroller a letter that provides the name of the new authorized representative(s), street and mailing address, telephone number, and official title, if any.

(e) Information confidentiality. At the time that applicant submits its application, application amendment, or application supplement, applicant may request that all or parts of such document not be posted on the internet and not otherwise be publicly released. In order to make such request, applicant shall:

(1) submit a written request that:

(A) specifically lists each document or portion of document and each entry in any form prescribed by the comptroller that applicant contends is confidential; and

(B) identifies specific detailed reasons stating why applicant believes each item listed should be considered confidential and identifies any relevant legal authority in support of the request;

(2) segregate the documents which are subject to the request from the other documents submitted with the application, application amendment, or application supplement that are not subject to the request; and

(3) adequately designate the documents subject to the request as "confidential."

(f) Continued eligibility for value limitation. In order to obtain and continue to receive a limitation on appraised value pursuant to Tax Code, Chapter 313, an applicant shall:

(1) have a completed application approved by the governing body of the school district in compliance with §9.1054(f) of this title (relating to School District Application Review and Agreement to Limit Appraised Value);

(2) at least 30 days prior to the meeting at which the governing body of the school district is scheduled to consider the application, provide to the school district and the comptroller a Texas Economic Development Act Agreement, as specified in §9.1052(a)(6) of this title, with terms acceptable to the applicant;

(3) if the applicant includes a combined group or members of the combined group, have the agreement executed by the authorized representative of each member of the combined group that owns a direct interest in property subject to the proposed agreement by which such members are jointly and severally liable for the performance of the stipulations, provisions, terms, and conditions of the agreement;

(4) comply with all stipulations, provisions, terms, and conditions of the agreement for a limitation on appraised value executed with the school district, this subchapter, and Tax Code, Chapter 313;

(5) be and remain in good standing under the laws of this state and maintain legal status as an entity, as defined in this subchapter;

(6) owe no delinquent taxes to the state;

(7) maintain eligibility for limitation on appraised value pursuant to Tax Code, Chapter 313; and

(8) provide to the school district, the comptroller, and the appraisal district any change to information provided in the application, including but not limited to:

(A) changes of the authorized representative(s);

(B) changes to the location and contact information for the approved applicant including all members of the combined group participating in the limitation agreement;

(C) copies of any valid assignments of the agreement and contact information for authorized representative(s) of any assignees.

(9) Within 30 days after filing a completed application with the school district, the applicant must provide the comptroller with estimates of the gross tax benefit resulting from the requested limitation on appraised value for school district maintenance and operations ad valorem tax and future revenues from the qualified property.

*§9.1055. Comptroller Application Review and Agreement to Limit Appraised Value.*

(a) Documents submitted to comptroller. Within 15 days of receiving or creating a substantive document, the comptroller shall post such document on the comptroller's Internet website, provided however, the comptroller shall not post any documents determined to be confidential in accordance with Tax Code, §313.028 and this section.

(1) The comptroller shall deem information as confidential only if the document:

(A) at the time that it is received by the comptroller, the party requesting confidentiality:

(i) has segregated the information for which confidentiality is being requested from the other information submitted to the comptroller and clearly and conspicuously labeled it confidential information;

(ii) provides a written list specifically identifying each document, portion of document, or entry in the form prescribed by the comptroller that applicant contends is confidential; and

(iii) provides in writing specific reasons, including any relevant legal authority, stating why the material is believed to be confidential; and

(B) the comptroller determines that the information for which confidentiality is sought describes:

(i) specific processes or business activities to be conducted by the applicant; or

(ii) specific tangible personal property to be located on real property covered by the application.

(2) Substantive documents deemed confidential will not be posted on the internet and will otherwise be withheld from public release unless and until the governing body of the school district acts on the application or the comptroller is directed to release the documents by a ruling from the Attorney General.

(3) All applications and parts of applications which are not segregated and marked as confidential as required under this section shall be considered substantive documents and shall be posted on the internet.

(4) When the governing body of the school district agrees to consider the application, information in the custody of a school district or the comptroller in connection with the application, including information related to the economic impact of a project or the essential elements of eligibility pursuant to Tax Code, Chapter 313, such as the nature and amount of the projected investment, employment, wages, and benefits, shall not be considered confidential business information.

(5) Any documents submitted in an electronic format (including searchable pdfs) to the comptroller must comply with the accessibility standards and specifications described in the 1 TAC Chapters 206 and 213.

(b) Application review. Upon receiving an application and accompanying documentation, the comptroller shall review the application to determine if it is complete.

(1) If the comptroller determines that the application was not submitted in compliance with or does not have documents or information required pursuant to §9.1053(a) and if applicable (b), of this title (relating to Entity Requesting Agreement to Limit Appraised Value), or does not provide all necessary information the comptroller determines is necessary to make the determinations required by Tax Code, §313.026, and subsection (d) of this section, the comptroller shall provide written notice to the school district, with a copy to applicant, identifying the information that is required or necessary to complete the application.

(A) Supplemental application information, amended application information, and additional information requested by the comptroller shall be promptly forwarded to the comptroller within 20 days of the date of the request.

(B) On request of the school district or applicant, the comptroller may extend the deadline for providing additional information for a period of not more than 10 working days.

(C) Additional information concerning investment, property value, property description, employment, and the qualifying time period that is not provided to the comptroller in a timely manner may or may not be used by the comptroller in making the determinations required by Tax Code, §313.026 or this section.

(2) Until the comptroller receives such information as is required and necessary to be submitted by applicant, the comptroller may discontinue further action on the application. The comptroller shall discontinue consideration of an application that remains incomplete for more than 180 days after the date the comptroller first received the application plus the number of days of any extension, notice of which has been provided to the comptroller pursuant to §9.1054(d) of this title (relating to School District Application Review and Agreement to Limit Appraised Value).

(3) When the comptroller determines that the documentation submitted in support of an application meets the requirements for an application pursuant to §9.1053(a) and if applicable (b), of this title, and the comptroller has received from the school district a request to provide an economic impact evaluation and all necessary documents for an appropriate evaluation of the requested appraised value limitation from the applicant and the school district, the comptroller shall notify the school district, the Texas Education Agency, and the applicant in writing that the applicant has submitted a completed application. [provide:]

~~[(A) written notice to the school district and applicant that applicant has submitted a completed application; and]~~

~~[(B) a copy of the completed application to the Texas Education Agency.]~~

(c) Action on completed application. After issuing a notice of a completed application, and after receipt of the information from the school district required by §9.1054(c)(2) of this title, the comptroller shall determine whether the property meets the requirements of Tax Code, §313.024 for eligibility for a limitation on appraised value pursuant to the provisions of Tax Code, Chapter 313, Subchapter B or C, whichever is applicable.

(1) If the comptroller determines that the property is not eligible for a limitation on appraised value, the comptroller shall:

(A) notify the governing body of the school district and applicant of the comptroller's determination[ ~~by certified mail return receipt requested~~]; and

(B) discontinue consideration of the application.

(2) If an applicant disagrees with a denial of eligibility for limitation of appraised value under Tax Code, §313.024, applicant may appeal the eligibility determination pursuant to the procedures set forth in Tax Code, Chapter 313 and in §9.1056 of this title (relating to Eligibility Determination Appeal). If an appeal under §9.1056 of this title, results in a determination that the project is eligible, the comptroller shall re-commence review of the application.

(d) Action on an eligible completed application. After determining that property identified in an application is eligible for limitation for appraised value and upon receiving a request from the school district to prepare an economic impact analysis, the comptroller shall:

(1) review any information available to the comptroller including:

(A) the application;

(B) public documents or statements by the applicant concerning business operations or site location issues or in which the applicant is a subject;

(C) statements by officials of the applicant, public documents or statements by governmental or industry officials concerning business operations or site location issues;

(D) existing investment and operations at or near the site or in the state that may impact the proposed project;

(E) announced real estate transactions, utility records, permit requests, industry publications or other sources that may provide information helpful in making the determination; and

(F) market information, raw materials or other production inputs, availability, existing facility locations, committed incentives, infrastructure issues, utility issues, location of buyers, nature of market, supply chains, other known sites under consideration, or any other information;

(2) prepare an economic impact analysis on the investment proposed by the application as required by Tax Code, §313.025 which may include:

(A) estimates of the maintenance and operations taxes for the 25 year period after the beginning of the limitation period;

(B) estimated tax revenue to the state generated by expenditures by the project, including wages, construction and operational expenditures, or other expenditures; and

(C) tax impacts, positive or negative, to the state based on indirect effects of the project, as estimated by the agency and using publicly available economic modeling systems;

(3) make the following determinations whether:

(A) it is reasonable to conclude from all the information available that the application is true and correct;

(B) the applicant is eligible for the limitation on the appraised value of the applicant's qualified property;

(C) the project proposed by the applicant is reasonably likely to generate tax revenue in an amount sufficient to offset the school district maintenance and operations ad valorem tax revenue lost

as a result of the agreement before the 25th anniversary of the beginning of the limitation period; and

(D) the limitation on appraised value is a determining factor in the applicant's decision to invest capital and construct the project in this state;

(4) not later than 90 days after written notice that the school district and the comptroller have determined that applicant has submitted a completed application that is eligible for a limitation of appraised value under Tax Code, §313.025(b), provide to the school district:

(A) an economic impact evaluation as required pursuant to Tax Code, §313.025(b);

(B) the comptroller's conclusion for each made pursuant to paragraph (3) of this subsection; and

(C) one of the three following:

(i) a comptroller certificate for a limitation;

(ii) a comptroller certificate for a limitation, subject to:

(I) conditions identified in the comptroller certificate for a limitation being completed prior to execution of the agreement; or

(II) the agreement including additional provisions as identified in the comptroller certificate for a limitation; or

(iii) a written explanation of the comptroller's decision not to issue a certificate.

