

# RUSK COUNTY APPRAISAL DISTRICT



Guidelines for Qualifying  
Land for Wildlife  
Management



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## **Introduction**

In 1995, the Texas Constitution was amended to permit open space land valuation on qualifying land that was used for the management of wildlife.

As is the case for other open space land valuations authorized by Section 23.51 of the Property Tax Code, specific standards must be met in order to qualify for the special valuation.

This set of guidelines will outline the requirement for receiving the special valuation on properties where the primary use is for the management of wildlife.

### **§ 23.521, Texas Property Tax Code, Standards for Qualification of Land for Appraisal Based on Wildlife Management Use.**

(a) The Parks and Wildlife Department, with the assistance of the comptroller, shall develop standards for determining whether land qualifies under Section 23.51(7) for appraisal under this subchapter. The comptroller by rule shall adopt the standards developed by the Parks and Wildlife Department and distribute those rules to each appraisal district. On request of the Parks and Wildlife Department, the Texas Agricultural Extension Service shall assist the department in developing the standards.

(b) The standards adopted under Subsection (a) may require that a tract of land be a specified minimum size to qualify under Section 23.51(7)(A) for appraisal under this subchapter, taking into consideration one or more of the following factors:

- (1) the activities listed in Section 23.51(7)(A);
- (2) the type of indigenous wild animal population the land is being used to propagate;
- (3) the region in this state in which the land is located; and
- (4) any other factor the Parks and Wildlife Department determines is relevant.

(c) The standards adopted under Subsection (a) may include specifications for a written management plan to be developed by a landowner if the landowner receives a request for a written management plan from a chief appraiser as part of a request for additional information under Section 23.57.

(d) In determining whether land qualifies under Section 23.51(7) for appraisal under this subchapter, the chief appraiser and the appraisal review board shall apply the standards adopted under Subsection (a) and, to the extent they do not conflict with those standards, the appraisal manuals developed and distributed under Section 23.52(d).

## **Wildlife Management Defined**

Tax Code Section 23.51(1) defines Qualified Open-Space Land as:

*“Land that is currently devoted principally to agricultural use to the degree of intensity generally accepted in the area and has been devoted principally to agriculture use or to production of timber or forest products for at five of the preceding seven years....”*

Section 23.51(7) defines Wildlife Management as one of the following:

1. *Actively using land that at the time the wildlife-management began was appraised as qualified open-space land under this subchapter or as qualified timber land under Subchapter E in at least*

*three of the following ways to propagate a sustaining, breeding, migrating, or wintering population of indigenous wild animals for human use, including food, medicine, or recreation:*

- (a) Habitat control;*
  - (b) Erosion control;*
  - (c) Predator control;*
  - (d) Providing supplemental supplies of water;*
  - (e) Providing supplemental supplies of food;*
  - (f) Providing shelters; and,*
  - (g) Making census counts to determine population.*
- 2. Actively using land to protect federally listed endangered species under a federal permit if the land is:*
  - (a) Included in a habitat preserve and is subject to a conservation easement created under Chapter 183, Natural Resources Code; or*
  - (b) part of a conservation development under a federally approved habitat conservation plan that restricts the use of the land to protect federally listed endangered species; or,*
- 3. Actively using land for a conservation or restoration project to provide compensation for natural resource damages pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9601 et seq.), the Oil Pollution Act of 1990 (33 U.S.C. §2701 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §1251 et. Seq.), or Chapter 40, Natural Resource Code.*

## **Eligibility Requirements**

### **Eligible Property**

Wildlife management use applies only to land. Man-made alterations of, or additions to, the land are appraised as part of the land. These appurtenances to the land (canals, water wells, roads, stock tanks, and other similar reshaping of the soil) are included in the value of the land and are not separately appraised.

Wildlife management appraisal does not apply to:

- **Improvements.** Buildings and structures such as barns, sheds, or other outbuildings must be appraised separately at market value. Fences, however, are appurtenances and are not appraised separately. Land beneath outbuildings and other improvements related to agricultural use qualify for the special appraisal because the owner uses it in the timber producing operation.
- **Minerals.** Oil, gas, or any hard mineral must be appraised separately at market value.

