TEXAS REGISTER

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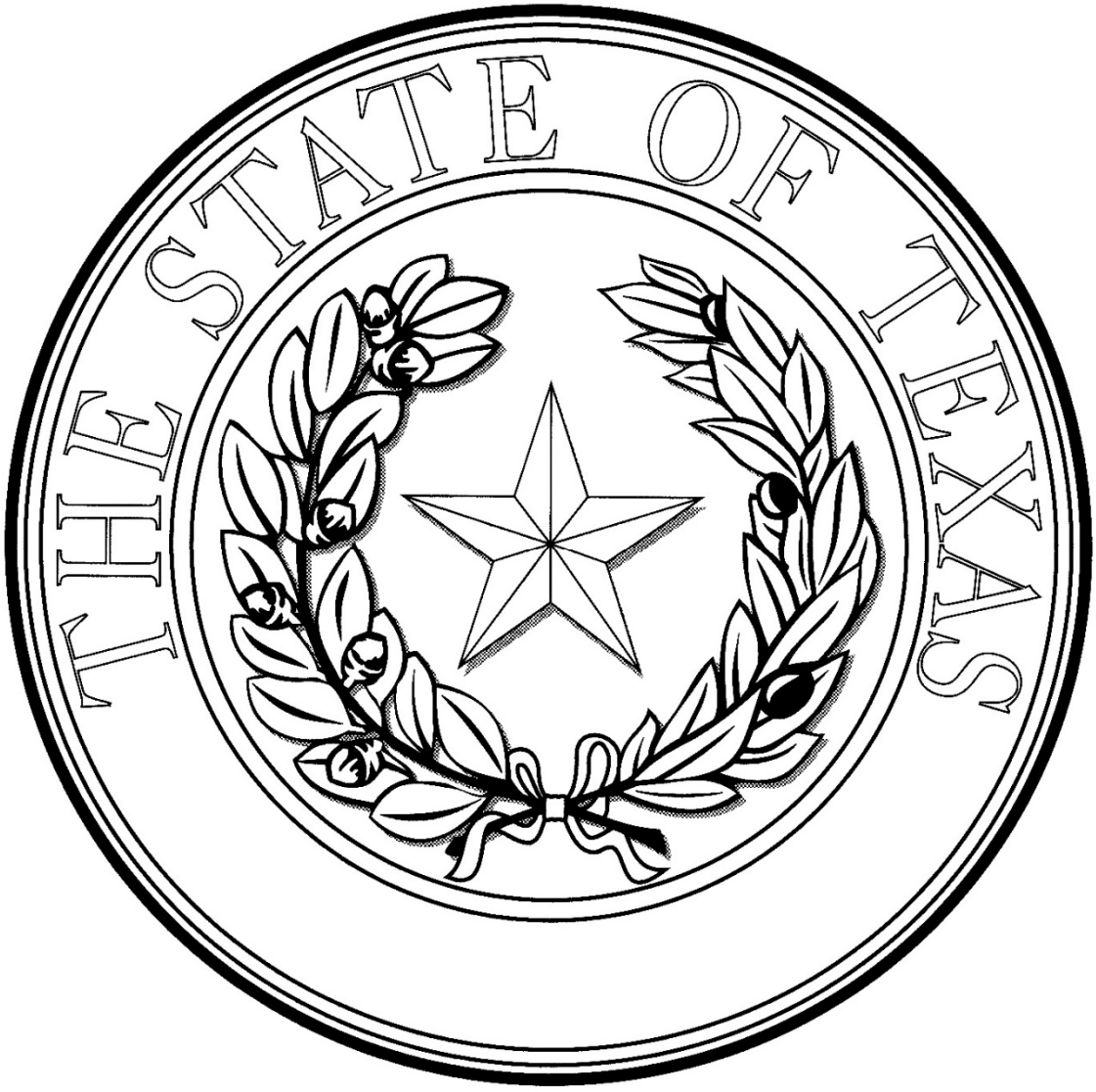

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In This Issue

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for February 7, 2022

Appointed to the One-Call Board of Texas for a term to expire August 31, 2024, Robert J. Bridge of Normanna, Texas (replacing Lester L. "Les" Stephens of New Braunfels, whose term expired).

Appointed to the One-Call Board of Texas for a term to expire August 31, 2024, Richard L. "Rich" Gann, Jr. of Sugar Land, Texas (replacing Richard D. Tesson of Houston, whose term expired).

Appointed to the One-Call Board of Texas for a term to expire August 31, 2024, Marcela S. Navarrete of El Paso, Texas (Ms. Navarrete is being reappointed).

Appointed to the One-Call Board of Texas for a term to expire August 31, 2024, Manish Seth of Missouri City, Texas (Mr. Seth is being reappointed).

Appointments for February 8, 2022

Appointed to the Adult High School Charter School Program Advisory Committee pursuant to SB 1615, 87th Legislature, Regular Session, for a term to expire at the pleasure of the Governor, Gilberto Salinas of Brownsville, Texas.

Appointed to the Child Fatality Review Team Committee for a term to expire at the pleasure of the Governor, Heather Fleming of Austin, Texas (replacing Elizabeth Farley of Austin).

Appointed to the Family Practice Residency Advisory Committee for a term to expire August 31, 2024, Elida Munoz of Farmers Branch, Texas (replacing Ruth S. Chamber of New Braunfels, whose term expired).

Appointed as the State Administrator for the Interstate Agreement on Detainers for a term to expire at the pleasure of the Governor, Timothy R. Fitzpatrick of Navasota, Texas (replacing Kimberly S. "Kim" Massey of Gatesville).

Appointments for February 9, 2022

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2023, Emmitt R. Jackson, Jr. of Argyle, Texas (replacing Justin L. Berry of Spicewood, who resigned).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2024, Melissa A. Carter of Bryan, Texas (Ms. Carter is being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2024, Hillary A. England of Pflugerville, Texas (replacing Andrea Sparks of Austin, whose term expired).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2024, Matthew L. "Matt" Ferrara, Ph.D. of Austin, Texas (Dr. Ferrara is being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2024, Michael S. "Shawn" Kennington of Pittsburg, Texas (Constable Kennington being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2024, Lindsay M. Kinzie of Keller, Texas (Ms. Kinzie is being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2024, Jeffrey D. "JD" Robertson of Wimberley, Texas (Major Robertson is being reappointed).

Greg Abbott, Governor

TRD-202200443

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Proclamation 41-3882

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the National Weather Service is predicting at least a quarter-inch of ice for Bosque, Dallas, Delta, Denton, Ellis, Fannin, Grayson, Hopkins, Hunt, Johnson, Kaufman, Lamar, Navarro, Rains, Red River, Rockwall, and Williamson counties; and

WHEREAS, the previously listed counties have issued or are planning to issue local disaster declarations in response to this ice storm;

NOW, THEREFORE, I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that this ice storm poses an imminent threat of severe property damage, injury, or loss of life in Bosque, Dallas, Delta, Denton, Ellis, Fannin, Grayson, Hopkins, Hunt, Johnson, Kaufman, Lamar, Navarro, Rains, Red River, Rockwall, and Williamson counties. In accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the previously listed counties based on the existence of such threat.

Pursuant to Section 418.017 of the code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster for that limited purpose.

Pursuant to 49 C.F.R. Section 390.23 and Chapter 644 of the Texas Transportation Code, I hereby declare a regional emergency due to this ice storm that justifies an exemption from the hours-of-service regulations in 49 C.F.R. Section 395.3 for motor carriers providing power line repairs to assist disaster relief in Texas.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 3rd day of February, 2022.

Greg Abbott, Governor

TRD-202200364

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THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, and Open Records Decisions.

An index to the full text of these documents is available on the Attorney General's website at https://www.texas.attorneygeneral.gov/attorney-general-opinions. For information about pending requests for opinions, telephone (512) 463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: https://www.texasattorneygeneral.gov/attorney-general-opinions.)

Requests for Opinions

RQ-0445-KP

Requestor:

Mr. Darrel D. Spinks

Executive Director

Texas Behavioral Health Executive Council

333 Guadalupe, Suite 3-900

Austin, Texas 78701

Re: Authority of the Behavioral Health Executive Council to repeal rules under Government Code section 507.153(a) (RQ-0445-KP)

Briefs requested by March 4, 2022

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-202200424

Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: February 8, 2022

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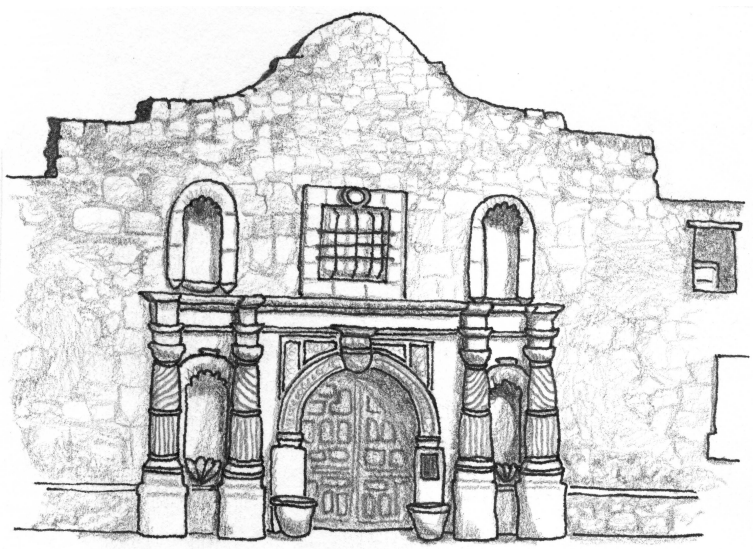

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Requests/Questions

Whether the revolving door provision in Government Code section 572.054(b) prohibits a former employee of a regulatory agency who participated in canceling a request for proposal ("RFP") during her state service from receiving compensation for assisting with a response to a subsequent RFP for the same service or product. (AOR-655.)

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800 or opinions@ethics.state.tx.us.

Issued in Austin, Texas, on February 8, 2022.

TRD-202200430
J.R. Johnson
General Counsel
Texas Ethics Commission
Filed: February 8, 2022

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Whether Chapter 572 of the Government Code prohibits a former employee of a regulatory agency from accepting certain employment. (AOR-657.)

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800 or opinions@ethics.state.tx.us.

Issued in Austin, Texas, on February 8, 2022.

TRD-202200431
J.R. Johnson
General Counsel
Texas Ethics Commission
Filed: February 8, 2022

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Whether section 572.069 of the Government Code prohibits a former employee of a regulatory agency from accepting employment from an affiliate of a person that was involved in procurements or contract negotiations in which the employee participated during her state service. (AOR-658.)

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800 or opinions@ethics.state.tx.us.

Issued in Austin, Texas, on February 8, 2022.

TRD-202200432
J.R. Johnson
General Counsel
Texas Ethics Commission
Filed: February 8, 2022

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Whether the laws under the Commission's jurisdiction prohibit a former employee of a state agency from accepting employment at another state agency. (AOR-661.)

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800 or opinions@ethics.state.tx.us.

Issued in Austin, Texas, on February 8, 2022.

TRD-202200433
J.R. Johnson
General Counsel
Texas Ethics Commission
Filed: February 8, 2022

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Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 500. COVID-19 EMERGENCY HEALTH CARE FACILITY LICENSING

SUBCHAPTER B. END STAGE RENAL DISEASE FACILITIES

26 TAC §500.21

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 500 COVID-19 Emergency Health Care Facility Licensing, new §500.21, concerning an emergency rule in response to COVID-19 in order to update and continue the regulatory requirements for end stage renal disease (ESRD) facilities to reduce barriers to treatment during the COVID-19 pandemic. As authorized by Texas Government Code §2001.034, HHSC may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020 proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this rule for ESRD Facility Requirements During the COVID-19 Pandemic.

To protect dialysis patients and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to reduce barriers to treatment for dialysis patients by updating ESRD facility regulatory guidelines regarding staffing ratios, in-home visits, telemedicine, incident reporting, and education and training requirements for staff.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Health and Safety Code §251.003 and §251.014. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Health and Safety Code §251.003 authorizes the Executive Commissioner of HHSC to adopt rules governing ESRD facilities. Texas Health and Safety Code §251.014 requires these rules to include minimum standards to protect the health and safety of a patient of an ESRD facility.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code §251.003 and §251.014.

§500.21. ESRD Facility Requirements During the COVID-19 Pandemic.

(a) Based on Governor Greg Abbott's March 13, 2020, declaration of a state of disaster in all Texas counties, the Texas Health and Human Services Commission (HHSC) adopts this emergency rule to establish continuing requirements and flexibilities to protect public health and safety during the COVID-19 pandemic. The requirements and flexibilities established in this section are applicable during an active declaration of a state of disaster in all Texas counties due to the COVID-19 pandemic, declared pursuant to Texas Government Code §418.014.

(b) Notwithstanding 25 TAC §117.43(e), core staff members shall actively participate in quality assessment and performance improvement (QAPI) activities and attend meetings every other month.

(c) Notwithstanding 25 TAC §117.45(c)(3), all verbal or telephone physician orders shall be documented and authenticated or countersigned by the physician not more than 30 calendar days from the date the order was given.

(d) Notwithstanding 25 TAC §117.45(i)(2)(C), at a minimum, each patient receiving dialysis in the facility shall be seen by a physician on the medical staff once per month during the patient's treatment time. Home dialysis patients shall be seen by a physician, advanced practice registered nurse, or physician's assistant no less than one time a month. If home dialysis patients are seen by an advanced practice registered nurse or a physician's assistant, the physician shall see the patient at least one time every three months. This visit may be conducted using telemedicine medical services. The record of these contacts shall include evidence of assessment for new and recurrent problems and review of dialysis adequacy each month.

(e) Notwithstanding 25 TAC §117.45(j)(4), the staffing level for home dialysis patients, including all modalities, shall be one full-time equivalent registered nurse per 25 patients, or portion thereof.

(f) Notwithstanding 25 TAC §117.45(j)(5)(A), the home dialysis training curriculum shall be conducted by a registered nurse with at least 12 months clinical experience and three months experience in

the specific modality with the responsibility for training the patient and the patient's caregiver.

(g) Notwithstanding 25 TAC §117.45(j)(9)(A), an initial monitoring visit of a patient's home adaptation prior to the patient beginning training for the selected home modality may be conducted from outside the patient's home if the visit is performed using a synchronous audiovisual interaction between the registered nurse and the patient while the patient is at home. The visit must be conducted to the same review standards as a normal face-to-face visit. If the visit is incapable of being performed using a synchronous audiovisual interaction between the registered nurse and the patient, the visit must be conducted in the patient's home.

(h) A home patient visit required by 25 TAC §117.45(j)(9)(B) may be conducted using telemedicine medical services.

(i) Notwithstanding 25 TAC §117.46(c)(2), each registered nurse who is assigned charge nurse responsibilities shall have at least 12 months of clinical experience and have three months of experience in hemodialysis subsequent to completion of the facility's training program. In addition:

(1) The registered nurse must be able to demonstrate competency for the required level of responsibility and the facility shall maintain documentation of that competency.

(2) The registered nurse must be certified by the facility's medical director and governing body.

(3) The hemodialysis experience shall be within the last 24 months.

(4) A registered nurse who holds a current certification from a nationally recognized board in nephrology nursing or hemodialysis may substitute the certification for the three months experience in dialysis obtained within the last 24 months.

(j) Notwithstanding 25 TAC §117.46(c)(4), if patient self-care training is provided, a registered nurse who has at least 12 months clinical experience and three months experience in the specific modality shall be responsible for training the patient or family in that modality. When other personnel assist in the training, supervision by the qualified registered nurse shall be demonstrated.

(k) Notwithstanding the deadline provision of 25 TAC §117.48(a), a facility shall report an incident listed in 25 TAC §117.48(a)(1) - (5) to HHSC within 20 working days of the incident.

(l) Notwithstanding 25 TAC §117.62(i), for persons with no previous experience in direct patient care, a minimum of 80 clock hours of classroom education and 200 clock hours of supervised clinical training shall be required for dialysis technicians. Training programs for dialysis technician trainees who have confirmed previous direct patient care experience may be shortened to a total of 40 clock hours of combined classroom education and clinical training if they demonstrate competency with the required knowledge and skills and there has not been more than a year of time elapsed since they provided patient care in a licensed ESRD facility setting.

(m) To the extent this emergency rule conflicts with 25 TAC Chapter 117, this emergency rule controls.

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

Filed with the Office of the Secretary of State on February 3, 2022.

TRD-202200363
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: February 5, 2022
Expiration date: June 4, 2022
For further information, please call: (512) 834-4591

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SUBCHAPTER D. CHEMICAL DEPENDENCY TREATMENT FACILITIES

26 TAC §§500.41 - 500.44

The Health and Human Services Commission is renewing the effectiveness of emergency new §§500.41 - 500.44 for a 60-day period. The text of the emergency rule was originally published in the October 22, 2021, issue of the *Texas Register* (46 TexReg 7110).

Filed with the Office of the Secretary of State on February 8, 2022.

TRD-202200420
Karen Ray
Chief Counsel
Health and Human Services Commission
Original effective date: October 12, 2021
Expiration date: April 9, 2022
For further information, please call: (512) 834-4591

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SUBCHAPTER E. LICENSED CHEMICAL DEPENDENCY COUNSELORS

26 TAC §500.51

The Health and Human Services Commission is renewing the effectiveness of emergency new §500.51 for a 60-day period. The text of the emergency rule was originally published in the October 22, 2021, issue of the *Texas Register* (46 TexReg 7112).

Filed with the Office of the Secretary of State on February 8, 2022.

TRD-202200421
Karen Ray
Chief Counsel
Health and Human Services Commission
Original effective date: October 12, 2021
Expiration date: April 9, 2022
For further information, please call: (512) 834-4591

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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 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.6

The Texas Board of Nursing (Board) proposes amendments to §217.6(j), relating to Failure to Renew License. The amendments are being proposed under the authority of the Occupations Code §301.151.

Background: On June 15, 2020, the Board launched the Texas Nurse Portal. The Texas Nurse Portal is a paperless, online system that allows individuals to apply for nurse licensure by examination, endorsement, or renewal. In an effort to continue moving the Board's work flow to a paperless system, the proposed amendments require the reactivation application and supporting documentation for a military spouse applicant to be submitted online through the Texas Nurse Portal.

Section by Section Overview. Proposed amended §217.6(j) provides that a military spouse applicant may be exempt from paying late fees and fines associated with a reactivation application if the applicant submits to the Board: a completed reactivation application submitted through the Texas Nurse Portal accessible through the Board's website, and documentation, also submitted through the Texas Nurse Portal accessible through the Board's website, showing that the applicant is the spouse of an individual serving on active duty as a member of the armed forces of the United States.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of a more efficient process for application submissions. There are no anticipated costs of compliance. On the contrary, the proposed amendments may reduce the existing nominal costs borne by individuals having to mail or fax paper copies of documents to the Board's offices.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. The Board has determined that there will be no economic impact on small businesses, micro businesses, or rural communities because there are no anticipated costs of compliance associated with the proposal. As such, an economic impact statement and regulatory flexibility analysis is not required.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Texas Administrative Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) the proposal is not expected to have an effect on existing agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board; (iv) the proposal does not require an increase or decrease in fees paid to the Board; (v) the proposal does not implement new legislation; (vi) the proposal modifies an existing regulation; (vii) the proposal does not increase or decrease the number of individuals subject to the rule's applicability; and (viii) the proposal does not have an effect on the state's economy.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on this proposal should be submitted to both Mark Majek, Director of Operations, and James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to mark.majek@bon.texas.gov and dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the authority of the Occupations Code §301.151.

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Cross Reference To Statute. The following statutes are affected by this proposal: the Occupations Code §301.151.

§217.6. Failure to Renew License.

(a) - (i) (No change.)

(j) Military Spouse.

(1) A nurse who is the spouse of an individual serving on active duty as a member of the armed forces of the United States may be exempt from paying the late fees and fines required by this section if the applicant submits to the Board:

(A) a completed reactivation application submitted through the Texas Nurse Portal accessible through the Board's website [~~, in paper form, that meets the applicable requirements of this section~~]; and

(B) documentation showing that the applicant is the spouse of an individual serving on active duty as a member of the armed forces of the United States, also submitted through the Texas Nurse Portal accessible through the Board's website.

(2) - (3) (No change.)

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

Filed with the Office of the Secretary of State on February 4, 2022.

TRD-202200377
Jena Abel
Deputy General Counsel
Texas Board of Nursing
Earliest possible date of adoption: March 20, 2022
For further information, please call: (512) 228-1862

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

SUBCHAPTER L. AQUATIC VEGETATION MANAGEMENT

31 TAC §57.930, §57.932

The Texas Parks and Wildlife Department (the department) proposes amendments to 31 TAC §57.930 and §57.932, concerning Aquatic Vegetation Management. The proposed amendments would provide a qualified exception for waterfront landowners from the current requirement for preparation and submission of a treatment proposal for physical removal of floating aquatic vegetation in public water adjacent to private property.

The proposed amendment to §57.930, concerning Definitions, would create a definition for floating aquatic vegetation that considers both floating species of plants not rooted in the substrate and floating mats of fragments of vegetation dislodged through natural processes such as flooding.

The proposed amendment to §57.932, concerning State Aquatic Vegetation Plan, would add new subsection (b)(5) to exempt property owners or managers or agents thereof from being required to submit a treatment proposal for physical removal of floating aquatic vegetation from public water adjacent to the property, shorelines, docks, or other waterfront infrastructure associated with the property, provided controlled exotic invasive species are possessed, transported, and disposed in compliance with §57.113 of this title, concerning Harmful or Potentially Harmful Fish, Shellfish, and Aquatic Plants), as applicable. The department has determined that removal of aquatic invasive plants is beneficial to the aquatic ecosystem and removal of small quantities of native floating aquatic plants is not detrimental. Furthermore, this activity does not present a risk of spreading aquatic invasive plant species provided compliance with regulations regarding possession, transport, and disposal of harmful or potentially harmful exotic aquatic plants.

Monica McGarrity, Senior Scientist for Aquatic Invasive Species in the Inland Fisheries Division, has determined that for each of the first five years that the rules as proposed are in effect, there will be fiscal implications to the department as a result of administering or enforcing the rules. Those implications are expected to be negligible, as they consist of a reduction in staff time required to review treatment proposals. There will be no implications to other units of state or local government.

Ms. McGarrity also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be a reduction in administrative complexity with respect to the removal of nuisance aquatic vegetation.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the proposed rules will not result in any direct economic costs to any small businesses, micro-businesses, or rural communities; therefore, the department has a determined that neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create or expand a new regulation; limit an existing regulation (by removing applicability in certain instances); neither increase nor decrease the number of individuals subject

to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Monica McGarrity, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 552-3465; email: monica.mcgarrity@tpwd.texas.gov or via the department website at www.tpwd.texas.gov.

The amendments are proposed under the authority of Parks and Wildlife Code, §11.082, which authorizes the department to develop and by rule adopt a state aquatic vegetation management plan following the generally accepted principles of integrated pest management.

The proposed amendments affect Parks and Wildlife Code, Chapter 11.

§57.930. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms in this subchapter shall have the meanings assigned in the Texas Parks and Wildlife Code.

(1) - (3) (No change.)

(4) Floating aquatic vegetation--A plant species that occurs on the surface of a lake or pond without attachment by roots to the soil at the bottom of the waterbody or free-floating mats of fragments of ordinarily rooted species of vegetation that have become dislodged through natural processes such as flooding.

(5) [~~(4)~~] Integrated pest management--the coordinated use of pest and environmental information and pest control methods to prevent unacceptable levels of pest damage by the most economical means and in a manner that will cause the least possible hazard to persons, property, and the environment. Integrated pest management includes consideration of ecological, biological, chemical, and mechanical strategies for control of nuisance aquatic vegetation.

(6) [~~(5)~~] Licensed Applicator--a person who holds a valid license for aquatic herbicide application from the Texas Department of Agriculture.

(7) [~~(6)~~] Local plan--a local aquatic vegetation management plan authorized by Parks and Wildlife Code, §11.083 and meeting the requirements in §57.933 of this title (relating to Adoption and Applicability of Local Aquatic Vegetation Plans) and §57.934 of this title (relating to Local Aquatic Vegetation Plan).

(8) [~~(7)~~] MCL--maximum contaminant level.

(9) [~~(8)~~] NPDES--National Pollutant Discharge Elimination System. The NPDES Permit Program is administered by EPA under the Clean Water Act.

(10) [~~(9)~~] Nuisance aquatic vegetation--any non-native or native vascular plant species that is determined, in consideration of TPWD guidance, to have the potential to substantially interfere with the uses of a public body of surface water.

(11) [~~(10)~~] Public body of surface water--any body of surface water that is not used exclusively for an agricultural purpose. The term does not include impounded water on private property or water being transported in a canal.

(12) [~~(11)~~] Public drinking water provider--any person who owns or operates a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals at least 60 days out of the year.

(13) [~~(12)~~] State plan--the state aquatic vegetation management plan authorized by Parks and Wildlife Code, §11.082, and described in §57.931 of this title (relating to State Aquatic Vegetation Plan Applicability) and §57.932 of this title (relating to State Aquatic Vegetation Plan).

(14) [~~(13)~~] TCEQ--Texas Commission on Environmental Quality.

(15) [~~(14)~~] TDA--the Texas Department of Agriculture.

(16) [~~(15)~~] TPWD--the Texas Parks and Wildlife Department.

(17) [~~(16)~~] Treatment proposal--a submission to TPWD on a TPWD-approved form that describes intended measures to control nuisance aquatic vegetation.

(18) [~~(17)~~] Water district--a conservation and reclamation district or an authority created under authority of Section 52(b)(1) or (2), Article III, or Section 59, Article XVI, Texas Constitution, that has jurisdiction over a public body of surface water. The term does not include a navigation district or a port authority.

§57.932. State Aquatic Vegetation Plan.

(a) Requirements Applicable to All Measures to Control Nuisance Aquatic Vegetation.

(1) - (3) (No change.)

(4) Review by TPWD. Except as provided in paragraph (5) of this subsection, prior [~~Prior~~] to undertaking any measures to control nuisance aquatic vegetation in a public body of surface water, a person operating under the state plan (exclusive of TPWD personnel or its contractors) shall provide to TPWD a treatment proposal, on a form included in the guidance document, no later than the 14th day before the measures are to begin. TPWD will review and may disapprove or amend any treatment proposal and will respond no later than the day before the proposed control measures are to begin. Where appropriate, TPWD will provide technical advice and recommendations regarding prevention of nuisance aquatic vegetation problems. The person submitting the treatment proposal shall have the burden of demonstrating compliance with the state plan. Where a local plan governs, treatment proposals are not subject to TPWD review, approval, and amendment, but are to be submitted to TPWD (pursuant to §57.934(b) of this title, relating to Local Aquatic Vegetation Plan) for informational purposes.

(5) The owner or manager of a property or their agent, other than persons hired solely for the purposes of removing aquatic vegetation or persons using mechanical harvesters, is not required to submit a treatment proposal for physical removal of floating aquatic plants from public water adjacent to the property, shorelines, docks, or other waterfront infrastructure associated with the property provided these species are possessed, transported, and disposed in compliance with §57.113 of this title (relating to Harmful or Potentially Harmful Fish, Shellfish, and Aquatic Plants).

(b) (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.

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SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

The Texas Parks and Wildlife Department proposes amendments to 31 TAC §§57.973, 57.974. 57.981, 57.992, and 57.1000, concerning the Statewide Recreational and Commercial Fishing Proclamation.

The proposed amendment to §57.973, concerning Devices, Means and Methods, would rephrase a provision concerning sail lines in subsection (g)(15)(I). The provision as currently worded could be construed as to prohibit the use of a sail line at any time by a person who holds a commercial fishing license. The department has determined that the intent of the rule is to prohibit the use of sail lines for commercial purposes, not to prevent a commercial license holder from employing a sail line while fishing under a recreational license for personal non-commercial use.

The proposed amendment to §57.974, concerning Reservoir Boundaries, would add boundary descriptions for two reservoirs (Lake Texoma and Sam Rayburn Reservoir), which is necessary to provide exact descriptions of the geographical areas to which harvest restrictions on those water bodies apply.

The proposed amendment to §57.981, concerning Bag, Possession, and Length Limits, would consist of several actions.

The proposed amendment would alter the species information with respect to striped bass in subsections (c)(5)(B)(iv) and (d)(1)(D) to remove references to white bass and subspecies. The department has determined that the change more accurately represents the intent of the rules.

The proposed amendment to §57.981 also would expand the boundaries of the area on the Oklahoma/Texas border in which the take of alligator gar is prohibited during spawning season (the month of May). Oklahoma now prohibits the take of alligator gar during the month of May on a statewide basis. The intent of the amendment is to harmonize Texas regulations for gar harvest with those in Oklahoma to mitigate to the extent possible any conflicts that could result in angler confusion and issues related to compliance and enforcement on boundary waters. The proposed amendment would prohibit the take of alligator gar from, and the possession of alligator gar while on, the Red River (including Lake Texoma) and all tributaries that drain directly or indirectly to the Red River on the Texas/Oklahoma border, in Cooke, Grayson, Fannin, Lamar, Red River, and Bowie counties during the month of May.

The proposed amendment to §57.981 also would eliminate the exception to statewide harvest standards for walleye on Lake Texoma. Walleye have not been stocked in the lake since 1977, a self-sustaining population does not exist, and the department has determined that a viable sport fishery for walleye is not possible; therefore, the management exception is no longer needed.

Additionally, the proposed amendment to §57.981 would alter subsection (d)(1)(C)(iii) to implement harvest rules for largemouth bass on Bois d'Arc Lake in Fannin County. Bois d'Arc Lake is a new impoundment and the department has determined that preservation of the largest, fastest growing largemouth bass in the new reservoir is an appropriate management strategy that will eventually maximize the quality of fishing over the lifespan of the reservoir. The proposed amendment would impose a 16-inch maximum length limit and create exceptions for temporary possession of 24-inch largemouth bass for submission to the department's ShareLunker program. The proposed amendment also would simultaneously correct an error affecting largemouth bass harvest regulations on the nine water bodies also subject to the provisions of clause (iii). An external administrative error during the rulemaking process in 2020 inadvertently resulted in incorrect largemouth bass harvest regulations being indicated in the Texas Administrative Code for the affected waterbodies. The error has since been rectified on a temporary basis by the adoption of new §57.985, which will be repealed at a later date. The proposed amendment re-establishes a maximum length limit of 16 inches with a special provision for the temporary possession of largemouth bass 24 inches and larger for possible donation to the ShareLunker program.

The proposed amendment to §57.981 also makes a clarification in subsection (d)(1)(G) to identify all the counties encompassed by Sam Rayburn Reservoir.

Finally, the proposed amendment to §57.981 would eliminate exceptions to the statewide harvest regulations for red drum on Coleto Creek Reservoir in Goliad and Victoria counties and on Lake Fairfield in Freestone County. Red drum have not been stocked by the department in either reservoir since 2011 and surveys indicate red drum are no longer present in either lake, from which the department has concluded that red drum as a sport fishery is unsustainable.

The proposed amendment to §57.992, concerning Bag, Possession, and Length Limits, would alter regulations for the commercial take of alligator gar on Lake Texoma, for the reasons set forth earlier in the discussion of the proposed amendment to §57.981 concerning recreational harvest of alligator gar on Lake Texoma. Additionally, the proposed amendment would clarify subsection (b)(4)(B) to identify all the counties encompassed by Sam Rayburn Reservoir.

The proposed amendment to §57.1000, concerning Prohibited Transport of Live Nongame Fish, would add tributaries of the Red River in Grayson, Fannin, Lamar, Red River, and Bowie counties to the list of designated waters from which the transport of live nongame fish is prohibited. The proposed amendment is intended to prevent the spread of invasive carp species to additional Texas waters as a result of being transported live for use as bait. Invasive carp pose an existential threat to native fish populations and can be a potential hazard for boaters. Silver and bighead carp have been documented in the affected waters; therefore, the department believes it is prudent to act now to mitigate against future spread to additional water bodies.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules.

Mr. Macdonald also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed

rules will be the dispensation of the agency's statutory duty to protect and conserve the resources of this state, the duty to equitably distribute opportunity for the enjoyment of those resources among the citizens, and the execution of the commission's policy to maximize recreational opportunity within the precepts of sound biological management practices.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and microbusinesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's direct adverse economic impacts" to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rules, with the exception of the amendment to §57.992, regulate various aspects of recreational license privileges that allow individual persons to pursue and harvest public wildlife resources in this state and therefore do not directly affect small businesses, micro-businesses, or rural communities. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required. With respect to the proposed amendment to §57.992, department data indicate that there is no commercial effort on Lake Texoma or the Red River involving alligator gar; therefore, there is no adverse impact to small businesses, microbusinesses, or rural communities and therefore neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation; not limit or repeal an existing regulation, but will expand a regulation (by enlarging the area where alligator gar harvest is prohibited in May); neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Michael Tennant (Inland Fisheries) at (512) 389-8754, e-mail: michael.tennant@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

DIVISION 1. GENERAL PROVISIONS

31 TAC §57.973, §57.974

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed amendments affect Parks and Wildlife Code, Chapter 61.

§57.973. Devices, Means and Methods.

(a) - (f) (No change.)

(g) Device restrictions. Devices legally used for taking fresh or saltwater fish or shrimp may be used to take crab as authorized by this subchapter.

(1) - (14) (No change.)

(15) Sail line. For use in salt water only.

(A) - (H) (No change.)

(I) No person may use a sail line for commercial purposes.[~~Sail lines may not be used by the holder of a commercial fishing license.~~]

(J) - (K) (No change.)

(16) - (23) (No change.)

§57.974. Reservoir Boundaries.

Reservoir boundaries for daily bag, possession, and length limits.

(1) - (18) (No change.)

(19) Lake Texoma in Cooke and Grayson counties comprises all impounded waters of the Red River from the Denison Dam upstream to Sycamore Creek.

(20) [~~(19)~~] Lake Travis in Burnet and Travis Counties comprises all impounded waters of the Colorado River from the Mansfield dam (Lake Travis dam) upstream to the Max Starcke dam (Lake Marble Falls dam) including the Pedernales River upstream to the Hammetts Crossing-Hamilton Pool Road bridge.

(21) [~~(20)~~] Purtis Creek State Park Lake in Henderson and Van Zandt Counties comprises all waters within the Purtis Creek State Park boundaries.

(22) Sam Rayburn Reservoir in Angelina, Jasper, Nacogdoches, Sabine, and San Augustine counties comprises all impounded waters of the Angelina River from the Sam Rayburn Dam upstream to the Union Pacific railroad bridge.

(23) [~~(21)~~] Toledo Bend Reservoir in Newton, Sabine, and Shelby counties comprises all impounded waters of the Sabine River from the Toledo Bend Reservoir Dam upstream to the Texas/Louisiana state line.

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

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James Murphy
General Counsel
Texas Parks and Wildlife Department
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DIVISION 2. STATEWIDE RECREATIONAL FISHING PROCLAMATION

31 TAC §57.981

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed amendments affect Parks and Wildlife Code, Chapter 61.

§57.981. Bag, Possession, and Length Limits.

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

(c) There are no bag, possession, or length limits on game or non-game fish, except as provided in this subchapter.

(1) - (4) (No change.)

(5) Except as provided in subsection (d) of this section, the statewide daily bag and length limits shall be as follows.

(A) (No change.)

(B) Bass:

(i) - (iii) (No change.)

(iv) Striped and their hybrids [~~(including hybrids and subspecies)~~].

(I) - (III) (No change.)

(v) (No change.)

(C) - (H) (No change.)

(I) Gar, alligator.

(i) - (iii) (No change.)