(e) Action after agreement review. No later than 20 business days after receiving an agreement for limitation on appraised value acceptable to an applicant, the comptroller:

(1) shall review the agreement for:

(A) compliance with Tax Code, Chapter 313, and this subchapter; and

(B) consistency with the application submitted to the comptroller and as amended or supplemented;

(2) may amend or withdraw the comptroller certificate for a limitation if the comptroller determines that the agreement as submitted by the applicant does not comply with Tax Code, Chapter 313 or this subchapter or that the agreement contains provisions that are not consistent with or represents information significantly different from that presented in the application as submitted to the comptroller; and

(3) provide written notification to the school district of the actions taken under this subsection.

(f) Application changes after the notice of completed application. If the comptroller receives an amended application or a supplemental application by an applicant after the comptroller has prepared or sent written notice that applicant has submitted a completed application, the comptroller shall:

(1) reject the amended application, supplemental application, or application, in whole or in part, and discontinue consideration of any submission by applicant;

(2) with the written concurrence of the school district, consider the completed application, as amended or supplemented, before the 91st day from application review start date; or

(3) review the documents submitted by applicant and complete the requirements according to subsection (d) of this section.

(g) Applications and agreements for deferred qualifying time period. When an eligible completed application for an agreement for limitation on appraised value requests to begin the qualifying time period after the date that the application is approved, the comptroller:

(1) to the extent possible, shall prepare the economic impact analysis for an estimated impact of the qualified investment during the proposed qualifying time period;

(2) if an appraised value limitation agreement which defers the time at which the qualifying time period starts for more than one year is executed, may request at any time prior to the commencement of the qualifying time period additional information to revise the economic impact analysis for the qualified investment; and

(3) based on the revised economic impact analysis, may revise the comptroller certificate for a limitation that was previously submitted, or determine to not issue such a certificate; and

(4) if a revised comptroller certificate for a limitation is prepared, or a determination is made not to issue such a certificate, shall provide the revised comptroller certificate for a limitation, or a written explanation of the decision not to issue such certificate, and revised economic impact analysis to the school district and approved applicant.

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

Filed with the Office of the Secretary of State on August 13, 2020.

TRD-202003360

Don Neal

General Counsel, Operations and Support Legal Services

Comptroller of Public Accounts

Earliest possible date of adoption: September 27, 2020

For further information, please call: (512) 475-0387



## SUBCHAPTER I. VALUATION PROCEDURES

### 34 TAC §9.4001

The Comptroller of Public Accounts proposes amendments to §9.4001, concerning valuation of open-space and agricultural lands. These amendments are to reflect updates and revisions to the manual for the appraisal of agricultural land. The proposed amended manual may be viewed at <https://comptroller.texas.gov/taxes/property-tax/rules/index.php>.

The amendments update and revise the November 2018 (Adopted May 2019) manual for the appraisal of agricultural land. The manual sets forth the methods to apply and the procedures to use in qualifying and appraising land used for agriculture and open-space land under Tax Code, Chapter 23, Subchapters C and D.

Generally, the substantive changes to the manual reflect statutory changes. Updates to the manual throughout reflect changes to the rollback period and interest rate in House Bill 1743, 86th Legislature, 2019. The proposed manual includes a new subsection in the "Cessation of Agricultural Use" section and adds a new section for 1-d to address the specific circumstances for which special appraisal does not end when the land ceases to be devoted principally to agricultural use to the degree of intensity generally accepted in the area, based on changes made in House Bill 3348, 86th Legislature, 2019. The comptroller also proposes to add to the requirements to qualify as an ecological

laboratory based on changes made in House Bill 639, 86th Legislature, 2019.

The proposed update includes changes to the section on federal farm programs based on the 2018 Federal Farm Bill. Years throughout the text have been updated in the examples without changes to the values or figures.

Pursuant to Tax Code, §23.52(d), these rules have been approved by the Comptroller with the review and counsel of the Department of Agriculture.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amendment is 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 agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. This proposal amends a current rule.

Mr. Currah also has determined that the proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amendment would benefit the public by conforming the rule to current statute. There would be no anticipated significant economic cost to the public. The proposed amendment would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Korry Castillo, Director, Property Tax Assistance Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: [ptad.rulecomments@cpa.texas.gov](mailto:ptad.rulecomments@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*.

These amendments are proposed under Tax Code, §§5.05 (Appraisal Manuals and Other Materials); 23.41 (Appraisal); and 23.52 (Appraisal of Qualified Agricultural Land), which provide the comptroller with the authority to prepare and issue publications relating to the appraisal of property and to promulgate rules specifying methods to apply and the procedures to use in appraising qualified agricultural and open-space land for ad valorem tax purposes.

These amendments implement Tax Code, §23.41 (Appraisal) and §23.52 (Appraisal of Qualified Agricultural Land).

#### §9.4001. *Valuation of Open-Space and Agricultural Lands*

Adoption of the "Manual for the Appraisal of Agricultural Land." This manual specifies the methods to apply and the procedures to use in qualifying and appraising land used for agriculture and open-space land under Tax Code, Chapter 23, Subchapters C and D. Appraisal districts are required to use this manual in qualifying and appraising open-space land. The Comptroller of Public Accounts adopts by reference the Manual for the Appraisal of Agricultural Land dated June 2020 [November 2018]. The manual is accessible on the Property Tax Assistance Division website. Copies of the manual can be obtained from the Comptroller of Public Accounts, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528. Copies also may be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999.

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





CHAPTER 20. STATEWIDE PROCUREMENT  
AND SUPPORT SERVICES  
SUBCHAPTER B. PUBLIC PROCUREMENT  
AUTHORITY AND ORGANIZATION  
DIVISION 2. PUBLICIZING PROCUREMENT:  
CMBL, ESD, AND VPS

**34 TAC §20.115**

The Comptroller of Public Accounts proposes to amend §20.115, concerning vendor performance tracking system. This rule is found in Chapter 20 (Statewide Procurement and Support Services), Subchapter B (Public Procurement Authority and Organization), Division 2 (Publicizing Procurement: CMBL, ESD, and VPS).

This proposed rule amendment provides, under certain circumstances, for a state agency to revise a vendor performance report and grade that has been published to the comptroller's web page. Also, this rule amendment provides to revise the method for assigning an overall vendor performance letter grade, and addresses various grammatical issues identified in the present rule.

Under the proposed amendment, the overall vendor performance letter grade will be a function of vendor grades assigned to a vendor after February 4, 2017, the date the legacy grading system was retired and the A through F grading system implemented. After February 5, 2021, the overall vendor performance letter grade will be a function of vendor grades assigned for the most recent 48 months. This change accounts for the fact that the contract term for many state contracts is four years and because the utility of a vendor performance report diminishes over time.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposal is in effect, the rule: 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 agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Currah also has determined that the proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amendment would benefit the public by conforming the rule to current statute. There would be no anticipated significant economic cost to the public. The proposed amendment would have no significant fiscal impact on small businesses or rural communities.

Comments on the proposal may be submitted to Ms. Tosca M. McCormick, Comptroller of Public Accounts, at P.O. Box 13186

Austin, Texas 78701-3186 or [Tosca.McCormick@cpa.texas.gov](mailto:Tosca.McCormick@cpa.texas.gov). Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

This rule amendment is proposed under Government Code, §2262.055(b)(1), which requires the comptroller by rule to establish an evaluation process that rates vendors on an A through F scale, with A being the highest grade; Government Code, §2262.055(b)(2), which allows vendors who receive a grade lower than a C to protest any classification given by the comptroller; Government Code, §2262.055(c), which requires the comptroller to include the performance reviews in a vendor performance tracking system; and Government Code, §2262.055(e), which requires the comptroller to make the vendor performance tracking system accessible to the public on the comptroller's Internet website.

The proposed amendment implements Government Code, §2262.055.