### **Ineligible Land**

- Land that is located inside the city limits is ineligible for qualification as open-space land unless the land has been devoted principally to agriculture use or the production of timber or forest products for the preceding five years and is used for wildlife management.
- Land that is owned by an individual who is a nonresident alien or by a foreign government if

that individual or government is required by federal law or by rule adopted pursuant to federal law to register his ownership or acquisition of that property; or the land is owned by a corporation, partnership, trust, or other legal entity if that entity is required by federal law or by rule adopted pursuant to federal law to register its ownership or acquisition of that land and a nonresident alien or a foreign government or any combination of nonresident aliens and foreign governments own a majority interest in the entity. Texas Property Tax Code §23.56 & §23.77.

## **Qualification Requirements**

To qualify for wildlife management appraisal, landowners must meet each of the following eligibility requirements:

- The land must have been appraised as qualified open-space land or timberland in the preceding year,
- The land must be currently devoted to a wildlife management use,
- Wildlife management must be the primary use of the property,
- The land must have been used principally for agriculture or timber production for any five of the preceding seven years,
- A population of indigenous wild animals for human use must be propagated,
- Management practices must be performed to typical intensity standards of the area,
- The property owner must file a valid application form.

Additionally, applicants must be aware that:

- Agricultural appraisal applies to the land and not to other property that may be connected with the land.
- Land owned by a foreigner is ineligible for open-space use appraisal;
- Land inside city limits has more stringent qualification requirements and may be ineligible; and,
- A “rollback” tax may be assessed against the property when the property’s use is changed.

## **Previous Use**

In order for land to be considered for wildlife management use valuation, it must have been appraised as qualified open-space land for agricultural or timberland purposes in the preceding year before the wildlife management use started.

Even when land meets all other qualifications for this use, it cannot be considered for the special valuation if this requirement has not been met.

## **Current Use**

Land must be currently used for wildlife management on January 1 to be considered for the special valuation. In the event that wildlife management use is not evident on January 1, the chief appraiser should grant productivity valuation if the owner can show evidence that he intends to put the land into wildlife management use and that wildlife management will be the primary use for the bulk of the calendar year covered by the application.

## Primary Use

According to the statute, land must be devoted principally to wildlife management. If the land is used for more than one purpose, the most important or primary use must be wildlife management.

Other uses do not prevent land from qualifying if the primary use is wildlife management; however, only properties that meet the minimum acreage of 12.5 acres and usage ratio of at least 92% will be considered eligible for open-space land wildlife valuation.

Properties that are a part of a wildlife management coop or association may have a minimum acreage of 10 acres with a usage ratio of 90%.

For properties that since the previous tax year have been reduced in size and have had a change in ownership, the tract size must meet the minimum size as established by the county in order to qualify for wildlife management use.

If a property does not meet the minimum size, but has threatened or endangered species, deed restrictions, property owners' agreements, conservation easements or other legally binding covenants that obligate the landowner to actively perform wildlife management, the minimum acreage for qualification is set to 10 acres with a usage of 90%.

## Calculation Test

A tract's minimum wildlife use percentage is determined using a formula prescribed in PTAD Rule 9.2005:

$$(Total\ Tract\ Acres - 1) / Total\ Tract\ Acres = Wildlife\ Use\ Percentage$$

Properties for which the wildlife use percentage calculates to be less than the required minimum for stand-alone or coop tracts will not qualify for the special valuation.

## Historical Use

The five out of seven years' use requirement is self-explanatory. Use principally for agriculture in any five of these seven years qualifies land for agricultural appraisal.

A property owner can also point to a history of timber production in meeting the five-year test. Land used primarily for either timber or agricultural production during any five of the previous seven years may qualify and as long as agriculture was the principal use in the preceding years, the land qualifies even if that use did not meet the degree of intensity requirement in all or some of those years.

## Qualifying Wildlife Types

Qualified wildlife management use is land that is used to propagate a sustaining breeding, migrating or wintering population of *indigenous* wild animals produced for human use.

An *indigenous* animal is a native animal that originated in or naturally migrates through the area and is living naturally in the area, as opposed to an exotic animal or one that has been introduced to the area. In this context, an indigenous animal is one that is native to Texas.



A **sustaining breeding population** is a group in indigenous wild animals that is large enough to live independently over several generations.