(iv) During May, no person shall [~~fish for,~~] take[~~,~~] alligator gar from, or possess alligator gar while on, the Red River (including Lake Texoma) and all tributaries that drain directly or indirectly to the Red River on the Texas/Oklahoma border in Cooke, Grayson, Fannin, Lamar, Red River, and Bowie counties [~~seek to take in that portion of Lake Texoma encompassed within the boundaries of the Hagerman National Wildlife Refuge or that portion of Lake Texoma from the U.S. 377 bridge (Willis Bridge) upstream to the I.H. 35 bridge~~].

(v) - (vii) (No change.)

(J) - (X) (No change.)

(d) Exceptions to statewide daily bag, possession, and length limits shall be as follows:

(1) Freshwater species.

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

(C) Bass: largemouth

(i) - (ii) (No change.)

(iii) Lakes Bellwood (Smith County), Bois d'Arc (Fannin County), Davy Crockett (Fannin County), Kurth (Angelina County), Mill Creek (Van Zandt County), Moss (Cooke), Nacogdoches (Nacogdoches County), Naconiche (Nacogdoches County), Purtis Creek State Park (Henderson and Van Zandt counties), and Raven (Walker).

(I) (No change.)

(II) Maximum length limit: 16 inches.[~~Minimum length limit: 12 inches.~~]

(III) It is unlawful to retain largemouth bass greater than 16 inches in length. Largemouth bass 24 inches or greater in length may be retained in a live well or other aerated holding device for purposes of weighing but may not be removed from the immediate vicinity of the lake. After weighing the bass must be released immediately back into the lake unless the department has instructed that the bass be kept for donation to the ShareLunker Program.

(iv) - (x) (No change.)

(D) Bass: striped and [~~white bass~~] their hybrids [~~and subspecies~~].

(i) - (iv) (No change.)

(E) - (F) (No change.)

(G) Catfish: channel and blue catfish, their hybrids and subspecies.

(i) - (ii) (No change.)

(iii) Lakes Caddo (Harrison and Marion counties), Livingston (Polk, San Jacinto, Trinity, and Walker counties), Sam Rayburn (Angelina, Jasper, Nacogdoches, Sabine, and San Augustine counties [~~County~~]), and Toledo Bend (Newton, Sabine and Shelby counties) and the Sabine River (Newton and Orange counties) from Toledo Bend dam to the I.H. 10 bridge.

(I) - (IV) (No change.)

(iv) - (ix) (No change.)

(H) - (I) (No change.)

(J) Drum, red. Lakes Braunig and Calaveras (Bexar County) [~~, Coleto Creek Reservoir (Goliad and Victoria counties), and Fairfield (Freestone County)~~].

(i) - (iii) (No change.)

(K) Gar, alligator.

(i) - (ii) (No change.)

(iii) During May, no person shall [~~fish for,~~] take[~~,~~] alligator gar from, or possess alligator gar while on, the Red River (including Lake Texoma) and all tributaries that drain directly or indirectly to the Red River on the Texas/Oklahoma border in Cooke, Grayson, Fannin, Lamar, Red River, and Bowie counties [~~seek to take in that portion of Lake Texoma encompassed within the boundaries of the Hagerman National Wildlife Refuge or that portion of Lake Texoma from the U.S. 377 bridge (Willis Bridge) upstream to the I.H. 35 bridge~~].

(L) - (N) (No change.)

[~~(O) Walleye. Lake Texoma (Cooke and Grayson counties).~~]

[~~*(i)* Daily bag limit: 5.~~]

[~~*(ii)* Minimum length limit: 18.~~]

(2) (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.

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DIVISION 3. STATEWIDE COMMERCIAL FISHING PROCLAMATION

31 TAC §57.992

The amendment is proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed amendment affects Parks and Wildlife Code, Chapter 61.

§57.992. Bag, Possession, and Length Limits.

(a) (No change.)

(b) There are no bag, possession, or length limits on game fish, non-game fish, or shellfish, except as otherwise provided in this subchapter.

(1) - (3) (No change.)

(4) The statewide daily bag and length limits for commercial fishing shall be as follows.

(A) (No change.)

(B) Catfish.

(i) channel and blue (including hybrids and subspecies). The provisions of subclauses (I) - (III) of this clause apply on all waters for which an exception is not provided under subclause (IV) of this clause.

(I) - (III) (No change.)

(IV) Exceptions.

(-a-) Lakes Caddo (Harrison and Marion counties), Livingston (Polk, San Jacinto, Trinity, and Walker counties), Sam Rayburn (Angelina, Jasper, Nacogdoches, Sabine, and San Augustine counties [~~County~~]), and Toledo Bend (Newton, Sabine, and Shelby counties), and the Sabine River (Newton and Orange counties) from Toledo Bend dam to the I.H. 10 bridge.

(-1-) - (-2-) (No change.)

(-b-) - (-c-) (No change.)

(ii) (No change.)

(C) - (E) (No change.)

(F) Gar, alligator.

(i) - (iii) (No change.)

(iv) During May, no person shall [~~fish for,~~] take[~~,~~] alligator gar from, or possess alligator gar while on, the Red River (including Lake Texoma) and all tributaries that drain directly or indirectly to the Red River on the Texas/Oklahoma boundary in Cooke, Grayson, Fannin, Lamar, Red River, and Bowie counties [~~seek to take in that portion of Lake Texoma encompassed within the boundaries of the Hagerman National Wildlife Refuge or that portion of Lake Texoma from the U.S. 377 bridge (Willis Bridge) upstream to the I.H. 35 bridge~~].

(v) - (vi) (No change.)

(G) - (N) (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.

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DIVISION 4. SPECIAL PROVISIONS TO PREVENT THE SPREAD OF EXOTIC AQUATIC SPECIES

31 TAC §57.1000

The amendment is proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to reg-

ulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed amendment affects Parks and Wildlife Code, Chapter 61.

§57.1000. Prohibited Transport of Live Nongame Fish.

No person may leave a body of water listed in this section while in possession of a live nongame fish:

(1) the Red River and all tributary waters in Grayson, Fannin, Lamar, Red River, and Bowie counties below Lake Texoma downstream to the Texas/Arkansas border;

(2) - (3) (No change.)

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

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CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

SUBCHAPTER A. STATEWIDE OYSTER FISHERY PROCLAMATION

31 TAC §58.21

The Texas Parks and Wildlife Department (TPWD) proposes an amendment to 31 TAC §58.21, concerning Taking or Attempting to Take Oysters from Public Oyster Beds: General Rules.

The proposed amendment would prohibit the harvest of oysters in Carlos Bay, Mesquite Bay, and Ayres Bay (hereafter referred to as the Carlos-Mesquite-Ayres complex). The closure to oyster harvest would protect ecologically sensitive and unique oyster habitat from the negative biological impacts of increased harvest pressure.

Oyster reefs in Texas have been impacted by drought, flooding, and hurricanes (e.g. Hurricane Ike, September 2008 and Hurricane Harvey, August 2017; major flooding in the coastal bend during summer/fall 2021) as well as high harvest pressure.

In 2017, the department closed six minor bays to oyster harvest (42 TexReg 6018). Those minor bays are unique in that they are relatively shallow systems containing intertidal and shallow-water oyster habitat adjacent to expansive seagrass beds and intertidal vegetation. Historically, oyster resources located in these minor bays and shoreline areas were rarely exploited, as commercial fishing was typically directed towards the more profitable and efficiently harvested reef complexes in larger and deeper waters; thus, the minor bays have functioned as de facto spawning reserves because harvest pressure was minimal and oyster larvae produced from these areas were available to populate oyster habitat on adjacent reefs and bays. However, as oyster resources became depleted on deep-water reefs, commercial harvest effort was redirected to shallow-water reefs. The resultant increase in harvest pressure and the consequent negative impacts to sensitive habitat complexes necessitated regulatory action to prohibit harvest in those systems.

In 2021, the department became aware of increasing harvest effort for oysters in the Carlos-Mesquite-Ayres complex, which generated concerns with respect to the long-term impacts to habitat within the complex. To date, the total number of reported commercial vessels reporting harvest from Mesquite Bay (shellfish harvest is reported to the department by harvest area rather than bay system or individual reef system; Mesquite Bay is area TX-28) during the 2021-2022 commercial oyster season is the highest on record (126 unique vessels compared to an average of 51 unique vessels from license year 2015-2021). The department has determined that in terms of ecological importance and risk of habitat loss, the harvest impacts on Carlos-Mesquite-Ayres complex are consistent with similar conditions necessitating the closure in 2017 of the six minor bay systems mentioned previously in this preamble. The Carlos-Mesquite-Ayres complex area is characterized by both intertidal and deeper oyster reefs, expansive seagrass beds, and fringing salt marsh habitats. The orientation of the shallow reefs in the system provide protection against erosion of the shoreline and associated wetlands as well as sensitive seagrass habitats. The proximity of shallow water and intertidal oyster habitat to other estuarine habitat types (e.g., seagrasses and marshes) is a major factor affecting macrofauna (invertebrates that live on or in sediment or attached to hard substrates) density and community composition (Grabowski et al. 2005; Gain et al. 2017). Until recently, sedimentation in Cedar Bayou had made it inaccessible; however, it has been re-opened, allowing activities that affect seagrasses, wetlands, and oyster reefs that serve as critical nursery habitats for young fish and invertebrates recruiting to the estuary (including both red frum and blue crab) to occur via Cedar Bayou pass (Hall et al. 2016). The protection and continued availability of this habitat may increase their growth, survival, and subsequent recruitment to the fishery for these organisms (Byer et al. 2017; Longmire et al. 2021).

The Carlos-Mesquite-Ayers complex was the site of similar increased harvest pressure in 2016-2017 following the closure of the six minor bays to oyster harvest 2017 mentioned earlier in this preamble, in terms of both the number of commercial oyster boats fishing in this area and oyster landings (e.g., 1,227 vessel trips in Mesquite Bay compared to an average of 1,037 vessel trips in Christmas Bay in 2017). While harvest pressure in the Carlos-Mesquite-Ayres complex declined after the record high during the 2016-17 season, it has increased in recent years. Through November 2021 of the 2021-2022 commercial oyster season, the number of reported commercial vessel trips in Mesquite Bay (784 vessel trips) and the total commercial harvest (21,163 sacks) are the second highest on record, with several months remaining in the season. While landings on many of the reefs in Carlos Bay and Ayres Bay cannot be independently assessed because those data are collected within large harvest areas (in this case, TX- 29 and TX-25, respectively), anecdotal

observations reported by the public and department staff indicate increases in harvest in these systems. Further, the department has been contacted by members of the public concerned that the structural integrity of the habitat in this complex has been degraded by oyster harvest effort in terms of physical structure and vertical relief. While the department does not currently have long-term monitoring data on physical habitat structure, live oyster abundance can often be used as a proxy for habitat health, as oyster habitats are biogenic (the organisms create the habitat). Several of the reefs within this complex have live oyster abundance that is below the 25th percentile of average oyster abundance for the entire bay system, indicating that they may have become structurally degraded and thus a priority for restoration.

Over the past year, oyster reefs in the coastal bend have been negatively impacted by decreased recruitment and oyster mortality and the resultant impacts of commercial oyster fishing pressure that has been redirected to remaining viable reef complexes. The preferred salinity range for oysters is 14-30‰ (mille, or tenth of a percent) for adults and 18-23‰ for egg and larval development. Spat (juvenile oysters) settling is optimized at 16-22‰ with diminishing settlement below 16‰ (Pattillo et. al., 1997). Additionally, when salinities drop below 10‰ "limited or no recruitment" occurs (La Peyre et al., 2013). While spawning in Texas is likely to occur in every month except July and August, peak spawnings are May to early June and again in September and October. During the summer and fall of 2021, many Texas estuaries experienced heavy rainfall and flooding, which brought salinities well below the preferred range for oyster recruitment and survival. Most notably, salinity in Copano Bay dropped below the 10‰ threshold beginning in June 2021, and its monthly average has ranged from 2.7‰ to 7.5‰ from June 2021 to December 2021. Sustained low salinity has resulted in very low recruitment and total oyster mortality in excess of 50% in Copano Bay. Given that Copano Bay typically supported the commercial fishing effort in this area of the coast, much of the commercial fleet has redistributed its effort to higher-salinity portions of the bay during the 2021-2022 commercial oyster season---primarily the Carlos-Mesquite-Ayers complex. While observed salinities in this area were not as low as those observed in Copano Bay, they were still sub-optimal (i.e., <16‰ from July 2021-November 2021), which will likely impact the ability of the complex to recover from the effects of increased harvest pressure. The significant ecological value and sensitivity of the Carlos-Mesquite-Ayers complex, coupled with the increasing harvest pressure, have produced conditions consistent with those that necessitated the closure of the six minor bay systems in 2017.

Therefore, the proposed amendment would prohibit oyster harvest in all waters of Carlos Bay and Ayres Bay from a line drawn between two points at the southern end of Carlos Bay (28.11450, -96.92570; 28.11061, -96.88817) to a line drawn between two points at the northern end of Ayers Bay (28.21394, -96.81237; 28.18807, -96.79233), and includes all waters in Mesquite Bay. The proposed amendment would affect 2,129 acres of oyster habitat (approximately 2.8% of coastwide oyster habitat) and prohibit harvest on 54.9% of the oyster reefs in lower Aransas Bay (TX-29), 100% of the reefs in Mesquite Bay (TX-28), and 41.3% of the oyster reefs in lower San Antonio Bay (TX -25).

Dakus Geeslin, Science and Policy Branch Chief, Coastal Fisheries Division, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule.

Mr. Geeslin also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be the dispensation of the agency's statutory duty to protect and conserve the fisheries resources of this state; the duty to equitably distribute opportunity for the enjoyment of those resources among the citizens; the execution of the commission's policy to maximize recreational opportunity within the precepts of sound biological management practices; and the protection of a reef complex to preserve a continuing supply of oyster larvae to colonize oyster habitat within the bay system.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

To ensure that this analysis captures every small or micro-business affected by the proposed rules, the department assumes that most, if not all businesses affected by the proposed rules qualify as small or micro-businesses.

The department has determined that there will be adverse economic effects on small businesses, micro-businesses, and persons required to comply. The proposed rule would affect persons licensed by the department to harvest and sell oysters taken from public water. To evaluate the potential reduction in harvest resulting from the proposed closure of the Carlos-Mesquite-Ayers Bay complex, historical trends in commercial oyster harvest, ex-vessel (dockside, or first sale) value of harvest, and number of commercial oyster vessels reporting were examined for each of these areas. While the Mesquite Bay portion of this complex is its own shellfish harvest area (TX-28), the oyster reefs within the Carlos Bay and Ayers Bay portion of this complex make up 54.9% and 41.3% (respectively) of the oyster reefs within the larger shellfish harvest areas in which they are located (TX-29 and TX-25, respectively). The three-year average (license years 2019-2021) of commercial oyster harvest in Mesquite Bay (TX-28) constitutes 1.0% of the coastwide public season harvest (7,252 sacks). This harvest equates to a three-year average ex-vessel value of $254,021 (1.0% of coastwide value) for a three-year average of 71 commercial oyster boats reporting landings in Mesquite Bay, which equates to an ex-vessel value loss of approximately $3,557 per reporting vessel (Mesquite Bay portion only); however, the department notes that production can be highly variable, as shown in data from the 2016-2017 commercial oyster season, in which harvest from Mesquite Bay produced a record 34,588 sacks, which equates to $1,238,309 ex-vessel value for 113 commercial oyster boats.

Over the same period (i.e., license years 2019-2021), TX-29 (which contains the Carlos Bay portion of the proposed closure area) experienced a three-year average commercial oyster harvest of 31,758 (4.5% of coastwide landings), which equates to a $1,200,911 average ex-vessel value (4.5% of coastwide value) for an average of 129 commercial oyster boats. Similar to Mesquite Bay, the 2016-2017 commercial oyster season produced the highest landings on record for TX-29 (82,437 sacks),

which equates to $2,884,905 ex-vessel value for 179 oyster vessels. The department assumes that landings, ex-vessel value, and number of oyster boat are distributed proportionally to the amount of oyster reef throughout TX-29. Given that 54.9% of the oyster reef in TX-29 is contained in the proposed Carlos Bay closure area, the three-year (license years 2019-2021) average landings, ex-vessel value, and number of oyster boats associated with the Carlos Bay portion of the proposed closure area would be 17,435 sacks (2.5% of coastwide landings) with an ex-vessel value of $659,300 (2.5% of coastwide ex-vessel value) for 71 vessels.

Lastly, over the same period (i.e., license year 2019-2021), TX-25 (which contains the Ayers Bay portion of the proposed closure area) experienced a three-year average commercial oyster harvest of 110,839 sacks (14.9% of coastwide landings), which equates to a three-year average of $3,963,547 ex-vessel value (14.7% of coastwide ex-vessel value) for an average of 271 commercial oyster boats. The 2019-2020 commercial oyster season produced a record-high harvest of 139,847 sacks, which equates to $5,450,131 ex-vessel value for 336 oyster vessels. The department assumes that landings, ex-vessel value, and number of oyster boats are distributed proportionally to the amount of oyster reef throughout TX-25. Given that 41.3% of the oyster reef in TX-25 is contained in the proposed Ayers Bay closure area, the three-year (license years 2019-2021) average landings, ex-vessel value, and number of oyster boats associated with the Ayers Bay portion of the proposed closure area would be 45,777 sacks (6.1% of coastwide landings) with an ex-vessel value of $1,636,945 (6.1% of coastwide ex-vessel value) for 112 vessels.

The department estimates that in total the proposed closure of the Carlos-Mesquite-Ayers complex (adjusted proportionally to account for oyster reef) would result in total landings, ex-vessel value, and oyster boats reporting landings of 70,463 sacks (9.6% of coastwide landings) with an ex-vessel value of $2,550,266 for 213 vessels. On that basis, the department estimates that the adverse economic impact to small and micro businesses as a result of the rules would be $11,973 per vessel ($2,550,266 ex-vessel value / 213 reporting vessels).

There will be no adverse economic impacts to rural communities.

The department considered several alternatives to achieve the goals of the proposed rule while reducing adverse economic impacts to small and micro-businesses.

One alternative considered was to maintain the status quo. This alternative was rejected because the department has determined that the current level of harvest in the Carlos-Mesquite-Ayers complex is unsustainable and to allow harvest to continue at the current rate would be to fail to fulfill the departments statutory and regulatory responsibility to protect oyster resources, and by extension, other biologically interconnected systems and fisheries resources in this area.

A second alternative was to prohibit the take of oysters in smaller areas or restrict the prohibition to a single bay system. The department rejected this alternative because the majority of sensitive and at-risk oyster reefs in this area occur where these bays converge; a closure in a smaller area or a single bay would not be sufficient to arrest or reverse the current negative impacts to oyster resources in the reef complex.

Another alternative considered was to calculate a maximum sustainable harvest value for the reef complex and allocate that value to licensees on a per-vessel quota basis. This alternative was rejected because it would likely result in each licensee being allocated a harvest quota that would not justify the effort, and in any case, would be difficult for the department to develop and monitor without additional resources.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

The department has determined that the proposed rules are in compliance with Government Code §505.11 (Actions and Rule Amendments Subject to the Coastal Management Program).

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation; will expand an existing regulation (by creating new area closures); neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Dr. Tiffany Hopper, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8575; email: cfish@tpwd.texas.gov, or via the department website at www.tpwd.texas.gov.

The amendment is proposed under Parks and Wildlife Code, §76.301, which authorizes the commission to regulate the taking, possession, purchase and sale of oysters, including prescribing the times, places, conditions, and means and manner of taking oysters, and §76.115, which authorizes the commission to close an area to the taking of oysters when the area is to be reseeded or restocked.

The proposed amendment affects Parks and Wildlife Code, Chapter 76.

§58.21. Taking or Attempting to Take Oysters from Public Oyster Beds: General Rules.

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

(c) Area Closures.

(1) (No change.)

(2) No person may take or attempt to take oysters within an area described in this paragraph. The provisions of subparagraphs (A)(i) - (v) and (C) of this paragraph cease effect on November 1, 2022. The provisions of subparagraphs (A)(vi) - (viii) and (B) cease effect on November 1, 2023.

(A) - (I) (No change.)

(J) Mesquite Bay, Aransas and Calhoun counties.

(K) Carlos Bay, Aransas County. The area within the boundaries of Carlos Bay from the border of Mesquite Bay to a line beginning at 28° 06' 52.19", 96° 55' 32.52" (28.11450° N, -96.92570° W)

and ending at 28° 06' 38.19", 96° 53' 17.41" (28.11061°N, -96.88817° W).

(L) Ayres Bay, Calhoun County. The area within the boundaries of Ayres Bay from the border of Mesquite Bay to a line beginning at 28° 12' 50.18", 96° 48' 44.53" (28.21394° N, -96.81237° W) and ending at 28° 11' 17.05", 96° 47' 32.38" (28.18807° N, -96.79233° W).

(M) [~~(J)~~] Areas along all shorelines extending 300 feet from the water's edge, including all oysters (whether submerged or not) landward of this 300-foot line.

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 February 7, 2022.

TRD-202200388
James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 20, 2022
For further information, please call: (512) 389-4775

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CHAPTER 65. WILDLIFE
SUBCHAPTER A. STATEWIDE HUNTING PROCLAMATION

The Texas Parks and Wildlife Department proposes the repeal of 31 TAC §65.4 and amendments to §§65.3, 65.10, 65.11, 65.42, and 65.64, concerning the Statewide Hunting Proclamation.

The repeal of §65.4, concerning Proof of Sex for Deer is necessary to transfer the contents of that section to §65.10, concerning Possession of Wildlife Resources. Section 65.4 was promulgated earlier this year because of pending rule action in §65.10 to implement rules regarding digital hunting and fishing licenses, which made that section unavailable for additional rule action. The proposed repeal will allow the department to comport the provisions of the two sections.

The proposed amendment to §65.3, concerning Definitions, would modify the definitions of "antlerless" and "buck" deer to further clarify the types of deer to which those terms apply. As a matter of reproductive biology, there are only two types of deer, male (buck) and female (doe). Harvest regulations historically have been centered on directing or deflecting harvest pressure to or away from those segments as necessary to manage population size. As an enforcement matter, however, these distinctions can be problematic because it is not always an easy matter to positively identify a deer as male or female while hunting, especially at a distance or in low visibility conditions. Most male white-tailed deer and mule deer typically develop their first set of distinctive hardened antlers at one and one-half years of age. Antlers are shed annually; thus, for some portion of the year, male deer cannot be readily or easily distinguished from female deer. The same is true of male fawns that have not developed antlers and the small percentage of male fawns with extremely limited antler growth that cannot be readily discerned except upon close inspection (the so-called "nubbin" or "button" bucks). In such situations, a hunter may, upon seeing a deer with no discernible antler characteristics, conclude that the deer is a female deer and legal to harvest as a female deer, only to discover upon harvest that the deer is in fact a male deer, which can be problematic if the harvest of male deer is prohibited at that time. For these reasons, the department many years ago replaced the term "doe" with the term "antlerless deer," which was intended to accommodate the unintentional but completely understandable circumstance of harvesting of deer that appeared to be female, only to discover otherwise on closer inspection. Another longstanding conundrum has been bucks in velvet. Technically, antlers in velvet are not actually completely hardened antlers yet; thus, the current and historic definition of a buck being "a deer with a hardened antler protruding through the skin" has been occasionally problematic, because to a hunter in the field it is difficult to tell whether an antler is fully in velvet (i.e. an antlerless deer) or not (a legal buck). In order to be as clear and specific as possible as to the specific types of animals that bag limits, tagging requirements, and proof-of-sex rules for "buck" and "antlerless" apply to, the proposed amendment would clarify that the term "antlerless deer" means a deer having no antler point (a projection extending at least one inch from the edge of a main beam or another tine, which includes the tip of a main beam) protruding through the skin or a buck deer that has completely shed its antlers. The proposed amendment would alter the definition of "buck deer" to apply the same standard; a buck deer is a deer having an antler point protruding through the skin or a deer having antler growth in velvet of greater than one inch.

The proposed amendment to §65.3 also would create a new definition for "commercial cold storage or processing facility." Under Parks and Wildlife Code, §42.018, no person except as provided by commission rule may possess the carcass of a deer before the carcass has been finally processed unless the deer has been tagged. In order to be finally processed, a carcass must be at a final destination, which can be either the possessor's permanent residence or a cold storage or processing facility. The proposed amendment to §65.10 would alter tagging and documentation requirements, which necessitates the creation of new distinctions regarding final destinations. The proposed definition of "commercial cold storage or processing facility" would be "a cold storage or processing facility as defined in Parks and Wildlife Code, §42.001, that is made available for use by individuals other than the owner, the owner's nonpaying family members, or the owner's nonpaying guests in exchange for a fee or other consideration." Parks and Wildlife Code, §62.029, specifically exempts private, noncommercial, family-owned cold storage or processing facilities from the requirement to maintain a cold storage record book for deer that are taken beyond quarters, unless the facility is located on a hunting lease and is made available to individuals other than the landowner, the landowner's nonpaying family members, or the landowner's nonpaying guests. In effect, this bifurcates cold storage or processing facilities into two categories, commercial (those available to paying customers) and non-commercial (those available only to non-paying family and guests). The department has determined that there is a further differentiation with respect to commercial cold storage or processing facilities because some facilities are located on ranches and hunting leases that, while being made available to paying customers (i.e., persons who have paid to hunt on the property), are not open to the general public. Therefore, the proposed amendment would define a "Type 1 commercial cold storage or processing facility" as "a facility that is a place of business open to the public for the purpose of storing or processing game animals or game birds upon demand on a for-profit

basis or in exchange for anything of value," and a "Type 2 commercial cold storage processing facility" as "a facility that is not open to the public on an on-demand basis and is utilized to store or process game taken by persons on properties where hunting by individuals in return for pay or other consideration occurs."

The proposed amendment to §65.3 also would create a new definition of "final destination." Under Parks and Wildlife Code, §42.001, a final destination for deer is the permanent residence of the hunter, the permanent residence of another person receiving the carcass, or a cold storage or processing facility. Under current rule, proof of sex (evidence of gender identity) for deer must remain with the carcass until the carcass reaches a final destination and is processed beyond quartering. As noted previously, the department is engaged in a concerted battle to control the spread of CWD. One mitigation strategy is to minimize where possible the extent to which certain body parts of harvested deer are transported from place to place. The department elsewhere in this rulemaking proposes to eliminate proof-of-sex requirements for deer that have been entered into a cold storage record book at a Type 2 commercial cold storage or processing facility (which allows the head, spinal column, etc. to remain at the harvest location); thus, the Type 2 cold storage processing facility would no longer be a final destination.

As previously noted in this preamble, the proposed amendment to §65.10, concerning Possession of Wildlife Resources, would make alterations to current rules regarding the nature and applicability of tagging and proof-of-sex requirements for deer. Parks and Wildlife Code, §42.018, provides that except as provided by commission rule, no person may possess the carcass of a deer before the carcass has been finally processed unless the deer has been lawfully tagged. Current rule stipulates that in order to be finally processed, a carcass must be at a final destination, which can be either the possessor's permanent residence or a cold storage or processing facility, and that proof of sex accompany a harvested deer until it reaches a final destination. The proposed amendment would alter those requirements for the reasons noted in the discussion of the proposed amendment to §65.3. It has come to the attention of the department that the requirement that a head remain with a carcass until the carcass is taken beyond quarters at a final destination is problematic at larger commercial cold storage/processing facilities, where immediate removal and disposal of the head is desirable for purposes of allowing hunters to retain the heads of trophy deer and for reasons of sanitation and food safety. Therefore, proposed new subsection (b)(2) would establish the conditions under which tagging requirements for deer cease at Type 1 commercial cold storage or processing facilities. Tagging requirements for a deer at a Type 1 commercial cold storage or processing facility would cease when the required information has been entered into the cold storage record book and the harvest location has been recorded (which may be maintained on a single document or separate documents); however, the cold storage or processing facility would be required to maintain the tag or Wildlife Resource Document (WRD), as applicable, on premises for so long as the carcass or any part of the carcass remains in possession, which is necessary in case the department needs the tag for evidentiary or investigational purposes. The proposed amendment would create paragraph (4) to make clear that although by statute there is no cold storage or record book requirement at a private, noncommercial cold storage facility, a cold storage record book nonetheless may be maintained if desired and accordingly, tagging and proof-of-sex requirements cease and a carcass may be processed beyond quarters when the required information has been recorded. The proposed amendment also would eliminate current subsection (b)(5) to eliminate conflicts of interpretation caused by commission action to alter statutory provision regarding tagging, proof of sex, and final destinations.

The proposed amendment to §65.10 would also alter provisions governing proof of sex. The movement, and ultimately, the improper disposal of carcasses and carcass parts, particularly skulls, brains, and spinal cords, increases the risk of spreading CWD. Under current rule, proof-of-sex for deer is the head of the deer, which must accompany the carcass until a final destination is reached. The proposed new rule would provide an alternative to the current rules regarding proof of sex for buck deer, by allowing the option of retaining the tail and unskinned skull cap with antlers attached, and for female deer, by allowing certain gender-related anatomical parts to accompany the carcass in lieu of the head. This would provide hunters an option to leave the head of a female deer at the site of harvest to reduce risk for the potential spread of CWD from that site. The proposed amendment also eliminates a superfluous reference to "personal consumption." A hunting license authorizes a person to take wildlife resources for personal use, including consumption; thus, the language is not necessary.

The proposed amendment to §65.11, concerning Lawful Means, would make changes necessary to comport the section with the proposed amendment to §65.42, concerning Deer. Under Parks and Wildlife Code, Chapter 43, Subchapter I, in a county that does not permit hunting with a firearm, a hunter may use a crossbow only if the hunter is a person with upper limb disabilities and has an archery hunting stamp. The proposed amendment to §65.42 would allow the use of firearms in four counties where lawful means are currently restricted to archery equipment only; therefore, any person would be able to hunt lawfully with a crossbow during the archery-only season and during the general season.

The proposed amendment to §65.42, concerning Deer, would allow harvest by firearm in four counties where lawful means are currently restricted to archery equipment (along with four "doe days" at Thanksgiving), extend the mule deer season in 15 Panhandle counties from nine days to 16 days, and implement antler restriction rules for the harvest of mule deer in 21 additional Panhandle counties and Terrell County.

The department received a petition for rulemaking requesting that firearms be made lawful for use during the general season in Collin, Dallas, Grayson, and Rockwall counties. Under current rule, harvest in the affected counties is restricted to archery equipment only. The season in Grayson County was closed in 1961 for reasons that the department is not able to determine. With the establishment of the Hagerman National Wildlife Refuge in 1983, the commission in 1984 authorized an archery-only season restricted to the refuge. In 1999 the department expanded the archery-only season countywide at the request of landowners and hunters, and harvest has remained restricted to archery equipment since that time. In 2010 the harvest regulations in effect in Grayson County were implemented in Collin, Dallas, and Rockwall counties (which had been closed for many years) at the request of State Representative Jodie Laubenberg and a finding that allowing take by archery only would not result in depletion or waste.

The department has determined that there is no biological reason for restricting the means of take for white-tailed deer in Collin, Dallas, Grayson, and Rockwall counties, which is

supported by department harvest, population, and habitat data. The majority of the four counties are encompassed within a single Deer Management Unit (DMU 21) and have habitat and deer population characteristics similar to the DMUs surrounding DMU 21. Take of white-tailed deer with a firearm is allowed in the surrounding DMUs. Therefore, the proposed amendment would implement similar harvest regulations in Collin, Dallas, Grayson, and Rockwall counties, consisting of an archery-only season, early and late youth seasons, a general season in which all lawful means may be used, and four "doe days" at Thanksgiving (during which antlerless deer may be harvested without a permit, which is in effect in surrounding counties with similar population dynamics, habitat, and harvest pressure). The bag limit would be four deer, no more than two bucks and no more than two antlerless, and the "antler restriction rule" would remain in effect (to be lawful for take, a buck must have at least one unbranched antler or an inside spread of 13 inches or greater and no person is allowed to take more than one buck with an inside spread of 13 inches or greater). Additionally, the proposed amendment would require all harvested deer in all seasons to be reported to the department via the department's internet or mobile application within 24 hours of take, which is necessary at least in the short term for the department to monitor and evaluate the effects of the new harvest rule on local populations.

Finally, the proposed amendment would replace the term "pronghorn antelope" with the term "pronghorn" where it occurs in the sections affected by this rulemaking. Parks and Wildlife Code, Chapter 63, designates the "pronghorn antelope" as a game species; however, the animal is not a true antelope. In 2020, the department amended §65.3 to stipulate that "pronghorn" means "pronghorn antelope" and has been engaged in a gradual process in the course of various rulemakings of replacing the term where it occurs in agency rules. The department believes it is less cumbersome and more accurate to simply refer to the animal as a pronghorn.

In 2018, the department implemented an experimental antler restriction regulation for mule deer (prohibiting harvest of bucks with an outside spread of the main beams of less than 20 inches) in six Panhandle counties in response to data indicating an injuriously excessive harvest of young mule deer bucks. The intent of the antler restriction rule was to protect bucks in the younger age cohorts from harvest, allowing them to grow into mature bucks, which in turn results in sex ratios consistent with those found in normal populations. Within four hunting seasons, population data indicate an improving sex ratio (which is an index of reduced harvest pressure) and harvest data have indicated a steep declining trend in the harvest of young bucks and a steady increasing trend in the harvest of mature (older) bucks. The department therefore believes that the antler restriction regulation is achieving the desired effect and will exert a similar beneficial effect in additional counties that either are experiencing overharvest of young bucks or in which harvest trends indicate overharvest is likely to occur in the future. The department also believes that extending the season from nine days to 16 days in the selected counties can safely provide additional hunting opportunity without the threat of depletion or waste, because the antler restrictions will protect approximately 80 percent of the buck population younger than four years of age and the hunting of antlerless mule deer is already strictly controlled by means of permits. The proposed amendment is expected to result in improved sex ratios, a healthier age structure in the buck segment of the herd, and older, more desirable buck deer for hunters. The antler restriction would not be implemented in any part of a county within a CWD management zone (an area where CWD may be more likely to occur and certain special provisions regarding harvest reporting and carcass movement are in effect), which is necessary because current science indicates that increased buck harvest in those areas will reduce CWD prevalence rates and may inhibit the spread of CWD into new areas.

Finally, the proposed amendment would implement the antler restriction rule in Terrell County. Harvest and population data indicate that intense buck harvest has skewed sex ratios and severely reduced buck structure to the point that the mule deer population in the management unit is in danger of depletion.

The proposed amendment also would eliminate subsection (a)(5) in order to locate reporting requirements in the specific suites of counties to which they apply.

The proposed amendment to §65.64, concerning Turkey, would close the spring turkey season east of Interstate Highway 35 in Ellis County. The department is conducting stocking operations and closing that part of the county to harvest will offer additional support in the reestablishment of huntable populations in the future.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules.

Mr. Macdonald also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be the dispensation of the agency's statutory duty to protect and conserve the resources of this state, the duty to equitably distribute opportunity for the enjoyment of those resources among the citizens, and the execution of the commission's policy to maximize recreational opportunity within the precepts of sound biological management practices.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and microbusinesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts"€ to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rules regulate various aspects of recreational license privileges that allow individual persons to pursue and harvest wildlife resources in this state and therefore do not directly affect small businesses, micro-businesses, or rural communities. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation; not repeal, expand, or limit an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Robert Macdonald at (512) 389-4775, e-mail: robert.macdonald@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

DIVISION 1. GENERAL PROVISIONS

31 TAC §§65.3, 65.10, 65.11

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed. The amendments are also proposed under the authority of Parks and Wildlife Code, Chapter 42, which authorizes the commission to modify or eliminate the tagging, carcass, final destination, or final processing requirements or provisions provided by Parks and Wildlife Code, Chapter 42.

The proposed amendments affect Parks and Wildlife Code, Chapter 61 and Chapter 42.

§65.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms in this chapter shall have the meanings assigned in the Texas Parks and Wildlife Code.