*§20.115. Vendor Performance Tracking System.*

(a) The comptroller's statewide procurement division shall maintain a [create, maintain, and use the] vendor performance tracking system on the comptroller's web page on which vendor performance reports and vendor grades submitted by state agencies are published. Vendor performance reports and vendor grades shall be submitted to the vendor performance tracking system as stated in §20.509 of this title (relating to Vendor Performance Reporting). [to measure vendor performance for purchases over \$25,000, and is used by the comptroller to score vendor performance in the areas of commodity delivery and service delivery and performance.]

(b) The comptroller shall provide a copy of a state agency's vendor performance report and grade to the vendor identified in the report. When a state agency assigns a grade lower than "C," the vendor may provide to the comptroller a response to the performance report and grade. When a response is received by the comptroller within 30 days of the comptroller providing a copy of the performance report and grade to the vendor, the comptroller: [No later than 30 days after the completion or termination of a purchase order or contract, each state agency shall submit a performance review to the vendor performance tracking system on the comptroller's web page and according to the provisions of Subchapter F, Division 2 of this chapter.]

[(e) When an agency contractor performance report is received by the comptroller:]

[(1) the comptroller shall provide a copy of the review to the contractor identified in the agency review;]

[(2) if the agency review submits a proposed grade for the contractor lower than C, the contractor may provide to the comptroller a response to the agency review;]

[(3) if the comptroller receives a response from the contractor within 30 days after receiving the agency review, the comptroller:]

[(A) shall consider the response provided by the contractor;]

(1) [(B)] shall provide [contact] the state agency a copy of the vendor [regarding the review and] response; and

(2) [(C)] shall review the performance report and grade, response, and [may review] any other relevant information available to the comptroller about the purchase order or contract that is the subject of the performance report and grade. [; and]

(c) [(D)] Based upon the review provided for in subsection (b) of this section, the comptroller may revise [edit] the performance report

or grade [as necessary to insure as accurate and responsible contract report as possible; and]

[(4) after considering the report, any response, and any other relevant information the comptroller shall process the report on the contractor performance into the vendor performance tracking system].

(d) Using vendor grades [Based on performance reviews of contractors] provided by state agencies, the vendor performance tracking system will generate one overall vendor performance letter grade [score] for each vendor [contractor in the system] in the following manner: [-]

[(1) For a contractor that has received one or more performance reports in the system prior to the implementation of this section, the system will add all the numerical values assigned to each such report for the contractor and divide the sum by the total number of such reports in the system which shall be the single historic average score for the contractor.]

(1) [(2)] Each vendor grade [With the implementation of the system described in this section, each performance review letter score rating] assigned by [to] a [contractor by a] state agency will be designated [assigned] a numerical value based on the following scale: A=4 [400], B=3 [85], C=2 [70], D=1 [65], F=0 [50].

(2) [(3)] On or before February 4, 2021, the [A] system numerical score for the vendor is [contractor will be determined by] the sum of all numerical values for each [review] letter grade [score rating] assigned to a vendor after February 4, 2017. After February 5, 2021, the system numerical score for a vendor will be the sum of all numerical values for each letter grade assigned to a vendor for the most recent 48 months [contractor on and after the implementation date of the system described in this section plus the single historic average score, if any].

(3) [(4)] The system numerical average score for the vendor is the system numerical score determined in paragraph (2) of this subsection [will be] divided by the number of letter grades included in the calculation of the system numerical score. The system numerical average score is rounded to the nearest tenth. [either:]

[(A) the number of letter rating scores provided for the contractor; or]

[(B) if there is a historical average score, one (1) plus the number of letter rating scores provided for the contractor; and]

(4) [(5)] Using the system numerical average score [number] determined under paragraph (3) [(4)] of this subsection, the system will assign a single system numerical average score letter grade for the contractor based on the following scale: A=3.5-4.0; B=2.5-3.4; C=1.5-2.4; D=0.5-1.4; and F=0.4 or below [90-100=A, 80-89=B, 70-79=C, 60-69=D, 59 or below=F].

[(6) Example: Vendor A has a score of 88 in the old system. In the new system, vendor A gets assessed a score of A by one state agency purchaser and C by another state agency purchaser. The formula applied by the system is as follows:  $88+100+70/3=86$ . The vendor has a numeric score of 86, so the displayed score would be a "B".]

(e) Except for a grade that was revised in the vendor's favor under subsection (c) of this section, the executive head of a state agency may, within 48 months of submission of a vendor performance report and grade, request to revise the report and grade for a particular purchase order or contract by submitting a written justification for the grade revision to the comptroller. The written justification for the grade revision must contain the following information:

(1) contract number or purchase order number;

(2) vendor name;

(3) date the state agency entered into the vendor performance tracking system the grade that the state agency is requesting to revise; and

(4) a revised vendor performance report, including the reason for the grade revision request.

[(e) The comptroller shall include the performance reviews in a vendor performance tracking system.]

(f) Upon receiving a request under subsection (e) of this section, the comptroller shall publish the grade revision and revised performance report in the vendor performance tracking system maintained on the comptroller's website unless the requested grade revision will result in a grade lower than "C," in which case subsection (b) of this section will apply. The comptroller shall recalculate the system numerical score and system numerical average score using the revised grade.

(g) [(f)] A vendor [Contractors] that receives a [have an overall] grade lower than a "C" from a state agency [C posted to the vendor performance tracking system web site] may file a protest to the grade [classification] according to the protest procedures in §20.534 of this title (relating to Protests) [Subchapter F, Division 2 of this chapter].

[(g) The comptroller shall make the vendor performance tracking system accessible to the public on the comptroller's Internet website.]

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003290

Don Neal

General Counsel, Operations and Support Legal Services

Comptroller of Public Accounts

Earliest possible date of adoption: September 27, 2020

For further information, please call: (512) 475-0387



## SUBCHAPTER F. CONTRACT MANAGEMENT

### DIVISION 2. REPORTS AND AUDITS

#### 34 TAC §20.509

The Comptroller of Public Accounts proposes to amend §20.509, concerning performance reporting. This rule is found in Chapter 20 (Statewide Procurement and Support Services), Subchapter F (Contract Management), Division 2 (Reports and Audits).

This proposed rule amendment implements Government Code, §2155.089 as revised by Senate Bill 65, 86th Legislature, 2019, which requires a state agency to review a vendor's performance during a contract valued greater than \$5 million and excludes certain contracts from the vendor performance reporting requirement.

This proposed rule amendment also responds to the State Auditor's Office Report No. 19-042 (An Audit Report on The Vendor Performance Tracking System at the Office of the Comptroller of Public Accounts and Its Use by the Texas Workforce Commission and the Parks and Wildlife Department). That report

stated that submitting vendor performance reports more than 30 days after contract termination increases the risk that vendor performance information submitted to VPTS may be inaccurate. However, the Comptroller of Public Accounts has learned that in some cases, delaying reports will result in more accurate information. For example, if an agency is investigating complaints about a vendor's conduct, the agency may need more than 30 days to accurately grade that vendor's performance. To account for such circumstances, §20.509 now allows a state agency to document the reason for delaying a vendor performance report in its procurement file.

Finally, the proposed rule amendment revises the grading scale for vendor performance. The State Auditor's Office Report No. 19-042 indicated that a vendor which "completed service with no issues" deserves an A grade, and that a B grade for that vendor is "incorrect." This interpretation was not intended by the Comptroller of Public Accounts and appears inconsistent with the A through F grading scale enacted by the Legislature. The revised grading scale makes clear that an A is earned only if performance significantly exceeded requirements of a purchase order or contract to the state's benefit and that other requirements were satisfied.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposal is in effect, the rule: 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 agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Currah also has determined that the proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amendment would benefit the public by conforming the rule to current statute. There would be no anticipated significant economic cost to the public. The proposed amendment would have no significant fiscal impact on small businesses or rural communities.

A public hearing will be held to receive comments on the proposed amendment. There is no physical location for this meeting. The meeting will be held at 10:00 a.m., Central Time, on Friday, September 25, 2020. To access the online public meeting by web browser, please enter the following URL into your browser: <https://txcpa.webex.com/txcpa/j.php?MTID=mc9ba5612e77f0a967bab0fcb0051ceef>. To join the meeting by computer or cell phone using the Webex app, use the access code 146 778 0726. Persons interested in providing comments at the public hearing may contact Mr. Gerard MacCrossan, Comptroller of Public Accounts, at [Gerard.MacCrossan@cpa.texas.gov](mailto:Gerard.MacCrossan@cpa.texas.gov) or by calling (512) 463-4468 by September 24, 2020.