A migrating population of indigenous wild animals is a group of animals moving between seasonal ranges. A wintering population of indigenous wild animals is a group of animals living on its winter range.

The Texas Department of Parks & Wildlife has classified Rusk County as a part of the **Pineywoods Region** for wildlife management.

See [http://tpwd.texas.gov/landwater/land/private/agricultural\\_land/pwood2010/](http://tpwd.texas.gov/landwater/land/private/agricultural_land/pwood2010/) for more information.

## Management Activities

Rusk County has been classified as a part of the Pineywoods Region for wildlife management. RCAD has adopted the wildlife management plan requirements from TPWD as the standard by which property owners in the county should perform their wildlife management practices.

Property owners are required to initially complete and submit a Wildlife Management Plan when applying for the special valuation and maybe required to annually report the progress of that plan to the district.

State law identifies seven classes of activities related to qualified wildlife management. A land owner must perform at least three of the seven wildlife management activities listed below on the land. An owner may qualify by doing more than three, but may not engage in fewer than three of the activities.

**Habitat Control** - involves using the land to create or promote an environment that benefits the wildlife on the land. A wild animal's habitat is its surroundings as a whole, including plants, ground cover, shelter, and other animals on the land.

Activities that contribute to habitat control or management include:

**Grazing Management** where livestock is rotated to increase food and animal cover or to improve a specific animal's habitat. Deferred grazing can last up to two years. Appropriately designed fencing can play an important role in grazing rotation plans.

**Prescribed burning** where fires are set to improve habitat and plant diversity, or to increase food and cover. Plans should indicate frequency of burnings and the minimum percentage of acreage burned.

**Range enhancement** where native plants and grasses that provide food for wildlife are established for food or to help control erosion.

**Brush management** to maintain, establish, or remove woody plants to encourage the growth of desirable ones for forage, nesting, and protective cover for specific wildlife.

**Forest management** involving the establishment, maintenance, harvesting, and selective removal of trees or woody species to allow growth of desirable ones for forage, nesting, and protective cover for specific wildlife.

**Riparian management and improvement** focuses on annually and/or seasonally protecting the vegetation and soils in riparian areas (low areas on either side of stream course). Riparian management and improvements can include providing livestock alternate watering sites, or deferring livestock from access to riparian areas for periods.

**Wetland improvements** provide seasonal or permanent water for roosting, feeding or nesting for wetland wildlife. This practice involves creating, restoring, or managing shallow wetland, green tree reservoirs, playa lakes and other moist soil sites.

**Managing native, exotic and feral species** involves controlling the grazing and browsing pressure from native and non-native wildlife, particularly white-tailed deer and exotic ungulates (hoofed mammals), example axis deer. This practice is designed to prevent overuse of desirable plant species and improve the habitat and plant diversity for native animals.

To ensure that an owner's objectives are met and the animals are not exceeding the habitat's carrying capacity, owners should monitor the harvesting of animals and vegetation use over time. Owners also may control other exotic and feral animals to improve the habitat and reduce the negative effect of native wildlife.

**Wildlife restoration** simply means 1) restoring and improving a habitat to good condition for targeted species and 2) reintroducing and managing a TPWD-approved native species within a habitat's carrying capacity as part of a TPWD-approved restoration area.

**Erosion Control** - Any active practice that attempts to reduce or keep soil erosion to a minimum for wild animals' benefit is erosion control. Some practices include:

**Pond construction** is the building of a permanent water pond to prevent, stop or control erosion as approved by the USDA's Natural Resources Conservation Service (NRCS).

**Gully shaping** involves reducing erosion rates on severely eroded areas by smoothing to acceptable grades and re-establishing vegetation.

**Streamside, pond and wetland revegetation** means revegetating areas along creeks, streams, pond and wetlands to reduce erosion and sedimentation, stabilize streambanks, improve plant diversity and improve the wildlife value of sensitive areas.

**Establishing native plants** on critical areas is one method of controlling erosion. These plants also can provide food and/or cover for wildlife and restore native habitat.

**Dike, levee construction or management** is a way to establish and maintain wetlands or slow runoff to control or prevent erosion and to provide habitat for wetland-dependent wildlife. Levee management may include reshaping or repairing damage caused by erosion and revegetating levee areas to reduce erosion and sedimentation and stabilize levees.