(1) - (5) (No change.)

(6) Antlerless deer--

(A) A deer having no [~~hardened~~] antler point protruding through the skin; or [.]

(B) a deer that has no antlers.

(7) - (10) No change.)

(11) Buck deer--

(A) A deer having an [~~a hardened~~] antler point protruding through the skin; or [.]

(B) a deer having antler growth in velvet of greater than one inch.

(12) (No change.)

(13) Commercial cold storage or processing facility--A cold storage or processing facility as defined in Parks and Wildlife Code, §42.001, that is made available for use by individuals other than the owner, the owner's nonpaying family members, or the owner's nonpaying guests in exchange for a fee or other consideration.

(A) A Type 1 commercial cold storage or processing facility is a facility that is a place of business open to the public for the purpose of storing or processing game animals or game birds upon demand on a for-profit basis or in exchange for anything of value.

(B) A Type 2 commercial cold storage processing facility is a facility:

(i) that is not open to the public on an on-demand basis; and

(ii) is utilized to store or process game taken by persons on properties where hunting by individuals in return for pay or other consideration occurs.

(14) [~~(13)~~] Daily bag limit--The quantity of a species of a wildlife resource that may be lawfully taken in one day.

(15) [~~(14)~~] Day--A 24-hour period of time that begins at midnight and ends at midnight.

(16) [~~(15)~~] Deer population data--Results derived from deer population surveys and/or from systematic data analysis of density or herd health indicators, such as browse surveys or other scientifically acceptable data, that function as direct or indirect indicators of population density.

(17) Final destination for deer--for a deer carcass or any part of a deer carcass, a final destination is any of the following:

(A) the permanent residence of the hunter;

(B) the permanent residence of any other person receiving the carcass or part of a carcass; or

(C) a Type 1 commercial cold storage or processing facility.

(18) [~~(16)~~] Final processing--The cleaning of a dead wildlife resource for cooking or storage purposes. For a deer or pronghorn [~~antelope~~] carcass, the term includes the processing of the animal more than by quartering.

(19) [~~(17)~~] Fully automatic firearm--Any firearm that is capable of firing more than one cartridge in succession by a single function of the trigger.

(20) [~~(18)~~] Gig--Any hand-held shaft with single or multiple points.

(21) [~~(19)~~] Herd unit--A discrete geographical area designated by the department for the purpose of population monitoring and permit issuance with respect to pronghorn.

(22) [~~(20)~~] Landowner--Any person who has an ownership interest in a tract of land, and includes a person authorized by the landowner to act on behalf of the landowner as the landowner's agent.

(23) [~~(21)~~] Lawful archery equipment--Longbow, recurved bow, compound bow, and crossbow.

(24) [~~(22)~~] License year--The period of time for which an annual hunting license is valid.

(25) [~~(23)~~] Muzzleloader--Any firearm designed such that the propellant and bullet or projectile can be loaded only through the muzzle.

(26) [~~(24)~~] Permanent residence--One's domicile. This does not include a temporary abode or dwelling such as a hunting/fishing club, or any club house, cabin, tent, or trailer house used as a hunting/fishing club, or any hotel, motel, or rooming house used during a hunting, fishing, pleasure, or business trip.

(27) [~~(25)~~] Possession limit--The maximum number of a wildlife resource that may be lawfully possessed at one time.

(28) [~~(26)~~] Pre-charged pneumatic--An air gun or arrow gun for which the propellant is supplied or introduced by means of a source that is physically separate from the air gun or arrow gun.

(29) [~~(27)~~] Pronghorn--A pronghorn antelope (Antilocapra americana).

(30) [~~(28)~~] Silencer or sound-suppressing device--Any device that reduces the normal noise level created when the firearm is discharged or fired.

(31) [~~(29)~~] Spike-buck deer--A buck deer with no antler having more than one point.

(32) [~~(30)~~] Unbranched antler--An antler having no more than one antler point.

(33) [~~(31)~~] Unbranched antlered deer--A buck deer having at least one unbranched antler.

(34) [~~(32)~~] Upper-limb disability--A permanent loss of the use of fingers, hand or arm in a manner that renders a person incapable of using a longbow, compound bow or recurved bow.

(35) [~~(33)~~] (33) Wildlife resources--Alligators, all game animals, and all game birds.

(36) [~~(34)~~] (34) Wounded deer--A deer leaving a blood trail.

§65.10. Possession of Wildlife Resources.

(a) For all wildlife resources taken [~~for personal consumption and~~] for which there is a possession limit, the possession limit shall not apply after the wildlife resource has reached the possessor's permanent residence and is finally processed.

(b) Under authority of Parks and Wildlife Code, §42.0177, the tagging requirements of Parks and Wildlife Code, §42.018, are modified as follows.

(1) At a final destination other than a cold storage or processing facility required to maintain a cold storage record book under the provisions of this subchapter [~~Parks and Wildlife Code, §62.029,~~] tagging requirements for a carcass cease when the forequarters, hindquarters, and back straps have been completely severed from the carcass.

(2) At a Type 1 commercial cold storage or processing facility, tagging requirements for a carcass cease when:

(A) the information required by Parks and Wildlife Code, §62.029, has been entered into the cold storage record book; and

(B) for each carcass entered into the cold storage record book, the harvest location required to be indicated on a tag or WRD (the county where the deer was harvested and the name of the ranch or property where the deer was harvested) has been recorded by the proprietor or agent of the facility.

(C) The information required by subparagraph (B) of this paragraph may be combined with or appended to the information required to be entered into the cold storage record book or may be maintained separately.

(D) After being detached from a carcass, a tag or WRD, as applicable, shall be retained at the premises of the cold storage or processing facility for as long as the carcass or any part of the carcass remains in the possession of the cold storage or processing facility.

(3) [~~(2)~~] At a Type 2 commercial cold storage or processing facility [~~required to maintain a cold storage record book under the provisions of Parks and Wildlife Code, §62.029,~~] tagging requirements for a carcass cease when:

(A) the forequarters, hindquarters, and back straps have been completely severed from the carcass; and

(B) the information required under Parks and Wildlife Code, §62.029, has been entered into the cold storage record book that the cold storage or processing facility is required to maintain.

(C) After the information required under Parks and Wildlife Code, §62.029, has been entered into the cold storage record book, a carcass may be taken beyond quarters.

(4) At a private noncommercial cold storage processing facility as defined in Parks and Wildlife Code, §62.029, where a cold storage record book is maintained, carcass tagging and proof-of-sex requirements cease and the carcass may be taken beyond quarters when the required information has been entered in the cold storage record book.

(5) [~~(3)~~] Except as provided in paragraph (3) [~~(4)~~] of this subsection, the tagging requirements for deer and turkey taken under a digital license issued under the provisions of §53.3(a)(12) of this title (relating to Super Combination Hunting and Fishing License Packages) or under the digital tagging option of §53.4(a)(1) of this title (relating to Lifetime Licenses) are prescribed in subsection (e) of this section.

(6) [~~(4)~~] A person who has purchased a digital license identified in §53.4(a)(1) of this title and selected the fulfilment of physical tags must comply with the tagging requirements of Parks and Wildlife Code, Chapter 42, and this chapter that are applicable to the tagging of deer and turkey under a license that is not a digital license.

[~~(5) The provisions of this subsection do not modify or eliminate any requirement of this subchapter or the Parks and Wildlife Code applicable to a carcass before it is at a final destination.~~]

(c) - (e) (No change.)

(f) Proof of sex for deer and pronghorn [~~antelope~~] must remain with the carcass until tagging requirements cease.

(1) Proof of sex for deer consists of:

(A) buck:

(i) the head, with antlers still attached; or

(ii) the tail and unskinned skull cap with antlers attached; and

[~~(A) buck: the head, with antlers still attached; and~~]

(B) antlerless:

(i) the head; or

(ii) if the deer is female: the mammary organ (udder) or vulva; and

[(B) antlerless: the head.]

(2) Proof of sex for pronghorn [antelope] consists of the unskinned head.

(g) - (m) (No change.)

§65.11. Lawful Means.

It is unlawful to hunt alligators, game animals or game birds except by the means authorized by this section, and as provided in §65.19of this title (relating to Hunting Deer with Dogs).

(1) (No change.)

(2) Archery.

(A) A [Except as provided in paragraph (3) of this section, a] person may hunt by means of lawful archery equipment during any open season; however, no person shall hunt deer by lawful archery equipment during a special muzzleloader-only deer season.

(B) - (C) (No change.)

(D) Lawful archery equipment is the only lawful means that may be used during archery-only seasons[, except as provided in paragraph (3) of this section].

(3) Crossbow--Special Provisions.

[(A) In Collin, Dallas, Grayson, and Rockwall counties:]

[(i) no person may use a crossbow to hunt deer during the archery-only season unless the person has an upper-limb disability and has in immediate possession a physician's statement that certifies the extent of the disability; and]

[(ii) any person may hunt deer by means of crossbow during the general open season and the requirements of clause (i) of this subparagraph do not apply.]

[(B)] When hunting turkey and all game animals other than squirrels by means of crossbow:

(A) [(i)] the crossbow must have a mechanical safety; and

(B) [(ii)] the bolt must conform with paragraph (2)(B) and (C) of this section.

(4) - (9) (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 February 7, 2022.

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James Murphy
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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31 TAC §65.4

The repeal is proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed repeal affects Parks and Wildlife Code, Chapter 61.

§65.4. Proof of Sex for Deer.

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

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General Counsel
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DIVISION 2. OPEN SEASONS AND BAG LIMITS

31 TAC §65.42, §65.64

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed amendments affect Parks and Wildlife Code, Chapter 61.

§65.42. Deer.

(a) General.

(1) - (4) (No change.)

[(5) In the counties or portions of counties listed in subsection (b)(2)(H) of this section, antlerless deer harvested on properties not subject to the provisions of §65.29 of this title (relating to Managed Lands Deer (MLD) Programs) must be reported via the department's internet or mobile application within 24 hours of the time of kill, including antlerless deer harvested during the special seasons established by subsection (b)(5) - (7) of this section.]

(b) White-tailed deer. The open seasons and bag limits for white-tailed deer shall be as follows.

(1) (No change.)

(2) The general open season for the counties listed in this subparagraph is from the first Saturday in November through the first Sunday in January.

(A) - (G) (No change.)

(H) In Austin, Bastrop, Caldwell, Colorado, Collin, Comal (east of IH 35), Dallas, DeWitt, Fayette, Goliad (north of U.S. Highway 59), Gonzales, Grayson, Guadalupe, Hays (east of IH 35), Jackson (north of U.S. Highway 59), Karnes, Lavaca, Lee, Rockwall, Travis (east of IH 35), Victoria (north of U.S. Highway 59), Waller, Washington, Wharton (north of U.S. Highway 59), and Wilson counties:

(i) - (iii) (No change.)

(iv) Special provisions.

(I) In Collin, Dallas, Grayson, and Rockwall counties, all deer harvested on properties not subject to the provisions of §65.29 of this title (relating to Managed Lands Deer (MLD) Programs) must be reported via the department's internet or mobile application within 24 hours of the time of kill, including deer harvested during any special season established by subsection (b)(5) - (7) of this section.

(II) In the counties or portions of counties not listed in subclause (I) of this clause, antlerless deer harvested on properties not subject to the provisions of §65.29 of this title (relating to Managed Lands Deer (MLD) Programs) must be reported via the department's internet or mobile application within 24 hours of the time of kill, including antlerless deer harvested during any special seasons established by subsection (b)(5) - (7) of this section.

~~[(I) In Collin, Dallas, Grayson, and Rockwall counties there is a general open season:]~~

~~*[(i)* the bag limit is four deer, no more than two bucks and no more than two antlerless;]~~

~~*[(ii)* the antler restrictions described in paragraph (3) of this subsection apply; and]~~

~~*[(iii)* lawful means are restricted to lawful archery equipment, including properties for which MLDP tags have been issued.]~~

(I) [~~(J)~~] In Andrews, Bailey Castro, Cochran, Dallam, Dawson, Deaf Smith, Gaines, Hale, Hansford, Hartley, Hockley, Lamb, Lubbock, Lynn, Martin, Moore, Oldham, Parmer, Potter, Randall, Sherman, Swisher, Terry, and Yoakum counties, the bag limit is three deer, no more than one buck and no more than two antlerless.

(J) [~~(K)~~] In Crane, Ector, Loving, Midland, Ward, and Winkler counties:

(i) - (ii) (No change.)

(K) [~~(L)~~] In all other counties, there is no general open season.

(3) - (7) (No change.)

(c) Mule deer. The open seasons and bag limits for mule deer shall be as follows:

(1) In Andrews, Armstrong, Bailey, Borden, Briscoe, Carson, Castro, Childress, Cochran, Coke, Collingsworth, Cottle, Crosby, Dallam, Dawson, Deaf Smith, Dickens, Donley, Fisher, Floyd, Foard, Gaines, Garza, Gray, Hale, Hall, Hansford, Hardeman, Hartley, Hemphill, Hockley, Hutchinson, Kent, King, Knox, Lamb, Lipscomb, Lubbock, Lynn, Martin, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Scurry, Sherman, Stonewall, Swisher, Terry, [~~and~~] Wheeler and Yoakum counties:

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

(D) In Andrews, Armstrong, Bailey, Briscoe, Castro, Childress, Cochran, Collingsworth, Cottle, Dawson, Donley, Foard, Floyd, Gaines, Hale, Hall, Hardeman, Hockley, Lamb, Lynn, Lubbock, Martin, [~~and~~] Motley, Parmer, Randall, Swisher, Terry, and Yoakum counties, no person may harvest a buck deer with an outside spread of the main beams of less than 20 inches.

(2) (No change.)

(3) In Brewster, Pecos, and Terrell counties:

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

(D) In Terrell County, no person may harvest a buck deer with an outside spread of the main beams of less than 20 inches.

~~[(4) In Andrews, Bailey, Castro, Cochran, Dawson, Gaines, Hale, Hockley, Lamb, Lubbock, Lynn, Martin, Parmer, Terry, and Yoakum counties:]~~

~~[(A) the Saturday before Thanksgiving for nine consecutive days;]~~

~~[(B) bag limit: one buck; and]~~

~~[(C) antlerless deer may be taken by antlerless mule deer permit or MLDP tag only.]~~

~~[(D) In Lynn County, no person may harvest a buck deer with an outside spread of the main beams of less than 20 inches.]~~

(4) [~~(5)~~] In all other counties, there is no general open season for mule deer.

(5) [~~(6)~~] Archery-only open seasons and bag and possession limits shall be as follows.

(A) In Andrews, Armstrong, Bailey, Borden, Briscoe, Carson, Castro, Childress, Cochran, Coke, Collingsworth, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Deaf Smith, Dickens, Donley, Ector, El Paso, Fisher, Floyd, Foard, Gaines, Garza, Gray, Hale, Hall, Hansford, Hardeman, Hartley, Hemphill, Hockley, Hudspeth, Hutchinson, Jeff Davis, Kent, King, Knox, Lamb, Lipscomb, Loving, Lubbock, Lynn, Martin, Midland, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Presidio, Randall, Reagan, Reeves, Roberts, Scurry, Sherman, Stonewall, Swisher, Terry, Upton, Val Verde, Ward, Wheeler, [~~and~~] Winkler, and Yoakum counties:

(i) - (ii) (No change.)

(B) (No change.)

(6) There are no antler restrictions within a Containment Zone or Surveillance Zone established under the provisions of Subchapter B, Division 1 of this chapter.

§65.64. Turkey.

(a) (No change.)

(b) Rio Grande Turkey. The open seasons and bag limits for Rio Grande turkey shall be as follows.

(1) - (2) (No change.)

(3) Spring season and bag limits.

(A) The counties listed in this subparagraph are in the Spring North Zone. In Archer, Armstrong, Bandera, Baylor, Bell, Bexar, Blanco, Borden, Bosque, Brewster, Briscoe, Brown, Burnet, Callahan, Carson, Childress, Clay, Coke, Coleman, Collingsworth, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Donley, Eastland, Ector, Edwards, Ellis (west of Interstate Hwy. 35), Erath, Fisher, Floyd, Foard, Garza, Gillespie, Glasscock, Gray, Guadalupe, Hall, Hamilton, Hardeman, Hartley, Haskell, Hays, Hemphill, Hill, Hood, Howard, Hutchinson, Irion, Jack, Jeff Davis, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Kinney (north of U.S. Hwy. 90), Knox, Lampasas, Lipscomb, Llano, Lynn, Martin, Mason, McCulloch, McLennan, Medina (north of U.S. Hwy. 90), Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Pecos, Potter, Randall, Reagan, Real, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Throckmorton, Tom Green, Travis, Upton, Uvalde (north of U.S. Hwy. 90), Val Verde (north of a line beginning at the International Bridge and proceeding along Spur 239 to U.S. Hwy. 90 and thence to the Kinney County line), Ward, Wheeler, Wichita, Wilbarger, Williamson, Wise, and Young counties, there is a spring general open season.

(i) - (ii) (No change.)

(B) - (C) (No change.)

(4) (No change.)

(c) - (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.

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SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 2. CHRONIC WASTING DISEASE - COMPREHENSIVE RULES

31 TAC §65.97

The Texas Parks and Wildlife Department (the department) proposes amendments to 31 TAC §65.97, concerning Testing and Movement of Deer Pursuant to a Triple T or TTP Permit. The proposed rule would establish chronic wasting disease (CWD) testing requirements and other provisions for properties that are prospective trap sites for permits to trap, transport, and transplant game animals and game birds (colloquially known as "Triple T" permits). The department earlier this year promulgated rules that made extensive changes to the CWD management rules (46 TexReg 8724) contained in Chapter 65, Subchapter B (commonly referred to as the "comprehensive rules"). Among other things, that rulemaking imposed a temporary moratorium on the issuance of Triple T permits for deer; however, the Parks and Wildlife Commission directed staff to develop a proposal as quickly as possible to allow resumption of program functionality. The intent of this proposed rulemaking is to restore the availability of the Triple T permit program for deer while minimizing the probability of CWD being spread as a result of deer translocation activities.

CWD is a fatal neurodegenerative disorder that affects cervid species such as white-tailed deer, mule deer, elk, red deer, sika, and others (susceptible species). CWD is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep) and bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans. CWD is transmitted both directly (through deer-to-deer contact) and indirectly (through environmental contamination).

White-tailed deer and mule deer are indigenous species authorized to be regulated by the department under the Parks and Wildlife Code. Under Parks and Wildlife Code, Chapter 43, Subchapter E, the department may issue permits authorizing the trapping, transporting, and transplanting of game animals and game birds for wildlife management (popularly referred to as "Triple T" permits).

The department, along with the Texas Animal Health Commission (TAHC), has been engaged in an ongoing battle against CWD in Texas since 2002. The recent detections of CWD in multiple deer breeding facilities created an unprecedented situation because it greatly increased the probability that CWD could have been spread to many new locations, including breeder deer release sites that subsequently could become trap sites for deer relocations under Triple T permits, which introduces even greater concerns regarding disease propagation.

Much remains unknown about CWD. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. There is currently no scientific evidence to indicate that CWD is transmissible to humans; however, the Centers for Disease Control and Prevention and the World Health Organization strongly recommend testing animals from CWD Zones prior to consumption, and if positive, recommend not consuming the meat. What is known is that CWD is invariably fatal to cervids. Additionally, the apparent persistence of CWD in contaminated environments represents a significant obstacle to eradication of CWD from either captive or free-ranging cervid populations. The potential implications of CWD for Texas and its multi-billion-dollar ranching, hunting, real estate, tourism, and wildlife management-related economies could be significant, unless it is contained and controlled.

The department has engaged in frequent rulemaking over the years to address both the general threat posed by CWD and the repeated detection of CWD in deer breeding facilities. In 2005, the department adopted rules (30 TexReg 3595) that closed the Texas border to the entry of out-of-state captive white-tailed and mule deer and increased regulatory requirements regarding disease monitoring and record keeping. In 2012, based on recommendations from the department's CWD Task Force (an ad hoc group of deer management professionals, landowners, veterinarians, scientists, and deer breeders), the department adopted rules (37 TexReg 10231) to implement a CWD containment strat-

egy in response to the detection of CWD in free-ranging mule deer located in the Hueco Mountains, the first detection of CWD in Texas. In 2015, the department discovered CWD in a deer breeding facility in Medina County and adopted emergency rules (40 TexReg 5566) to respond immediately to the threat, followed by rules (41 TexReg 815) intended to function through the 2015-2016 hunting season. Working closely with TAHC and with the assistance of the Center for Public Policy Dispute Resolution of the University of Texas School of Law, the department intensively utilized input from stakeholders and interested parties to develop and adopt comprehensive CWD management rules in 2016 (41 TexReg 5726), including provisions for live testing ("ante-mortem") of deer for CWD. Since 2002, the department has made a continuous, concerted effort to involve the regulated community and stakeholders in the process of developing appropriate CWD response, management, and containment strategies, including input from the Breeder User Group (an ad hoc group of deer breeders), the CWD Task Force, the Private Lands Advisory Committee (an advisory group of private landowners from various ecological regions of the state), and the White-tailed Deer and Mule Deer Advisory Committees (advisory groups of landowners, hunters, wildlife managers, and other stakeholders).

The Triple T permit is a deer management tool for land managers and landowners, allowing surplus deer to be moved to places where deer are needed. The department has issued 149 Triple T permits at an average rate of 29.8 permits per year during the past five years. Some of these transplantations involve trapping at sites where breeder deer have been released or transferred in the past, as well as at places that have received deer via Triple T permit from other trap sites where breeder deer were transferred. As mentioned earlier in this preamble, the department engaged in rulemaking earlier this year in response to the recent detections of CWD in multiple deer breeding facilities, from which the department was forced to conclude that the rules in effect were not, as previously believed, adequate for providing assurances that CWD could be detected in breeding facilities before it could be spread to additional breeding facilities and free-ranging populations. Because breeder deer have been transferred to many properties that could become potential trap sites for Triple T activities, the department became concerned that Triple T activities could be or become a contributor to the spread of CWD.

Under current rule (which, as noted, is temporarily suspended, but would be restored under the proposed amendment), the department will not issue a Triple T permit unless "not detected" post-mortem test results have been submitted for 15 test-eligible deer from the trap site. The department has determined that this standard provides insufficient confidence that CWD is not present or being spread by Triple T activities, particularly at places where breeder deer have been transferred in the past. Therefore, the proposed amendment, while retaining the current five-year time window concerning ineligibility for permit issuance as a result of breeder deer transfers for purposes of release, would provide for increased surveillance at properties where breeder deer have never been transferred and at properties where breeder deer were transferred at least five years prior to permit application.

Unlike deer breeding facilities (where the population is captive and every deer is theoretically available for testing), in free-range settings such as Triple T release sites, not all deer are readily available or in fact easy to locate. As a result, the department concluded that post-mortem testing of harvested deer was the most viable and appropriate vehicle for establishing a reasonable confidence that CWD does not exist at the trap site. The proposed amendment would impose a basic testing regime by requiring, prior to authorization of any trapping activities under a Triple T permit, the post-mortem testing of at least 60 deer; the tagging of all deer transferred under a Triple T permit; and continuous post-mortem testing on all trap sites at the rate of 15 deer per year in order to maintain trap site eligibility for Triple T permit activities. The proposed amendment would require continuous testing to ensure that long-term surveillance is conducted following establishment of trap site status (via submission of 60 "not detected" tests, as applicable) and would provide the department a reasonable degree of confidence that CWD is not present in that deer population, and thus, not likely to be transmitted to other locations and populations if the site is used as a trap site for Triple T activities. Therefore, the proposed amendment would impose a continuous testing regime and stipulate that any gap or lacunae in testing efforts would cause the testing requirements of the section to start over again in order to regain eligibility for trap site status. The 60-sample standard is the minimum sample size needed to attain 95 percent confidence that CWD is not present at a five percent prevalence for an infinite, homogenous population with random disease distribution.

In developing the proposed rule, the department identified three risk categories presented by Triple T trap sites with respect to disease transmission. Of greatest concern are trap sites that are under a hold order or quarantine. A hold order prohibits the movement of a herd, animal, or animal product pending the determination of CWD status. A hold order is issued when a test result of "suspect" at a deer breeding facility ("index facility") is received and applies to all locations that are epidemiologically connected to that facility, directly or indirectly (i.e., where breeder deer have been transferred directly from the suspect breeding facility, or, in some cases, via an intermediate breeding facility). A quarantine restricts animal or animal product movement from or onto a property as a result of verification of the existence of or exposure to CWD. This category of release site is of the greatest concern because deer at such sites have been exposed to a positive breeding facility, are potentially infected, and therefore are potentially able to spread the disease to additional locations and animals. The current rules prohibit trap-site authorization only for sites that are under a hold order at the time. The proposed amendment would prohibit trapping for Triple T purposes at sites that are subject to a hold order or quarantine and would provide that a property that has been subject to a hold order or quarantine is eligible to be a trap site beginning five years from the date that the hold order or quarantine is lifted. The proposed provision is necessary because evaluation of disease status and mitigation of disease transmission after breeder deer are transferred and released are inherently more problematic than evaluation of disease status and mitigation of disease transmission before breeder deer are moved from a breeding facility. The current rule was designed to temporarily halt deer movement from affected facilities and locations until testing efficacy could reach acceptable levels; however, given the recent detections of CWD at multiple facilities despite rules intended to prevent it, the department cannot be certain that CWD is not present at prospective trap sites where breeder deer from epidemiologically linked facilities have been transferred and released in the past.

Of less, but still very significant concern, are prospective trap sites that have received a breeder deer. This category is of concern because of the continuing detection of CWD in deer breeding facilities. As stated earlier in this preamble and based on epidemiological investigation, it has become quite apparent that the

CWD testing requirements in effect for breeding facilities prior to 2021 were inadequate for detecting CWD in a timely fashion. Although the recently adopted comprehensive rules definitively improve disease surveillance at breeding facilities, they do not address the disease-risk scenarios presented by deer transferred from breeding facilities under the previous rules. Consequently, the proposed amendment would require the submission of a minimum of 60 post-mortem test results of "not detected" for samples collected on prospective trap sites that have been the site of a breeder deer transfer for purposes of release, provided at least five years have elapsed prior to the collection of any samples and the last release of breeder deer at the prospective trap site. The department notes that CWD (especially at low prevalence) is not randomly distributed and that populations are not completely homogenous (because of barriers such as high fences, habitat type and quality, the presence of humans, and so on); however, site-specific testing at this intensity is expected to provide minimal assurance that movement from trap sites where breeder deer have been previously transferred and released (including breeder bucks temporarily possessed for breeding purposes under a Deer Management Permit) will not result in the spread of CWD to additional areas and populations. In sum, the testing and trapping requirements for these trap sites should provide minimal assurance that CWD is not spread via Triple T activities involving trap sites where breeder deer have been transferred and released in the past.

The remaining risk category is represented by trap sites that have *never* received a breeder deer. Compared to the other two categories, these sites are the least likely to present a risk of CWD transmission because there is a demonstrably minimal epidemiological connectivity with deer breeding facilities (which, in Texas and nationally, have been shown to have the greatest capacity to amplify and spread CWD) and they are not located in CWD Containment or Surveillance Zones. The post-mortem testing prescribed by the proposed rules (60 deer prior to permit authorization, 15 deer per year afterwards), in concert with the lower risk of CWD introduction associated with sites that have never received breeder deer, are believed by the department to be adequate to address disease risk. The proposed amendment would allow the required 60 post-mortem tests to be conducted in a single year or over the course of consecutive years, provided a minimum of 15 test results per year are submitted and the samples are collected in consecutive years. The 60-sample standard is the minimum sample size needed to attain 95 percent confidence that CWD is not present at a five percent prevalence for an infinite, homogenous population with random disease distribution.

The proposed amendment would alter the timelines for test validity specified in current subsection (a)(6) and (7), which is necessary because the proposed amendments would predicate permit eligibility on the basis of continuous testing effort; thus, the testing windows are necessary for purposes of verifying compliance with annual testing requirements over time.

The proposed amendment also would reorganize existing provisions by moving the contents of current subsection (a)(3) into the list in subsection (a)(2) of situations in which the department will not authorize trapping for Triple T purposes.

The proposed amendment also would prohibit the authorization of trapping activities at any site wholly or partially within a five-mile radius surrounding a property containing a breeding facility that the department has designated NMQ (non-movement qualified, or prohibited from transferring deer) under the provisions of §65.99, concerning Breeding Facilities Epidemiologically Connected to Deer Infected with CWD, but would allow such sites to become eligible to be a trap site once the department has restored MQ status to the facility in question and the provisions of this section as applicable, have been met. The five-mile radius was chosen after considering feedback received from various advisory groups along with deer movement data (the department notes that this value exceeds the standard imposed by department rules regarding CWD containment zones under Chapter 65, Subchapter B, Division 1). The proposed amendment also would allow for approval of trapping activities at such sites if the department conducts a trap site assessment that stipulates specific testing and management protocols the department deems necessary to assure that adequate disease surveillance exists and will be maintained at the trap site, and the permittee and the property owner of the trap site (if different persons) agree in writing to abide by the terms of the testing and management protocols prescribed by the department as a condition of trap site approval. The department considers that given the probable very low number of potential instances in which a prospective trap site could be within the radius established by the proposed amendment, it is feasible that a trap site assessment prescribing a testing and management protocol that could offer assurance that Triple T activities at the site would not result in unacceptable risk of disease transmission; therefore, the proposed amendment would provide for that possibility, provided the permittee and the owner of the trap site agree in writing to the terms and conditions of the testing and management protocol. The department has determined that any authorization of Triple T activities within an area of heightened disease concerns pursuant to special testing and management protocols should be in the context of a written agreement that specifically identifies the responsibilities and obligations of the permittee and the landowner as well as the consequences for failure to comply.

Additionally, these epidemiologically linked facilities are high-fenced, which further reduces deer movements and distribution and the potential spread of CWD beyond these facilities. Similarly, the proposed amendment would prohibit the authorization of trapping activities at any site wholly or partially within a ten-mile radius surrounding a property containing a release site under a hold order or quarantine. The ten-mile radius was chosen after considering feedback received from various advisory groups along with deer movement data (the department notes that this value exceeds the standard imposed by department rules regarding CWD surveillance zones under Chapter 65, Subchapter B, Division 1). The department considers that given the probable very low number of potential instances in which a prospective trap site could be within the radius established by the proposed amendment, it is feasible that a trap site assessment prescribing a testing and management protocol that could offer assurance that Triple T activities at the site would not result in unacceptable risk of disease transmission; therefore, the proposed amendment would provide for that possibility, provided the permittee and the owner of the trap site agree in writing to the terms and conditions of the testing and management protocol. The department has determined that any authorization of Triple T activities within an area of heightened disease concerns pursuant to special testing and management protocols should be in the context of a written agreement that specifically identifies the responsibilities and obligations of the permittee and the landowner as well as the consequences for failure to comply.

Similarly, the proposed amendment would allow for movement of deer under a Triple T permit at properties unable to meet the

60-test threshold for permit issuance, provided the trap site and the release site are adjacent, contiguous tracts owned by the same person, the department has conducted a trap site assessment that stipulates specific testing and management protocols the department deems necessary to assure that adequate disease surveillance exists and will be maintained at the trap site, and the permittee and the property owner of the trap site (if different persons) agree in writing to abide by the terms of the testing and management protocols prescribed by the department. Under current rule, testing is not required in such scenarios; however, the department has concluded, in light of recent detections of CWD, the deer population on any release site is for epidemiological purposes completely isolated from the trap site deer population, which represents a CWD transmission risk to additional tracts of land under the same ownership that otherwise may not have been exposed. Consequently, the CWD risk of the trap site must be assessed prior to the movement of any deer in order to gain confidence that CWD is not present.

The proposed amendment would require all deer released via Triple T permits to be tagged, prior to release, with an external plastic tag, approved by the department, that is brightly colored and clearly visible so as to allow the information on the tag to be read via binoculars or spotting scope at a distance of 100 yards. In the event that CWD is detected at a site that epidemiological investigations reveal is connected to a Triple T release, the department needs to be able to quickly identify the specific deer that were released in order to conduct post-mortem testing. By requiring conspicuous marking of Triple T deer, the department intends to facilitate that.

Finally, the proposed amendment would specifically provide that changes in property ownership or size do not affect the applicability of the section. The department wishes to be explicitly clear that subdividing a property or transferring ownership following the release of breeder deer will not alter the property's eligibility or ineligibility for consideration as a trap site for Triple T activities, which is a necessary measure intended to prevent the spread of CWD.

Mitch Lockwood, Big Game Program Director, has determined that for the first five years that the amendment as proposed is in effect, there will be no additional fiscal implications to state or local governments of enforcing or administering the rule as proposed.

Mr. Lockwood also has determined that for each of the first five years the proposed rule is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be a minimally acceptable probability that CWD will be detected at Triple T trap sites if it exists at a relatively low prevalence and an attendant reduction in the probability of CWD being spread from properties where it might exist to additional populations, thus ensuring the public of continued enjoyment of the resource and the continued beneficial economic impacts of hunting in Texas.

There will be an adverse economic impact on persons required to comply with the rules as proposed. The impact will be the costs associated with the testing requirements imposed by the proposed amendment, which would consist of the cost of 60 post-mortem CWD tests prior to trapping authorization, and the cost of 15 CWD post-mortem test every year thereafter if the landowner desires to maintain eligibility. The department notes that although the rule stipulates the testing requirements for issuance of Triple T permits, no person is required by any provision of law to obtain Triple T permits; that choice is purely voluntary. The cost of a post-mortem CWD test administered by the Texas A&M Veterinary Medicine Diagnostic Lab (TVMDL) is a minimum of $25, to which is added a $7 accession fee (which may cover multiple samples submitted at the same time). If a whole head is submitted to TVDML there is an additional $20 sample collection fee, plus a $20 disposal fee. Thus, the minimum fee for each post-mortem test would be $32, plus any veterinary cost (which the department cannot quantify, as the cost of veterinary services varies greatly from place to place), and the maximum fee for each post-mortem test would be $70. The department notes that it is possible for any person to be trained and certified at no cost to be a sample collector, which would reduce the cost of compliance accordingly. Therefore, the department estimates the maximum cost to persons seeking a Triple T permit for deer would be $4,200 (60 post-mortem tests at a cost of $70 per test).

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rule regulates various aspects of the issuance and use of permits that authorize the temporary possession of public wildlife resources and do not authorize the sale or purchase of live game animals and therefore do not directly affect small businesses, micro-businesses, or rural communities. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation, or limit an existing regulation, but will expand an existing regulation (by imposing additional testing requirements on all prospective Triple T permittees); neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rules may be submitted to Alan Cain at (830) 480-4038, e-mail: alan.cain@tpwd.texas.gov. or via the department website at www.tpwd.texas.gov.

The amendment is proposed under Parks and Wildlife Code, Chapter 43, Subchapter E, which authorizes the commission to make regulations governing the trapping, transporting, and transplanting of game animals

The proposed amendment affects Parks and Wildlife Code, Chapter 43, Subchapter E.

§65.97. Testing and Movement of Deer Pursuant to a Triple T or TTP Permit.

(a) General.

(1) [~~On the effective date of this paragraph the department will cease the issuance of Triple T permits for deer until further notice.~~]

[~~(2)~~] Except as provided by subparagraph (I) of this paragraph, the [~~The~~] department will not issue a Triple T permit authorizing deer to be trapped at a:

(A) site where [~~release site that has received~~] breeder deer have been transferred within five years of the application for a Triple T permit;

(B) [~~release~~] site that is not in compliance with [~~has failed to fulfill~~] the applicable testing requirements of this division;

(C) [~~any~~] site where a deer has been confirmed positive for CWD;

(D) [~~any~~] site where a deer has tested "suspect" for CWD; [~~or~~]

(E) [~~any~~] site subject to [~~under~~] a hold order or quarantine;

(F) site wholly or partially within a five-mile radius surrounding a property containing a deer breeding facility that the department has designated NMQ under the provisions of §65.99 of this title (relating to Breeding Facilities Epidemiologically Connected to Deer Infected with CWD); provided however, that such a site is eligible to be a trap site once the department has restored MQ status to the deer breeding facility in question and the provisions of this section, as applicable, have been met;

(G) site wholly or partially within a ten-mile radius surrounding a property containing a release site subject to a hold order or quarantine; or

(H) site that the department determines, based on an epidemiological assessment, represents an unacceptable risk for the spread of CWD.