In addition, written comments on the proposal may be submitted to Ms. Tosca M. McCormick, Comptroller of Public Accounts, at P.O. Box 13186 Austin, Texas 78701-3186 or [Tosca.McCormick@cpa.texas.gov](mailto:Tosca.McCormick@cpa.texas.gov). Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

This rule amendment is proposed under Government Code, §2155.0012, which authorizes the comptroller to adopt rules to administer Government Code, Chapter 2155; Government Code, §2155.0755, which requires the comptroller ensure that

state agencies include in their vendor performance reviews whether the best value standard was satisfied if the state agency was required to use the best value standard for a purchase of goods or services; Government Code, §2155.089, which requires each state agency to review and report to the comptroller a vendor's performance under a contract; and Government Code, §2262.055, which requires the comptroller by rule to establish an evaluation process that rates vendors on an A through F scale, with A being the highest grade.

The proposed amendment implements Government Code, §§2155.0755, 2155.089, and 2262.055.

*§20.509. Vendor Performance Reporting.*

(a) A [No later than 30 days after the completion or termination of a purchase order or contract, the] purchasing state agency shall review a vendor's [the contractor's] performance of a [the] purchase order or contract as provided in this section. [State agencies shall submit a report on a contractor's performance to the vendor performance tracking system for any purchase of goods or services:]

[(1) of \$25,000 or more from contracts administered by the comptroller;]

[(2) made through an agency's delegated authority;]

[(3) made pursuant to the authority in Government Code, Title 10, Subtitle D; or]

[(4) for which a state agency is required to use the best value standard.]

(b) No later than 30 days after the completion or termination of a purchase order or contract, a state agency shall submit a report and grade on a vendor's performance to the vendor performance tracking system as stated in §20.115 of this title (relating to Vendor Performance Tracking System) for any purchase of goods or services:

(1) of \$25,000 or more from contracts administered by the comptroller;

(2) made through an agency's delegated authority as described in §20.82 of this title (relating to Delegated Purchases);

(3) made pursuant to the authority in Government Code, Title 10, Subtitle D; or

(4) for which a state agency is required to use the best value standard.

(c) In addition, if the value of a contract exceeds \$5 million, a state agency must submit a performance report and grade on a vendor's performance to the vendor performance tracking system as stated in §20.115 of this title within 30 days of the completion of a key milestone identified in the contract and at least once each year during the term of the contract.

(d) If a state agency does not submit a vendor performance report and grade in accordance with subsection (b) or (c) of this section, it shall document the reason in its procurement file.

(c) [(b)] A state agency shall:

(1) evaluate the vendor's [contractor's] performance based on:

(A) information prepared by the state agency in planning the procurement that assessed the need for the purchase together with the specifications for the good or service and the criteria to evaluate the responses resulting in an award and contract;

(B) compliance with the material terms of the contract;

(C) ability to correct instances of contractual non-compliance; and

(D) other relevant evaluation criteria presented in the on-line vendor performance tracking system; and

(2) for the purchase order or contract which is the basis for the report [based on the evaluation provided in the system], assign the vendor a [contractor the] letter grade. [:]

{(A) "A" if the contractor that delivered the good or service:}

{(i) that is the best value for the good or service because it complied with all the specifications and evaluation criteria identified in the solicitation documents;}

{(ii) in full compliance of all material terms of the contract; and}

{(iii) with complete or substantial customer satisfaction:}

{(B) "B" if the contractor delivered the good or service:}

{(i) that is the best value for the good or service because it complied with all specifications and evaluation criteria identified in the solicitation documents;}

{(ii) in substantial compliance of all material terms of the contract or promptly remedied any instance of non-compliance with the material terms of the contract; and}

{(iii) with substantial or adequate customer satisfaction:}

{(C) "C" if the contractor delivered the good or service:}

{(i) that is the best value for the good or service because it complied with all specifications and evaluation criteria identified in the solicitation documents;}

{(ii) substantially remedied a majority of the instances of non-compliance with the material terms of the contract; and}

{(iii) with adequate customer satisfaction:}

{(D) "D" if the contractor delivered the good or service:}

{(i) that was not the best value for the good or service because it did not comply with substantially all specifications and evaluation criteria identified in the solicitation documents; or}

{(ii) in substantial non-compliance of material terms of the contract and failed to remedy a majority of instances of non-compliance with the material terms of the contract:}

{(E) "F" if the contractor delivered the good or service:}

{(i) that was not the best value for the good or service because it did not comply with all specifications and evaluation criteria identified in the solicitation documents;}

{(ii) in substantial non-compliance of material terms of the contract and failed to remedy a majority of instances of non-compliance with the material terms of the contract; or}

{(iii) in a manner that subjects the contractor to debarment pursuant to Subchapter G of these rules.}

(f) State agencies shall independently evaluate the contract performance and use the following grading scale when assigning a letter grade to a vendor:

(1) A state agency shall assign an "A" when it determines that the vendor significantly exceeded the requirements of the purchase order or contract to the state's benefit, that any problems with the purchase order or contract were minor, and that corrective actions taken by the vendor to address such problems were highly effective. If the best value standard was used to award the purchase order or contract, an "A" means that the vendor satisfied that standard.

(2) A state agency shall assign a "B" when it determines that the vendor exceeded some requirements of the purchase order or contract to the state's benefit, that any problems with the purchase order or contract were minor, and that corrective actions taken by the vendor to address such problems were effective. If the best value standard was used to award the purchase order or contract, a "B" means that the vendor satisfied that standard.

(3) A state agency shall assign a "C" when it determines that the vendor met the requirements of the purchase order or contract and that corrective actions taken by the vendor to address minor problems were satisfactory. If the best value standard was used to award the purchase order or contract, a "C" means that the vendor satisfied that standard but that the vendor's performance did not merit an "A" or "B."

(4) A state agency shall assign a "D" when it determines that the vendor did not meet some of the requirements of the purchase order or contract, that problems with the purchase order or contract were serious, and that corrective actions taken by the vendor to address such problems were only marginally effective or not fully implemented. If the best value standard was used to award the purchase order or contract, a "D" means that the vendor did not satisfy that standard.

(5) A state agency shall assign an "F" when it determines that the vendor did not meet the requirements of the purchase order or contract, that problems with the purchase order or contract were serious, and that corrective actions taken by the vendor to address such problems were ineffective. If the best value standard was used to award the purchase order or contract, an "F" means that the vendor did not satisfy that standard.

(g) [(e)] This section does not apply to:

(1) an enrollment contract described by 1 TAC §391.205(b)(5); [or]

(2) a contract of the Employees Retirement System of Texas[ or the Teacher Retirement System of Texas] except for a contract with a nongovernmental entity for claims administration of a group health benefit plan under Insurance Code, Title 8, Subtitle H; or [:]

(3) a contract entered into by:

(A) the comptroller under Government Code, §2155.061; or

(B) the Department of Information Resources under Government Code, §2157.068.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003292

Don Neal

General Counsel, Operations and Support Legal Services

Comptroller of Public Accounts

Earliest possible date of adoption: September 27, 2020

For further information, please call: (512) 475-0387

## DIVISION 3. PROTESTS AND APPEALS

### 34 TAC §20.537

The Comptroller of Public Accounts proposes to amend §20.537, concerning action by director. This rule is found in Chapter 20 (Statewide Procurement and Support Services), Subchapter F (Contract Management), Division 3 (Protests and Appeals).

This proposed rule amendment revises subsection (c) of the current rule so that the process for resolution of protests by the director is uniform for protests of vendor grades and protests based on solicitation or award of a contract. Under the current rule, the director resolves protests of vendor grades differently than protests based on a solicitation or contract award. The comptroller also amends subsection (a) to address a formatting issue identified in the current rule.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposal is in effect, the rule: 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 agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Currah also has determined that the proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amendment would benefit the public by conforming the rule to current statute. There would be no anticipated significant economic cost to the public. The proposed amendment would have no significant fiscal impact on small businesses or rural communities.

Comments on the proposal may be submitted to Ms. Tosca M. McCormick, Comptroller of Public Accounts, at P.O. Box 13186 Austin, Texas 78701-3186 or [Tosca.McCormick@cpa.texas.gov](mailto:Tosca.McCormick@cpa.texas.gov). Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

This rule amendment is proposed under Government Code, §2155.076(a), which requires the comptroller by rule to develop and adopt protest procedures for resolving vendor protests relating to purchasing issues and Government Code, §2262.055(b)(2), which requires the comptroller by rule to establish an evaluation process that allows vendors who receive a grade lower than a C to protest any classification given by the comptroller.

The proposed amendment implements Government Code, §§2155.076, 2155.089, and 2262.055.

*§20.537. Action by Director.*

(a) Upon receipt of a protest, the director may:

(1) dismiss the protest if:

(A) it is not timely; or

(B) does not meet the requirements of §20.535 of this title (relating to Filing Requirements); or [this section:]

(2) solicit written responses to the protest from using agencies or other affected vendors and attempt to settle and resolve the protest by mutual agreement.[: or]

~~[(3) attempt to settle and resolve the protest by mutual agreement.]~~

(b) If a protest concerning a solicitation is not resolved by mutual agreement, the director shall issue a written determination that resolves the protest.