**Water diversion systems** also can be installed to protect erodible soils and divert water into wetlands to provide habitat for resident and migratory water birds and wetland- dependent species.

**Predator Management** – practices intended to manage the population of predators to benefit the target wildlife population. Predator control usually is not necessary unless the number of predators is harmful to the desired wildlife population. Some types of predator management and control are:

- Mammal predator control
- Fire ant control
- Brown-headed cowbird control, and
- Grackle or starling control.

**Providing Supplemental Water** – is providing water in addition to the natural water that exists in all wildlife environments. Wildlife water developments are in addition to those sources already available

to livestock and may require protection from livestock. Some examples of recommended practices include:

**Marsh or wetland restoration or development** to provide supplemental water in the form of shallow wetlands.

**Managing well, trough and windmill overflow** can provide supplemental water for wildlife and provide habitat for wetland plants. Building devices known as wildlife water guzzlers to collect rainfall and runoff for wildlife in areas where water is limited also help protect wildlife, but these devices must be a part of an overall habitat management program.

Spring development and/or improvements can be designed to protect the immediate area surrounding a spring. Excluding and/or controlling livestock around springs may help to maintain native plants and animal diversity. Other ways to protect areas include moving water through a pipe to a low trough or a shallow wildlife water overflow, making water available to livestock and wildlife while preventing degradation of the spring area from trampling.

**Providing Supplemental Food** – most wildlife environments have some natural food. An owner supplies supplemental food by providing food or nutrition in addition to that naturally produced on the land. Some ways of providing supplemental foods are:

Food plots  
Feeder and mineral supplements, and  
Managing tame pasture, old fields and croplands.

**Providing Supplemental Shelter** – actively creating or maintaining vegetation or artificial structures that provide shelter from the weather, nesting and breeding sites or “escape cover” from enemies. The best shelter for wildlife can be provided by a well-managed habitat. Some practices listed below provide types of shelter that may be unavailable in the habitat:

Installing nest boxes and bat boxes;  
Brush piles and slash retention;  
Managing hay meadow, pasture or cropland;  
Half-cutting trees and shrubs;  
Establishing woody plants and shrubs; and,  
Developing natural cavities and snags.

**Census Counts** – periodic surveys and inventories to determine the number, composition or other relevant information about a wildlife population to measure if the current wildlife management practices are serving the targeted species. Such surveys help evaluate management plan goals and practices. Specifically, this activity estimates species numbers, annual population trends, density or age structure. Techniques include:

**Spotlight counts** at night along a predetermined route using a spotlight, with a minimum of three counts conducted annually.

**Aerial counts** using a fixed-wing aircraft or helicopter to count animals performed by a trained individual.

**Daylight wildlife composition counts** are driving counts used to census wildlife in daylight hours. Annual population trends on dove, quail, turkey and deer, as well as sex/age structure on deer, should be determined by sightings along a standardized transect of a minimum of five miles at least three times during a season.

**Harvest data collection/record-keeping** means tracking the annual production of wildlife. Age, weight and antler development from harvested deer, and the age and sex information from game birds and waterfowl should be obtained annually.

**Browse utilization surveys** annually examine deer browse plant species for evidence of deer use on each major vegetative site on the property. The surveys should be conducted in a way that can be repeated.

**Census and monitoring of non-game wildlife species** also can improve management or increase knowledge of the local, regional or state status of the species. These practices can include developing checklists of wildlife diversity on the property and should be a part of a comprehensive wildlife management plan.

## **Intensity use**

Intensity use tests measure whether the land is being managed for wildlife to the extent typical for operations in the county. A previous section described whether a particular use was primarily for wildlife management; however, the land must also be used for an agricultural purpose to the degree of intensity typical in the area. This test is intended to exclude land on which token use occurs in an effort to obtain tax relief.

The Texas Parks & Wildlife Department (TPWD) has developed acceptable practices for the management of specific wildlife types according to the ten ecological regions it has established.

TPWD has included Rusk County in the Pineywoods Region and the district recognizes and adopts TPWD's typical practices and intensity standards for the Pineywoods Region as the typical intensity standards for the county.

See [http://tpwd.texas.gov/landwater/land/private/agricultural\\_land/pwood2010/](http://tpwd.texas.gov/landwater/land/private/agricultural_land/pwood2010/)

## **Qualification Limitations**

Even if land meets all the preceding conditions, two situations may block approval of an application. These situations are discussed in detail below.