(I) The department may approve a prospective trap site described by subparagraph (F) or (G) of this paragraph only if:

(i) the department conducts a trap site assessment that stipulates specific testing and management protocols the department deems necessary to assure that adequate disease surveillance exists and will be maintained at the trap site; and

(ii) the permittee and the property owner of the trap site agree in writing to abide by the terms of the testing and management protocols prescribed by the department as a condition of trap site approval.

[~~(3) In addition to the reasons for denying a Triple T permit as provided in §65.107 of this title (relating to Permit Application and Processing) and §65.109 of this title (relating to Issuance of Permit), the department will not issue a Triple T permit if the department determines, based on epidemiological assessment and consultation with TAHC that to do so would create an unacceptable risk for the spread of CWD.~~]

(2) [~~(4)~~] In addition to the marking required by §65.102 of this title (relating to Disease Detection Requirements), all [~~All~~] deer released under the provisions of this section must be tagged prior to release in one ear with:

(A) a plastic tag approved by the department that is:

(i) externally applied (affixed so as to be suspended from the ear and not placed within or so as to be obscured by the ear);

(ii) a bright color that distinctly contrasts with the pelage of the deer to which it is attached, as well as any surrounding foliage or background color; and

(iii) clearly visible in such a fashion as to allow the tag to be easily seen and the information on the tag to be read at a distance of at least 100 yards by binoculars, spotting scope, or other magnifying device.

(B) a button-type RFID tag approved by the department [~~, in addition to the marking required by §65.102 of this title (relating to Disease Detection Requirements)~~].

(C) the department may specify the [~~RFID~~] tag information that must be submitted to the department.

(3) [~~(5)~~] Nothing in this section authorizes the take of deer except as authorized by applicable laws and regulations, including but not limited to laws and regulations regarding seasons, bag limits, and means and methods as provided in Subchapter A of this chapter (relating to Statewide Hunting Proclamation).

(4) [~~(6)~~] Except for a permit issued for the removal of urban deer, a test result is not valid for fulfilling the testing requirements of this section unless the sample was collected and tested between [~~after~~] the Saturday closest to September 30 of one [~~the~~] year and February 28 of the following year [~~for which activities of the permit are authorized~~].

(5) [~~(7)~~] For permits issued for the removal of urban deer, test samples may be collected between April 1 and March 31 of the following year [~~the time of application~~].

(6) The provisions of this section apply irrespective of changes in property size or ownership.

(b) Testing Requirements for Triple T Permit.

(1) The provisions of this paragraph apply on any property identified as a prospective trap site in an application for a Triple T permit if department records indicate deer that were ever in a deer breeding facility have ever been transferred to that property for any reason. The department will not authorize trapping activities under this paragraph until:

(A) at least five years have elapsed since the last release of breeder deer on the property; and

(B) the applicant has submitted at least 60 post-mortem "Not Detected" test results obtained from deer killed at the prospective trap site.

(C) The test results required by this subparagraph may be from samples collected during the year in which the permit application is filed.

(D) If the test results required by this paragraph are collected over multiple years prior to permit application:

(i) a minimum of 15 post-mortem "Not Detected" test results from the prospective trap site must be submitted for each year; and

(ii) the period of years for which test results are submitted must be continuous (i.e., if the samples are collected in each of four years, each of three years, or each of two years, those years must be consecutive years).

(iii) Test results from samples collected earlier than five years from the last date breeder deer were transferred to the prospective trap site are not valid for the purposes of this section.

(E) Following any trapping activities authorized under a Triple T permit, a minimum of 15 post-mortem "Not Detected" test results must be submitted annually for a property to remain eligible as a trap site for future Triple T permit activities.

(F) The department will not authorize trapping activities at any property where the continuous testing history required by this subparagraph has not been achieved and maintained.

(G) Eligibility for consideration as a trap site may be re-established by providing a minimum of 60 post-mortem "Not Detected" test results from samples collected in consecutive years, provided:

(i) a minimum of 15 post-mortem "Not Detected" test results are submitted per year; and

(ii) no breeder deer have been transferred to the prospective trap site within five years of the first year for which test results are submitted.

(2) The provisions of this paragraph apply to a property identified as a prospective trap site in an application for a Triple T permit if department records indicate that breeder deer have never been transferred to that property for any reason. The department will not authorize trapping activities until the applicant has submitted at least 60 post-mortem "Not Detected" test results obtained from deer killed at the prospective trap site in accordance with the provisions of this paragraph.

(A) The test results required by this subparagraph may be from samples collected in the year of the permit application, samples collected the year prior to permit application, or from samples collected in more than one year prior to permit application; however, if the samples are obtained over multiple years prior to the year of permit application:

(i) a minimum of 15 post-mortem "Not Detected" test results from the prospective trap site must be submitted for each year; and

(ii) the period of years for which test results are submitted must be continuous (i.e., if the samples are collected in each of four years, each of three years, each of two years, the year prior, or the year of permit application, those years must be consecutive years).

(B) for a property to remain eligible as a trap site for future Triple T permit activities, a minimum of 15 post-mortem "Not Detected" test results from deer at the property must be submitted annually.

(C) The department will not authorize trapping activities at any property where the continuous annual testing history required by this paragraph has not been achieved and maintained following the issuance of a Triple T permit.

(D) Eligibility for consideration as a trap site may be re-established by providing a minimum of 60 post-mortem "Not Detected" test results from samples collected:

(i) in the year of or the year immediately preceding permit application; or

(ii) in multiple years immediately preceding permit application, provided a minimum of 15 post-mortem "Not Detected" test results are submitted per year.

(3) A property that has been subject to a hold order or quarantine is eligible to be a trap site for Triple T activities under the provisions of this section, as applicable, beginning five years from the date that the hold order or quarantine is lifted.

(4) In the instance that an applicant is unable for whatever reason supply the 60 test samples for permit issuance as required by this section, the department may approve the movement of deer under a Triple T permit, provided:

(A) the trap site and the release site are owned by the same person;

(B) the trap site and the release site are on adjacent, contiguous tracts; and

(C) the permittee and the property owner of the trap site (if different persons) have agreed in writing to abide by the terms of testing and management protocols prescribed by the department following a trap site assessment performed by the department that stipulates specific testing and management protocols the department deems necessary to assure that adequate disease surveillance exists and will be maintained at the trap site.

~~[(1) The department will not issue a Triple T permit unless "not detected" post-mortem test results have been submitted for 15 test-eligible deer from the trap site.]~~

~~[(2) CWD testing is not required for deer trapped on any property if the deer are being moved to adjacent, contiguous tracts owned by the same person who owns the trap site property.]~~

(c) (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.

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James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 20, 2022
For further information, please call: (512) 389-4775

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SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §§65.314 - 65.320

The Texas Parks and Wildlife Department (the department) proposes amendments to 31 TAC §§65.314 - 65.320, concerning the Migratory Game Bird Proclamation.

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

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

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

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

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

The proposed amendment to §65.318, concerning Sandhill Crane, would correct an oversight that occurred in 2020 when the department merged the Early Season Migratory Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation to create a single Migratory Game Bird Proclamation in response to a change in the federal process for establishing frameworks for migratory game bird hunting. In the process of that effort, the department inadvertently omitted a provision requiring a free federal sandhill crane hunting permit for hunting sandhill cranes. The permit is a federal requirement and is used to provide more accurate survey data for management purposes.

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

Shaun Oldenburger, Wildlife Division Small Game Program Director, has determined that for the first five years that the amendments as proposed are in effect, there will be no additional fiscal implications to state or local governments of enforcing or administering the rules as proposed.

Mr. Oldenburger also has determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be the department's discharge of its statutory obligation to manage and conserve the state's populations of migratory game birds for the use and enjoyment of the public, consistent with the principles of sound biological management.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and microbusinesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rules regulate various aspects of recreational license privileges that allow individual persons to pursue and harvest migratory game bird resources in this state and therefore do not directly affect small businesses, micro-businesses, or rural communities. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

There also will be no adverse economic effect on persons required to comply with the rules as proposed.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation, expand or limit an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rules may be submitted via the department website at www.tpwd.texas.gov to Shaun Oldenburger (Small Game Bird Program Director) at (512) 389-4778, e-mail: shaun.oldenburger@tpwd.texas.gov.

The amendments are proposed under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

The proposed amendments affect Parks and Wildlife Code, Chapter 64.

§65.314. Doves. (Mourning, White-Winged, White-Tipped, White-Fronted Doves).

(a) (No change.)

(b) Seasons; Daily Bag Limits.

(1) North Zone.

(A) Dates: September 1 - November 13, 2022 and December 17, 2022 - January 1, 2023 [~~September 1 - November 12, 2021 and December 17, 2021 - January 2, 2022~~].

(B) (No change.)

(2) Central Zone.

(A) Dates: September 1 - October 30, 2022 [~~October 31, 2021~~] and December 17, 2022 - January 15, 2023 [~~December 17, 2021 - January 14, 2022~~].

(B) (No change.)

(3) South Zone and Special White-winged Dove Area.

(A) Dates: September 2-4 and 9-11, 2022 [~~September 3-5 and 10-12, 2021~~]; September 14 - October 30, 2022 [~~October 31, 2021~~]; and December 17, 2022 - January 22, 2023 [~~December 17, 2021 - January 21, 2022~~].

(B) Daily bag limit:

(i) from September 2-4 and 9-11, 2022 [~~September 3-5 and 10-12, 2021~~]; 15 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than two mourning doves and two white-tipped (white-fronted) doves per day; and

(ii) from September 14 - October 30, 2022 and December 17, 2022 - January 22, 2023 [~~September 14 - October 31, 2021 and December 17, 2021 - January 21, 2022~~]; 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped (white-fronted) doves per day.

§65.315. Ducks, Coots, Mergansers, and Teal.

(a) (No change.)

(b) Season dates and bag limits.

(1) HPMMU.

(A) For all species other than "dusky ducks": October 29-30, 2022 and November 4, 2022 - January 29, 2023 [~~October 30-31, 2021 and November 5, 2021 - January 30, 2022~~]; and

(B) "dusky ducks": November 7, 2022 - January 29, 2023 [~~November 8, 2021 - January 30, 2022~~].

(2) North Zone.

(A) For all species other than "dusky ducks": November 12-27, 2022 and December 3, 2022 - January 29, 2023 [~~November 13 - 28, 2021 and December 4, 2021 - January 30, 2022~~]; and

(B) "dusky ducks": November 17-27, 2022 and December 3, 2022 - January 29, 2023 [~~November 18 - 28, 2021 and December 4, 2021 - January 30, 2022~~].

(3) South Zone.

(A) For all species other than "dusky ducks": November 5-27, 2022 and December 10, 2022 - January 29, 2023 [~~November 6 - 28, 2021 and December 11, 2021 - January 30, 2022~~]; and

(B) "dusky ducks": November 10-27, 2022 and December 10, 2022 - January 29, 2023 [~~November 11 - 28, 2021 and December 11, 2021 - January 30, 2022~~].

(4) September teal-only season.

(A) (No change.)

(B) Dates: September 10-25, 2022 [~~September 11 - 26, 2021~~].

(c) Bag limits.

(1) The daily bag limit for ducks and mergansers is six in the aggregate, which may include no more than five mallards (only two of which may be hens); three wood ducks; one scaup (lesser scaup or greater scaup); two redheads; two canvasbacks; one pintail; and one "dusky" duck (mottled duck, Mexican like duck, black duck and their hybrids) during the seasons established for those species in this section. For all species not listed, the daily bag limit shall be six. The daily bag limit for coots is 15. [~~The daily bag limit for mergansers is five, which may include no more than two hooded mergansers~~].

(2) (No change.)

§65.316. Geese.

(a) (No change.)

(b) Season dates and bag limits.

(1) Western Zone.

(A) Light geese: November 5, 2022 - February 5, 2023 [~~November 13, 2021 - February 13, 2022~~]. The daily bag limit for light geese is 10, and there is no possession limit.

(B) Dark geese: November 5, 2022 - February 5, 2023 [~~November 13, 2021 - February 13, 2022~~]. The daily bag limit for dark geese is five, to include no more than two white-fronted geese.

(2) Eastern Zone.

(A) Light geese: November 5, 2022 - January 29, 2023 [~~November 6, 2021 - January 30, 2022~~]. The daily bag limit for light geese is 10, and there is no possession limit.

(B) Dark geese:

(i) Season:[~~.~~] November 5, 2022 - January 29, 2023 [~~November 6, 2021 - January 30, 2022~~];

(ii) (No change.)

(c) September Canada goose season. Canada geese may be hunted in the Eastern Zone during the season established by this subsection. The season is closed for all other species of geese during the season established by this subsection.

(1) Season dates: September 10-25, 2022 [~~September 11 - 26, 2021~~].

(2) (No change.)

(d) Light Goose Conservation Order. The provisions of paragraphs (1) - (3) of this subsection apply only to the hunting of light geese. All provisions of this subchapter continue in effect unless specifically provided otherwise in this section; however, where this section conflicts with the provisions of this subchapter, this section prevails.

(1) - (3) (No change.)

(4) Season dates.

(A) From January 30 - March 12, 2023 [~~January 31 - March 13, 2022~~], the take of light geese is lawful in the Eastern Zone.

(B) From February 6 - March 12, 2023 [~~February 14 - March 13, 2022~~], the take of light geese is lawful in the Western Zone.

§65.317. Special Youth, Active Duty Military, and Military Veteran Seasons [~~Youth-Only Waterfowl Season~~].

(a) Special Youth Waterfowl Season. There shall be a Special Youth [~~Youth-Only~~] Season for waterfowl, during which the hunting, taking, and possession of geese, ducks, mergansers, and coots is restricted to licensed hunters 16 years of age and younger accompanied by a person 18 years of age or older, except for persons hunting by means of falconry under the provisions of §65.320 of this title (relating to Extended Falconry Seasons).

(1) HPMMU:

(A) season dates: October 22 - 23, 2022 [~~October 23 - 24, 2021~~]; and

(B) (No change.)

(2) North Duck Zone:

(A) season dates: November 5 - 6, 2022 [~~November 6 - 7, 2021~~]; and

(B) (No change.)

(3) South Duck Zone:

(A) season dates: [~~Special youth-only season:~~] October 29 - 30, 2022 [~~October 30 -31, 2021~~];

(B) (No change.)

(b) Special Active-Duty Military and Military Veteran Migratory Game Bird Season.

(1) There shall be a Special Active-Duty Military and Military Veteran Migratory Game Bird Season for waterfowl, during which the taking and possession of ducks, geese, mergansers, coots, moorhens, and gallinules are restricted to veterans, as defined by 38 U.S.C. Section 101, and members of the armed forces of the United States on active duty, including members of the national guard and reserves on active duty other than for training.

(2) While hunting during the special season established by this subsection, a person must have in possession at least one of the forms of documentation listed in this paragraph:

(A) a driver's license or other state-issued identification indicating that the person to whom it was issued is a veteran of the United States Armed Forces;

(B) a copy of the DD214 or DD215 discharge documentation issued to the person by the United States Department of Defense; or

(C) any other identification issued by the federal government indicating that the person to whom it was issued is a veteran or member of the armed forces on active duty.

(3) Season Dates and Bag Limits.

(A) HPMMU:

(i) season dates: October 22-23, 2022;

(ii) daily bag limits:

(I) ducks, coots, and mergansers - as specified by §65.315(b)(1) of this title (relating to Ducks, Coots, Mergansers, and Teal);

(II) geese - as specified by §65.316(b)(1) of this title (relating to Geese); and

(III) moorhens and gallinules - as specified by §65.319(a)(2) of this title (relating to Gallinules, Rails, Snipe, Woodcock).

(B) North Duck Zone:

(i) season dates: November 5-6, 2022;

(ii) daily bag limits:

(I) ducks, coots, and mergansers - as specified by §65.315(b)(2) of this title;

(II) geese:

(-a-) west of IH 35 - as specified by §65.316(b)(1) of this title; and

(-b-) east of IH 35 - as specified by §65.316(b)(2) of this title.

(-c-) moorhens and gallinules - as specified by §65.319(a)(2) of this title.

(C) South Duck Zone:

(i) season dates: October 29-30, 2022;

(ii) daily bag limits:

(I) ducks, coots, and mergansers - as specified by §65.315(b)(3) of this title; and

(II) geese:

(-a-) west of IH 35 - as specified by §65.316(b)(1) of this title; and

(-b-) east of IH 35 - as specified by §65.316(b)(2) of this title.

(-c-) moorhens and gallinules - as specified by §65.319(a)(2) of this title.

(4) It is a defense to prosecution that a person cited for a violation of this subsection produces in court proof of the person's veteran or active-duty status in accordance with commission rule.

§65.318. Sandhill Crane.

(a) (No change.)

(b) Season dates and bag limits.

(1) Zone A: October 29, 2022 - January 29, 2023 [~~October 30, 2021 - January 30, 2022~~]. The daily bag limit is three.

(2) Zone B: November 25, 2022 - January 29, 2023 [~~November 26, 2021 - January 30, 2022~~]. The daily bag limit is three.

(3) Zone C: December 17, 2022 - January 22, 2023 [~~December 18, 2021 - January 23, 2022~~]. The daily bag limit is two.

(c) No person may hunt sandhill cranes in this state unless that person has obtained a federal sandhill crane permit valid for the season in which the hunting occurs. The permit required by this subsection is free.

§65.319. Gallinules, Rails, Snipe, Woodcock.

(a) Gallinules (moorhen or common gallinule and purple gallinule) may be taken in any county of this state during the season established in this subsection.

(1) Season dates: September 10-25 and November 5 - December 28, 2022 [~~September 11 - 26 and November 6 - December 29, 2021~~].

(2) (No change.)

(b) Rails may be taken in any county of [~~in~~] this state during the season established by this subsection.

(1) Season dates: September 10-25 and November 5 - December 28, 2022 [~~September 11 - 26 and November 6 - December 29, 2021~~].

(2) (No change.)

(c) Snipe may be taken in any county of this [~~the~~] state during the season established by this subsection.

(1) Season dates: November 5, 2022 - February 19, 2023 [~~November 6, 2021 - February 20, 2022~~].

(2) (No change.)

(d) Woodcock may be taken in any county of this [~~the~~] state during the season established by this subsection.

(1) Season dates: December 18, 2022 [~~2021~~] - January 31, 2023 [~~2022~~].

(2) (No change.)

§65.320. Extended Falconry Seasons.

It is lawful to take the species of migratory birds listed in this section by means of falconry during the seasons established by this section.

(1) Mourning doves, white-winged doves and white-tipped doves: November 18 - December 4, 2022 [~~November 19 - December 5, 2021~~].

(2) Duck, gallinule, moorhen, rail, and woodcock: January 30 - February 13, 2023 [~~January 31 - February 14, 2022~~].

(3) - (4) (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 February 7, 2022.

TRD-202200389
James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 20, 2022
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.589

The Comptroller of Public Accounts proposes amendments to §3.589, concerning margin: compensation. The amendments implement statutory changes to definitions, incorporate policy decisions, and improve readability.

Throughout the section, the comptroller adds titles to statutory citations.

The comptroller deletes subsection (b)(1) and (2) relating to the definitions of assigned employee and client company to accommodate statutorily defined terms in Tax Code, §171.0001 (General Definitions). The comptroller adds new paragraph (1) to include the statutory definition of "Client" pursuant to Tax Code, §171.0001(6) because the statute replaced the term "Client company" with "Client." The comptroller adds new paragraph (2) to include the statutory definition of "Covered employee" according to Tax Code, §171.0001(8-a).

The comptroller amends paragraphs (6) and (7) to accommodate a new statutorily defined term and maintain alphabetical order of the section. The comptroller inserts the statutory term and definition of "Professional employer organization" into paragraph (6). Professional employer organization replaced the term "staff leasing services." The comptroller amends paragraph (7) to include the definition of the statutory term "Small employer" as it was previously just a citation to Insurance Code, §1501.002 (Definitions).

The comptroller adds new paragraph (9)(B) to include language concerning wages and cash compensation paid to employees in a foreign country, pursuant to STAR Accession No. 201510539L (June 14, 2016). Former subparagraphs (B) and (C) are relettered accordingly.

The comptroller amends subsection (c)(1), including subparagraphs (A) and (B), to improve readability.

The comptroller adds new subparagraphs (C) - (H) to include compensation thresholds for years 2012 through 2024, which reflect the biennial adjustment based on the Consumer Price Index pursuant to Tax Code, §171.006 (Adjustment of Eligibility for No Tax Due, Discounts, and Compensation Deduction).

The comptroller deletes subsection (e)(2)(B) and (D) pursuant to the findings of *Winstead PC v. Combs,* No. D-1-GN-12-000141 (201st Dist. Ct., Travis County, Tex. Feb. 7, 2013) (holding

these subparagraphs were invalid to the extent the disallowed deductions were allowed for federal purposes). Subparagraph (C) is relettered as subparagraph (B).

The comptroller amends subsection (f) to reflect the new terms "professional employer organization" instead of "staff leasing company" and "covered" instead of "assigned" employee to maintain consistency with statutory definitions.

The comptroller amends paragraphs (2) and (3) to remove the word "company" from "client company" to maintain consistency with statutory terms.

The comptroller amends subsection (i) to reflect a policy change retroactively allowing the method of computing margin to be amended regardless of what method was elected on an original report pursuant to Star Accession No. 201206444L (June 12, 2012).

The comptroller deletes paragraphs (1) and (2) concerning the annual election, as they are no longer relevant pursuant to Star Accession No. 201206444L.

The comptroller adds subsection (j) to add language concerning expenses paid with qualifying loan or grant proceeds received for COVID-19 Relief pursuant to House Bill 1195, 87th Legislature, 2021, enacting Tax Code, §171.10131, and applies to reports originally due on or after January 1, 2021.

Brad Reynolds, 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. Reynolds also has determined that for each year of the first five years the rule is in effect, proposed amendment would benefit the public by improving readability, adding consistency, removing language that does not align with federal law, reflecting agency policy decisions, and reflecting statutory changes enacted by the Legislature. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. The proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic costs to the public.

You may submit comments on the proposal to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: tp.rule.comments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

These amendments are proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

This amendment implements Tax Code, §171.0001 (General Definitions) and §171.1013 (Determination of Compensation).

§3.589. Margin: Compensation.

(a) Effective date. The provisions of this section apply to franchise tax reports originally due on or after January 1, 2008, except as otherwise noted.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Client--

(A) any person who enters into a professional employer services agreement with a license holder; or

(B) any person who enters into an agreement with a temporary employment service, as defined under Labor Code, §93.001(2) (Definitions), for the purpose of having individuals supplement their workforce.

(2) Covered employee--An individual having a co-employment relationship with a professional employer organization and a client.

[~~(1) Assigned Employee--Has the meaning assigned by Labor Code, §91.001.~~]

[~~(2) Client company--~~]

[~~(A) a person that contracts with a license holder under Labor Code, Chapter 91, and is assigned employees by the license holder under that contract; or~~]

[~~(B) a client of a temporary employment service, as that term is defined by Labor Code, §93.001(2), to whom individuals are assigned for a purpose described by that subdivision.~~]

(3) Management company--A corporation, limited liability company or other limited liability entity that conducts all or part of the active trade or business of another entity (the managed entity) in exchange for a management fee and reimbursement of specified costs incurred in the conduct of the active trade or business of the managed entity, including wages and cash compensation as determined under Tax Code, §171.1013(a) and (b) (Determination of Compensation). To qualify as a management company:

(A) the entity must perform active and substantial management and operational functions, control and direct the daily operations, and provide services such as accounting, general administration, legal, financial or similar services; or

(B) if the entity does not conduct all of the active trade or business of an entity, the entity must conduct all operations, as provided in subparagraph (A) of this paragraph, for a distinct revenue-producing component of the entity.

(4) Natural person--A human being or the estate of a human being. The term does not include a purely legal entity given recognition as the possessor of rights, privileges, or responsibilities, such as a corporation, limited liability company, partnership, or trust.

(5) Net distributive income--The net amount of income, gain, deduction, or loss relating to a pass-through entity or disregarded entity reportable to the owners for the tax year of the entity.

(6) Professional employer organization--A business entity that offers professional employer services or a temporary employment service.[~~Small employer--An entity defined in Insurance Code, §1501.002.~~]

(7) Small employer--A person who employed an average of at least two employees but not more than 50 employees on business days during the preceding calendar year, as defined under Insurance Code, §1501.002 (Definitions). For purposes of this definition, a

partnership is the employer of a partner. [~~Staff leasing services company--A business entity that offers staff leasing services as that term is defined by Labor Code, §91.001, or temporary employment service as that term is defined by Labor Code, §93.001.~~]

(8) Undocumented worker--A person who is not lawfully entitled to be present and employed in the United States.

(9) Wages and cash compensation--

(A) the amount entered in the Medicare wages and tips box of Internal Revenue Service Form W-2 or any subsequent form with a different number or designation that substantially provides the same information for the period on which the tax is based;

(B) any wages and cash compensation paid to employees in a foreign country and reported on forms issued by the foreign company that are substantially equivalent to the Internal Revenue Service Form W-2;

(C) [~~(B)~~] the amount of net distributive income (not to include net distributive income that has been subtracted from total revenue), regardless of whether cash or property pertaining to such income is actually distributed and regardless of whether it is a positive or negative amount, from one of the following entities to partners or owners during the accounting period but only if the person receiving the amount is a natural person:

(i) taxable entities treated as partnerships for federal income tax purposes;

(ii) limited liability companies and corporations treated as S corporations for federal income tax purposes; and

(iii) limited liability companies treated as sole proprietorships for federal income tax purposes;

(D) [~~(C)~~] stock awards and stock options deducted for federal income tax purposes, to the extent not included in subparagraph (A) of this paragraph.

(c) Compensation. Subject to Tax Code, §171.1014 (Combined Reporting; Affiliated Group Engaged in Unitary Business), a taxable entity that elects to subtract compensation (see subsection (i) of [~~in~~] this section) for the purpose of computing its taxable margin under Tax Code, §171.101 (Determination of Taxable Margin), may subtract an amount equal to:

(1) subject to subsection (d) of this section, all wages and cash compensation paid by a taxable entity to its officers, directors, owners, partners, and employees up to the following thresholds for any one person per 12-month period on which the tax is based:[~~.~~]

(A) for [~~For~~] reports originally due on or after January 1, 2008, but before January 1, 2010, the taxable entity cannot subtract more than $300,000; [~~per 12-month period on which the tax is based for any one person in wages and cash compensation it determines under Tax Code, §171.1013. See §3.590 of this title (relating to Margin: Combined Reporting).~~]

(B) for [~~For~~] reports originally due on or after January 1, 2010, but before January 1, 2012, the taxable entity cannot subtract more than $320,000;[~~(determined under Tax Code, §171.006) per 12-month period on which the tax is based for any one person in wages and cash compensation it determines under Tax Code, §171.1013. See §3.590 of this title; and~~]

(C) for reports originally due on or after January 1, 2012, but before January 1, 2014, the taxable entity cannot subtract more than $330,000;

(D) for reports originally due on or after January 1, 2014, but before January 1, 2016, the taxable entity cannot subtract more than $350,000;

(E) for reports originally due on or after January 1, 2016, but before January 1, 2018, the taxable entity cannot subtract more than $360,000;

(F) for reports originally due on or after January 1, 2018, but before January 1, 2020, the taxable entity cannot subtract more than $370,000;

(G) for reports originally due on or after January 1, 2020, but before January 1, 2022, the taxable entity cannot subtract more than $380,000;

(H) for reports originally due on or after January 1, 2022, but before January 1, 2024, the taxable entity cannot subtract more than $400,000; and

(2) subject to subsection (e) of this section, the cost of all benefits the taxable entity provides to its officers, directors, owners, partners, and employees.[~~;~~]

(d) Compensation - excluded items. Compensation does not include:

(1) payments made that are reportable on Internal Revenue Form 1099 (or would have been reported if the amount had met the Internal Revenue Service minimum reporting requirement);

(2) any expense excluded from total revenue and any net distributive income subtracted from total revenue. See §3.587 of this title (relating to Margin: Total Revenue);

(3) an employer's share of payroll taxes;

(4) wages or cash compensation paid to an employee whose primary employment is directly associated with the operation of a facility that is located on property owned or leased by the federal government and managed or operated primarily to house members of the armed forces of the United States. See §3.587 of this title; and

(5) wages or cash compensation paid to undocumented workers.

(e) Benefits. A taxable entity is allowed to subtract the cost of all benefits to the extent deductible for federal income tax purposes that it provides to its officers, directors, owners, partners, and employees.

(1) The term "benefits" includes employer contributions made to:

(A) employees' health savings accounts;

(B) health care (for example, this would include contributions to the cost of health insurance);

(C) retirement; and

(D) workers' compensation.

(2) The term "benefits" does not include the following:

(A) amounts included in the definition of wages and cash compensation; and

[~~(B) discounts on the price of the taxable entity's merchandise or services sold to the taxpayer's employees, officers, or directors, partners, or owners that are not available to other customers;~~]

(B) [~~(C)~~] payroll taxes. (For example, "payroll taxes" would include payments to state and federal unemployment compensation funds and payments under the Federal Insurance Contributions Act, Chapter 21 of Subtitle C of the Internal Revenue Code, §§3101 -

3128, the Railroad Retirement Tax Act, Chapter 22 of Subtitle C of the Internal Revenue Code, §§3201 - 3233). [; and]

[(D) working condition amounts provided so employees can perform their jobs. (Examples of working condition benefits include an employee's use of a company car for business, job-related education provided to an employee, and travel reimbursement.)]

(3) The cost of benefits does not include the amount paid by an employee.

(f) Professional employer organizations [Staff leasing companies]. See §3.587 of this title.

(1) A professional employer organization [staff leasing company] cannot include as compensation the following payments for covered [assigned] employees:

(A) wages and cash compensation;

(B) payroll taxes;

(C) employee benefits including workers' compensation; and

(D) payments made to independent contractors and reportable on Internal Revenue Service Form 1099 (or would have been reported if the amount had met the Internal Revenue Service minimum reporting requirement).

(2) A client [company] can include as compensation the following amounts for covered [assigned] employees:

(A) wages and cash compensation; and

(B) benefits.

(3) A client [company] cannot include as compensation the following:

(A) an administrative fee;

(B) payments made to a professional employer organization [staff leasing company] as reimbursement for payments made to independent contractors assigned to the client [company] and reportable on Internal Revenue Service Form 1099 (or would have been reported if the amount had met the Internal Revenue Service minimum reporting requirement); and

(C) other costs.

(4) A professional employer organization [staff leasing company] shall determine compensation only for the taxable entity's own employees who are not covered [assigned] employees.

(g) Management company. See §3.587 of this title.

(1) A taxable entity that is a management company may not include as wages and cash compensation any amounts reimbursed by a managed entity.

(2) A taxable entity that is a managed entity may subtract wages and cash compensation that are reimbursed to the management company.

(3) A management company shall determine compensation for only those wages and compensation payments that are not reimbursed by a managed entity.

(h) Small employers. This subsection applies to a taxable entity that is a small employer and that has not provided health care benefits to any of its employees in the calendar year preceding the beginning date of its reporting period. Subject to Tax Code, §171.1014, a taxable entity to which this subsection applies that elects to subtract compensation for the purpose of computing its taxable margin under Tax Code, §171.101, may subtract the following health care benefits:

(1) amounts as provided under subsection (c) of this section;

(2) for the first 12-month period on which margin is based and in which the taxable entity provides health care benefits to all of its employees, an additional amount equal to 50% of the cost of health care benefits provided to its employees for that period; and

(3) for the second 12-month period on which margin is based and in which the taxable entity provides health care benefits to all of its employees, an additional amount equal to 25% of the cost of health care benefits provided to its employees for that period.

(4) The term "provide" does not include amounts paid by the employee, officer, director, etc.

(i) Election to subtract compensation. [A taxable entity must make an annual election to subtract compensation in computing margin by the due date or at the time the report is filed, whichever is later.] The election to subtract compensation is made by filing the franchise tax report using the compensation method or by amending any report filed within the statute of limitations. A taxable entity may file an amended report for the purpose of correcting a mathematical or other error in a report, or to change its method of computing margin.

[(1) After the due date of the report, an amended report may not be filed to change the method of computing margin from the compensation deduction to the cost of goods sold deduction.]

[(2) An amended report may be filed to change the method of computing margin from the compensation deduction to 70% of total revenue or, if qualified, the E-Z Computation.]

(j) Expenses paid with qualifying loan or grant proceeds. A taxable entity may include in compensation any expense paid using the qualifying loan or grant proceeds, as defined under Tax Code §171.10131 (Provisions Related to Certain Money Received for COVID-19 Relief), to the extent the expense is otherwise includable as compensation under this section, even if the taxable entity has excluded the qualifying loan or grant proceeds from its total revenue under §3.587 of this title.

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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William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
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CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER D. CLAIMS PROCESSING--PAYROLL

34 TAC §5.47

The Comptroller of Public Accounts proposes amendments to §5.47 concerning deductions for payments to credit unions.

The amendments to subsection (a) add a definition of "CAPPS"; remove the definitions of "payee identification number" and "USPS" because these terms are no longer used in the rule; and simplify other definitions by adding relevant statutory citations and clarifying the language of the definitions.

The amendments to subsection (b) combine the requirements for authorizing a deduction in paragraph (2) with the requirements for authorizing a change in the amount of a deduction in former paragraph (3); clarify that a state employee may authorize a deduction or a change in the amount of a deduction, or may cancel a deduction, by submitting a properly completed authorization form or a properly completed electronic authorization; clarify the process for authorizing a deduction or a change in the amount of a deduction, or for cancelling a deduction; provide that a completed authorization form must be submitted by a credit union to an employer in a secure manner; remove "then" as unnecessary; and change "working day" to "workday" to ensure the consistent use of defined terms.

The amendments to subsection (c) combine the requirements for the effective date of new deductions in paragraph (1) with the requirements for the effective dates of changes in deductions, or cancellation of deductions in former paragraphs (2) and (3); clarify that a state employee may authorize a deduction or a change in the amount of a deduction, or may cancel a deduction, by submitting a properly completed authorization form or a properly completed electronic authorization; clarify the process for authorizing a deduction or a change in the amount of a deduction, or for cancelling a deduction; and change "state agency" to "employer," as appropriate, to ensure the consistent use of defined terms.

The amendments to subsection (d) change "state agency" to "employer," as appropriate, to ensure the consistent use of defined terms.

The amendments to subsection (e) remove unnecessary requirements regarding the size of authorization forms.

The amendments to subsection (f) require a credit union that is applying for certification to submit to the comptroller its primary contact's email address, instead of the contact's facsimile telephone number; change "payee identification number" to "Internal Revenue Service employer identification number"; clarify that notifications required under subsection (f)(4) must be made in writing, whether they are provided in a paper or an electronic format; and remove "then" as unnecessary.

The amendments to subsection (g) remove "then," as unnecessary; change "state agency" to "employer," as appropriate, to ensure the consistent use of defined terms; and correct the spelling of "hand-deliver."

The amendments to subsection (i) remove "then" as unnecessary; and clarify that notifications required under subsection (i)(2)(B) must be made in writing, whether they are provided in a paper or an electronic format.

The amendments to subsection (j) clarify that notifications required under subsections (j)(1)(A) and (E) must be made in writing, whether they are provided in a paper or an electronic format; change "state agency" to "employer," as appropriate, to ensure the consistent use of defined terms; correct the spelling of "hand-delivered"; and remove "then" as unnecessary.