(c) If a protest concerning a contractor grade is not resolved by mutual agreement, the director shall make the final determination in writing. [If the director determines that the protest has presented a reasonable basis to conclude that the grade was not warranted, then the director shall inform the protesting vendor and the using agency of that determination in writing and the appropriate remedy. If the director determines that the protest did not present a reasonable basis to conclude that the grade was not warranted, then the director shall inform the protesting vendor and the using agency of that determination in writing and dismiss the protest.] The director's determination shall be the final administrative action of the comptroller.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003294

Don Neal

General Counsel, Operations and Support Legal Services

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

#### CHAPTER 21. EQUIPMENT AND VEHICLE SAFETY STANDARDS

##### 37 TAC §21.6, §21.7

The Texas Department of Public Safety (the department) proposes amendments to §21.6 and §21.7 concerning Equipment and Vehicle Safety Standards. Senate Bill 616 passed by the 86th Texas Legislature moved the administration of the motorcycle operator training and safety program from the Department of Public Safety to the Texas Department of Licensing and Regulation (TDLR). This rule amendment changes references and removes language accordingly.

Suzy Whittenton, Assistant Director, Finance, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period these rules are in effect, the pub-

lic benefit anticipated as a result of these rules will be effective implementation of legislation.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; will not require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Texas Department of Public Safety, Motorcycle Safety Unit, Attn: Cindy Flores, P.O. Box 4087, MSC-0257, Austin, Texas 78773-0257. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §662.009, which authorizes the designated state agency to adopt rules to administer Chapter 662.

Texas Government Code, §411.004(3) and Texas Transportation Code, Chapter 662 are affected by this proposal.

*§21.6. Motorcycle Operator and Passengers Protective Headgear Minimum Safety Standards and Exemption for Motorcycle Protective Headgear.*

(a) [~~Minimum safety standards.~~] The Federal Motor Vehicle Safety Standard, Number 218, concerning Motorcycle Helmets, and all amendments thereto, is adopted by the department as the minimum standard for motorcycle helmets sold for and worn by motorcycle operators and passengers on public roadways in Texas.

(b) [~~Motorcycle helmet exemption.~~] Persons 21 years old or older are exempt from wearing a motorcycle helmet if they:

(1) have successfully completed a motorcycle operator training course as approved under Texas Transportation Code, Chapter 662; or

(2) are covered by a health insurance plan providing the person with medical benefits for injuries incurred as a result of an accident while operating or riding upon a motorcycle.

(c) [~~Motorcycle operator training course.~~] A motorcycle operator training course is any course approved by Texas Department of Licensing and Regulation (TDLR). [~~defined as being a basic or advanced motorcycle operator training course approved by the department and meeting or exceeding the educational standards of the Motorcycle Safety Foundation.~~]

[(1) The department-approved advanced motorcycle operator training course is the minimum requirement for licensed motorcyclists with their own motorcycle and protective equipment. The basic motorcycle operator training course approved by the department in the same reference is acceptable.]

[(2) The department-approved basic motorcycle operator training course is required for new or inexperienced motorcyclists, persons without a valid motorcycle driver license or persons without their own motorcycle or protective equipment.]

(d) [~~Proof of successful completion.~~] Proof of successful completion of a TDLR approved [~~department-approved~~] motorcycle operator training course is a motorcycle operator training course completion card[; MSB-8; annotated for the basic or advanced motorcycle operator training course; as applicable]. A completion card from another state or military base indicating that the course attended meets or exceeds the educational standards of the Motorcycle Safety Foundation is acceptable.

(e) [~~Health insurance plan.~~] A health insurance plan is defined as an individual, group, blanket, or franchise insurance policy, insurance agreement, group hospital services contract, health maintenance organization membership, or employee benefit plan that provides benefits for health care services or for medical or surgical expenses incurred as a result of an accident.

(f) [~~Proof of compliance.~~] The Texas Department of Insurance shall prescribe a standard proof of health insurance for issuance to persons who are at least 21 years of age and covered by a health insurance plan described in subsection (b)(2) of this section.

*§21.7. Certification of Certain Vehicles.*

(a) [~~Certification required.~~] Mopeds will be certified by the department.

(b) [~~Certification procedures.~~] Any person, firm, or corporation desiring certification shall submit to the department a properly attested verification affidavit form[; DL-48], which will be furnished upon request.

(c) [~~List of certified vehicles.~~] The department will furnish upon request a list of certified makes and models to the public.

(d) [~~Cancellation or suspension of certification certificate.~~] If, at any time, it is discovered that any certified vehicle does not comply with the required specifications, the department will cancel the certificate of certification covering said make and model; provided that the manufacturer is entitled to 30 days' [days] notice of such proposed cancellation of certificate during which time he shall have an opportunity to submit proof that the make and model number in question does in fact comply with these specifications.

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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D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
Earliest possible date of adoption: September 27, 2020  
For further information, please call: (512) 424-5848



### 37 TAC §21.8

The Texas Department of Public Safety (the department) proposes the repeal of §21.8, concerning All Terrain Vehicle (ATV) Warning Flag. Senate Bill 616 passed by the 86th Texas Legislature moved the administration of the motorcycle operator training and safety program from the Department of Public Safety to the Texas Department of Licensing and Regulation (TDLR). Rules for the program have been established by TDLR and are located at 16 TAC §99.100, concerning Off-Highway Vehicle Warning Flag thus making the department's rule obsolete.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the repeal is in effect, the public benefit will be effective implementation of legislation.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; will not require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does repeal existing regulations. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed repeal is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Texas Department of Public Safety, Motorcycle Safety Unit, Attn: Cindy Flores, P.O. Box 4087, MSC-0257, Austin, Texas 78773-0257.

Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §662.009, which authorizes the designated state agency to adopt rules to administer Chapter 662.

Texas Government Code, §411.004(3) and Texas Transportation Code, Chapter 662 are affected by this proposal.

*§21.8. All Terrain Vehicle (ATV) Warning Flag.*

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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D. Phillip Adkins  
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For further information, please call: (512) 424-5848



## CHAPTER 31. STANDARDS FOR AN APPROVED MOTORCYCLE OPERATOR TRAINING COURSE

### 37 TAC §§31.1 - 31.12

The Texas Department of Public Safety (the department) proposes the repeal of §§31.1 - 31.12, concerning Standards for An Approved Motorcycle Operator Training Course. Senate Bill 616 passed by the 86th Texas Legislature moved the administration of the motorcycle operator training and safety program from the Department of Public Safety to the Texas Department of Licensing and Regulation (TDLR). Rules for the program have been established by TDLR and are located at 16 TAC Chapter 98, concerning Motorcycle Operator Training and Safety, thus making the department's rules obsolete.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the repeals as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the repeals are in effect, the public benefit will be effective implementation of legislation.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy,

a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; will not require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does repeal existing regulations. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed repeal is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Texas Department of Public Safety, Motorcycle Safety Unit, Attn: Cindy Flores, P.O. Box 4087, MSC-0257, Austin, Texas 78773-0257. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §662.009, which authorizes the designated state agency to adopt rules to administer Chapter 662.

Texas Government Code, §411.004(3) and Texas Transportation Code, Chapter 662 are affected by this proposal.

- §31.1. *Definitions.*
- §31.2. *Contracted Motorcycle Operator Training Sponsor.*
- §31.3. *Motorcycle Safety Instructor.*
- §31.4. *Student Admission Requirements.*
- §31.5. *Verification of Motorcycle Operator Training Course Completion.*
- §31.6. *Approved Standard Motorcycle Operator Training Course.*
- §31.7. *Motorcycle Requirements.*
- §31.8. *Notice and Hearing Requirements.*
- §31.9. *Suspension.*
- §31.10. *Technical Assistance Visits.*
- §31.11. *Notification of Legal Actions.*
- §31.12. *Licensed Motorcycle Operator Training Sponsor.*

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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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848

## CHAPTER 33. ALL-TERRAIN VEHICLE OPERATOR EDUCATION AND CERTIFICATION PROGRAM

### 37 TAC §§33.1 - 33.5

The Texas Department of Public Safety (the department) proposes the repeal of §§33.1 - 33.5, concerning All-Terrain Vehicle Operator Education and Certification Program. Senate Bill 616 passed by the 86th Texas Legislature moved the administration of the motorcycle operator training and safety program from the Department of Public Safety to the Texas Department of Licensing and Regulation (TDLR). Rules for the Motorcycle Operator Training Course oversight program have been established by TDLR and are located at 16 TAC Chapter 99, concerning Off-Highway Vehicle Operator Education and Certification Program thus making the department's rules obsolete.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the repeals as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the repeals are in effect, the public benefit will be effective implementation of legislation.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; will not require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does repeal existing regulations. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed repeal is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Texas Department of Public Safety, Motorcycle Safety Unit, Attn: Cindy



Flores, P.O. Box 4087, MSC-0257, Austin, Texas 78773-0257. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §662.009, which authorizes the designated state agency to adopt rules to administer Chapter 662.