### **Land Located Within the Boundaries of a City or Town**

Land within the boundaries of a city often will not qualify. Land located within an incorporated city or town must meet the criteria applicable to all land and must meet one of the following:

- (a) the city must not provide the land with general services comparable to those provided in other parts of the municipality having similar features and population; or
- (b) the land must have been devoted principally to agricultural use continuously for the preceding five years.

### **Land Owned by a Non-Resident Alien or Foreign Government**

Some kinds of foreign ownership disqualify land. If the property owner is a non-resident alien (a non-U.S. citizen who does not reside in the U-S-), the land cannot qualify.

Similarly, a corporation can't qualify its land if non-resident aliens, foreign governments, or both control the corporation. These owners are required by federal law to report ownership or transfers of agricultural land. §23.56(2) and (3), Property Tax Code, bars these owners from qualifying.

## **Application for Open Space Productivity Appraisal**

Property owners must timely file an application for *Open Space Land Valuation* along with a *Texas Parks & Wildlife Management Plan* with the appraisal district.

Forms are available:

- (a) At appraisal district office
- (b) From the district's website [www.ruskcadcad.org](http://www.ruskcadcad.org), or
- (c) From the State Comptroller's website:  
[www.window.state.tx.us/taxinfo/taxforms/02-forms.html](http://www.window.state.tx.us/taxinfo/taxforms/02-forms.html)

If the initial application is valid but does not contain all the information the district needs to rule on an application, the chief appraiser may require the applicant to give additional information. This procedure is described later in this section.

A property owner may file a single application form covering all tracts within an appraisal district. Owners need not file a separate form for each tract as long as they provide sufficient information to show that all tracts qualify under the law.

***If a person does not file a valid application before the appraisal review board approves the appraisal roll, the land is ineligible for productivity appraisal in that tax year.***

### **Filing Deadline**

An application must be postmarked or filed no later than midnight, April 30. For good cause and only on the property owner's request, the chief appraiser may extend the filing deadline in individual cases for not more than 60 days. The property owner must request an extension before the filing deadline.

The Tax Code does not define "good cause." However, it is commonly something the applicant cannot control. Illness or injury or an inability to transact normal business for a period that effectively prevents filing on time is usually good cause. Each appraisal district should prescribe its good cause requirements.

### **Late Application**

A property owner who misses the deadline may file a late application until the appraisal review board approves records for that year (normally mid-July). However, there is a penalty for late application. An application filed after April 30 is subject to a penalty equal to 10% of the difference between the tax if imposed at market value and the tax imposed at the productivity value. If the chief appraiser extended the deadline for that property owner, this penalty does not apply.

The chief appraiser must note the imposition of the penalty in the appraisal records. The property owner must be given written notice of the penalty and an explanation for its imposition. The tax assessor adds the penalty amount to the tax bill and collects the penalty along with the annual tax payment.

A lien attaches to the property until the penalty is paid. If the penalty remains unpaid on February 1 of the following year (or a later delinquency date if tax bills are mailed late), penalty and interest on the penalty amount accrue as if it were a delinquent tax.

### **One Time Application**

Once the application is filed and approved, the land continues to receive productivity appraisal every year without a new application unless the ownership changes, the land's eligibility changes, or the chief appraiser requires a new application. *The chief appraiser may require a new application if he or she has good cause to believe that the land's eligibility for productivity has ended.* If the chief appraiser requires a new application, the property owner must meet the deadlines that apply to a new applicant. To better inform the taxpayer, the chief appraiser may wish to state in writing the reason for a new application.

### **Annual Management Plan Update**

Once approved for the special valuation, property owners who qualify land for wildlife management use may be required to submit a TPDW *Annual Wildlife Management Plan Update* between January 1 and April 30.

### **Chief Appraiser's Action**

The chief appraiser must review each application and decide whether to:

1. approve it and grant productivity appraisal;
2. disapprove it and ask for more information; or
3. deny the application.

The chief appraiser must determine the validity of all timely filed applications before turning all appraisal records over to the district's appraisal review board. The deadline is May 15 or as soon afterward as is practicable.