The amendments to subsection (k) require a participating credit union to notify the comptroller of a change in its primary contact's email address, instead of the contact's facsimile telephone number; change "state agency" to "employer," as appropriate, to ensure the consistent use of defined terms; remove the language regarding detail reports submitted by the comptroller on behalf of a state agency because the comptroller does not submit detail reports on behalf of state agencies; provide that a credit union's report of all discrepancies between a detail report provided by an employer and the actual amount of deductions received from the employer must be submitted to an employer in a secure manner; correct the spelling of "hand-delivered"; remove "then" as unnecessary; and remove language regarding the return of magnetic tapes and cartridges because they are no longer used in this process.

The amendments to subsection (l) change "state agency" to "employer," as appropriate, to ensure the consistent use of defined terms; provide that a monthly or additional detail report submitted by an employer to a credit union must be submitted in a secure manner; remove "then" as unnecessary; remove the language regarding detail reports submitted by the comptroller on behalf of a state agency because the comptroller does not submit detail reports on behalf of state agencies; and establish a standard deadline by which an employer must submit a monthly detail report or an additional detail report to a participating credit union or other entity, no matter what type of process is used to submit the report.

The amendments to subsection (m) clarify that notifications required under this subsection must be made in writing, whether they are provided in a paper or an electronic format.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule 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. Reynolds 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 amended rule would benefit the public by improving the clarity and implementation of the section. There would be no significant anticipated economic cost to the public. The proposed rule would have no fiscal impact on small businesses or rural communities.

Comments on the proposal may be submitted to Rob Coleman, Director, Fiscal Management Division, at rob.coleman@cpa.texas.gov or 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 Government Code, §659.110, which authorizes the comptroller to establish procedures and adopt rules to administer the credit union program authorized by Government Code, Chapter 659, Subchapter G.

The amendments implement Government Code, §§659.101, 659.103, and 659.104-659.110.

§5.47. Deductions for Payments to Credit Unions.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) CAPPS--The centralized accounting and payroll/personnel system, or any successor system used to implement the enterprise resource planning component of the uniform statewide accounting project, developed under Government Code, §2101.035 and §2101.036.

(2) [~~(1)~~] Comptroller--The comptroller of public accounts for the State of Texas.

(3) [~~(2)~~] Credit union--A state credit union, an out-of-state credit union, a foreign credit union, or a federal credit union.

(4) [~~(3)~~] Electronic funds transfer--A payment made electronically instead of by warrant or check. The term includes a payment made through an automated clearinghouse, by bank wire, or by federal wire.

(5) [~~(4)~~] Employer--A state agency that employs a [~~one or more~~] state employee who authorizes a deduction under this section [~~employees~~].

(6) [~~(5)~~] Federal credit union--A credit union organized under 12 U.S.C. Chapter 14 [~~the Federal Credit Union Act~~].

(7) [~~(6)~~] Foreign credit union--A credit union that is not organized under the laws of [~~the~~] this state or the United States if the credit union is authorized under Finance Code, Title 3, Subtitle D, [~~the Texas Credit Union Act~~] to do business in this state.

(8) [~~(7)~~] Holiday--A state or national holiday as specified by the General Appropriations Act or [~~Texas~~] Government Code, §§662.001-662.010.

(9) [~~(8)~~] Include--A term of enlargement and not of limitation or exclusive enumeration. The use of the term does not create a presumption that components not expressed are excluded.

(10) [~~(9)~~] Institution of higher education--Has the meaning assigned by [~~the~~] Education Code, §61.003.

(11) [~~(10)~~] May not--A prohibition. The term does not mean "might not" or its equivalents.

(12) [~~(11)~~] Out-of-state credit union--A credit union organized under the laws of a state other than Texas if the credit union is authorized under Finance Code, Title 3, Subtitle D, [~~the Texas Credit Union Act~~] to do business in this state.

(13) [~~(12)~~] Participating credit union--A credit union that the comptroller has certified according to this section.

[~~(13) Payee identification number--The 14-digit number that the comptroller assigns to each direct recipient of a payment made by the comptroller for the State of Texas.~~]

(14) Salary or wages--Base salary or wages, longevity pay, or hazardous duty pay.

(15) State agency--A department, commission, board, office, or other agency of any branch of Texas state government, including an institution of higher education.

(16) State credit union--A voluntary, cooperative, nonprofit financial institution that is authorized under Finance Code, Title 3, Subtitle D, [~~the Texas Credit Union Act~~] to do business in this state for the purposes of:

(A) encouraging thrift among its members;

(B) creating a source of credit at fair and reasonable rates of interest;

(C) providing an opportunity for its members to use and control their own money to improve their economic and social condition; and

(D) conducting any other business, engaging in any other activity, and providing any other service that may be of benefit to its members subject to Finance Code, Title 3, Subtitle D, [~~the Texas Credit Union Act~~] and rules adopted under that law.

(17) State employee--An employee of a state agency. The term includes an elected or appointed official, a part-time employee, an hourly employee, a temporary employee, an employee who is not covered by Government Code, Chapter 654 [~~the Position Classification Act~~], and a combination of the preceding. The term excludes an independent contractor and an employee of an independent contractor.

[~~(18) USPS--The uniform statewide payroll/personnel system.~~]

(18) [~~(19)~~] Workday--A calendar day other than Saturday, Sunday, or a holiday.

(b) Deductions or changes in deductions.

(1) References in this section. A reference in this section to a deduction without further qualification or explanation is a reference only to a deduction from a state employee's salary or wages to make a payment to a participating credit union.

(2) Authorization of a deduction or a change in the amount of a deduction [~~deductions~~].

[~~(A) A state employee may authorize not more than three monthly deductions from the employee's salary or wages. However, a state employee may not authorize more than one monthly deduction to any particular participating credit union.~~]

(A) [~~(B)~~] A state employee may authorize a deduction or a change in the amount of a deduction only if the employee:

(i) submits to the participating credit union to which the deducted amounts will be paid a properly completed [~~completes an~~] authorization form establishing a deduction or changing the amount of a deduction; or [~~and~~]

(ii) submits through CAPPS a properly completed electronic authorization establishing a deduction or changing the amount of a deduction [~~the form to the participating credit union to which the deducted amounts will be paid~~].

(B) A state employee may not authorize more than three monthly deductions from the employee's salary or wages. However, a state employee may not authorize more than one monthly deduction to any particular participating credit union.

(C) A state employee may authorize a change in the amount to be deducted from the employee's salary or wages at any time.

(D) [~~(C)~~] Neither the comptroller nor a state agency is liable or responsible for any damages or other consequences resulting from a state employee authorizing an incorrect amount of a deduction or a change in the amount of a deduction.

(E) [~~(D)~~] This subparagraph applies only if a state employee authorizes a deduction or changes the amount of a deduction by submitting a [~~An authorization form is not~~] properly completed authorization form to the participating credit union to which the deducted amounts will be paid under [~~for purposes of~~] subparagraph (A)(i) [~~(B)(i)~~] of this paragraph [~~unless the form states the amount of~~

administrative fees the employee completing the form must pay under this section].

(i) If the employee completing the authorization form is required to pay an administrative fee, the [The] amount of the fee must be stated on the form before the employee signs it.

(ii) The credit union shall submit in a secure manner the authorization form to the employer not later than the tenth workday after the day on which the form becomes effective.

(F) This subparagraph applies only if a state employee authorizes a deduction or changes the amount of a deduction by submitting a properly completed electronic authorization through CAPPS under subparagraph (A)(ii) of this paragraph. The employer shall notify the participating credit union in writing of a deduction or change in the amount of a deduction when the employer submits the next monthly detail report to the credit union.

[(3) Change in the amount of a deduction.]

[(A) At any time, a state employee may authorize a change in the amount to be deducted from the employee's salary or wages.]

[(B) A state employee may authorize a change in the amount of a deduction only if the employee:]

[(i) properly completes an authorization form; and]

[(ii) submits the form to the affected participating credit union.]

[(C) Neither the comptroller nor a state agency is liable or responsible for any damages or other consequences resulting from a state employee changing the amount of a deduction.]

[(D) An authorization form is not properly completed for purposes of subparagraph (B)(i) of this paragraph unless the form states the amount of administrative fees the employee completing the form must pay under this section. The amount must be stated on the form before the employee signs it.]

(3) [(4)] Sufficiency of salary or wages to support a deduction.

(A) A state employee is solely responsible for ensuring that the employee's salary or wages are sufficient to support a deduction.

(B) If a state employee's salary or wages are sufficient to support only part of a deduction, [then] no part of the deduction may be made. If a state employee has authorized more than one deduction and the employee's salary or wages are insufficient to support all the deductions, [then] none of the deductions may be made.

(C) The amount that could not be deducted from a state employee's salary or wages because of subparagraph (B) of this paragraph may not be made up by deducting the amount from subsequent payments of salary or wages to the employee.

(4) [(5)] Timing of deductions.

(A) Except as provided in subparagraph (B) of this paragraph, a deduction must be made from the salary or wages that are paid on the first workday [working day] of a month.

(B) If a state employee does not receive a payment of salary or wages on the first workday [working day] of a month, [then] the employer [of the employee] may designate the payment of salary or wages from which a deduction will be made. A deduction may be made only once each month.

(5) [(6)] Cancellation of deductions.

(A) A state employee may cancel a deduction at any time. A cancellation is effective only if the employee:

(i) submits to the participating credit union or employer a properly completed [completes an] authorization form canceling a deduction; or [and submits the form to the affected participating credit union or the employee's employer.]

(ii) submits through CAPPS a properly completed electronic authorization canceling a deduction.

(B) This subparagraph applies only if a state employee cancels a deduction by submitting a properly completed authorization form to a participating credit union under subparagraph (A)(i) of this paragraph. The credit union shall submit in a secure manner the form to the employer not later than the tenth workday after the day on which the form becomes effective.

(C) [(B)] This subparagraph applies only if a state employee cancels a deduction by submitting a properly completed authorization form to an employer under subparagraph (A)(i) of this paragraph or by submitting a properly completed electronic [an] authorization through CAPPS under subparagraph (A)(ii) of this paragraph. The employer shall notify the participating credit union in writing of the cancellation of a deduction when the employer submits the next monthly detail report to the credit union. [form to the employee's employer and if the employer submits monthly detail reports directly to participating credit unions.]

[(i) Except as provided in clause (ii) of this subparagraph, the employer shall include a copy of the form with the next monthly detail report that the employer sends to the affected participating credit union.]

[(ii) If the next monthly detail report will not be sent before the tenth workday after the day on which the form becomes effective, then the employer shall mail or hand deliver the copy of the form to the credit union not later than that workday.]

[(C) This subparagraph applies only if a state employee cancels a deduction by submitting an authorization form to the employee's employer and if the comptroller submits monthly detail reports to participating credit unions on the employer's behalf. The employer shall mail or hand deliver a copy of the form to the credit union not later than the tenth workday after the day on which the form becomes effective.]

(D) Neither the comptroller nor a state agency is liable or responsible for any damages or other consequences resulting from a state employee canceling a deduction.

(6) [(7)] Interagency transfers of state employees. A state employee who transfers from one state agency to a second state agency may be treated by the second state agency as if the employee has not yet authorized any deductions.

(c) Effective dates of authorization forms and electronic authorizations.

(1) Effective date of authorization forms or electronic authorizations that request new deductions, changes in deductions, or cancellation of deductions. This paragraph applies [only] to a state employee's authorization form or electronic authorization that requests a new deduction, change in a deduction, or cancellation of a deduction. The employer [of the employee] may decide when the first deduction from the employee's salary or wages, or the change or cancellation of the deduction, will occur. However, the authorized deduction, change in a deduction, or cancellation of a deduction must begin not later than

with the employee's salary or wages that are paid on the first workday of the second month following the month in which:

(A) the employer receives the authorization form; or [.]

(B) the electronic authorization is submitted through CAPPS.

[(2) Effective date of authorization forms that request changes in deductions. This paragraph applies only to a state employee's authorization form that requests a change to a deduction. The employer of the employee may decide when the change will take effect. However, the change must take effect not later than with the employee's salary or wages that are paid on the first workday of the second month following the month in which the employer receives the form.]

[(3) Effective date of authorization forms that request cancellations of deductions. This paragraph applies only to a state employee's authorization form that requests the cancellation of a deduction. The employer of the employee may decide when the cancellation will take effect. However, the cancellation must take effect not later than with the employee's salary or wages that are paid on the first workday of the second month following the month in which the employer receives the form.]

(2) [(4)] Copies of authorization forms.

(A) A participating credit union is solely responsible for making a copy of an authorization form before the credit union submits the form to an employer [a state agency].

(B) A state employee is solely responsible for making a copy of an authorization form before the employee submits the form to a participating credit union or employer [state agency].

(d) Return of authorization forms.

(1) Mandatory return. An employer [A state agency] shall return an authorization form to the participating credit union or state employee that submitted the form if it:

(A) is incomplete, contains erroneous data, or is otherwise insufficient and the insufficiency makes it impossible for the employer [agency] to cancel, establish, or change the deduction according to the form; or

(B) is for an individual who is not employed by the employer [agency].

(2) Discretionary return. An employer [A state agency] may return an authorization form to the participating credit union or state employee that submitted the form if the form is a copy or facsimile.

(e) Requirements for the content and format of authorization forms.

(1) Prohibition against distributing or providing authorization forms. A participating credit union may not distribute or provide an authorization form to a state employee until the credit union has received the comptroller's written approval of the form.

(2) Requirement to produce authorization forms. As a condition for retaining its certification, a participating credit union must produce an authorization form that complies with the comptroller's requirements and this section. The credit union must produce the form within a reasonable time after receiving its certification from the comptroller.

(3) Using previously approved authorization forms. A participating credit union may use an authorization form that the comptroller has approved for use by another participating credit union if the form is modified so that the first credit union's name appears at the top of the form.

(4) Restrictions on approval of authorization forms by the comptroller. The comptroller may not approve the authorization form of a participating credit union unless:

[(A) the form is at least 8 1/2 inches wide;]

[(B) the form is at least 11 inches long;]

(A) [(C)] the form has a blank space for insertion of the amount of administrative fees the employee completing the form must pay under this section;

(B) [(D)] the name of the credit union appears at the top of the form; and

(C) [(E)] the form complies with the comptroller's other requirements for format and substance.

(5) Revisions of authorization forms. A participating credit union shall revise an authorization form upon request from the comptroller. The credit union may not distribute or otherwise make available a revised form to a state employee until the credit union has received the comptroller's written approval of the form.

(f) Requirements for certifying and decertifying credit unions.

(1) Request for certification. The comptroller may not certify a credit union unless the comptroller receives a written request for certification from an individual who is authorized by the credit union to make the request.

(2) Requirements for requests for certification. The comptroller may not certify a credit union unless its request for certification includes:

(A) the credit union's complete name;

(B) the street address of the credit union's main branch;

(C) the mailing address of the credit union's main branch, if different from the street address;

(D) the full name, title, telephone number, email address [facsimile telephone number], and mailing address of the credit union's primary contact;

(E) the credit union's Internal Revenue Service employer [payee] identification number; and

(F) the other information that the comptroller deems necessary.

(3) Electronic funds transfers. The comptroller may not certify a credit union unless the credit union:

(A) [it] submits to the comptroller a request for deducted amounts to be paid by the comptroller through electronic funds transfers under rules and procedures adopted by the comptroller;

(B) [it] submits to each institution of higher education that will be paying deducted amounts directly to the credit union a request for those amounts to be paid through electronic funds transfers; and

(C) all those requests are approved.

(4) Notifications.

(A) The comptroller shall notify [mail a notice to] a credit union in writing about the comptroller's approval or disapproval of the credit union's request for certification[. The notice must be

~~mailed~~] not later than the 30th calendar day after the comptroller receives the request if the request is complete in all respects. If the 30th calendar day is not a workday, [~~then~~] the first workday following the 30th calendar day is the deadline.

(B) The comptroller shall maintain a list of participating credit unions. The comptroller shall periodically circulate the list to all state agencies and furnish a copy of the list to a state agency upon request.

(5) Effective date of certification. The first deduction to a participating credit union may be made from salary or wages paid on the first workday of the second month following the month in which the comptroller certifies the credit union.

(6) Termination of certification.

(A) A participating credit union may terminate its participation in the deduction program authorized by this section only by terminating its certification.

(B) A participating credit union may terminate its certification by providing written notice of termination to the comptroller. However, the credit union may not provide that notice before the credit union has provided written notice of termination to each state employee from whose salary or wages a deduction to the credit union is occurring.

(C) A participating credit union's termination of its certification is effective beginning with the salary or wages paid on the first workday of the third month following the month in which the comptroller receives the credit union's proper notice of termination.

(g) Payments of deducted amounts.

(1) Payments by the comptroller through electronic funds transfers.

(A) If feasible, the comptroller shall pay deducted amounts to a participating credit union by electronic funds transfer.

(B) If the comptroller pays deducted amounts to a participating credit union by electronic funds transfer, [~~then~~] the comptroller may:

(i) make one transfer to the credit union and require it to distribute the transferred funds to state employees' accounts according to subsection (h) of this section; or

(ii) make one transfer to the credit union account of each state employee.

(2) Payments through warrants issued by the comptroller.

(A) If it is infeasible for the comptroller to pay deducted amounts to a participating credit union by electronic funds transfer, [~~then~~] the comptroller shall:

(i) pay the amounts by warrant;

(ii) make the warrant payable to the credit union;

(iii) require the credit union to distribute the deducted amounts to state employees' accounts according to subsection (h) of this section; and

(iv) make the warrant available for pick up by the employer [~~state agency~~] whose employees' deducted amounts are being paid by the warrant.

(B) An employer [~~A state agency~~] shall hand-deliver [~~hand deliver~~] or use an overnight delivery service to deliver a warrant picked up under subparagraph (A) of this paragraph to the payee of the warrant.

(i) If the warrant relates to salary or wages that are paid on the first workday of a month, [~~then~~] the employer [~~agency~~] shall:

(I) release the warrant to an overnight delivery service not later than the second workday of the month for delivery to the payee of the warrant; or

(II) hand-deliver [~~hand deliver~~] the warrant to the payee of the warrant not later than the third workday of the month.

(ii) If the warrant relates to salary or wages that are paid on a day other than the first workday of a month, [~~then~~] the employer [~~agency~~] shall:

(I) release the warrant to an overnight delivery service not later than the second workday after the employer [~~agency~~] receives the warrant for delivery to the payee of the warrant; or

(II) hand-deliver [~~hand deliver~~] the warrant to the payee of the warrant not later than the third workday after the employer [~~agency~~] receives the warrant.

(3) Payments by institutions of higher education.

(A) This paragraph applies only to deductions from salaries or wages that the comptroller does not pay directly to state employees of institutions of higher education.

(B) If feasible, an institution of higher education shall pay deducted amounts to a participating credit union by electronic funds transfer.

(C) If an institution of higher education pays deducted amounts to a participating credit union by electronic funds transfer, [~~then~~] the institution may:

(i) make one transfer to the credit union and require it to distribute the transferred funds to state employees' accounts according to subsection (h) of this section; or

(ii) make one transfer to the credit union account of each state employee.

(D) If it is infeasible for an institution of higher education to pay deducted amounts to a participating credit union by electronic funds transfer, [~~then~~] the institution shall:

(i) pay the amounts by check;

(ii) make the check payable to the credit union; and

(iii) require the credit union to distribute the deducted amounts to state employees' accounts according to subsection (h) of this section.

(E) An institution of higher education shall hand-deliver [~~hand deliver~~] or use an overnight delivery service to deliver a check issued under subparagraph (D) of this paragraph to the payee of the check.

(i) If the check relates to salary or wages that are paid on the first workday of a month, [~~then~~]the institution shall:

(I) release the check to an overnight delivery service not later than the second workday of the month for delivery to the payee of the check; or

(II) hand-deliver [~~hand deliver~~] the check to the payee of the check not later than the third workday of the month.

(ii) If the check relates to salary or wages that are paid on a day other than the first workday of a month, [~~then~~] the institution shall:

(I) release the check to an overnight delivery service not later than the second workday after the date printed on the check for delivery to the payee of the check; or

(II) hand-deliver [~~hand deliver~~] the check to the payee of the check not later than the third workday after the date printed on the check.

(h) Distributions of deducted amounts.

(1) Applicability of this subsection. This subsection applies to deducted amounts only if they are paid to a participating credit union under subsection (g)(1)(B)(i), (g)(2), (g)(3)(C)(i), or (g)(3)(D) of this section.

(2) Requirement. A participating credit union shall distribute the amount deducted from a state employee's salary or wages to the proper account of the employee at the credit union.

(3) Deadline for distributions.

(A) This subparagraph applies only if a participating credit union receives a payment of deducted amounts through an electronic funds transfer. The credit union shall distribute them according to paragraph (2) of this subsection not later than the first workday after the credit union receives the detail report for the deducted amounts.

(B) This subparagraph applies only if a participating credit union receives a payment of deducted amounts through a warrant or check. The credit union shall distribute them according to paragraph (2) of this subsection not later than the first workday after the credit union receives the warrant or check.

(4) Distribution of interest earned. This paragraph applies only to the interest that accrues while an employee's deducted amounts are in a credit union account awaiting distribution to the employee's account at the credit union. The interest shall be paid to the employee's account unless the credit union determines the payment would violate federal or state law or an agreement between the credit union and the employee.

(i) Charging administrative fees to cover costs incurred to make deductions.

(1) Requirement.

(A) This subparagraph applies to a state employee whose salary or wages are paid through a warrant issued or an electronic funds transfer initiated by the comptroller. The comptroller may not charge the employee an administrative fee to cover the cost of making the deduction.

(B) If a state employee's salary or wages are paid through a check issued or an electronic funds transfer initiated by an institution of higher education and the institution's payroll costs are reimbursed from the state treasury, [~~then~~] the institution may determine whether the employee must pay an administrative fee to cover the cost of making the deduction. The fee, if charged, shall be paid through payroll deduction.

(2) Determination by an institution of higher education of the amount of the fee.

(A) An institution of higher education shall determine the amount of the administrative fee, if any, to be paid by a state employee covered by paragraph (1)(B) of this subsection.

(B) The institution shall periodically recalculate the fee to ensure that the amount of the fee equals the cost of making the deduction. Except as otherwise provided in this subparagraph, the institution shall notify each participating credit union and employee of the institution in writing whenever the institution calculates or recalculates the fee. The institution is not required to notify an employee who has not authorized a deduction or a participating credit union to which no employee of the institution has authorized a currently-effective deduction.

(3) Payment of the administrative fees. The total amount of administrative fees that an institution of higher education deducts from its state employees' salary and wages shall be paid to the institution.

(j) Canceled payments of salary or wages; refunding deducted amounts to employers.

(1) Canceled payments of salary or wages.

(A) An employer [~~A state agency~~] shall notify a participating credit union in writing about the employer's [~~agency's~~] cancellation of a payment of salary or wages to a state employee[~~. The notification must be by facsimile and must be provided~~] not later than the day the employer [~~agency~~] processes the cancellation. This subparagraph applies only if:

(i) the payment is canceled after the employer [~~agency~~] has hand-delivered [~~hand delivered~~] to the credit union or released to an overnight delivery service a monthly or an additional detail report; and

(ii) the deductions covered by the report include deductions from the canceled payment of salary or wages.

(B) If an employer [~~a state agency~~] notifies a credit union that the employer [~~agency~~] has canceled a payment of salary or wages to a state employee and if the credit union receives the notice before it distributes deducted amounts to the employee's account, [~~then~~] the credit union may not make the distribution.

(C) If a credit union's distribution of deducted amounts is prohibited by subparagraph (B) of this paragraph, [~~then~~] the employer [~~state agency~~] that paid them to the credit union shall obtain a refund of them according to paragraph (3)(A) or (B) of this subsection.

(D) If an employer [~~a state agency~~] notifies a credit union that the employer [~~agency~~] has canceled a payment of salary or wages to a state employee and if the credit union receives the notice after it distributes deducted amounts to the employee's account, [~~then~~] the credit union shall withdraw the amounts from the account unless:

(i) the credit union determines the withdrawal would violate federal or state law; or

(ii) the amount of funds in the account is insufficient for withdrawal of the full amount.

(E) A credit union that receives notification under subparagraph (A) of this paragraph that an employer [~~a state agency~~] has canceled a payment of salary or wages to a state employee shall promptly notify the employer in writing [~~agency~~] about whether the employee's deducted amounts have been distributed to the employee's account. If the distribution has occurred, the credit union shall also notify the employer [~~agency~~] about whether the amounts have been withdrawn from the employee's account under subparagraph (D) of this paragraph. The credit union's notification to the employer [~~agency~~] must be made in writing [~~by facsimile~~].

(2) Authorization of refunds. The payment of a state employee's deducted amounts to a participating credit union shall be refunded to the [~~employee's~~] employer only if:

(A) they exceed the amount that should have been paid to the credit union, and they have not been distributed to the employee's account at the credit union; or

(B) they have been withdrawn from the employee's account at the credit union according to paragraph (1)(D) of this subsection.

(3) Method for accomplishing refunds. If a refund from a participating credit union is required by paragraph (1)(C) or (2) of this subsection, [~~then~~] the refund shall be accomplished by:

(A) the employer of the state employee whose deducted amounts are being refunded subtracting the amount of the refund from a subsequent payment of deducted amounts to the credit union; or

(B) the credit union issuing a check to the employer in the amount of the refund, if authorized by paragraph (4) of this subsection.

(4) Paying refunds by check. A participating credit union may issue a check to an employer only if it submits to the credit union a written request for the refund to be made by check.

(5) Deadline for paying refunds by check. If a participating credit union is authorized by paragraph (4) of this subsection to make a refund to an employer by check, [~~then~~] the credit union shall ensure that the employer receives the check not later than the 30th calendar day after the date on which the credit union receives the employer's [~~agency's~~] written request for the refund. If the 30th calendar day is not a workday, [~~then~~] the first workday following the 30th calendar day is the deadline.

(k) Responsibilities of participating credit unions.

(1) Notification to the comptroller. A participating credit union shall notify the comptroller in writing immediately after a change occurs to:

(A) the credit union's name;

(B) the street address of the credit union's main branch;

(C) the mailing address of the credit union's main branch, if different from the street address;

(D) the full name, title, telephone number, email address [~~facsimile telephone number~~], or mailing address of the credit union's primary contact; or

(E) the credit union's routing number or bank account number.

(2) Primary contact. The individual that a credit union designates as its primary contact must represent the credit union for the purposes of:

(A) communicating with the comptroller, including receiving and responding to correspondence from the comptroller;

(B) disseminating information, including information about the requirements of this section, to representatives of the credit union; and

(C) communicating with employers [~~state agencies~~] about payment reconciliation and refunds.

(3) Payment reconciliation and discrepancies.

(A) A participating credit union shall reconcile the detail report provided by an employer [~~a state agency~~] under subsection (l) of this section with the deducted amounts paid to the credit union [~~on behalf of or~~] by the employer [~~agency~~] under subsection (g) of this section.

(B) A participating credit union shall report all discrepancies between a detail report provided by an employer [~~a state agency~~] and the actual amount of deductions received from [~~or on behalf of~~] the employer [~~agency~~]. The credit union shall provide in a secure manner its report to the employer [~~state agency~~] that submitted [~~or on whose behalf the comptroller submitted~~] the detail report. The credit union must ensure that its report is received not later than the 60th calendar day after the day on which the detail report was mailed, hand-delivered [~~hand delivered~~], or released, whichever applies. If the 60th calendar day is not a workday, [~~then~~] the first workday following the 60th calendar day is the deadline.

[~~(4) Return of magnetic tapes and cartridges. A participating credit union shall return a magnetic tape or cartridge to a state agency not later than the 30th calendar day after the credit union received the tape or cartridge from the agency. If the 30th calendar day is not a workday, then the first workday following the 30th calendar day is the deadline.~~]

(4) [~~(5)~~] Submission of detail reports. A participating credit union that wants a monthly or additional detail report to be submitted to an entity other than the credit union must notify the comptroller in writing. An employer [~~A state agency~~] is not required to submit the report to the entity before the employer [~~agency~~] has received notification from the comptroller that the report must be submitted to the entity.

(l) Responsibilities of employers [~~state agencies~~].

(1) Authorization forms. An employer [~~A state agency~~]:

(A) may accept an authorization form only if it complies with this section; and

(B) is not required to accept an authorization form that contains an obvious alteration without the state employee's written consent to the alteration.

(2) Monthly detail reports to participating credit unions.

(A) An employer [~~A state agency~~] shall submit in a secure manner a monthly detail report to each participating credit union that received or should have received a payment of amounts deducted from the salary or wages of at least one of the employer's [~~agency's~~] state employees. If the participating credit union has notified the comptroller in writing that the monthly detail reports should be submitted to an entity other than the credit union, [~~then~~]the reports shall be submitted to that entity.

[~~(B) If a state agency uses USPS and submits its monthly detail reports electronically, then the comptroller shall submit those reports on behalf of the agency. The requirements of this subsection that apply to the submission of those reports by state agencies also apply to the comptroller's submission of the reports.~~]

(B) [~~(C)~~] A monthly detail report may cover only the deductions from salary or wages that are paid on the first workday of the month. Deducted amounts that were paid by electronic funds transfer directly to the credit union accounts of state employees may not be included in the report.

(C) [~~(D)~~] An employer [~~A state agency~~] shall ensure that [~~submit~~] a monthly detail report is received by the participating credit union or other entity under subparagraph (A) of this paragraph not later than the third workday of the month [~~by facsimile, by hand delivery, or through an overnight delivery service~~].

[~~*(i)* If the agency submits the report by facsimile, then the agency shall ensure that the report is received not later than the third workday of the month.~~]

[~~*(ii)* If the agency hand delivers the report, then the agency shall ensure that the report is received not later than the third workday of the month.~~]

[(iii) If the agency uses an overnight delivery service, then the agency shall release the report to the service not later than the second workday of the month.]

(D) [(E)] A monthly detail report to a participating credit union for a particular month must include:

(i) the name and social security number of each state employee from whose salary or wages deducted amounts were paid to the credit union for the month; and

(ii) the amount of deductions from each state employee's salary or wages that were paid to the credit union for the month.

(E) [(F)] An employer [A state agency] shall submit its monthly detail reports in the format required by the comptroller.

(3) Additional detail reports to participating credit unions.

(A) An employer [A state agency] shall submit in a secure manner an additional detail report to each participating credit union that received or should have received a payment of amounts deducted from the salary or wages of at least one of the employer's [agency's] state employees. If the participating credit union has notified the comptroller in writing that the additional detail reports should be submitted to an entity other than the credit union, [then]the reports shall be submitted to that entity.

[(B) If a state agency uses USPS and submits its additional detail reports electronically, then the comptroller shall submit those reports on behalf of the agency. The requirements of this subsection that apply to the submission of those reports by state agencies also apply to the comptroller's submission of the reports.]

(B) [(C)] An additional detail report may cover only the deductions from salary or wages that are paid on a day other than the first workday of the month. Deducted amounts that were paid by electronic funds transfer directly to the credit union accounts of state employees may not be included in the report.

(C) [(D)] This subparagraph applies only to an additional detail report that covers deducted amounts which are paid by electronic funds transfer to a participating credit union. An employer [A state agency] shall ensure that [submit] an additional detail report is received by the participating credit union or other entity under subparagraph (A) of this paragraph not later than the third workday of the month after the deducted amounts are paid to the credit union [by facsimile, by hand delivery, or through an overnight delivery service].

[(i) If an agency submits the report by facsimile, then the agency shall ensure that the report is received not later than the third workday after the deducted amounts are paid to the credit union.]

[(ii) If the agency hand delivers the report, then the agency shall ensure that the report is received not later than the third workday after the deducted amounts are paid to the credit union.]

[(iii) If the agency uses an overnight delivery service, then the agency shall release the report to the service not later than the second workday after the deducted amounts are paid to the credit union.]

(D) [(E)] This subparagraph applies only to an additional detail report that covers deducted amounts which are paid by warrant or check to a participating credit union. The report shall accompany the warrant or check when it is mailed or otherwise delivered to the credit union.

(E) [(F)] An additional detail report to a participating credit union for a particular month must include:

(i) the name and social security number of each state employee from whose salary or wages deducted amounts were paid to the credit union for the month; and

(ii) the amount of deductions from each state employee's salary or wages that were paid to the credit union for the month.

(F) [(G)] An employer [A state agency] shall submit its additional detail reports in the format required by the comptroller.

(4) Payment discrepancies. An employer [A state agency] that receives a report of discrepancies from a participating credit union shall investigate them and notify the credit union in writing of the action to be taken to eliminate them. The employer [agency] shall provide the notification not later than the 30th calendar day after the employer [agency] receives the report. If the 30th calendar day is not a workday, [then]the first workday following the 30th calendar day is the deadline.

(m) Responsibilities of the comptroller. The comptroller shall notify all state agencies in writing whenever the comptroller receives written notification from a participating credit union that monthly or additional detail reports should be submitted to an entity other than the credit union.

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 February 4, 2022.

TRD-202200379
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: March 20, 2022
For further information, please call: (512) 475-0387

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CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER C. APPRAISAL DISTRICT ADMINISTRATION

34 TAC §9.419

The Comptroller of Public Accounts proposes amendments to §9.419, concerning property tax exemption for certain leased motor vehicles. The proposed amendments implement statutory requirements as amended by House Bill 988, Section 6, 87th Legislature, 2021.

The proposed amendment to subsection (a)(4) allows the lessee's affidavit to be certified under oath or by a written, unsworn declaration.

In subsection (b)(1)(a) the comptroller proposes to adopt by reference an amended version of the Lessee's Affidavit Motor Vehicle Use Other than Production of Income (Form 50-285) to make updates and clarifications related to the lessee's address, statutory language and the legislative change from House Bill 988, Section 6. The proposed amended form may be viewed at comptroller.texas.gov/taxes/property-tax/rules.

In subsection (c), the comptroller proposes to amend the name of Form 50-285 to its current title.

In subsection (g), the comptroller proposes to amend the text to add a missing parenthesis.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amendments are in effect, the amendments: 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 current rules.

Mr. Reynolds 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 conforming the rule to current statute. 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.

You may submit comments on the proposal to Shannon Murphy, Director, Property Tax Assistance Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: 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, §11.252 (Motor Vehicles Leased for Use Other than Production of Income), which requires the comptroller to, by rule, establish exemption application requirements and appropriate procedures to determine whether a motor vehicle subject to a lease qualifies for an exemption under this section and to adopt a form to be completed by the lessee of a motor vehicle for which the owner of the vehicle may apply for an exemption under this section.

The comptroller further proposes the amendments under Tax Code, §22.24 (Rendition and Report Forms) which authorizes the comptroller to prescribe and approve forms for the rendition and reporting of property.

This rule implements Tax Code, §11.252 (Motor Vehicles Leased for Use Other than Production of Income).

§9.419. Property Tax Exemption for Certain Leased Motor Vehicles.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Lease--An agreement, other than a rental as defined by Tax Code, §152.001(5), whereby an owner of a motor vehicle gives exclusive use of the motor vehicle to another for consideration, for a period that is longer than 180 days.

(2) Lessee--A person who enters into a lease for a specific motor vehicle.

(3) Lessor-- The owner of a motor vehicle that is subject to a lease.

(4) Lessee's Affidavit or Affidavit--A [~~properly notarized sworn~~] statement, either under oath or by written, unsworn declaration, that a lessee or authorized representative of the lessee if the lessee is an entity described by Tax Code, §11.252(b) executes to attest that the lessee does not hold the leased motor vehicle for the production of income and the leased motor vehicle is used primarily for activities that do not involve the production of income.

(5) Motor vehicle--A passenger car or truck with a shipping weight of 9,000 pounds or less.