Texas Government Code, §411.004(3) and Texas Transportation Code, Chapter 662 are affected by this proposal.

§33.1. *Definitions.*

§33.2. *Operator Education Program.*

§33.3. *Operator Education Program Sponsor and Instructors.*

§33.4. *Notice of Hearing Requirements.*

§33.5. *Operator Certification Requirements.*

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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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



## CHAPTER 459. FIRE AND LIFE SAFETY EDUCATOR

### SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE AND LIFE SAFETY EDUCATOR II

#### 37 TAC §459.201

The Texas Commission on Fire Protection (commission) proposes amendments to 37 Texas Administrative Code, Chapter 459, Fire and Life Safety Educator, Subchapter B, Minimum Standards For Fire and Life Safety Educator II, concerning §459.201, Fire and Life Safety Educator II Certification.

#### BACKGROUND AND PURPOSE

The purpose of the proposed amendments to rule §459.201 is to remove the "grandfathering" provision from rule language for Fire and Life Safety Educator II that expired on February 29, 2020.

Specifically, without the Special Temporary Provision in rule §459.201(c), the rule will require all individuals seeking a Fire and Life Safety Educator II certification to comply with the continuing education requirements in Chapter 441 of this title.

#### FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT

Michael Wisko, Executive Director, has determined that for each year of the first five-year period the proposed amendments are

in effect, there will be no significant fiscal impact to state government or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4) because this certification is a voluntary certification.

#### PUBLIC BENEFIT AND COST NOTE

Mr. Wisko has also determined under Texas Government Code §2001.024(a)(5) that for each year of the first five years the amendments are in effect the public benefit will be more accurate, clear and concise rules regarding obtaining Fire and Life Safety Educator II certification.

#### LOCAL ECONOMY IMPACT STATEMENT

There is no anticipated effect on the local economy for the first five years that the proposed new section is in effect because this is a voluntary certification; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

#### ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES AND RURAL COMMUNITIES

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments because this is a voluntary certification; therefore, no economic impact statement or regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is required.

#### GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2006.0221 that during the first five years the amendments are in effect:

- (1) the rules will not create or eliminate a government program;
- (2) the rules will not create or eliminate any existing employee positions;
- (3) the rules will not require an increase or decrease in future legislative appropriation;
- (4) the rules will not result in a decrease in fees paid to the agency;
- (5) the rules will not create a new regulation;
- (6) the rules will not expand a regulation;
- (7) the rules will not increase the number of individuals subject to the rule; and
- (8) the rules are not anticipated to have an adverse impact on the state's economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### COSTS TO REGULATED PERSONS

The proposed section does not impose a cost on regulated persons, including another state agency, a special district, or a local

government and, therefore, is not subject to Texas Government Code §2001.0045.

## ENVIRONMENTAL IMPACT STATEMENT

The commission has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

## REQUEST FOR PUBLIC COMMENT

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register*, to Michael Wisko, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or emailed to [deborah.cowan@tcfp.texas.gov](mailto:deborah.cowan@tcfp.texas.gov).

## STATUTORY AUTHORITY

The amended rule is proposed under Texas Government Code, Chapter 419, §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also proposed under Texas Government Code §419.032 which authorizes the commission to adopt rules establishing the qualifications of fire protection personnel.

## CROSS REFERENCE TO STATUTE

No other statutes, articles, or codes are affected by these amendments.

§459.201. *Fire and Life Safety Educator II Certification.*

(a) A Fire and Life Safety Educator II is defined as an individual who performs professional work in the coordination and delivery of public fire and life safety education, and fire prevention programs.

(b) All individuals holding a Fire and Life Safety Educator II certification shall be required to comply with the continuing education requirements in Chapter 441 of this title (relating to Continuing Education).

[(c) Special temporary provision: Individuals are eligible to take the commission examination for Fire and Life Safety Educator II by:]

[(1) holding Fire and Life Safety Educator I certification and meeting one of the following requirements:]

[(2) providing documentation acceptable to the commission that the individual has successfully completed Fire and Life Safety Educator II certification training that meets the minimum requirements of the National Fire Protection Association Standard 1035; or]

[(3) providing documentation acceptable to the commission of proficiency in fire and life safety education as an employee of a government entity; a member in a volunteer fire service organization; and/or an employee of a regulated non-governmental fire department; or]

[(4) hold a TCFP Fire Instructor II certification or higher.]

[(5) This subsection will expire on February 29, 2020.]

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

Filed with the Office of the Secretary of State on August 13, 2020.

TRD-202003362

Michael Wisko

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3812



## CHAPTER 461. INCIDENT COMMANDER

### 37 TAC §§461.1, 461.3, 461.5

The Texas Commission on Fire Protection (the commission) proposes new 37 Texas Administrative Code, Chapter 461, Incident Commander, concerning, §461.1, Incident Commander Certification, §461.3, Minimum Standards for Incident Commander Certification, and §461.5, Examination Requirement.

## BACKGROUND AND PURPOSE

The purpose of the proposed new chapter is to offer a new voluntary Incident Commander certification that has been requested by the Texas fire service for several years. This new certification will create a statewide Incident Commander certification that meets the requirements of the National Fire Protection Association Standard (NFPA) 1026, Standard for Incident Management Personnel Professional Qualifications.

## FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT

Michael Wisko, Executive Director, has determined that for each year of the first five year period the proposed new chapter is in effect, there will be no significant fiscal impact to state government or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4) because the Incident Commander certification is a voluntary certification.

## PUBLIC BENEFIT AND COST NOTE

Mr. Wisko has also determined that under Texas Government Code §2001.024(a)(5) that for each year of the first five years the proposed new chapter is in effect, the public benefit will be increased public safety as a result of a statewide Incident Commander certification that meets the requirements of the National Fire Protection Association Standard (NFPA) 1026, Standard for Incident Management Personnel Professional Qualifications.

## LOCAL ECONOMY IMPACT STATEMENT

There is no anticipated effect on the local economy for the first five years that the proposed new rule is in effect because the certification is voluntary; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and §2001.024(a)(6).

## ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES AND RURAL COMMUNITIES

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments because the certification is voluntary. Therefore, no economic impact statement or regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is required.

## GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2006.0221 that during the first five years the new chapter is in effect:

- (1) the rule will not create or eliminate a government program;
- (2) the rule will not create new or eliminate any existing employee positions;
- (3) the new rule does not increase or decrease future legislative appropriations;
- (4) the rule will not require an increase in fees paid to the agency;
- (5) the rule will create a new regulation but will only apply to those individuals who choose to take advantage of the new certification;
- (6) the rule will not expand, limit or repeal an existing regulation;
- (7) the rule will increase the number of individuals subject to the rule because the new certification could be obtained by individuals not currently regulated by the commission; however, the certification is not mandated and is considered a voluntary certification; and
- (8) although not anticipated to be significant, any economic impact to the state would likely be positive, as individuals holding the certification would be delivering valuable fire safety education to communities.

#### TAKINGS IMPACT ASSESSMENT

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

#### REQUIREMENT FOR RULE INCREASING COSTS TO REGULATED PERSONS

The proposed section does not impose a cost on regulated persons, including another state agency, a special district, or a local government and therefore, is not subject to Texas Government Code §2001.0045.

#### ENVIRONMENTAL IMPACT STATEMENT

The commission has determined that the proposed new chapter does not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

#### REQUEST FOR PUBLIC COMMENT

Comments regarding the proposed new chapter may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Michael Wisko, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to [deborah.cowan@tcfp.texas.gov](mailto:deborah.cowan@tcfp.texas.gov).

#### STATUTORY AUTHORITY

The new chapter is proposed under Texas Government Code, Chapter 419, §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also proposed under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing the qualifications of fire protection personnel.

#### CROSS REFERENCE TO STATUTE

No other statutes, articles, or codes are affected by these amendments.

##### §461.1. Incident Commander Certification.

(a) An Incident Commander is defined as an individual responsible for all incident activities, including the development of strategies and tactics and the ordering and release of resources, who has overall authority and responsibility for conducting and managing all incident operations at the incident site.

(b) All individuals holding an Incident Commander certification shall be required to comply with the continuing education requirements in Chapter 441 of this title (relating to Continuing Education).

(c) Special temporary provision. Individuals are eligible to take the commission examination for Incident Commander by:

(1) holding as a minimum, Fire Officer II certification through the commission; and

(2) providing documentation of completion of the National Incident Management System courses 100, 200, 700 and 800; and

(3) providing documentation acceptable to the commission that the individual has successfully completed Incident Commander training that meets the minimum requirements of the National Fire Protection Association Standard 1026; or

(4) providing documentation acceptable to the commission, in the form of an affidavit from the individual's Head of Department or Chief Training Officer, that the individual has met the departments requirements to perform as an Incident Commander and has demonstrated proficiency as an Incident Commander.

(5) This subsection will expire on January 1, 2022.