The chief appraiser usually gives the appraisal records to the appraisal review board (ARB) by May 15. Property owners who were denied productivity appraisal may file a protest with the ARB. In addition, taxing unit officials who believe productivity appraisal was erroneously granted to any property owner may seek to remove that grant by filing a challenge with the ARB.

The chief appraiser must rule on all late-filed applications before the appraisal review board approves the records for the year. The chief appraiser must notify the applicant in writing within five days of an application's denial. This notice must explain the procedures for protest.

### **Additional Information**

The chief appraiser may request additional information. If the initial application form is valid but the chief appraiser does not have all the information needed to determine if the land qualifies, the chief appraiser may request additional information. The chief appraiser may request only additional information that is necessary to determine if the land qualifies for productivity appraisal. Information and/or documentation may include the following:

- (a) Sworn statements from lessors of subject property, owners of surrounding properties, or other person's knowledge of ag use. Statements should describe how the property has been used and the period of time used. Statements should be notarized.
- (b) Invoices for feed, veterinarian services, seed, fertilizer, etc.,
- (c) Receipts for sale of livestock, hay or farm products,
- (d) Income tax return showing farm income (Schedule F),
- (e) Current active lease.

The applicant must provide additional information within 30 days after the date of the request or the application will be denied.

If there is good cause, the chief appraiser may extend the deadline to allow additional information. An extension cannot exceed 15 days.

### **Denial of Application**

If a chief appraiser denies an application, a notice of the denial must be delivered to the applicant within five days. This notice must be sent by certified mail (See Section 1.07(d), Tax Code).

The notice from the chief appraiser will include a reason for denial and procedures for protesting to the appraisal review board.

### **Notification of Changes in Eligibility by Landowner**

If the land's eligibility ends or its ownership changes, the property owner must notify the appraisal office in writing before the next May 1.

New owners are not eligible for open-space productivity appraisal unless they apply. If the owner fails to do so, one or more penalties will apply.

If the land remains under the same ownership and the owner fails to inform the appraisal district that the land is no longer eligible for productivity appraisal, either because the land is no longer in open-space use or because the degree of intensity has fallen below that typical for the area, the property owner must pay a penalty equal to 10% of the difference between the taxes imposed under the open-space use and the taxes that would have been imposed under the new use. This penalty applies for each year the property received the incorrect appraisal, but for no more than five years.

If the property erroneously receives productivity appraisal because a new owner failed to file an application or other reason, the chief appraiser must calculate the difference between the land's market value and its productivity value. The owner must pay taxes and penalties on the difference between these values for the time that the land erroneously received productivity appraisal, plus a 10% penalty on these taxes. This additional tax and penalty may not cover a time period exceeding five years. In the year the chief appraiser discovers the change, the chief appraiser should add this value to the appraisal roll as property omitted in a prior year.

When a penalty is imposed, the chief appraiser must notify the property owner. This notice must explain the procedures for protesting the penalty. The chief appraiser notes the imposition of the penalty in the appraisal records, and the tax assessor adds the amount of the penalty to the property's annual tax bill.

## **Change of Use**

When land that has been receiving special valuation is taken out of 1-d-1 agricultural use, the law provides that a rollback tax be assessed. The rollback tax equals the difference between the taxes the owner actually paid in the five years preceding the change in use and the taxes the owner would have paid on his property's market value.

Technically, the tax is a new, additional tax imposed by law on the date the change of use occurs. It has its own delinquency date, and it does not exist until the event that triggers the rollback occurs. Selling the property does not trigger a rollback, nor does the cessation of use always trigger the rollback. Additionally, a property owner may begin using a part of the property for a residence without triggering a rollback. However, property cannot be deeded to someone else for the construction of a residence without the property being subject to a rollback. If the property owner diverts only part of a property to a non-agricultural use, the rollback tax only applies to the changed portion. Property sold or condemned for right of way is not subject to rollback.

Once the Chief Appraiser determines that a change of use has occurred, he must notify the property owner of the determination and that the property is subject to rollback taxes. The Determination Notice must include the reason(s) for the change and inform the property owner of his right of appeal.

The tax payer has the right to challenge the chief appraiser's determination by filing a protest with the Appraisal Review Board. The taxpayer has thirty days from the date of the determination notice to file a protest with the ARB.