(6) Reasonable date and/or time--A time that is after 10:00 a.m. and before 5:00 p.m., Monday through Friday, excluding holidays, unless the appraisal district and the lessor agree otherwise.

(b) The comptroller will make available forms that are adopted by reference in paragraph (1) of this subsection. Copies of the forms can be obtained from the Comptroller of Public Accounts' Property Tax Assistance Division.

(1) The comptroller adopts by reference the following forms:

(A) Lessee's Affidavit Motor Vehicle Use Other than Production of Income (Form 50-285); and

(B) Lessor's Rendition or Property Report Leased Automobiles (Form 50-288).

(2) A chief appraiser, lessee and lessor must use the comptroller's forms adopted by reference in paragraph (1) of this subsection, available from the Comptroller of Public Accounts Property Tax Assistance Division unless the form:

(A) substantially complies with the corresponding comptroller form by using the same language in the same sequence as the comptroller form;

(B) is an electronic version of a comptroller form and preserves the same language in the same sequence as the comptroller form; or

(C) is a rendition form approved by the comptroller in writing before the form is used.

(3) A lessor shall maintain the affidavit, an electronic image of the affidavit, or a certified copy of the affidavit and must produce the affidavit, electronic image of the affidavit, or certified copy of the affidavit to the chief appraiser for inspection or copying when requested, subject to the conditions of subsection (f)(1) of this section.

(4) No provision in this section should be construed as limiting the chief appraiser's authority to enter into an agreement for electronic exchange of information under Tax Code, §1.085.

(5) No provision in this section should be construed as limiting the ability to electronically execute a document according to the laws of the State of Texas.

(c) The Lessee's Affidavit [~~for~~] Motor Vehicle Use Other than Production of Income (Form 50-285) should be completed by lessees and the affidavit, electronic image of the lessee's affidavit, or certified copy of the lessee's affidavit should be maintained by lessors in connection with applying for the exemption available under Tax Code, §11.252.

(1) For lessor to qualify for the exemption, the Lessee must not hold the motor vehicle for the production of income and the motor vehicle must be used primarily for activities that do not include the production of income.

(2) A motor vehicle is presumed to be used primarily for activities that do not involve the production of income if:

(A) 50% or more of the miles the motor vehicle is driven in a year are for non-income producing purposes;

(B) the motor vehicle is leased to the State of Texas or a political subdivision of the State of Texas; or

(C) the motor vehicle:

(i) is leased to an organization that is exempt from federal income taxation under Internal Revenue Code, §501(a), as an organization described by Internal Revenue Code, §501(c)(3); and

(ii) would be exempt from taxation if the vehicle were owned by the organization.

(d) The Lessor's Rendition or Property Report Leased Automobiles (Form 50-288) shall be used as the property report form required by Tax Code, §11.252(i).

(1) To meet the reporting requirements of Tax Code, §11.252(i), the lessor shall list each leased vehicle the lessor owns on January 1, regardless of whether the leased vehicle qualifies for an exemption under Tax Code, §11.252, and provide the following:

(A) the year, make, model, and vehicle identification number for each leased vehicle;

(B) the name of the lessee and address at which the leased vehicle is kept;

(C) whether the lessee has designated the leased vehicle as not held for the production of income and used primarily for activities that do not involve the production of income; and

(D) whether the lessor maintains a lessee's affidavit, electronic image of the lessee's affidavit, or a certified copy of the lessee's affidavit for the leased vehicle.

(2) To meet the reporting requirements of Tax Code, §11.252(j), the Lessor shall provide the form to the chief appraiser in the manner provided by Subchapter B, Chapter 22, Tax Code.

(e) To apply for the exemption allowed under Tax Code, §11.252(a), the lessor shall submit a fully completed and properly executed Lessor's Exemption Application Motor Vehicles Leased for Use Other than Production of Income (Form 50-286) to the chief appraiser pursuant to Tax Code, §11.43 and §11.45, and indicate at the appropriate space on the form that the lessor is applying for the exemption allowed under Tax Code, §11.252(a) for each qualifying leased vehicle.

(f) A chief appraiser may inspect and/or obtain copies of lessees' affidavits, electronic images of the affidavits, or certified copies of the affidavits that the lessor maintains. Unless agreed to otherwise, a lessor and a chief appraiser shall use the following procedures when the chief appraiser proposes to inspect and/or copy lessees' affidavits, electronic images of the affidavits, or certified copies of the affidavits on leased motor vehicles for which the lessor seeks an exemption.

(1) No less than 10 days prior to the inspection, the chief appraiser shall provide the lessor with notice of the chief appraiser's intention to inspect and/or copy the lessees' affidavits, electronic images of the affidavits, or certified copies of the affidavits in the lessor's possession or control. The notice must state a reasonable time when the chief appraiser proposes to inspect and/or copy the lessees' affidavits, electronic images of the affidavits, or certified copies of the affidavits and shall identify the affidavits, electronic images of the affidavits, or certified copies of the affidavits that will be subject to inspection and/or copy.

(2) If the proposed date or time is not convenient, then the lessor may propose an alternate reasonable date or time by notifying the chief appraiser in writing.

(3) The lessor shall provide the chief appraiser with reasonable accommodations to inspect and/or copy any of the lessees' affidavits, electronic images of the affidavits, or certified copies of the affidavits or shall permit the chief appraiser to take the affidavits, electronic images of the affidavits, or certified copies of the affidavits off premises for a period of no less than 48 hours to inspect and/or copy.

(4) If the lessor is located more than 150 miles from the appraisal district's office, then the chief appraiser may submit a written request that the lessor deliver the identified lessees' affidavits, electronic images of the affidavits, or certified copies of the affidavits to the chief appraiser for at least 14 days for inspection and copying. The chief appraiser and the lessor may determine who should bear the costs of delivery and copying if any.

(g) The comptroller-prescribed exemption application form (Lessor's Exemption Application Motor Vehicles Leased for Use Other than Production of Income (Form 50-286)) is not adopted by reference herein and may be revised at the discretion of the comptroller. Current forms can be obtained from the Comptroller of Public Accounts' Property Tax Assistance Division.

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 February 7, 2022.

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Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: March 20, 2022
For further information, please call: (512) 475-2220

ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 160. GENERAL ADMINISTRATION
SUBCHAPTER B. GENERAL PROVISIONS

1 TAC §§160.10 - 160.12

The State Office of Administrative Hearings (SOAH) adopts new Subchapter B, §§160.10 - 160.12, to Texas Administrative Code, Title 1, Administration, Part 7, State Office of Administrative Hearings, Chapter 160, General Administration, without changes to the proposed text as published in the October 29, 2021, issue of the *Texas Register* (46 TexReg 7297). The rules will not be republished.

Basis for Rule Adoption

The adopted rules will establish a new Subchapter within the current Chapter 160, entitled General Administration, relating to general agency administration. The new Subchapter B is entitled General Provisions, and includes rules relating to the administration of training and education for agency administrators and employees, the administration of the agency's sick leave pool, and the establishment of the agency's family leave pool.

New §160.10 describes the parameters and requirements for training and education of SOAH administrators and employees, and includes provisions relating to the eligibility of agency administrators and employees for training and education supported by SOAH, the obligations assumed by the administrators and employees on receiving the training and education, and the requirements for administrator or employee reimbursement for a training or education program. The new rule is necessary to comply with Texas Government Code §656.048, which requires that each state agency shall adopt rules relating to the training and education of agency administrators and employees.

New §160.11 describes the administration of the agency's employee sick leave pool in accordance with Texas Government Code Chapter 661. The new rule is necessary to comply with the requirement of Texas Government Code §661.002(c) for state agencies to adopt rules and prescribe procedures relating to the administration of the agency sick leave pool for employees.

New §160.12 establishes the agency's family leave pool in compliance with House Bill 2063, 87th Leg., R.S. The new rule describes the administration of the family leave pool.

The rules adopted herein are consistent with the statutory parameters and requirements of Texas Government Code §§ 656.048, 661.002, and 661.022 accordingly.

Comments

The 31-day comment period ended on November 29, 2021. During this period, SOAH received one comment.

Comment: The commenter requested modification of proposed §160.10 to add a new subsection to require that the policies developed by the administrator of the agency's education and training program include trainer requirements for "accurate information and, if applicable, balanced perspectives from both sides of the practicing bar." The commenter requested this modification based on the contention that SOAH's administrative law judges assigned to preside over special education due process hearings under the federal Individuals with Disabilities Education Act (IDEA), referred to SOAH by the Texas Education Agency (TEA), attend sponsored trainings hosted by private practitioners who exclusively represent school districts, and that such training is inappropriate to the extent that it is not balanced by counter-presentations from representatives of the opposing side.

Response: While SOAH appreciates the commenter's concern, SOAH declines to modify the rule as requested because the concern is unfounded. Although SOAH's administrative law judges assigned to preside over special education due process hearings do receive specialized training supported by SOAH, such training is neither provided exclusively by private practitioners representing only the school districts' bar, nor by trainers who offer only one perspective. Rather, such training is provided through reputable entities, including the National Judicial College, the National Academy for IDEA Administrative Law Judges and Impartial Hearing Officers, the Center for Appropriate Dispute Resolution in Special Education, the Center for Public Policy Dispute Resolution at the University of Texas, the Lehigh University Special Education Law Symposium, and DePaul University. Furthermore, the rule is intended to broadly apply to all agency employees and to all types of training and educational opportunities supported by SOAH. The rule is not intended to prescribe judicial training requirements for SOAH's administrative law judges, which is addressed by Texas Government Code §2003.0451 and subject to the oversight and discretion of SOAH's Chief Administrative Law Judge. Additionally, the requested modification would result in an undue administrative burden for SOAH in that it would require SOAH to preview and fact-check all training and other educational content prior to purchase and/or receipt, even when the training and education is already accredited material being offered by a reputable entity, such as continuing legal education (CLE) provided through the State Bar of Texas.

Statutory Authority

The rules are adopted under Texas Government Code §656.048, which requires that each state agency shall adopt rules relating to the training and education of agency administrators and employees; Texas Government Code §661.002(c), which requires state agencies to adopt rules and prescribe procedures relating to the administration of the agency sick leave pool; and Texas

Government Code §661.022, which requires state agencies to adopt rules and prescribe procedures relating to the operation of a family leave pool.

No other statutes, articles, or codes are affected by the adopted rules.

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

Filed with the Office of the Secretary of State on February 3, 2022.

TRD-202200365
Laurel Parke
Assistant General Counsel
State Office of Administrative Hearings
Effective date: February 23, 2022
Proposal publication date: October 29, 2021
For further information, please call: (512) 475-4993

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.108, §355.109

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.108, concerning Determination of Inflation Indices, and §355.109, concerning Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs. The amendments to §355.108 and §355.109 are adopted without changes to the proposed text as published in the September 17, 2021, issue of the *Texas Register* (46 TexReg 6002). The rules will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the amendments is to clarify how the agency calculates reimbursement rate adjustments in response to inflation and payroll tax rate changes. The inflation methodologies pertaining to the adopted amendments are used to calculate payment rates for long-term services and supports programs. Calculating rates of inflation and applying them to appropriate costs allows HHSC to account for economic inflation between one time period to the next when estimating the costs of rate changes implemented by the Legislature, calculating periodic rate changes such as biennial fee reviews, establishing rates for new programs, and completing other special analyses.

COMMENTS

The 31-day comment period ended October 18, 2021.

During this period, HHSC did not receive any comments regarding the proposed rules.

STATUTORY AUTHORITY

The amendments are adopted under 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 agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

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

Filed with the Office of the Secretary of State on February 7, 2022.

TRD-202200416
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: February 27, 2022
Proposal publication date: September 17, 2021
For further information, please call: (737) 867-7817

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 62. COMMISSIONER'S RULES CONCERNING OPTIONS FOR LOCAL REVENUE LEVELS IN EXCESS OF ENTITLEMENT

19 TAC §62.1001, §62.1072

The Texas Education Agency (TEA) adopts amendments to §62.1001 and §62.1072, concerning options for local revenue levels in excess of entitlement. The amendments are adopted without changes to the proposed text as published in the October 8, 2021 issue of the *Texas Register* (46 TexReg 6655) and will not be republished. The adopted amendment to §62.1001 removes language that prohibits a school district's board of trustees from delegating certain authority. The adopted amendment to §62.1072 adopts as a part of the Texas Administrative Code (TAC) the official TEA publications *Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2021-2022 School Year and Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2022-2023 School Year.* The manuals contain the processes and procedures that TEA will use in the administration of the provisions of Texas Education Code (TEC), Chapter 49, and the fiscal, procedural, and administrative requirements that school districts subject to TEC, Chapter 49, must meet.

REASONED JUSTIFICATION: The following changes to Chapter 62 are adopted as proposed.

§62.1001, Authority of Trustees; Duration of Agreements

The agreement for purchase of attendance credit authorized under TEC, Chapter 49, is an electronic document accessible via

the Excess Local Revenue subsystem of the online Foundation School Program (FSP) System. Each year, a school district's board of trustees must delegate authority to obligate the district under TEC, Chapter 49, to the superintendent to facilitate the submission of the agreement through the Excess Local Revenue subsystem. The adopted amendment to §62.1001(a) aligns with TEA's automated process for districts submitting this agreement by removing language that prohibits a school district's board of trustees from delegating authority to enter into agreements necessary to achieve the purposes of TEC, Chapter 49.

§62.1072, Options and Procedures for Local Revenue in Excess of Entitlement, 2019-2020 and 2020-2021 School Years

The procedures contained in each yearly manual for districts determined to have local revenue in excess of entitlement are adopted as part of the TAC. The intent is to biennially update §62.1072 to refer to the most recently published manuals. Manuals adopted for previous school years will remain in effect with respect to those school years.

The adopted amendment to §62.1072 adopts in rule the official TEA publications *Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2021-2022 School Year* as Figure: 19 TAC §62.1072(a) and *Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2022-2023 School Year* as Figure: 19 TAC §62.1072(b). The section title is updated to reflect the manuals adopted in the rule.

Each school year's options and procedures for districts determined to have local revenue in excess of entitlement explain how districts subject to excess local revenue are identified; the fiscal, procedural, and administrative requirements those districts must meet; and the consequences for not meeting requirements. The options and procedures also provide information on using the online FSP System to fulfill certain requirements.

The following significant changes are addressed in the updated publications pursuant to TEC, Chapter 49, as amended by House Bill 1525, 87th Texas Legislature, Regular Session, 2021.

Netting Provision

Provisions in TEC, §48.257(c), were amended to allow districts to offset the reduction of excess local revenue against TEC, Chapter 48, funds. All districts will have the option to use state aid calculated under TEC, Chapter 48, that is not described by TEC, §48.266(a)(3), as an offset to their attendance credit for purposes of reducing their local revenue level. Districts using this option are required to submit the district intent/choice selection form and complete an Option 3 netting agreement.

Local Revenue in Excess of Entitlement After Review Notification

If the commissioner determines that a district has a local revenue level in excess of entitlement after the date of notification for the current school year under TEC, §49.004, the amount of the district's local revenue level that exceeds the level established under TEC, §48.257, for that school year will be included in the annual review for the following school year of the district's local revenue levels under TEC, §49.004(a).

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began October 8, 2021, and ended November 8, 2021. Following is a summary of the public comments received and the corresponding agency responses.

Comment: Crane Independent School District raised concerns that there would be additional costs to districts that are not notified of revenue levels in excess of entitlement at the beginning of the school year and there should be deadlines that require notification no later than 90 days prior to the end of the fiscal year.

Response: The agency disagrees on both points. The public school finance system operates under a mechanism through which funding is provided to school districts via estimates, and then balances owed are accounted for in the subsequent school year. While the state might not have knowledge of actual excess revenue levels during the official notification process, school districts have current enrollment and tax information that would allow the actual excess revenue levels to be known and budgeted for well in advance of the subsequent school year. In addition, TEC, §49.0041, contemplates that the commissioner might determine the district has local revenue in excess of entitlement after the official notification date specified in TEC, §49.004, and, in that situation, requires the commissioner to include the excess local revenue associated with that school year in the subsequent year's revenue level. There is no additional cost beyond what the authorizing statutes allow.

Comment: An employee from Education Service Center 15 raised concerns that there would be an additional cost to districts that are not notified of revenue in excess of entitlement status by the statutory deadline, and districts in this situation would not meet the required deadlines to call an election and to submit the required documentation.

Response: The agency disagrees on both points. The public school finance system operates under a mechanism through which funding is provided to school districts via estimates and then balances owed are accounted for in the subsequent school year. While the state might not have knowledge of actual excess revenue levels during the official notification process, school districts have current enrollment and tax information that would allow the actual excess revenue levels to be known and budgeted for well in advance of the subsequent school year. In addition, TEC, §49.0041, contemplates that the commissioner might determine the district has local revenue in excess of entitlement after the official notification date specified in TEC, §49.004, and, in that situation, requires the commissioner to include the excess local revenue associated with that school year in the subsequent year's revenue level. This statutory date provides ample time for a school district to determine their amount of revenue in excess of entitlement under these provisions to call an election and to submit the required documentation to the agency. There is no additional cost beyond what the authorizing statutes allow.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code, §49.006, which authorizes the commissioner of education to adopt rules necessary for the implementation of TEC, Chapter 49, Options for Local Revenue Levels in Excess of Entitlement.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §49.006.

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

Filed with the Office of the Secretary of State on February 2, 2022.

TRD-202200354

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: February 22, 2022
Proposal publication date: October 8, 2021
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 465. RULES OF PRACTICE

22 TAC §465.13

The Texas Behavioral Health Executive Council adopts amendments to §465.13, relating to Personal Problems, Conflicts, and Dual Relationship. Section 465.13 is adopted without changes to the proposed text as published in the October 1, 2021, issue of the *Texas Register* (46 TexReg 6472) and will not be republished.

Reasoned Justification.

Currently the rule requires licensees to refrain from entering into a professional relationship where another relationship is likely to cause harm or impair the licensee's objectivity. Additionally, licensees must withdraw from a professional relationship if another relationship exists that is likely to cause harm or impair the licensee's objectivity. The amended rule is intended to clarify these requirements, that when a licensee conducts the practice of psychology the licensee must do so with the best interest of the recipient of those services in mind.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

Filed with the Office of the Secretary of State on February 7, 2022.

TRD-202200403
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: February 27, 2022
Proposal publication date: October 1, 2021
For further information, please call: (512) 305-7706

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PART 30. TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

CHAPTER 681. PROFESSIONAL COUNSELORS

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §681.2

The Texas Behavioral Health Executive Council adopts amendments to §681.2, relating to Definitions. Section 681.2 is adopted without changes to the proposed text as published in the October 1, 2021, issue of the *Texas Register* (46 TexReg 6479) and will not be republished.

Reasoned Justification.

The amendment to §681.2 is intended to provide clarity to the definition of art therapy and correct a typographical error. The

amended rule also provides a definition for the term independent practice, which is defined as the practice of providing professional counseling services to a client without the supervision of an LPC-S.

List of interested groups or associations against the rule.

American Dance Therapy Association

Christian Counselors of Texas, Inc.

Summary of comments against the rule.

Some commenters believe the quality of care that will be provided by some LPC-Associates will suffer because allowing them to manage and learn how to run a business while also becoming sound grounded clinicians will require a large learning curve. Commenters also believe allowing an LPC-Associate to control their notes limits a supervisor's access to them and can limit their support. Many commenters believe that LPC-Associates should be focused on client work and not on running a business, therefore they believe it could cause harm to the public. Other commenters oppose this rule change because LPC-Associates may have graduated with degrees that do not include courses on business, accounting, or HIPAA compliance, and therefore lack the requisite knowledge to run a business. A commenter believes that not all LMFT-Associates are appropriately marketing their services and this may happen with LPC-Associates - which has many more licensees. Commenters opined that the rule changes do not allow for enough oversight, that supervisors will not have adequate power to meet their responsibilities and liabilities - especially if the supervisor does not maintain and control the client's records. Some commenters believe these rules remove the support of a team and site manager, placing all responsibility on a supervisor, and that owning a practice or business is a privilege and not a right. A commenter believes there is not parity between LMFT-Associates and LPC-Associates because the commenter opines that LMFT-Associates have more coursework and internship requirements. Some commenters believe that only one hour of supervision a week for an LPC-Associate will not be enough given these rule changes. Commenters believe these rule changes will result in more litigation and an increase of complaints filed with the Council, as well as an increased workload for the supervisors and possibly a decrease in the amount of supervisors. One commenter believes the failure rate of LPC-Associates' businesses will cause harm to clients. Other commenters believe LPC-Associates that own their own business may misrepresent the fact that they are under supervision so the public may be misled. A commenter suggested that if an LPC-Associate feels put upon by the supervisor then the cure for a bad supervisory relationship is for LPC-Associate to freely choose another supervisor. Some commenters believe the current system of supervision is working and they do not see the need for change. Some commenters opined that these rules may impact client access to lower cost counseling services because the commenters posit that LPC-Associates will likely charge higher rates under these new rules, and part of the commenters' practice is having LPC-Associates with lower rates which they believe better serves the community. Additionally, some commenters believe this may cause there to be competition between LPC-Associates and LPC-Supervisors. One commenter believes the term self-employed is confusing and it suggests an independent practice. Another commenter opined that the rule change will cause public confusion regarding the distinction between LPC-Associates and supervisors, and the public will think ownership of a business as the functional equivalent of independent practice. Two commenters were unsure as to who would be the direct employee in the supervision arrangement, should there be a sharing of profits, who would be responsible for billing and accepting payment, do insurance payors agree with these changes, and do these changes apply to other Boards? A commenter voiced a word of caution to supervisors, associates, and students that if the proposed changes become law to consider your choices carefully to determine what type of supervisory relationship should be entered into because it will demand and deserve a full investment of time, attention, and energy.

A commenter objected to the change to the definition for art therapy because the commenter believes it undermines the training that creative arts therapists undergo to be able to conduct their sessions and the language presumes that any licensee is able to participate in art therapy sessions. The commenter believes the definition should be modeled after the definitions provided by national associations, and asks that dance therapy be redefined and not listed as a non-counseling related field.

List of interested groups or associations for the rule.

Texas Counseling Association

Summary of comments for the rule.

Commenters voiced their support for these rule changes, related to LPC-Associates, and opined that it will be beneficial for LPC-Associates as well as clients. Some also believe this rule change will open up new opportunities for rural residents to receive quality counseling services by attracting or retaining more licensees to those communities. Many commenters believe these changes will create greater parity between the other licensed mental health professions. Other commenters believe the changes will encourage greater financial freedom and stability for LPC-Associates, while decreasing possible financial exploitation and allowing for additional learning experience. One commenter in support of this changes also asked if the 3,000 hours could be reconsidered and shortened. Another commenter in favor of the change, was concerned that supervisor will have to advise LPC-Associates on business structure, employment law, and other decisions which may be outside of their scop of practice which could lead to future issues. A commenter voiced support for these changes but request some clarification to correct a possible typographic error and require additional contact information for the supervisor to be disclosed by the supervisee. One commenter in favor of the rule changes also recommended changes to the LPC licensing rules to match more closely with the LMFT licensing requirements, to create greater parity between the LPC and LMFT associate licenses and their requirements for full licensure. A commenter opined that these rules changes have no foreseeable adverse economic effect on small businesses.

Agency Response.

This agency appreciates the supportive comments, and declines to make changes to the rule as requested except to correct a typographical error in the proposed version of §681.91(m). The proposed amendment to subsection (m) inadvertently struck through the word "including" and the Council is adopting the rule with this change to correct this typographical error.

Under these rule amendments LPC-Associates are still prohibited from conducting the practice of professional counseling without the supervision of an LPC-Supervisor. LPC-Associates are still prohibited from representing themselves as independent practitioners, and LPC-Associates are still required to indicate the name of their supervisor when representing themselves

professionally. LPC-Associates are still prohibited from employing their supervisor, but the LPC-Associate may compensate the supervisor (e.g. contract for supervision) if the supervision is not a part of the supervisor's responsibilities as a paid employee of an agency, institution, clinic, or other business entity. LPC-Associates and LPC-Supervisors are free to enter into any type of supervision agreement so long as it does not conflict with any applicable law. What these rule amendments do is allow for an LPC-Associate to create and run their own business and then contract for the required supervision with a willing LPC-Supervisor. If a supervisor does not want to enter into such an arrangement then they are not required to do so; for example, supervisors can choose to only offer supervision to direct employees if they so choose. The Council finds that any alleged harm to the public, clients, or licensees that the commenters allege these rule changes will cause are purely speculative, and there is no evidence to suggest the misconduct or harm described in the comments will in fact occur because of these rule changes. LPC-Supervisors are required to provide supervision as it relates to the practice of professional counseling by the LPC-Associate, if a matter is outside of this scope a supervisor would not be subject to a disciplinary action by the Council. For example, if an LPC-Associate decides to create a legal entity, such as a limited liability company, in Texas but fails to timely or properly file a required form or fee with Texas Comptroller of Public Accounts, the Texas Workforce Commission, or any other applicable government agency, then the LPC-Supervisor would not be subject to disciplinary action by the Council for this failure by the LPC-Associate. Rule 681.92(e) requires a minimum of four hours of supervision per month for an LPC-Associate, but this is only the minimum standard - supervisors can provide or require more than this minimum standard if a supervisor finds more supervision is necessary for a particular LPC-Associate. Rule 681.41(s) currently states that if records are created by a licensee during the scope of employment by an agency or institution (e.g. hospital) then the licensee does not have to maintain the records because the hospital should have them. Part of the reasoning behind this rule is that clients will naturally return to a hospital to request a copy of their records and not seek out each provider they received services from during their hospital stay. A similar reason exits for clarifying in these rules that if an LPC-Associate is self employed (e.g. creates their own business) then the client will naturally return to the business where they received services to request a copy of their records. Therefore, in such a situation, a supervisor would not be required to maintain the client's records but the supervisor can and should inspect the records created and maintained by the LPC-Associate. If an LPC-Associate is not property creating and maintaining client records then, per §681.93(e), a supervisor should develop and implement a written plan for remediation of the LPC-Associate. If an LPC-Associate refuses to provide the supervisor access to such records then the supervisor can terminate the supervisory relationship.

The 3,000 hours of supervised experience needed for licensure is required by statute, see §503.302(a)(4) of the Occupations Code, therefore this agency declines to reconsider this requirement or shorten it. The Council declines to amend the licensing requirements for an LPC or LPC-Associate, the Texas State Board of Examiners of Professional Counselors has not articulated a need to amend the licensure requirements because of these rule amendments.

Regarding the comment pertaining to the definition of art therapy, current §681.49(i) states:

A licensee is required to hold the art therapy specialty designation in order to use the title "art therapist" or the initials "AT." A licensee who does not hold the designation may use art therapy as a counseling method but may not use the title or initials.

Therefore this agency declines to amend or withdraw the definition of art therapy in this rule because licensees without this specialty designation can use art therapy as a counseling method but they cannot represent themselves as a specialist until the designation has been achieved. The definition regarding dance therapy was not previously proposed to be amended so this agency declines to make any changes as requested.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

Filed with the Office of the Secretary of State on February 7, 2022.

TRD-202200406

Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Professional Counselors
Effective date: February 27, 2022
Proposal publication date: October 1, 2021
For further information, please call: (512) 305-7706

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SUBCHAPTER C. APPLICATION AND LICENSING

22 TAC §681.91

The Texas Behavioral Health Executive Council adopts amendments to §681.91, relating to LPC Associate License. Section 681.91 is adopted with changes to the proposed text as published in the October 1, 2021, issue of the *Texas Register* (46 TexReg 6481) and will be republished below. In response to public comment, a typographical error was identified in the proposed version of §681.91(m), the word "including" was inadvertently struck through and the Council is adopting the rule with this word added back to correct this grammatical mistake.

Reasoned Justification.

The amended rule still requires an LPC-Associate to only practice professional counseling under the supervision of an LPC-S, but the amended rule no longer prohibits LPC-Associates from owning their own business or accepting direct payment. The amended rule will allow for the supervision arrangements between an LPC-Associate and LPC-S to be one of a direct employee, independent contractor, or any other legal arrangement the parties agree to. The amended rule also clarifies how LPC-Associates must represent themselves, and which licensee is responsible for the retention and maintenance of client records.

List of interested groups or associations against the rule.

American Dance Therapy Association

Christian Counselors of Texas, Inc.

Summary of comments against the rule.

Some commenters believe the quality of care that will be provided by some LPC-Associates will suffer because allowing them to manage and learn how to run a business while also becoming sound grounded clinicians will require a large learning curve. Commenters also believe allowing an LPC-Associate to control their notes limits a supervisor's access to them and can limit their support. Many commenters believe that LPC-Associates should be focused on client work and not on running a business, therefore they believe it could cause harm to the public. Other commenters oppose this rule change because LPC-Associates may have graduated with degrees that do not include courses on business, accounting, or HIPAA compliance, and therefore lack the requisite knowledge to run a business. A commenter believes that not all LMFT-Associates are appropriately marketing their services and this may happen with LPC-Associates - which has many more licensees. Commenters opined that the rule changes do not allow for enough oversight, that supervisors will not have adequate power to meet their responsibilities and liabilities - especially if the supervisor does not maintain and control the client's records. Some commenters believe these rules remove the support of a team and site manager, placing all responsibility on a supervisor, and that owning a practice or business is a privilege and not a right. A commenter believes there is not parity between LMFT-Associates and LPC-Associates because the commenter opines that LMFT-Associates have more coursework and internship requirements. Some commenters believe that only one hour of supervision a week for an LPC-Associate will not be enough given these rule changes. Commenters believe these rule changes will result in more litigation and an increase of complaints filed with the Council, as well as an increased workload for the supervisors and possibly a decrease in the amount of supervisors. One commenter believes the failure rate of LPC-Associates' businesses will cause harm to clients. Other commenters believe LPC-Associates that own their own business may misrepresent the fact that they are under supervision so the public may be misled. A commenter suggested that if an LPC-Associate feels put upon by the supervisor then the cure for a bad supervisory relationship is for LPC-Associate to freely choose another supervisor. Some commenters believe the current system of supervision is working and they do not see the need for change. Some commenters opined that these rules may impact client access to lower cost counseling services because the commenters posit that LPC-Associates will likely charge higher rates under these new rules, and part of the commenters' practice is having LPC-Associates with lower rates which they believe better serves the community. Additionally, some commenters believe this may cause there to be competition between LPC-Associates and LPC-Supervisors. One commenter believes the term self-employed is confusing and it suggests an independent practice. Another commenter opined that the rule change will cause public confusion regarding the distinction between LPC-Associates and supervisors, and the public will think ownership of a business as the functional equivalent of independent practice. Two commenters were unsure as to who would be the direct employee in the supervision arrangement, should there be a sharing of profits, who would be responsible for billing and accepting payment, do insurance payors agree with these changes, and do these changes apply to other Boards? A commenter voiced a word of caution to supervisors, associates, and students that if the proposed changes become law to consider your choices carefully to determine what type of supervisory relationship should be entered into because it will demand and deserve a full investment of time, attention, and energy.

List of interested groups or associations for the rule.

Texas Counseling Association

Summary of comments for the rule.

Commenters voiced their support for these rule changes, related to LPC-Associates, and opined that it will be beneficial for LPC-Associates as well as clients. Some also believe this rule change will open up new opportunities for rural residents to receive quality counseling services by attracting or retaining more licensees to those communities. Many commenters believe these changes will create greater parity between the other licensed mental health professions. Other commenters believe the changes will encourage greater financial freedom and stability for LPC-Associates, while decreasing possible financial exploitation and allowing for additional learning experience. One commenter in support of this changes also asked if the 3,000 hours could be reconsidered and shortened. Another commenter in favor of the change, was concerned that supervisor will have to advise LPC-Associates on business structure, employment law, and other decisions which may be outside of their scop of practice which could lead to future issues. A commenter voiced support for these changes but request some clarification to correct a possible typographic error and

require additional contact information for the supervisor to be disclosed by the supervisee. One commenter in favor of the rule changes also recommended changes to the LPC licensing rules to match more closely with the LMFT licensing requirements, to create greater parity between the LPC and LMFT associate licenses and their requirements for full licensure. A commenter opined that these rules changes have no foreseeable adverse economic effect on small businesses.

Agency Response.

This agency appreciates the supportive comments, and declines to make changes to the rule as requested except to correct a typographical error in the proposed version of §681.91(m). The proposed amendment to subsection (m) inadvertently struck through the word "including" and the Council is adopting the rule with this change to correct this typographical error.

Under these rule amendments LPC-Associates are still prohibited from conducting the practice of professional counseling without the supervision of an LPC-Supervisor. LPC-Associates are still prohibited from representing themselves as independent practitioners, and LPC-Associates are still required to indicate the name of their supervisor when representing themselves professionally. LPC-Associates are still prohibited from employing their supervisor, but the LPC-Associate may compensate the supervisor (e.g. contract for supervision) if the supervision is not a part of the supervisor's responsibilities as a paid employee of an agency, institution, clinic, or other business entity. LPC-Associates and LPC-Supervisors are free to enter into any type of supervision agreement so long as it does not conflict with any applicable law. What these rule amendments do is allow for an LPC-Associate to create and run their own business and then contract for the required supervision with a willing LPC-Supervisor. If a supervisor does not want to enter into such an arrangement then they are not required to do so; for example, supervisors can choose to only offer supervision to direct employees if they so choose. The Council finds that any alleged harm to the public, clients, or licensees that the commenters allege these rule changes will cause are purely speculative, and there is no evidence to suggest the misconduct or harm described in the comments will in fact occur because of these rule changes. LPC-Supervisors are required to provide supervision as it relates to the practice of professional counseling by the LPC-Associate, if a matter is outside of this scope a supervisor would not be subject to a disciplinary action by the Council. For example, if an LPC-Associate decides to create a legal entity, such as a limited liability company, in Texas but fails to timely or properly file a required form or fee with Texas Comptroller of Public Accounts, the Texas Workforce Commission, or any other applicable government agency, then the LPC-Supervisor would not be subject to disciplinary action by the Council for this failure by the LPC-Associate. Rule 681.92(e) requires a minimum of four hours of supervision per month for an LPC-Associate, but this is only the minimum standard - supervisors can provide or require more than this minimum standard if a supervisor finds more supervision is necessary for a particular LPC-Associate. Rule 681.41(s) currently states that if records are created by a licensee during the scope of employment by an agency or institution (e.g. hospital) then the licensee does not have to maintain the records because the hospital should have them. Part of the reasoning behind this rule is that clients will naturally return to a hospital to request a copy of their records and not seek out each provider they received services from during their hospital stay. A similar reason exits for clarifying in these rules that if an LPC-Associate is self employed (e.g. creates their own business) then the client will naturally return to the business where they received services to request a copy of their records. Therefore, in such a situation, a supervisor would not be required to maintain the client's records but the supervisor can and should inspect the records created and maintained by the LPC-Associate. If an LPC-Associate is not property creating and maintaining client records then, per §681.93(e), a supervisor should develop and implement a written plan for remediation of the LPC-Associate. If an LPC-Associate refuses to provide the supervisor access to such records then the supervisor can terminate the supervisory relationship.

The 3,000 hours of supervised experience needed for licensure is required by statute, see §503.302(a)(4) of the Occupations Code, therefore this agency declines to reconsider this requirement or shorten it. The Council declines to amend the licensing requirements for an LPC or LPC-Associate, the Texas State Board of Examiners of Professional Counselors has not articulated a need to amend the licensure requirements because of these rule amendments.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§681.91. LPC Associate License.

(a) The Council may issue an LPC Associate license to an applicant who has:

(1) filed all application forms and paid all applicable fees;

(2) met all of the academic requirements for licensure;

(3) completed the required examinations with the requisite score as described in 681.72(a)(3) and (a)(4) of this title (relating to Required Application Materials);

(4) entered into a supervisory agreement with a Licensed Professional Counselor Supervisor (LPC-S); and

(5) not completed the supervised experience described in §681.92 of this title (relating to Experience Requirements (Internship)).