##### §461.3. Minimum Standards for Incident Commander Certification.

In order to be certified as an Incident Commander, an individual must:

(1) provide documentation of completion of the National Incident Management System courses 100, 200, 700, and 800; and

(2) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as an Incident Commander; or

(3) complete a commission-approved Incident Commander program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Incident Commander program must consist of one of the following:

(A) completion of an in-state Incident Commander program meeting the requirements of the applicable NFPA standard and conducted by a commission-certified training provider, that was submitted and approved through the commission's training prior approval system; or

(B) completion of an out-of-state, educational institution of higher education, and/or military training program that has been submitted to the commission for evaluation and found to meet the requirements of the applicable NFPA standard.

##### §461.5. Examination Requirement.

Examination requirements in Chapter 439 of this title (relating to Examinations for Certification) must be met to receive Incident Commander certification.

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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Michael Wisko

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3812



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES**

#### **CHAPTER 732. CONTRACTED SERVICES SUBCHAPTER A. DISPUTE RESOLUTION**

**40 TAC §§732.101, 732.103, 732.105, 732.107, 732.109, 732.111, 732.113, 732.115, 732.117, 732.119, 732.121, 732.123, 732.125, 732.127, 732.129, 732.131, 732.133**

The Department of Family and Protective Services (DFPS), proposes new §§732.101, 732.103, 732.105, 732.107, 732.109, 732.111, 732.113, 732.115, 732.117, 732.119, 732.121, 732.123, 732.125, 732.127, 732.129, 732.131 and 732.133 in Title 40, Texas Administrative Code (TAC), new Chapter 732, relating to Contracted Services.

#### **BACKGROUND AND PURPOSE**

The purpose of this rulemaking is to re-implement repealed TAC rules related to contracting at DFPS. Health and Human Services Commission (HHSC) repealed DFPS Title 40 TAC Chapter 732 (procurement) on or around June 2015 when DFPS' procurement function and associated legal staff were consolidated under HHSC. HHSC procurement and contracting ethics rules are located at Title 1 TAC, Part 15, Chapters 391, relating to Purchase of Goods and Services by the Texas Health and Human Services Commission and 392, relating to Purchase of Good and Services for Specific health and Human Services Commission Programs.

With DFPS becoming a stand-alone agency in September 2017, DFPS needs to provide clarity for its procurement function by re-implementing statutorily required rules for contracting practices. In this case, the rule being proposed is required by Texas Government Code Chapter 2260 that explains how DFPS addresses contract disputes. It is determined that DFPS needs to implement this rule even though HHSC carries out some DFPS procurement process steps. If there is ever a dispute involving a contract, the final decision about performance under the contract will be DFPS' responsibility.

#### **SECTION-BY-SECTION SUMMARY**

Proposed new §732.101 explains the purpose and scope of the subchapter, which governs negotiation and mediation of a claim for breach of contract asserted by a Contractor against DFPS.

Proposed new §732.103 contains key definitions of terms frequently found in breach of contract claims.

Proposed new §732.105 outlines the statutes involved in contract claims, namely Texas Government Code Chapter 2260 and Chapter 107 of the Texas Civil Practice and Remedies Code.

Proposed new §732.107 clarifies that actions under this rule do not waive DFPS' sovereign immunity to suit or liability.

Proposed new §732.109 outlines the specific steps a Contractor asserting a claim needs to take under these rules. The steps are generally specified in Texas Government Code Chapter 2260.

Proposed new §732.111: (1) provides DFPS with the ability to file a counterclaim as allowed by Texas Government Code Chapter 2260; and (2) outlines the specific steps that DFPS must take in order to assert a counterclaim against the Contractor.

Proposed new §732.113: (1) requires the parties to negotiate according to a timetable established under §732.115 to attempt to resolve the claim(s); and (2) states that no party is required to settle with the other party as a result of negotiations.

Proposed new §732.115: (1) this section lays out timetable requirements and authority for the parties to mutually agree to a different timetable following receipt of a claim; and (2) provides option for parties to agree to mediate during negotiations being done under an agreed-upon timetable.

Proposed new §732.117: (1) provides that negotiations may be conducted by any method or procedure authorized under the contract or agreed to by the parties; and (2) parties may exchange relevant documents that support their respective claims, defenses, counterclaims or positions.

Proposed new §732.119: (1) requires that the parties' settlement approval procedures be disclosed prior to or no later than the beginning of negotiations; and (2) requires the parties to select experienced negotiators who can reach an agreement or who can credibly approve an agreement.

Proposed new §732.121: (1) allows a settlement agreement to resolve an entire claim or any portion of a claim; (2) for a settlement to be enforceable, it must be in writing and signed by authorized representatives of both parties who have authority to bind their party; and (3) a partial settlement does not waive a party's rights under Texas Government Code Chapter 2260.

Proposed new §732.123 allows that unless the parties agree otherwise, each party is responsible for its own costs for negotiations.

Proposed new §732.125 allows the Contractor to request a contested case hearing at State Office of Administrative Hearings (SOAH) if the claim is not resolved through negotiations.

Proposed new §732.127 allows the Contractor and DFPS to agree to mediate any claim or counterclaim at any time.

Proposed new §732.129: (1) outlines a mediation process; (2) requires that any mediator not impose his/her judgment on issues; (3) states that a mediator selected must be acceptable to both parties; (4) clarifies that mediation is subject to the Governmental Dispute Resolution Act found in Texas Government Code §2009; and (5) specifies both parties must put forth representatives who are knowledgeable about the claim and who are authorized to reach and/or accept an agreement during mediation.

Proposed new §732.131: (1) clarifies that the cost of mediation must be divided equally between the parties unless agreed otherwise; and (2) explains that each party is responsible for its own costs to prepare for and participate in the mediation including re-

production costs, attorney's fees, consultant fees, and expert's fees.

Proposed new §732.133: (1) states that any settlement agreement reached during mediation that resolves an entire claim or any designated and severable portion of a claim must be in writing and signed by authorized representatives of both parties; (2) specifies that if the settlement agreement does not resolve all issues raised in claims or counterclaims, the agreement must identify the issues that remain unresolved; and (3) clarifies that a partial settlement agreement resulting from mediation does not waive a Contractor's rights under Texas Government Code Chapter 2260 as to the parts of the claim that were not resolved nor does it waive DFPS' rights to any parts of a counterclaim that is not resolved.

#### FISCAL NOTE

David Kinsey, Chief Financial Officer of DFPS, has determined that for each year of the first five years that the sections will be in effect, there will not be fiscal implications to state or local governments.

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create a government program;
- (2) implementation of the proposed rules will not affect the number of employee positions;
- (3) implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed rules will not affect fees paid to the agency;
- (5) the proposed rule amendments will not create a new regulation;
- (6) the proposed rule amendments will not expand, limit, or repeal an existing regulation;
- (7) the proposed rule amendments will increase the number of individuals subject to the rule; and
- (8) the proposed rule amendments will not affect the state's economy.

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

Mr. Kinsey has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The proposed rules do not apply to small or micro-businesses, or rural communities.

#### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Pursuant to subsection (c)(7) of Texas Government Code §2001.0045, the statute does not apply to a rule that is adopted by the Department of Family and Protective Services.

#### PUBLIC BENEFIT

Audrey Carmical, General Counsel of DFPS, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the sections will be that Contractors will have clear direction on how to bring a claim for a dispute about a contract it has with DFPS and how DFPS will go about trying to resolve the dispute in an orderly, equitable manner.

#### REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225.

#### TAKINGS IMPACT ASSESSMENT

DFPS 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 Government Code, §2007.043.

#### PUBLIC COMMENT

Comments and questions on this proposal must be submitted within 30 days of publication of the proposal in the *Texas Register*. Electronic comments and questions may be submitted to Deputy General Counsel of DFPS, Tiffany Roper at [Tiffany.Roper@dfps.state.tx.us](mailto:Tiffany.Roper@dfps.state.tx.us). Hard copy comments may be submitted to the DFPS Rules Coordinator, Legal Services 18R08, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030.

#### STATUTORY AUTHORITY

The sections are proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The proposed new sections implement requirements found in Texas Government Code Chapter 2260, regarding an agency's procedures for handling and resolving disputes about contracts.

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

#### §732.101. Purpose and Scope.

This subchapter governs the negotiation and mediation of a claim of breach of contract asserted by a Contractor against the Department, as well as a counterclaim asserted by the Department against the Contractor, pursuant to the requirements established under Chapter 2260 of the Texas Government Code. Chapter 2260 takes precedence to the extent of any conflict or inconsistency between these rules and the applicable requirements of Chapter 2260.