(b) An LPC Associate must comply with all provisions of the Act and Council rules.

(c) To practice counseling in Texas, a person must obtain an LPC Associate license before the person begins an internship or continues an internship. Hours obtained by an unlicensed person in any setting will not count toward the supervised experience requirements.

(d) An LPC Associate may practice counseling only as part of his or her internship and only under the supervision of a Licensed Professional Counselor Supervisor (LPC-S). The LPC Associate shall not engage in independent practice.

(e) An LPC Associate may have no more than two (2) Council-approved LPC supervisors at any given time.

(f) An LPC Associate must maintain their LPC Associate license during his or her supervised experience.

(g) An LPC Associate license will expire 60 months from the date of issuance.

(h) An LPC Associate who does not complete the required supervised experience hours during the 60-month time period must reapply for licensure.

(i) An LPC Associate must continue to be supervised after completion of the 3,000 hours of supervised experience and until the LPC Associate receives his or her LPC license. Supervision is complete upon the LPC Associate receiving the LPC license.

(j) The possession, access, retention, control, maintenance, and destruction of client records is the responsibility of the person or entity that employs or contracts with the LPC Associate, or in those cases where the LPC Associate is self-employed, the responsibility of the LPC-Associate.

(k) An LPC Associate must not employ a supervisor but may compensate the supervisor for time spent in supervision if the supervision is not a part of the supervisor's responsibilities as a paid employee of an agency, institution, clinic, or other business entity.

(l) All billing documents for services provided by an LPC Associate must reflect the LPC Associate holds an LPC Associate license and is under supervision.

(m) The LPC Associate must not represent himself or herself as an independent practitioner. The LPC Associate's name must be followed by a statement such as "supervised by (name of supervisor)" or a statement of similar effect, together with the name of the supervisor. This disclosure must appear on all marketing materials, billing documents, and practice related forms and documents where the LPC Associate's name appears, including websites and intake documents.

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

Filed with the Office of the Secretary of State on February 7, 2022.

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Professional Counselors
Effective date: February 27, 2022
Proposal publication date: October 1, 2021
For further information, please call: (512) 305-7706

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22 TAC §681.93

The Texas Behavioral Health Executive Council adopts amendments to §681.93, relating to Supervisor Requirements. Section 681.93 is adopted without changes to the proposed text as published in the October 1, 2021, issue of the *Texas Register* (46 TexReg 6483) and will not be republished.

Reasoned Justification.

The Council is no longer mailing renewal permits; verification of licensure status is done online. The amended rule will reduce regulatory burden by allowing the supervisor to print and keep a copy of the online license verification in lieu of a wall certificate. Additionally, the amended rule requires a supervisor to keep a written record acknowledging the supervisee is self-employed, if applicable. And the amended rule clarifies the liability assumed for a supervisee by a supervisor; both are responsible for the professional counseling activities of an LPC-Associate but an LPC-S may be subject to disciplinary action for violations that relate only to the professional practice of counseling committed by the LPC-Associate which the LPC-S knew about or due to the oversight nature of the supervisory relationship should have known about.

List of interested groups or associations against the rule.

American Dance Therapy Association

Christian Counselors of Texas, Inc.

Summary of comments against the rule.

Some commenters believe the quality of care that will be provided by some LPC-Associates will suffer because allowing them to manage and learn how to run a business while also becoming sound grounded clinicians will require a large learning curve. Commenters also believe allowing an LPC-Associate to control their notes limits a supervisor's access to them and can limit their support. Many commenters believe that LPC-Associates should be focused on client work and not on running a business, therefore they believe it could cause harm to the public. Other commenters oppose this rule change because LPC-Associates may have graduated with degrees that do not include courses on business, accounting, or HIPAA compliance, and therefore lack the requisite knowledge to run a business. A commenter believes that not all LMFT-Associates are appropriately marketing their services and this may happen with LPC-Associates - which has many more licensees. Commenters opined that the rule changes do not allow for enough oversight, that supervisors will not have adequate power to meet their responsibilities and liabilities - especially if the supervisor does not maintain and control the client's records. Some commenters believe these rules remove the support of a team and site manager, placing all responsibility on a supervisor, and that owning a prac-

tice or business is a privilege and not a right. A commenter believes there is not parity between LMFT-Associates and LPC-Associates because the commenter opines that LMFT-Associates have more coursework and internship requirements. Some commenters believe that only one hour of supervision a week for an LPC-Associate will not be enough given these rule changes. Commenters believe these rule changes will result in more litigation and an increase of complaints filed with the Council, as well as an increased workload for the supervisors and possibly a decrease in the amount of supervisors. One commenter believes the failure rate of LPC-Associates' businesses will cause harm to clients. Other commenters believe LPC-Associates that own their own business may misrepresent the fact that they are under supervision so the public may be misled. A commenter suggested that if an LPC-Associate feels put upon by the supervisor then the cure for a bad supervisory relationship is for LPC-Associate to freely choose another supervisor. Some commenters believe the current system of supervision is working and they do not see the need for change. Some commenters opined that these rules may impact client access to lower cost counseling services because the commenters posit that LPC-Associates will likely charge higher rates under these new rules, and part of the commenters' practice is having LPC-Associates with lower rates which they believe better serves the community. Additionally, some commenters believe this may cause there to be competition between LPC-Associates and LPC-Supervisors. One commenter believes the term self-employed is confusing and it suggests an independent practice. Another commenter opined that the rule change will cause public confusion regarding the distinction between LPC-Associates and supervisors, and the public will think ownership of a business as the functional equivalent of independent practice. Two commenters were unsure as to who would be the direct employee in the supervision arrangement, should there be a sharing of profits, who would be responsible for billing and accepting payment, do insurance payors agree with these changes, and do these changes apply to other Boards? A commenter voiced a word of caution to supervisors, associates, and students that if the proposed changes become law to consider your choices carefully to determine what type of supervisory relationship should be entered into because it will demand and deserve a full investment of time, attention, and energy.

List of interested groups or associations for the rule.

Texas Counseling Association

Summary of comments for the rule.

Commenters voiced their support for these rule changes, related to LPC-Associates, and opined that it will be beneficial for LPC-Associates as well as clients. Some also believe this rule change will open up new opportunities for rural residents to receive quality counseling services by attracting or retaining more licensees to those communities. Many commenters believe these changes will create greater parity between the other licensed mental health professions. Other commenters believe the changes will encourage greater financial freedom and stability for LPC-Associates, while decreasing possible financial exploitation and allowing for additional learning experience. One commenter in support of this changes also asked if the 3,000 hours could be reconsidered and shortened. Another commenter in favor of the change, was concerned that supervisor will have to advise LPC-Associates on business structure, employment law, and other decisions which may be outside of their scop of practice which could lead to future issues. A commenter voiced support for these changes but request some clarification to correct a possible typographic error and require additional contact information for the supervisor to be disclosed by the supervisee. One commenter in favor of the rule changes also recommended changes to the LPC licensing rules to match more closely with the LMFT licensing requirements, to create greater parity between the LPC and LMFT associate licenses and their requirements for full licensure. A commenter opined that these rules changes have no foreseeable adverse economic effect on small businesses.

Agency Response.

This agency appreciates the supportive comments, and declines to make changes to the rule as requested except to correct a typographical error in the proposed version of §681.91(m). The proposed amendment to subsection (m) inadvertently struck through the word "including" and the Council is adopting the rule with this change to correct this typographical error.

Under these rule amendments LPC-Associates are still prohibited from conducting the practice of professional counseling without the supervision of an LPC-Supervisor. LPC-Associates are still prohibited from representing themselves as independent practitioners, and LPC-Associates are still required to indicate the name of their supervisor when representing themselves professionally. LPC-Associates are still prohibited from employing their supervisor, but the LPC-Associate may compensate the supervisor (e.g. contract for supervision) if the supervision is not a part of the supervisor's responsibilities as a paid employee of an agency, institution, clinic, or other business entity. LPC-Associates and LPC-Supervisors are free to enter into any type of supervision agreement so long as it does not conflict with any applicable law. What these rule amendments do is allow for an LPC-Associate to create and run their own business and then contract for the required supervision with a willing LPC-Supervisor. If a supervisor does not want to enter into such an arrangement then they are not required to do so; for example, supervisors can choose to only offer supervision to direct employees if they so choose. The Council finds that any alleged harm to the public, clients, or licensees that the commenters allege these rule changes will cause are purely speculative, and there is no evidence to suggest the misconduct or harm described in the comments will in fact occur because of these rule changes. LPC-Supervisors are required to provide supervision as it relates to the practice of professional counseling by the LPC-Associate, if a matter is outside of this scope a supervisor would not be subject to a disciplinary action by the Council. For example, if an LPC-Associate decides to create a legal entity, such as a limited liability company, in Texas but fails to timely or properly file a required form or fee with Texas Comptroller of Public Accounts, the Texas Workforce Commission, or any other applicable government agency, then the LPC-Supervisor would not be subject to disciplinary action by the Council for this failure by the LPC-Associate. Rule 681.92(e) requires a minimum of four hours of supervision per month for an LPC-Associate, but this is only the minimum standard - supervisors can provide or require more than this minimum standard if a supervisor finds more supervision is necessary for a particular LPC-Associate. Rule 681.41(s) currently states that if records are created by a licensee during the scope of employment by an agency or institution (e.g. hospital) then the licensee does not have to maintain the records because the hospital should have them. Part of the reasoning behind this rule is that clients will naturally return to a hospital to request a copy of their records and not seek out each provider they received services from during their hospital stay. A similar

reason exits for clarifying in these rules that if an LPC-Associate is self employed (e.g. creates their own business) then the client will naturally return to the business where they received services to request a copy of their records. Therefore, in such a situation, a supervisor would not be required to maintain the client's records but the supervisor can and should inspect the records created and maintained by the LPC-Associate. If an LPC-Associate is not property creating and maintaining client records then, per §681.93(e), a supervisor should develop and implement a written plan for remediation of the LPC-Associate. If an LPC-Associate refuses to provide the supervisor access to such records then the supervisor can terminate the supervisory relationship.

The 3,000 hours of supervised experience needed for licensure is required by statute, see §503.302(a)(4) of the Occupations Code, therefore this agency declines to reconsider this requirement or shorten it. The Council declines to amend the licensing requirements for an LPC or LPC-Associate, the Texas State Board of Examiners of Professional Counselors has not articulated a need to amend the licensure requirements because of these rule amendments.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Professional Counselors
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For further information, please call: (512) 305-7706

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PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

CHAPTER 781. SOCIAL WORKER LICENSURE

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §781.206

The Texas Behavioral Health Executive Council adopts the repeal of §781.206, relating to Minutes. The repeal of §781.206 is adopted without changes to the proposed text as published in the October 1, 2021, issue of the *Texas Register* (46 TexReg 6485) and will not be republished.

Reasoned Justification.

The repeal of this rule is necessary since recordings of entire meetings of the Texas State Board of Social Worker Examiners will be posted on a publicly accessible website; therefore this rule is no longer necessary.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The repeal of the rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts the repeal of this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to

adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved the repeal of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts the repeal of this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the repeal of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt the repeal of this rule.

Lastly, the Executive Council adopts the repeal of this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Darrel D. Spinks
Executive Director
Texas State Board of Social Worker Examiners
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For further information, please call: (512) 305-7706

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SUBCHAPTER C. APPLICATION AND LICENSING

22 TAC §781.401

The Texas Behavioral Health Executive Council adopts amendments to §781.401, relating to qualifications for licensure. Section 781.401 is adopted without changes to the proposed text as published in the October 1, 2021, issue of the *Texas Register* (46 TexReg 6486) and will not be republished.

Reasoned Justification.

The amended rule implements a Board policy and simplifies the requirements for gaining supervised experience. The Texas State Board of Social Worker Examiners has a policy that allows hours accrued in non-clinical settings to be used to satisfy the requirements for an LCSW if the applicant works at least 4 hours per week providing clinical social work. This amended rule seeks to implement this policy into the rules. Additionally, this amended rule is intended to streamline the rule by removing obsolete language. For example, an LMSW-AP is no longer issued therefore the rule language pertaining to the experience required to obtain one is no longer needed.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter asked if the rule could clarify two things. First, if clinical hours must be obtained in what has been identified as the non-clinical employment setting and, second, that some individuals who seek the four hours of clinical experience outside of their employer, but would like to count their 3,000 hours from their non-clinical employer.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

The agency declines to amend this rule, the rule as proposed addresses the commenter's concerns. The amendment specifically states that "[h]ours accrued in non-clinical settings may be used to satisfy the requirements of this rule if the applicant works at least 4 hours per week providing clinical social work." Applicants must obtain 3,000 of supervised professional clinical experience, but if an applicant obtains 3,000 hours in a non-clinical setting those can be used as long as the applicant provided clinical social work, in the same or different setting, for at least four hours per week during the 3,000 hours.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has

been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Darrel D. Spinks
Executive Director
Texas State Board of Social Worker Examiners
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For further information, please call: (512) 305-7706

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22 TAC §781.404

The Texas Behavioral Health Executive Council adopts amendments to §781.404, relating to Recognition as a Council-approved Supervisor and the Supervision Process. Section 781.404 is adopted without changes to the proposed text as published in the October 1, 2021, issue of the *Texas Register* (46 TexReg 6489) and will not be republished.

Reasoned Justification.

The amended rule clarifies and simplifies the requirements for gaining supervised experience. The amended rule simplifies the requirements that supervision shall occur in proportion to the number of actual hours worked for the required 3,000 hours of supervised experience for licensure as an LCSW or towards specialty recognition in independent practice (IPR). Additionally, this proposed amendment is intended to streamline the rule by removing obsolete language. For example, an LMSW-AP is no longer issued therefore the rule language pertaining to the experience required to obtain one is no longer needed.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter asked if the rule could clarify two things. First, if clinical hours must be obtained in what has been identified as the non-clinical employment setting and, second, that some individuals who seek the four hours of clinical experience outside of their employer, but would like to count their 3,000 hours from their non-clinical employer.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

The agency declines to amend this rule, the rule as proposed addresses the commenter's concerns. The amendment specifically states that "[h]ours accrued in non-clinical settings may be used to satisfy the requirements of this rule if the applicant works at least 4 hours per week providing clinical social work." Applicants must obtain 3,000 of supervised professional clinical experience, but if an applicant obtains 3,000 hours in a non-clinical setting those can be used as long as the applicant provided clinical social work, in the same or different setting, for at least four hours per week during the 3,000 hours.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Darrel D. Spinks
Executive Director
Texas State Board of Social Worker Examiners
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For further information, please call: (512) 305-7706

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22 TAC §781.406

The Texas Behavioral Health Executive Council adopts amendments to §781.406, relating to Required Documentation of Qualifications for Licensure. Section 781.406 is adopted without changes to the proposed text as published in the October 1, 2021, issue of the *Texas Register* (46 TexReg 6492) and will not be republished.

Reasoned Justification.

The amended rule clarifies the requirements for gaining supervised experience. The amended rule clarifies that supervised experience must have occurred within the five calendar years immediately preceding the date of an initial or upgrade application. That way if an applicant applies for reinstatement of a license, under §882.22, the application would not be an initial or upgrade application so this part of the rule would not apply.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Texas State Board of Social Worker Examiners
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For further information, please call: (512) 305-7706

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22 TAC §781.412

The Texas Behavioral Health Executive Council adopts amendments to §781.412, relating to Examination Requirement. Section 781.412 is adopted without changes to the proposed text as published in the October 1, 2021, issue of the *Texas Register* (46 TexReg 6494) and will not be republished.

Reasoned Justification.

The amended rule clarifies and simplifies the examination requirements for applicants. The amended rule clarifies that applicants must pass the national examination with two years prior to their initial or upgrade application. Previously the rule required passage within one year of application. And if an applicant applies for reinstatement of a license, under §882.22, the amended rule clarifies that this part of the rule would not apply. The amended rule also deletes a reference to §882.6, pertaining to limitation on number of examination attempts; even though the limitation on examination attempts will still apply the reference to that rule here is duplicative and unnecessary.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

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

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Executive Director
Texas State Board of Social Worker Examiners
Effective date: February 27, 2022
Proposal publication date: October 1, 2021
For further information, please call: (512) 305-7706

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PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §801.2

The Texas Behavioral Health Executive Council adopts amendments to §801.2, relating to Definitions. Section 801.2 is adopted without changes to the proposed text as published in the October 1, 2021, issue of the *Texas Register* (46 TexReg 6496) and will not be republished.

Reasoned Justification.

The amended rule aligns the definition for LMFT and LMFT Associate with the statutory definition in §502.002 of the Occupations Code, as well as the Executive Council's rule 22 Texas Administrative Code §881.2(b).

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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TRD-202200404
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
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For further information, please call: (512) 305-7706

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SUBCHAPTER C. APPLICATIONS AND LICENSING

22 TAC §801.74

The Texas Behavioral Health Executive Council adopts amendments to §801.74, relating to Application to Take Licensure Examination. Section 801.74 is adopted without changes to the proposed text as published in the October 1, 2021, issue of the *Texas Register* (46 TexReg 6498) and will not be republished.

Reasoned Justification.

The amended rule is intended to streamline the application process for the approval and registration for licensure examinations resulting in anticipated greater agency efficiencies.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Texas State Board of Examiners of Marriage and Family Therapists
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PART 41. TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL

CHAPTER 881. GENERAL PROVISIONS

SUBCHAPTER C. PERSONNEL

22 TAC §881.33

The Texas Behavioral Health Executive Council adopts new §881.33, relating to Family Leave Pool. Section 881.33 is adopted without changes to the proposed text as published in the December 10, 2021, issue of the *Texas Register* (46 TexReg 8311) and will not be republished.

Reasoned Justification.

The new rule is necessary to implement H.B. 2063, 87th Leg., R.S. (2021), which codified new Subchapter A-1 of Chapter 661 of the Government Code. These new statutes require state agencies to adopt rules to develop a program where agency employees can voluntarily transfer sick or vacation leave earned by the employee to a family leave pool, and eligible employees can apply for leave under this pool.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Darrel D. Spinks
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Texas Behavioral Health Executive Council
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For further information, please call: (512) 305-7706

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CHAPTER 882. APPLICATIONS AND LICENSING
SUBCHAPTER B. LICENSE

22 TAC §882.21

The Texas Behavioral Health Executive Council adopts amendments to §882.21, relating to License Statuses. Section 882.21 is adopted without changes to the proposed text as published in the December 10, 2021, issue of the *Texas Register* (46 TexReg 8313) and will not be republished.

Reasoned Justification.

The amended rule is necessary to reflect the change in process whereby requests to reactivate a license must now be submitted through the online licensing system.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Darrel D. Spinks
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For further information, please call: (512) 305-7706

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SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

22 TAC §882.37

The Texas Behavioral Health Executive Council adopts new §882.37, relating to COVID-19 Vaccine Passports Prohibited. Section 882.37 is adopted without changes to the proposed text as published in the October 1, 2021, issue of the *Texas Register* (46 TexReg 6500) and will not be republished.

Reasoned Justification.

The new rule is needed to implement S.B. 968, 87th Leg., R.S. (2021), which codifies new Section 161.0085 of the Health and Safety Code. This new statute requires state agencies to ensure compliance with this statute and may require compliance as a condition for licensure.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

Commenters opposed this rule because they felt it took away a licensee's right to decide how to enact their own safety protocols. Some commenters believed licensed behavioral health professionals should be allowed to act in the interest of public health by requiring patients to be vaccinated, and one commenter opined that the protocols the rule allows are vague. While other com-

ments opposed this rule because they believe it mandates people to get a COVID vaccine.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

A commenter voice support for this rule, and recommended adding practicum and internship locations to the list of locations where vaccine passports are prohibited.

Agency Response.

This agency declines to withdraw or amend this rule. This rule does not require any person to get a COVID-19 vaccine. This rule is required by statute, Section 161.0085 of the Health and Safety Code, which was enacted by the Texas Legislature and signed into law by the Texas Governor in 2021. Section 882.37 tracks this statutory language, so even prior to the enactment of this rule licensees were required to comply with these statutory legal requirements. This rule does not prohibit licensees from implementing COVID-19 screening and infection control protocols in accordance with state and federal law to protect public health. Such protocols are numerous and changing, as more information is developed, so it would not be inappropriate for the rule to list all such protocols. Additionally, practicum and internships typically take place during or part of a graduate degree program, as such this agency does not regulate university programs so the recommended expansion of this rule would not be legally permissible.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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SUBCHAPTER F. LICENSING PROVISIONS RELATED TO MILITARY SERVICE MEMBERS, VETERANS, AND MILITARY SPOUSES

22 TAC §882.60

The Texas Behavioral Health Executive Council adopts amendments to §882.60, relating to Special Provisions Applying to Military Service Members, Veterans and Spouses. Section 882.60 is adopted without changes to the proposed text as published in the December 10, 2021, issue of the *Texas Register* (46 TexReg 8314) and will not be republished.

Reasoned Justification.

The amended rule is necessary to reflect recent changes to Section 55.004 of the Occupations Code following passage of H.B. 139, 87th Leg., R.S. (2021).

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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22 TAC §882.61

The Texas Behavioral Health Executive Council adopts amendments to §882.61, relating to Special Licensing Provisions for Military Spouses. Section 882.61 is adopted without changes to the proposed text as published in the December 10, 2021, issue of the *Texas Register* (46 TexReg 8316) and will not be republished.

Reasoned Justification.

The amended rule is necessary to correct a typographical error and reflect recent changes to Section 55.004 of the Occupations Code following passage of H.B. 139, 87th Leg., R.S. (2021).

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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SUBCHAPTER G. EMERGENCY TEMPORARY LICENSE

22 TAC §882.70

The Texas Behavioral Health Executive Council adopts amendments to §882.70, relating to emergency temporary license. Section 882.70 is adopted without changes to the proposed text as published in the October 1, 2021, issue of the *Texas Register* (46 TexReg 6501) and will not be republished.

Reasoned Justification.

The amended rule removes the requirement that individuals that hold an emergency temporary license issued by this agency must renew such a license within 30 days or it will expire. Under the amended rule, once an emergency temporary license has been issued it remains active until the disaster declaration has been terminated or the suspension of statutes or rules that allowed for the issuance of the emergency temporary license have been lifted.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code, which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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

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CHAPTER 884. COMPLAINTS AND ENFORCEMENT

SUBCHAPTER A. FILING A COMPLAINT

22 TAC §884.4

The Texas Behavioral Health Executive Council adopts new §884.4, relating to Special Requirements for Complaints Alleging Violations Related to Court Ordered Therapy or Parenting Facilitator Services. Section 884.4 is adopted without changes to the proposed text as published in the October 1, 2021, issue of the *Texas Register* (46 TexReg 6502) and will not be republished.

Reasoned Justification.

The new rule is intended to address the procedural requirements for the filing and adjudication of complaints relating to court-ordered therapy or parenting facilitator services. Under this rule, a complainant must wait to bring a complaint to the agency until the licensee's appointment has expired or been terminated. This ensures that complaints are not used as a litigation tactic and that the agency does not interfere or conflict with a court's inherent power to regulate its own proceedings. Additionally, the new rule expressly preserves a complainant's right to file a complaint once a licensee is no longer under appointment even if the general limitations period has expired.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

A commenter generally supports the rule and opined that as written it will help more situation that it will hurt. But the commenter believes the rule leave the door open for abuse by some unethical practitioners, because if a judge or the attorneys for a case do not take action or know to take action regarding unethical conduct by a licensee then those licensees may be able to abuse the system and their clients for a long time. The commenter recommended amending the rule to limit the individual, or individual's agents, receiving the court order services from filing a complaint while the court appointment is still active. The commenter's goal in this proposed change was to allow other licensees to file a complaint while the court appointment is still active because other licensees will be more aware of the standards being violated and they could possibly address unethical abuse better.

Agency Response.

The agency declines to amend the rule as requested but appreciates the supportive comment. One of the purposes of this new rule is to define the jurisdiction of this agency. The Executive Council has no authority to intervene in a court case, such as a suit affecting the parent-child relationship. The Executive Council does not have the authority to order or influence a court as to whether it can or cannot use a particular person's services. This agency has no authority to make determinations in matters pending before a County or District Court. When a complaint is being processed regarding a matter pending in a court, this agency's determination in such a matter could be the usurping of the judicial branch of government's power. Far too often have complaints used this agency's complaint process as a litigation tactic to disqualify or have removed a licensee from a case by merely filing a complaint. The same complaint can be brought before the court which can make its own determination as to whether the licensee should be removed from the case or not.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
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For further information, please call: (512) 305-7706

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CHAPTER 885. FEES

22 TAC §885.1

The Texas Behavioral Health Executive Council adopts amendments to §885.1, relating to Fees. Section 885.1 is adopted without changes to the proposed text as published in the October 1, 2021, issue of the *Texas Register* (46 TexReg 6504) and will not be republished.

Reasoned Justification.

The amended rule is intended to clarify and correct the Texas.gov fee required for some of the license applications, and criminal history evaluations. This fee is required by law, is paid to a different state agency, and is only expected to increase by about $3.00 to $10.00 per application. The fee is necessary because these applications are transitioning from traditional paper applications to an online process which is expected to increase agency efficiencies and make the application process easier for applicants. Additionally, this amended rule combines the fees for an initial LMFT Associate application with the fee for the initial licensure, but the result is the same fee.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council adopts this rule pursuant to the authority found in §507.154 of the Tex. Occ. Code which authorizes the Executive Council to set fees necessary to cover the costs of administering Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Darrel D. Spinks
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Texas Behavioral Health Executive Council
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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 551. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS

The Texas Health and Human Services Commission (HHSC) adopts amendments to §§551.2, 551.3, 551.11 - 551.22, 551.42 - 551.45, 551.50, 551.60 - 551.73, 551.75, 551.191, 551.192, 551.212 - 551.215, 551.231 - 551.241, 551.281, 551.283, 551.285 - 551.287, 551.321, 551.323, 551.324, 551.326, and 551.327; and the repeal of §551.217 and §551.284, in Texas Administrative Code (TAC), Title 26, Part 1, Chapter 551, Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions.

The amendments to §551.234 are adopted with changes to the proposed text as published in the November 26, 2021, issue of the *Texas Register* (45 TexReg 7958). This rule will be republished.

The amendments to §§551.2, 551.3, 551.11 - 551.22, 551.42 - 551.45, 551.50, 551.60 - 551.73, 551.75, 551.191, 551.192, 551.212 - 551.215, 551.231 - 551.233, 551.235 - 551.241, 551.281, 551.283, 551.285 - 551.287, 551.321, 551.323, 551.324, 551.326, and 551.327; and the repeal of §551.217 and §551.284, are adopted without changes to the proposed text as published in the November 26, 2021, issue of the *Texas Register* (46 TexReg 7958). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments and repeals are necessary to implement the changes made to Texas Health and Safety Code, Chapter 81, by House Bill (H.B.) 1848, 86th Legislature, Regular Session, 2019, and changes made to Texas Health and Safety Code, Chapter 252, by H.B. 3720, 87th Legislature, Regular Session, 2021. H.B. 1848 amended the requirements of a long-term care facility's infection prevention and control program to add monitoring key infectious agents including multidrug-resistant organisms and procedures for making rapid influenza diagnostic tests available to facility residents. H.B. 3720 set the maximum amount of an administrative penalty that can be assessed for an on-site regulatory visit or complaint investigation, regardless of the duration of any ongoing violations.

Additionally, the amendments and repeals reflect the transition from paper applications to the use of the online licensure portal,

called the Texas Unified Licensure Information Portal (TULIP), and clarify other processes relating to licensure. The amendments and repeals also update rule language to reflect the administrative transfer of the rules from 40 TAC Chapter 90 and the change of regulating agency from the Department of Aging and Disability Services to HHSC.

COMMENTS

The 31-day comment period ended December 27, 2021. During this period, HHSC received comments regarding the proposed rules from two commenters: Disability Rights Texas (DRTx) and the Texas Medical Association (TMA). A summary of comments and HHSC's responses follow.

Comment: The commenter requested that the definition of "personal hold" as it appears in §551.3(83)(B) be amended by adding language to clarify what is meant by the term "resists" as it relates to when a personal hold becomes a restraint.

Response: HHSC declines to revise the rule in response to the comment. The definition of "personal hold" is consistent with 26 TAC §261.203(60)(B), which also applies to Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions.

Comment: The commenter requested that the parenthetical in §551.42(e)(4)(C)(i)(III)(-d-) be amended to include the phrase "or otherwise traumatized," so that it would read "(including whether a resident has a history of having been physically or sexually abused or otherwise traumatized)".

Response: HHSC declines to revise the rule in response to the comment. The use of the word "including" in §551.42(e)(4)(C)(i)(III) is a term of enlargement and not limitation and sets forth examples, as opposed to the only factors, considered when deciding whether to use restraint. Additionally, the interdisciplinary team, which includes a physician, a physician assistant, or an advanced practice nurse, must consider many factors when deciding whether restraint is appropriate for a resident.

Comment: The commenter asked that language be added to §551.42(e)(4)(H) to clarify when the resident and their legally authorized representative (LAR) receive notification as it relates to the facility, ensuring that each resident and the resident's LAR are notified of HHSC rules and the facility's policies related to restraint and seclusion.

Response: HHSC declines to revise the rule in response to the comment. This recommendation is outside the scope of this project. HHSC will consider this recommendation for a future rule project.

Comment: The commenter asked that language be added to §551.44 to clarify that trauma-informed care training must be competency-based as it relates to being able to demonstrate their understanding of the material.

Response: HHSC declines to revise the rule in response to the comment. This recommendation is outside the scope of this project. HHSC will consider this recommendation for a future rule project.

Comment: The commenter asked that §551.50(b) be changed to require emergency plans be made available to residents and the LAR upon admission and that the emergency plan be placed on the facility website to ensure easy access by stakeholders. Additionally, the commenter asked for the change to include HHSC being required to receive and review the plans to better ensure the plan adequately protects residents in an emergency.

Response: HHSC declines to revise the rule language. The suggested changes are outside the scope of this project. HHSC will consider these revisions for a future rule project.

Comment: The commenter asked that §551.60(A)(i) be changed to require the frequency of fire drills to be tied to the success of the drill.

Response: HHSC declines to revise the rule language. The suggested changes are outside the scope of this project. HHSC will consider these revisions for a future rule project.

Comment: The commenter asked that language be added to §551.213(b)(1-2) to include "neglect, as defined in Chapter 711 of this title, that caused or may have caused serious physical injury."

Response: HHSC declines to revise the rule in response to this comment. The suggested recommendation is outside the scope of this project. HHSC will consider this revision for a future rule project.

Comment: The commenter asked that §551.213(c) be changed to indicate who is responsible for performing an internal investigation and to mandate that the individual be trained in how to conduct an investigation.

Response: HHSC declines to revise the rule language. The suggested changes are outside the scope of this project. HHSC will consider these revisions for a future rule project.

Comment: Regarding §551.214(a), the commenter asked that language be changed to focus on ensuring that an assessment is made within one hour to determine if such care is desired or warranted, and if it is determined that the care is warranted such care be provided.

Response: HHSC declines to revise the rule language. The suggested changes are outside the scope of this project. HHSC will consider these revisions for a future rule project.

Comment: The commenter asked that language be added to §551.214(d) to indicate when and how the outcome of the investigation will be reported to the alleged victim and their LAR and that they will be informed of their right to appeal the outcome of the investigation.

Response: HHSC declines to revise the rule language. The suggested changes are outside the scope of this project. HHSC will consider these revisions for a future rule project.

Comment: Regarding §551.42(e)(8)(E)(i), the commenter asked that the definition of "key infectious agents" be broadened to include bacteria, viruses, and other microorganisms that are listed on the Texas Notifiable Conditions list issued by the Texas Department of Health Services.

Response: HHSC declines to revise the rule in response to this comment. The Texas legislature did not reference the Texas Notifiable Conditions list in statute. Further, the list includes conditions that are rarely found in long-term care facilities and that would be difficult to address in a facility's infection prevention and control policies and procedures.

Comment: Regarding §551.3(87), the commenter asked HHSC to remove the language "a person with flu-like symptoms that can."

Response: HHSC declines to revise the rule in response to this comment. This recommendation is outside the scope of this project. HHSC will consider this recommendation for a future rule project.

Comment: Regarding §551.42(e)(8)(F), the commenter asked HHSC to remove the language "who is exhibiting flu-like symptom."

Response: HHSC declines to revise the rule in response to this comment. This recommendation is outside the scope of this project. HHSC will consider this recommendation for a future rule project.

SUBCHAPTER A. INTRODUCTION

26 TAC §551.2, §551.3

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §252.008 and §252.036, which, respectively, require the Executive Commissioner of HHSC to adopt rules related to the administration and implementation of Chapter 252 and to adopt minimum standards relating to facilities licensed under Texas Health and Safety Code Chapter 252.

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

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 438-3161

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SUBCHAPTER B. APPLICATION PROCEDURES

26 TAC §§551.11 - 551.22

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §252.008 and §252.036, which, respectively, require the Executive Commissioner of HHSC to adopt rules related to the administration and implementation of Chapter 252 and to adopt minimum standards relating to facilities licensed under Texas Health and Safety Code Chapter 252.

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

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Karen Ray
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SUBCHAPTER C. STANDARDS FOR LICENSURE

26 TAC §§551.42 - 551.45, 551.50

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §252.008 and §252.036, which, respectively, require the Executive Commissioner of HHSC to adopt rules related to the administration and implementation of Chapter 252 and to adopt minimum standards relating to facilities licensed under Texas Health and Safety Code Chapter 252.

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

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Karen Ray
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SUBCHAPTER D. GENERAL REQUIREMENTS FOR FACILITY CONSTRUCTION

26 TAC §§551.60 - 551.73, 551.75

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §252.008 and §252.036, which, respectively, require the Executive Commissioner of HHSC to adopt rules related to the administration and implementation of Chapter 252 and to adopt minimum standards relating to facilities licensed under Texas Health and Safety Code Chapter 252.

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

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SUBCHAPTER F. INSPECTIONS, SURVEYS, AND VISITS

26 TAC §551.191, §551.192

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §252.008 and §252.036, which, respectively, require the Executive Commissioner of HHSC to adopt rules related to the administration and implementation of Chapter 252 and to adopt minimum standards relating to facilities licensed under Texas Health and Safety Code Chapter 252.

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

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SUBCHAPTER G. ABUSE, NEGLECT, AND EXPLOITATION; COMPLAINT AND INCIDENT REPORTS AND INVESTIGATIONS

26 TAC §§551.212 - 551.215

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §252.008 and §252.036, which, respectively, require the Executive Commissioner of HHSC to adopt rules related to the administration and implementation of Chapter 252 and to adopt minimum standards relating to facilities licensed under Texas Health and Safety Code Chapter 252.

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

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26 TAC §551.217

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §252.008 and §252.036, which, respectively, require the Executive Commissioner of HHSC to adopt rules related to the administration and implementation of Chapter 252 and to adopt minimum standards relating to facilities licensed under Texas Health and Safety Code Chapter 252.

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

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SUBCHAPTER H. ENFORCEMENT

26 TAC §§551.231 - 551.241

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §252.008 and §252.036, which, respectively, require the Executive Commissioner of HHSC to adopt rules related to the administration and implementation of Chapter 252 and to adopt minimum standards relating to facilities licensed under Texas Health and Safety Code Chapter 252.

§551.234. Emergency License Suspension and Closing Order.

(a) The Texas Health and Human Services Commission (HHSC) may suspend a facility's license or order an immediate closing of part of the facility if:

(1) HHSC finds that the facility is operating in violation of the licensure rules; and

(2) the violation creates an immediate threat to the health and safety of a resident.

(b) The order suspending a license or closing a part of a facility under this section is immediately effective on the date the license holder receives written notice or a later date specified in the order.

(c) The order suspending a license or ordering an immediate closing of a part of the facility is valid for ten days after the effective date of the order.