#### §732.103. Definitions.

The words and terms in this chapter have the following meanings, unless the context clearly indicates otherwise:

(1) Claim--a demand for damages by the Contractor based upon the Department's alleged breach of contract;

(2) Contractor--as defined by §2260.001(2), Texas Government Code;

(3) Commissioner--the chief administrative officer of the Department;

(4) Counterclaim--a claim by the Department against the Contractor based upon the same contract as that of the Contractor's claim;

(5) Day--a calendar day. If an act is required to occur on a date falling on a Saturday, Sunday, or holiday, the first working day following one of these days is the date to be counted as the required day for the act;

(6) Department--the Texas Department of Family and Protective Services;

(7) Event--an act or omission or a series of acts or omissions giving rise to a claim;

(8) Mediation--a consensual process in which an impartial third party, the mediator, facilitates communication between the parties to promote reconciliation, settlement, or understanding among them;

(9) Negotiation--a consensual bargaining process in which the parties attempt to resolve a claim and counterclaim;

(10) Parties--the Department and the Contractor that have entered into the contract that is the subject of the claim;

(11) SOAH--State Office of Administrative Hearings; and

(12) Subcontractor--an independent person or business hired by an independent Contractor to perform a specific task as part of an overall project and is paid for services to the project by the independent Contractor.

§732.105. Suits Against the Department for Contract Breach.

Subject to §2260.005 of the Texas Government Code, the procedures contained within Chapter 2260 of the Texas Government Code are exclusive and required prerequisites to suit in accordance with Chapter 107 of the Texas Civil Practice and Remedies Code. Chapter 2260 of the Texas Government Code does not prevent a contractor sued by a unit of state government from asserting a counterclaim or right of offset against the unit of state government in the court in which the unit of state government files the suit.

§732.107. Sovereign Immunity.

This subchapter does not waive the Department's sovereign immunity to suit or liability.

§732.109. Requirements for Notice of Claim of Breach of Contract.

(a) A Contractor asserting a claim of breach of contract under Chapter 2260 of the Texas Government Code must file notice of the claim as provided in this section.

(b) The notice of the claim must be:

(1) in writing and signed by the Contractor or the Contractor's authorized representative; and

(2) delivered by hand, certified mail return receipt requested, or other verifiable delivery service, to the:

(A) contract signatory for the Department of the region or state office division which signed the contract;

(B) The person designated in the contract as the appropriate receiver of legal notice; or

(C) the Commissioner of the Department.

(c) The notice must state in detail:

(1) the nature of the alleged breach of contract, including the date of the event that the Contractor asserts as the basis of the claim and each contractual provision allegedly breached;

(2) a description of damages that are recoverable under §2260.003 of the Texas Government Code that the Contractor asserts resulted from the alleged breach, including the amount and method used to calculate those damages; and

(3) the legal theory of recovery, including the relationship between the alleged breach and the damages claimed.

(d) The notice of claim must be delivered no later than the 180th calendar day after the date of the event that the Contractor asserts as the basis of the claim.

§732.111. Department Counterclaims.

(a) The Department may assert a counterclaim under Chapter 2260 of the Government Code, as provided in this section. The counterclaim must be:

(1) in writing; and

(2) delivered by hand, certified mail return receipt requested, or other verifiable delivery service to the Contractor or the representative of the Contractor who signed the notice of claim of breach of contract.

(b) The notice must state in detail:

(1) the nature of the counterclaim;

(2) a description of damages or offsets sought, including the amount and method used to calculate those damages or offsets; and

(3) the legal theory supporting the counterclaim.

(c) The notice of counterclaim must be delivered to the Contractor no later than the 60th calendar day after the Department's receipt of the Contractor's notice of claim.

(d) Nothing in this subchapter precludes the Department from initiating a lawsuit for damages against the Contractor in a court of competent jurisdiction.

§732.113. Duty to Negotiate.

The parties must negotiate in accordance with the timetable set forth in §732.115 of this title (relating to Negotiation Timetable) in an attempt to resolve all claims and counterclaims. No party is obligated to settle with the other party as a result of the negotiation.

§732.115. Negotiation Timetable.

(a) Following receipt of a Contractor's notice of claim, the Commissioner or another Department officer designated in the contract will review the Contractor's claim and the Department's counterclaim, if any, and initiate negotiations with the Contractor in an attempt to resolve the claim and counterclaim.

(b) The parties will begin negotiations within a reasonable period of time, not to exceed 120 calendar days following the date the Department receives the Contractor's notice of claim.

(c) The parties may conduct negotiations according to an agreed upon schedule as long as they complete the negotiations no later than the 270th calendar day after the Department receives the Contractor's notice of claim, subject to one or more extensions agreed upon by the parties.

(d) The parties may agree in writing on or before the 270th calendar day after the Department receives the Contractor's notice of claim to extend the time for negotiations. The agreement must be signed by representatives of the parties with authority to bind each respective party and must provide for the extension of the statutory negotiation period. The parties may enter into a series of written extension agreements that comply with the requirements of this section.

(e) The Contractor may request a contested case hearing before the State Office of Administrative Hearings on or before the 270th calendar day after the Department receives the Contractor's notice of claim, or the expiration of any extension agreed to by the parties.

(f) The parties may agree to mediate the dispute at any time before the 270th calendar day after the Department receives the Contractor's notice of claim or before the expiration of any extension agreed to by the parties.

§732.117. Negotiations.

(a) The negotiation may be conducted by any method, technique, or procedure authorized under the contract or agreed upon by the parties.

(b) To facilitate the meaningful evaluation and negotiation of the claim and any counterclaim, the parties may exchange relevant documents that support their respective claims, defenses, counterclaims, or positions.

(c) Material submitted pursuant to this section and claimed to be confidential by the Contractor will be handled pursuant to the requirements of the Public Information Act, Government Code, Chapter 552.

§732.119. Settlement Approval Procedures.

The parties' settlement approval procedures must be disclosed prior to, or at the beginning of, negotiations. To the extent possible, the parties must select negotiators who are knowledgeable about the subject matter of the dispute, who are in a position to reach agreement, and who can credibly recommend approval of an agreement.

§732.121. Settlement Agreement.

(a) A settlement agreement may resolve an entire claim or any designated portion of a claim.

(b) To be enforceable, a settlement agreement must be in writing and signed by representatives of the Contractor and the Department who have authority to bind each respective party.

(c) A partial settlement does not waive a party's rights under the Government Code, Chapter 2260, as to the parts of the claim or counterclaim that are not resolved.

§732.123. Costs of Negotiations.

Unless the parties agree otherwise, each party will be responsible for its own costs incurred in connection with a negotiation, including, without limitation, the costs of attorney's fees, consultant's fees, and expert's fees.

§732.125. Contractor Contested Case Hearings.

(a) If a claim for breach of contract is not resolved in its entirety on or before the 270th day after the Department receives the notice of claim, or after the expiration of any extension, the Contractor may file a request with the Department for a contested case hearing before SOAH in accordance with §2260.102 of the Texas Government Code.

(b) A request for a contested case hearing must state the legal and factual basis for the claim, request that the claim be referred to SOAH for a contested case hearing and must be delivered within 30 days after the 270th day, or the expiration of any agreed extensions, to the Commissioner of the Department or the person designated in the contract to receive notice.

(c) If the parties reach an impasse in the negotiations and proceed to a contested case hearing because it would serve the interests of

justice, the parties may agree to submit the case to SOAH before the 270th day after the notice of claim is received by the Department to the extent that the claim or counterclaim, if any, remain unsolved.

§732.127. Mediation of Contract Claims.

The Contractor and the Department may agree to mediate the claim and any counterclaim at any time.

§732.129. Mediation.

(a) A mediator may not impose his or her own judgment on the issues for that of the parties. The mediator must be acceptable to both parties.

(b) The mediation is subject to the provisions of the Governmental Dispute Resolution Act, Government Code, Chapter 2009.

(c) The term "mediation" is assigned the meaning set forth in the Civil Practice and Remedies Code §154.023.

(d) To facilitate a meaningful opportunity for settlement, the parties will, to the extent possible, select representatives who are knowledgeable about the dispute, who are in a position to reach agreement, or who can credibly recommend approval of an agreement.

§732.131. Costs of Mediation.

Unless the parties agree otherwise, the costs of the mediator must be divided equally between the parties. Each party must be responsible for its own costs incurred in connection with the mediation, including costs for reproduction of documents requested by such party, attorney's fees, consultant's fees, and expert's fees.

§732.133. Mediation Settlement Agreements.

(a) A settlement agreement reached during, or as a result of, mediation that resolves an entire claim, or any designated and severable portion of a claim, must be in writing and signed by representatives of the Contractor and the Department who have authority to bind each respective party.

(b) If the settlement agreement does not resolve all issues raised by the claim or counterclaim, if any, the agreement must identify the issues that are not resolved.

(c) A partial settlement does not waive a Contractor's rights under the Government Code, Chapter 2260, as to the parts of the claim that are not resolved, nor does it waive the Department's rights as to parts of the counterclaim that are not resolved.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003295

Tiffany Roper

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: September 27, 2020

For further information, please call: (512) 438-3397

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