(d) When an emergency suspension has been ordered and the conditions in the facility indicate that residents need to be relocated, a facility must ensure:

(1) A resident's rights or freedom of choice in selecting treatment facilities will be respected.

(2) If a facility or part thereof is closed, the following rules apply.

(A) HHSC will notify the local health department director, city or county health authority, and representatives of the appropriate state agencies of the closure.

(B) Facility staff must notify each resident's legally authorized representative (LAR) and attending physician, advising them of the action in process.

(C) The resident or the resident's LAR will have an opportunity to designate a preference for a specific facility or for other arrangements.

(D) HHSC must contact the local intellectual and developmental disability authority (LIDDA) to arrange for resident relocation to other facilities in the area in accordance with the resident's preference. A facility chosen for relocation must be in good standing with HHSC and, if certified under Titles XVIII and XIX of the Social Security Act, must be in good standing under its contract. The facility chosen must be able to meet the needs of the resident.

(E) If absolutely necessary, to prevent transport over substantial distances, HHSC will grant a waiver to a receiving facility to temporarily exceed its licensed capacity, provided the health and safety of residents is not compromised and the facility can meet the increased demands for direct care personnel and dietary services. A facility may exceed its licensed capacity under these circumstances, monitored by HHSC staff, until residents can be transferred to a permanent location.

(F) With each resident transferred, the following reports, records, and supplies must be transmitted to the receiving institution:

(i) a copy of the current physician's orders for medication, treatment, diet, and special services required;

(ii) personal information, such as name and address of next of kin or LAR; attending physician; Medicare and Medicaid identification number; Social Security number; and other identification information as deemed necessary and available;

(iii) all medication dispensed in the name of the resident for which physician's orders are current. The medication must be inventoried and transferred with the resident. Medications past an expiration date or discontinued by physician order must be inventoried for disposition in accordance with state law;

(iv) the resident's personal belongings, clothing, and toilet articles. An inventory of personal property and valuables must be made by the closing facility; and

(v) resident trust fund accounts maintained by the closing facility. All items must be properly inventoried, and receipts obtained for audit purposes by the appropriate state agency.

(G) If the closed facility is allowed to reopen within 90 days, the relocated residents will have the first right to return to the facility. Relocated residents may choose to return, may stay in the receiving facility (if the facility is not exceeding its licensed capacity), or choose any other accommodations.

(H) Any resident's return to the facility must be treated as a new admission, including exchange of medical information, medications, and completion of required forms.

(e) A licensee whose facility is closed under this section is entitled to request an administrative hearing in accordance with 1 TAC §357.484 (relating to Request for a Hearing), but a hearing request does not suspend the effectiveness of the order.

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

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Karen Ray
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SUBCHAPTER J. RESPITE CARE

26 TAC §§551.281, 551.283, 551.285 - 551.287

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §252.008 and §252.036, which, respectively, require the Executive Commissioner of HHSC to adopt rules related to the administration and implementation of Chapter 252 and to adopt minimum standards relating to facilities licensed under Texas Health and Safety Code Chapter 252.

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

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Karen Ray
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26 TAC §551.284

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §252.008 and §252.036, which, respectively, require the Executive Commissioner of HHSC to adopt rules related to the administration and implementation of Chapter 252 and to adopt minimum standards relating to facilities licensed under Texas Health and Safety Code Chapter 252.

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

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Karen Ray
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SUBCHAPTER L. PROVISIONS APPLICABLE TO FACILITIES GENERALLY

26 TAC §§551.321, 551.323, 551.324, 551.326, 551.327

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §252.008 and §252.036, which, respectively, require the Executive Commissioner of HHSC to adopt rules related to the administration and implementation of Chapter 252 and to adopt minimum standards relating to facilities licensed under Texas Health and Safety Code Chapter 252.

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

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

The Commissioner of Insurance adopts amendments to 28 TAC §21.4901 and §21.4903, concerning disclosures by out-of-network providers, and 28 TAC §21.5002 and §21.5003, concerning out-of-network claim dispute resolution. The amendments to §21.4901 and §21.4903 are adopted without changes to the proposed text published in the October 22, 2021, issue of the *Texas Register* (46 TexReg 7191), and will not be republished. The amendments to §21.5002 and §21.5003 are adopted with nonsubstantive changes to the proposed text and will be republished.

REASONED JUSTIFICATION. The amendments to §§21.4901, 21.4903, 21.5002, and 21.5003 are necessary to implement House Bill 3924, 87th Legislature, 2021, and Insurance Code Chapter 1275. HB 3924 allows a nonprofit agricultural organization under Chapter 1682 to offer a health benefit plan. These health benefit plans are subject to the requirements of Insurance Code Chapter 1275, which creates similar requirements for out-of-network billing that already exist for Health Maintenance Organization (HMO) and Preferred Provider Benefit (PPO) plans, as well as for health benefit plans administered by Employees Retirement System of Texas (ERS) and Teacher Retirement System of Texas (TRS) plans under Insurance Code Chapters 1551, 1575, and 1579.

The amendments to the sections are described in the following paragraphs.

Section 21.4901. The amendment to §21.4901 adds citations to Insurance Code §1275.052 and §1275.053 to the list of Insurance Code sections interpreted and implemented by 28 TAC Chapter 21, Subchapter OO. These Insurance Code sections, which address out-of-network facility-based provider payments and out-of-network diagnostic imaging provider or laboratory service provider payments, respectively, are similar to the parallel sections in the rule that refer to requirements for HMO, PPO, TRS, and ERS plans.

Section 21.4903. The amendment to §21.4903 adds citations to Insurance Code §1275.052 and §1275.053 to the list of sections addressed in the explanation of the meaning of "balance bill" for the purposes of the section.

Section 21.5002. The amendment to §21.5002 adds new Insurance Code Chapter 1682 to the scope of the subchapter. Insurance Code §1275.004 states that Insurance Code Chapter 1467 applies to a health benefit plan to which Chapter 1275 applies, and the administrator of a health benefit plan to which this chapter applies is an administrator for purposes of Chapter 1467. Nonsubstantive changes are made to conform to current TDI language preferences and drafting practices. The changes replace

parentheses with commas for Insurance Code "concerning" information text, and replace some commas with semicolons to separate that information where lists occur.

Section 21.5003. The amendments to §21.5003 modify the definition of "administrator" and "health benefit plan" to include plans offered under Chapter 1682, to conform with HB 3924. Nonsubstantive changes are made to conform to current TDI language preferences and drafting practices. The changes replace parentheses with commas for Insurance Code "concerning" information text, and replace some commas with semicolons to separate that information where lists occur.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenter: One commenter, the Texas Medical Association, states its support of the proposal with changes.

Comment on §21.4902

Comment. A commenter suggests adding definitions of "administrator" and "health benefit plan" to Subchapter OO, §21.4902. The commenter states that the addition will clarify the application of the rules.

Agency Response. The department declines to make the suggested amendments to §21.4902. The rule proposal did not include amendments to §21.4902, thus the suggested changes are outside the scope of this rule adoption.

Comment on §21.5001 and §21.5040

Comment. The commenter suggests incorporating the balance billing prohibition notice under Insurance Code §1275.003 into §21.5001 and §21.5040.

Agency Response. The department declines to make the suggested amendments to §21.5001 and §21.5040. The rule proposal did not include amendments to §21.5001 and §21.5040, thus the suggested changes are outside the scope of this rule adoption.

Comment on §21.5002

Comment. A commenter suggests amending §21.5002(c) to reflect that HB 3924 became effective September 1, 2021.

Agency Response. The department declines to make the suggested change. Since the health benefits offered by certain nonprofit agricultural organizations were not available in Texas until HB 3924 went into effect, there would be no applicable claims for the period before the 2019 amendments to the subchapter. Therefore, the proposed change is unnecessary.

SUBCHAPTER OO. DISCLOSURES BY OUT-OF-NETWORK PROVIDERS

28 TAC §21.4901, §21.4903

STATUTORY AUTHORITY. The Commissioner of Insurance adopts amendments to §21.4901 and §21.4903 under Insurance Code §§1275.004, 1467.003, and 36.001.

Insurance Code §1275.004 states that Insurance Code Chapter 1467 applies to a health benefit plan to which Chapter 1275 applies, and the administrator of a health benefit plan to which Chapter 1275 applies is an administrator for purposes of Chapter 1467.

Insurance Code §1467.003 provides that the Commissioner adopt rules as necessary to implement the Commissioner's powers and duties under Insurance Code Chapter 1467.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

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

Filed with the Office of the Secretary of State on January 31, 2022.

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James Person
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6584

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SUBCHAPTER PP. OUT-OF-NETWORK CLAIM DISPUTE RESOLUTION
DIVISION 1. GENERAL PROVISIONS

28 TAC §21.5002, §21.5003

STATUTORY AUTHORITY. The Commissioner of Insurance adopts amendments to §21.5002 and §21.5003 under Insurance Code §§1275.003, 1275.004, 1467.003, and 36.001.

Insurance Code §1275.003 provides that the Commissioner adopt rules advising the physician or provider of the availability of mediation or arbitration, as applicable, under Chapter 1467.

Insurance Code §1275.004 states that Insurance Code Chapter 1467 applies to a health benefit plan to which Chapter 1275 applies, and the administrator of a health benefit plan to which Chapter 1275 applies is an administrator for purposes of Chapter 1467.

Insurance Code §1467.003 provides that the Commissioner adopt rules as necessary to implement the Commissioner's powers and duties under Insurance Code Chapter 1467.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

§21.5002. Scope.

(a) This subchapter applies to a qualified mediation claim or qualified arbitration claim filed under health benefit plan coverage:

(1) issued by an insurer as a preferred provider benefit plan under Insurance Code Chapter 1301, concerning Preferred Provider Benefit Plans, including an exclusive provider benefit plan;

(2) administered by an administrator of a health benefit plan, other than a health maintenance organization (HMO) plan, under Insurance Code Chapters 1551, concerning Texas Employees Group Benefits Act; 1575, concerning Texas Public School Employees Group Benefits Program; 1579, concerning Texas School Employees Uniform Group Health Coverage; or 1682, concerning Health Benefits Provided by Certain Nonprofit Agricultural Organizations; or

(3) offered by an HMO operating under Insurance Code Chapter 843, concerning Health Maintenance Organizations.

(b) This subchapter does not apply to a claim for health benefits that is not a covered claim under the terms of the health benefit plan coverage.

(c) Except as provided in §21.5050 of this title (relating to Submission of Information), this subchapter applies to a claim for emergency care or health care or medical services or supplies, provided on or after January 1, 2020. A claim for health care or medical services or supplies provided before January 1, 2020, is governed by the rules in effect immediately before the effective date of this subsection, and those rules are continued in effect for that purpose.

§21.5003. Definitions.

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

(1) Administrator--Has the meaning assigned by Insurance Code §1467.001, concerning Definitions. The term also includes a nonprofit agricultural organization under Chapter 1682, concerning Health Benefits Provided by Certain Nonprofit Agricultural Organizations, offering a health benefit plan.

(2) Arbitration--Has the meaning assigned by Insurance Code §1467.001.

(3) Claim--A request to a health benefit plan for payment for health benefits under the terms of the health benefit plan's coverage, including emergency care, or a health care or medical service or supply, or any combination of emergency care and health care or medical services and supplies, provided that the care, services, or supplies:

(A) are furnished for a single date of service; or

(B) if furnished for more than one date of service, are provided as a continuing or related course of treatment over a period of time for a specific medical problem or condition, or in response to the same initial patient complaint.

(4) Diagnostic imaging provider--Has the meaning assigned by Insurance Code §1467.001.

(5) Diagnostic imaging service--Has the meaning assigned by Insurance Code §1467.001.

(6) Emergency care--Has the meaning assigned by Insurance Code §1301.155, concerning Emergency Care.

(7) Emergency care provider--Has the meaning assigned by Insurance Code §1467.001.

(8) Enrollee--Has the meaning assigned by Insurance Code §1467.001.

(9) Facility--Has the meaning assigned by Health and Safety Code §324.001, concerning Definitions.

(10) Health benefit plan--A plan that provides coverage under:

(A) a health benefit plan offered by an HMO operating under Insurance Code Chapter 843, concerning Health Maintenance Organizations;

(B) a preferred provider benefit plan, including an exclusive provider benefit plan, offered by an insurer under Insurance Code Chapter 1301, concerning Preferred Provider Benefit Plans; or

(C) a plan, other than an HMO plan, under Insurance Code Chapters 1551, concerning Texas Employees Group Benefits Act; 1575, concerning Texas Public School Employees Group Benefits Program; 1579, concerning Texas School Employees Uniform Group Health Coverage; or 1682.

(11) Facility-based provider--Has the meaning assigned by Insurance Code §1467.001.

(12) Insurer--A life, health, and accident insurance company; health insurance company; or other company operating under: Insurance Code Chapters 841, concerning Life, Health, or Accident Insurance Companies; 842, concerning Group Hospital Service Corporations; 884, concerning Stipulated Premium Insurance Companies; 885, concerning Fraternal Benefit Societies; 982, concerning Foreign and Alien Insurance Companies; or 1501, concerning Health Insurance Portability and Availability Act, that is authorized to issue, deliver, or issue for delivery in this state a preferred provider benefit plan, including an exclusive provider benefit plan, under Insurance Code Chapter 1301.

(13) Mediation--Has the meaning assigned by Insurance Code §1467.001.

(14) Mediator--Has the meaning assigned by Insurance Code §1467.001.

(15) Out-of-network claim--A claim for payment for medical or health care services or supplies or both furnished by an out-of-network provider or a non-network provider.

(16) Out-of-network provider--Has the meaning assigned by Insurance Code §1467.001.

(17) Party--Has the meaning assigned by Insurance Code §1467.001.

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

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James Person
General Counsel
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 367. CONTINUING EDUCATION

40 TAC §§367.1 - 367.3

The Texas Board of Occupational Therapy Examiners adopts amendments to 40 Texas Administrative Code §367.1, Continuing Education; §367.2, Categories of Education; and §367.3, Continuing Education Audit. The amendments are adopted to revise current continuing education requirements and add activities eligible for continuing education credit. Section 367.1, Continuing Education, and §367.2, Categories of Education, were adopted without changes to the proposed text as published in

the December 3, 2021, issue of the *Texas Register* (46 TexReg 8228) and will not be republished. Section 367.3, Continuing Education Audit, was adopted with changes to the proposed text as published in the December 3, 2021, issue of the *Texas Register* (46 TexReg 8228) and will be republished.

The change upon adoption to §367.3, Continuing Education Audit, will replace in §367.3(e) the phrase "the name and signature of the authorized signer or the official seal, letterhead, or logo of the authorized signer if an area designated for a signature is not included" with "the name of the authorized signer and either the signature of the authorized signer or the official seal, letterhead, or logo of the authorized signer if an area designated for a signature is not included." The change will clarify that if an area designated for a signature is not included on official documentation of a CE activity, the official seal, letterhead, or logo of the authorized signer may be included.

The amendments to §367.2, Categories of Education, revise current continuing education requirements and include cleanups and clarifications. The revisions include the substitution of the phrase "Creation of a new" with "Development of a" in an item concerning the development of a formal academic course or courses from an occupational therapy program. Such a change will allow licensees to count the development of a course or courses, which includes the creation of a new course or courses, for continuing education credit. The amendments add that the required documentation for certain categories of continuing education, such as the development of a formal academic course from an occupational therapy program or the development of publications, includes an attestation by the licensee of the dates and duration of the corresponding activities completed. This documentation will ensure that licensees attest to the activities they have completed for credit for such categories. The revisions also include the replacement of an item concerning the development of practice-related or instructional materials using alternative media by an item concerning the development of practice-related or instructional software.

The changes to the section also include, with regard to the maximum credit available for certain activities and/or categories, substituting a phrase such as "maximum" with "up to a maximum of"; such amendments will not change the amount of credit available for the activities and/or categories, but will, instead, make related language more uniform throughout the chapter.

The amendments to §367.2 add additional categories of continuing education and activities eligible for continuing education. For example, the amendments add that licensees may count the development of a professional or community/service presentation for continuing education credit.

The amendments include changes that would allow licensees to count an independent study for continuing education. Due to the change, the amendments also include the removal of the phrase "Reading journals" from a provision in §367.1, Continuing Education, concerning unacceptable activities not eligible for continuing education. Continuing education activities completed by the licensee for license renewal shall be acceptable if falling under one or more of the categories of continuing education activities included in §367.2, Categories of Education, and meeting further requirements of Chapter 367, Continuing Education. The phrase "Reading journals" has been removed, however, to reduce possible confusion concerning the new independent study category and the activities that may be counted for such, which may include the reading of journals, provided such meets other requirements of that category.

Amendments to §367.3, Continuing Education Audit, revise continuing education documentation to clarify and expand the items that may be included for such. A change to the section, with regard to items that may serve as continuing education documentation, includes striking "an official transcript" and replacing such with "transcripts." Additional changes include the information that must be on continuing education documentation. The section currently includes that documentation must include the signature of the authorized signer. The amendments add that if an area designated for the signature of the authorized signer is not included, the official seal, letterhead, or logo of the authorized signer may be included, instead.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Occupations Code §454.102, Rules, which authorizes the Board to adopt rules to carry out its duties under Chapter 454, and adopted under Texas Occupations Code §454.254, Mandatory Continuing Education, which authorizes the Board to assess the continuing education needs of license holders, establish a minimum number of hours of continuing education required to renew a license, and develop a process to evaluate and approve continuing education courses.

§367.3. Continuing Education Audit.

(a) The Board shall select for audit a random sample of licensees. The audit will cover a period for which the licensee has already completed the continuing education requirement.

(b) Licensees randomly selected for the audit must provide to TBOTE appropriate documentation within 30 days of notification.

(c) The licensee is solely responsible for keeping accurate documentation of all continuing education requirements. Continuing education documentation must be maintained for two years from the date of the last renewal for auditing purposes.

(d) Continuing education documentation includes, but is not limited to: transcripts, AOTA self-study completion certificates, copies of official sign-in or attendance sheets, course certificates of attendance, certificates of completion, and letters of verification.

(e) Documentation must identify the licensee by name, and must include the date and title of the course; the name of the authorized signer and either the signature of the authorized signer or the official seal, letterhead, or logo of the authorized signer if an area designated for a signature is not included; and the number of hours or contact hours awarded for the course. When continuing education units (CEUs), professional development units (PDUs), or other units or credits are listed on the documentation, such must be accompanied by documentation from the continuing education provider noting the equivalence of the units or credits in terms of hours or contact hours.

(f) Knowingly providing false information or failure to respond during the audit process or the renewal process is grounds for disciplinary action.

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

Filed with the Office of the Secretary of State on February 7, 2022.

TRD-202200380

Ralph A. Harper
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: March 1, 2022
Proposal publication date: December 3, 2021
For further information, please call: (512) 305-6962

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CHAPTER 370. LICENSE RENEWAL

40 TAC §370.4

The Texas Board of Occupational Therapy Examiners adopts new rule 40 Texas Administrative Code §370.4, concerning Administrative Suspension and Refusal to Renew a License. The new rule is adopted to add to the Board rules language regarding the delegation of Board authority to certain staff to administratively suspend or refuse to renew a license pursuant to Texas Occupations Code §454.255. The rule is adopted without changes to the proposed text as published in the December 3, 2021, issue of the *Texas Register* (46 TexReg 8232). The rule will not be republished.

The Occupational Therapy Practice Act, Texas Occupations Code §454.255(a), Criminal History Record information for License Renewal, provides that "An applicant renewing a license issued under this chapter shall submit a complete and legible set of fingerprints for purposes of performing a criminal history record information check of the applicant as provided by Section 454.217." Section 454.255(b) further specifies that "The board may administratively suspend or refuse to renew the license of a person who does not comply with the requirement of Subsection (a)."

Rule §370.4 will specify that the Executive Director, the Executive Director's designee, or the Director of Enforcement may administratively suspend or refuse to renew the license of a person who does not comply with the requirements of the Occupational Therapy Practice Act §454.217 (relating to Criminal History Record Information for License Issuance) and §454.255 (relating to Criminal History Record Information Requirement for License Renewal).

No comments were received regarding adoption of the rule.

The new rule is adopted under Texas Occupations Code §454.102, Rules, which authorizes the Board to adopt rules to carry out its duties in administering Chapter 454. The rule is also adopted under Texas Occupations Code §454.105, Employees; Division of Responsibilities, which authorizes the Board to develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the director and staff of the executive council. The new rule implements Texas Occupations Code §454.255, Criminal History Record information for License Renewal, which allows the board to administratively suspend or refuse to renew the license of a person who does not comply with the requirement of subsection (a) of the section.

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

Filed with the Office of the Secretary of State on February 7, 2022.

TRD-202200381
Ralph A. Harper
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: March 1, 2022
Proposal publication date: December 3, 2021
For further information, please call: (512) 305-6962

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REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Finance Commission of Texas

Title 7, Part 1

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking files this notice of intention to review and consider for readoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, in its entirety:

Chapter 3 (State Bank Regulation), comprised of Subchapter A (§§3.1 - 3.5); Subchapter B (§§3.21 - 3.23 and 3.34 - 3.38); Subchapter C (§§3.40 - 3.45); Subchapter D (§§3.51 - 3.62); Subchapter E (§§3.91 - 3.93); and Subchapter F (§3.111 and §3.112)

The review is conducted pursuant to Government Code, §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register.*

Any questions or written comments pertaining to this notice of intention to review should be directed to Catherine Reyer, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705, or e-mailed to legal@dob.texas.gov.

Any proposed changes to these sections as a result of the rule review will be published as proposed rules in the *Texas Register.* Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-202200360
Catherine Reyer
General Counsel
Finance Commission of Texas
Filed: February 2, 2022

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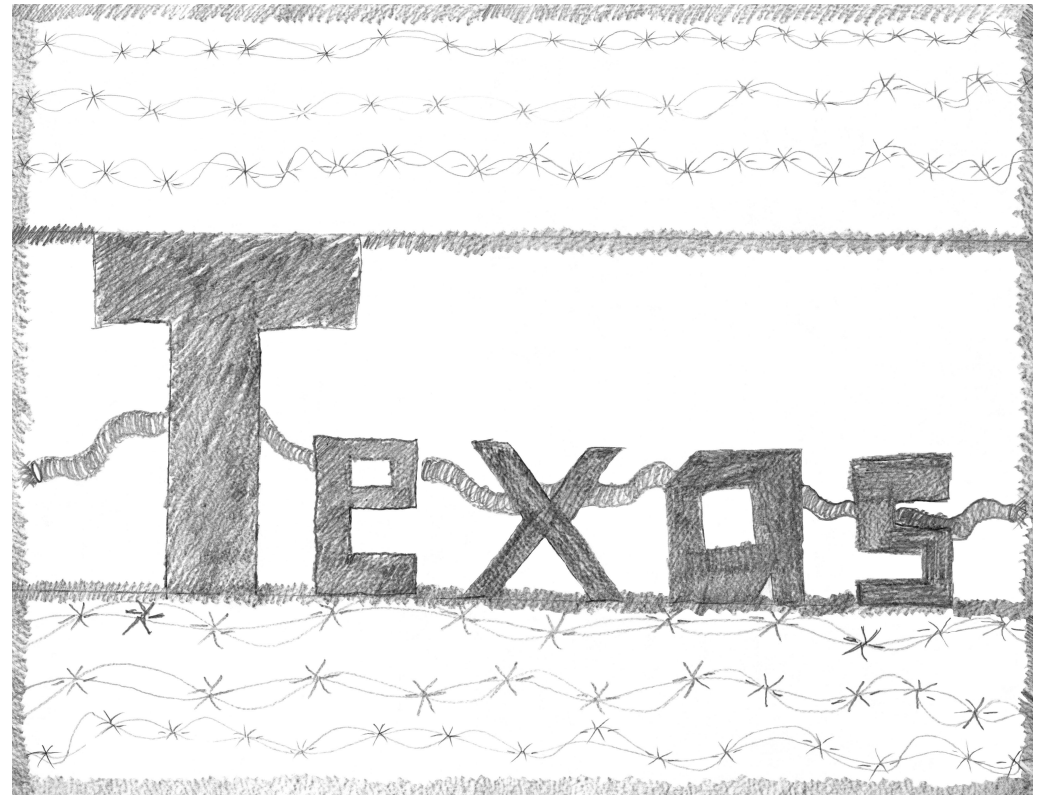
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IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Department of Aging and Disability Services

Correction of Error

The Department of Aging and Disability Services adopted amendments to 40 TAC §45.211 in the February 4, 2022, issue of the *Texas Register* (47 TexReg 537). Due to an error by the Texas Register, the title number for the amendment was listed incorrectly on page 47 TexReg 540. Following the division name, the rule number should have been published as 40 TAC §45.211.

TRD-202200417

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Comptroller of Public Accounts

Notice to Persons Interested in High-Performance Building Design Evaluation Systems for State Agencies and Institutions of Higher Education

Government Code, §447.004(b-1), requires that new state buildings or major renovations be designed and constructed so the building achieves certification under a high-performance design evaluation system approved by the State Energy Conservation Office (SECO). Government Code, §447.004(b-2) directs SECO to establish an advisory committee to provide recommendations to SECO in selecting one or more high-performance building design evaluation systems for Texas state agencies and institutions of higher education. The Government Code, §447.004 also requires SECO to establish and publish mandatory building design standards for new state buildings that encourage a comprehensive and environmentally sound approach to certification of high-performance buildings.

This notice is provided to interested persons that SECO is accepting written comments on the advisory committee's report for a High-Performance Building Design Evaluation System (September 10, 2021) for state agencies. Specific building design organizations and industry construction trades associations served on the State of Texas High-Performance Building Design Evaluation System Advisory Committee (HPBDES) and assisted SECO in reviewing existing high-performance building standards and provided recommendations regarding these requirements. SECO and the advisory committee researched the U.S. market for whole building certification systems to identify the high-performance building design evaluation systems currently available in the U.S. commercial buildings market. SECO also reviewed information published by other jurisdictions interested in a new whole building system approach to the design, construction, and operation of buildings, and monitored the new building standards development processes published by multiple entities:

American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE); International Codes Council (ICC); General Services Administration (GSA) vetting and adoption procedures for high-performance buildings standards; and U.S. Department of Energy.

Government Code, §447.004(b) requires sustainable design flexibility and certification under a high-performance evaluation system that is based on nationally recognized, consensus-based building design standards that result in better indoor environments, lower impact on natural resources, and better overall connections to sustainable designs. SECO assembled the advisory committee when national consensus-based standards are already developed, examined, and vetted by stakeholders in the building design and construction industry and by the associated codes and standards organizations.

From the review of these documents and subsequent discussions, the advisory committee developed the following adoption recommendations.

SECO should adopt a high-performance building design evaluation system that provides the option to a state agency to choose from a multiple of four choices:

International Green Construction Code (IgCC), published 2018 (or latest version) by the International Code Council in partnership with ASHRAE, ICC, and the U.S. Green Building Council (USGBC); LEED BD+C; Leadership in Energy and Environmental Design; developed by the USGBC; BREEAM (Building Research Establishment Environmental Assessment Methodology) rating and certification system for environmental sustainability, administered by the Building Research Establishment (BRE); or Austin Energy Green Building (AEGB) Rating system developed by Austin Energy.

The advisory committee concluded that each of the four high-performance building design evaluation systems contain the requirements and options that align with the required criteria in Government Code, §447.004(b) and provide a sound approach to the certification of high-performance buildings.

Comments on the SECO High-Performance Advisory Committee Final Report are encouraged from any persons interested in high-performance building design evaluation systems for state agencies and institutions of higher education. To receive a copy of the High-Performance Advisory Committee Final Report, visit the SECO web link to download the final report: https://comptroller.texas.gov/programs/seco/code/state-funded.php; or please contact SECO at seco.reporting@cpa.texas.gov. Copies of the 2021 IgCC are available for purchase or for viewing through International Code Council website: https://codes.iccsafe.org/content/IGCC2021P1. Written comments may be submitted in person at the SECO office, electronically through the SECO's electronic mail address 2021CodeComments@cpa.texas.gov, or through the United States Postal Service at the State Energy Conservation Office, Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528.

All written comments submitted no later than 45 days following the publication date of this notice will be forwarded to the Texas A&M University, Energy Systems Laboratory for review and further comment to SECO.

TRD-202200382
Don Neal
General Counsel for Operations and Support Legal Services
Comptroller of Public Accounts
Filed: February 7, 2022

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/14/22 - 02/20/22 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/14/22 - 02/20/22 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-202200429
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 8, 2022

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code, (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 22, 2022.** TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **March 22, 2022.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Berry Contracting, L.P.; DOCKET NUMBER: 2021-1371-AIR-E; IDENTIFIER: RN102473865; LOCATION: Sinton, San Patricio County; TYPE OF FACILITY: construction contracting site; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: $1,625; ENFORCEMENT COORDINATOR: Kate Dacy, (512) 239-4593; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(2) COMPANY: Daga Properties, Incorporated dba Cornerstone Builders; DOCKET NUMBER: 2021-1170-WQ-E; IDENTIFIER: RN111290052; LOCATION: Wall, Tom Green County; TYPE OF FACILITY: home building site; RULES VIOLATED: 30 TAC §281.25(a)(4), 40 Code of Federal Regulations §122.26(c), and TWC, §26.121, by failing to obtain authorization to discharge stormwater associated with construction activities under Texas Pollutant Discharge Elimination System General Permit Number TXR150000; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 315-6782; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(3) COMPANY: DEEP ROOTS RECYCLING, INCORPORATED and John H. Heilman; DOCKET NUMBER: 2021-0680-IHW-E; IDENTIFIER: RN105999999; LOCATION: Sulphur Springs, Hopkins County; TYPE OF FACILITY: unauthorized industrial and hazardous waste disposal site; RULE VIOLATED: 30 TAC §335.2(b), by failing to not cause, suffer, allow, or permit the storage of industrial solid waste at an unauthorized facility; PENALTY: $7,875; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: Johnson, Matthew J. RS; DOCKET NUMBER: 2022-0087-WQ-E; IDENTIFIER: RN105953327; LOCATION: Woodville, Tyler County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §285.61(4), by failing to ensure that an authorization to construct has been issued prior to beginning construction of an on-site sewage facility; PENALTY: $175; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: Klaas Talsma, Anastasia Talsma, and Two Sisters Dairy, LLC; DOCKET NUMBER: 2021-0296-AGR-E; IDENTIFIER: RN101523090; LOCATION: Hico, Erath County; TYPE OF FACILITY: concentrated animal feeding operation; RULES VIOLATED: 30 TAC §§305.62, 305.125(1), and 321.33(g), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0003190000 Part IX.A and H, by failing to obtain an amendment prior to a change in a term, condition, or provision of a permit; and 30 TAC §305.125(1) and (4) and §321.31(a), TWC, §26.121(a)(1), and TPDES Permit Number WQ0003190000 Part VII.A.8.(f)(2)(i), by failing to prevent the unauthorized discharge of agricultural waste into or adjacent to any water in the state; PENALTY: $3,438; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Rockin H, LLC; DOCKET NUMBER: 2022-0082-WQ-E; IDENTIFIER: RN111376737; LOCATION: Granbury, Hood County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Targa Pipeline Mid-Continent WestTex LLC; DOCKET NUMBER: 2020-1314-AIR-E; IDENTIFIER: RN102217015; LOCATION: Midland, Midland County; TYPE OF FACILITY: natural gas compressor station; RULES VIOLATED: 30 TAC §§116.115(c), 116.615(2), and 122.143(4), Standard Permit Registration Number 148737, Air Quality Standard Permit for Oil and Gas Handling Facilities, Special Conditions Number (a)(4), Federal Operating Permit Number O3757/General Operating Permit Number

514, Site-wide Requirements (b)(2) and (9)(E)(ii), and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $7,800; ENFORCEMENT COORDINATOR: Amanda Diaz, (713) 422-8912; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(8) COMPANY: The Goodyear Tire & Rubber Company; DOCKET NUMBER: 2021-1232-AIR-E; IDENTIFIER: RN100870898; LOCATION: Houston, Harris County; TYPE OF FACILITY: rubber and latex manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Flexible Permit Numbers 6618 and PAL1, Special Conditions Number 1, Federal Operating Permit Number O1227, General Terms and Conditions and Special Terms and Conditions Number 15, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $6,675; ENFORCEMENT COORDINATOR: Kate Dacy, (512) 239-4593; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Windy Cove Energy II, LLC; DOCKET NUMBER: 2021-1035-AIR-E; IDENTIFIER: RN110545241; LOCATION: Plains, Yoakum County; TYPE OF FACILITY: oil and gas production site; RULES VIOLATED: 30 TAC §101.20(1), 40 Code of Federal Regulations (CFR) §60.5420(b)(2)(i) and (6), and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a 40 CFR Part 60 Subpart OOOOa annual report; and 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O4128/General Operating Permit Number 514, Site-wide Requirements Number (b)(3), and THSC, §382.085(b), by failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: $7,250; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(10) COMPANY: ZZQ Enterprises, Incorporated dba Mini Mart Food Store; DOCKET NUMBER: 2021-0683-PST-E; IDENTIFIER: RN102356078; LOCATION: Irving, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(c) and §334.50(d)(1)(B), by failing to conduct effective manual or automatic inventory control procedures for all underground storage tanks involved in the retail sale of petroleum substances used as motor fuel; 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; and 30 TAC §334.605(d), by failing to retrain the Class A/B Operator for the facility by January 1st, 2020, with a course approved by the TCEQ; PENALTY: $6,301; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202200418
Gitanjali Yadav
Acting Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: February 8, 2022

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Enforcement Orders

An agreed order was adopted regarding the City of Bartlett, Docket No. 2019-0955-MWD-E on February 9, 2022, assessing $1,937 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Natgasoline LLC, Docket No. 2019-1219-AIR-E on February 9, 2022, assessing $110,318 in administrative penalties with $22,063 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Enterprise Crude Pipeline LLC, Docket No. 2019-1361-AIR-E on February 9, 2022, assessing $2,400 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Seadrift, Docket No. 2020-0890-MWD-E on February 9, 2022, assessing $54,865 in administrative penalties with $10,973 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CITGO Refining and Chemicals Company L.P., Docket No. 2020-1175-AIR-E on February 9, 2022, assessing $28,876 in administrative penalties with $5,775 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas TransEastern, Inc., Docket No. 2020-1281-WQ-E on February 9, 2022, assessing $22,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Alyssa Loveday, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MarkWest Javelina Company, L.L.C., Docket No. 2020-1484-AIR-E on February 9, 2022, assessing $16,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding The University of Texas at Arlington, Docket No. 2021-0060-PST-E on February 9, 2022, assessing $10,125 in administrative penalties with $2,025 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202200440
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 9, 2022

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Notice of District Petition

Notice issued February 2, 2022

TCEQ Internal Control No. D-12212021-038; Conroe 1097 Investments, Ltd., a Texas limited partnership (Petitioner) filed a petition for creation of Montgomery County Municipal Utility District No. 213 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas

Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ.

The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Greenbay Real Estate Investment LP, on the property to be included in the proposed District and the lienholder consents to the creation of the proposed District; (3) the proposed District will contain approximately 289.366 acres located within Montgomery County, Texas; and (4) all of the land within the proposed District is within the extraterritorial jurisdiction of the City of Conroe. By Resolution No. 2595-21, passed and adopted on October 28, 2021, the City of Conroe, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system, park and recreational facilities, and road facilities for residential and commercial purposes (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the District; (3) to control, abate and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, improve, maintain and operate such additional facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately $77,809,868 ($53,775,582 for utilities plus $14,828,675 for roads plus $9,205,611 for recreational).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202200361
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 2, 2022

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Notice of District Petition

Notice issued February 2, 2022

TCEQ Internal Control No. D-12202021-036; Tejas Landing Development, LLC (Petitioner), a Texas limited liability company, filed a petition for the creation of Fort Bend County Municipal Utility District No. 254 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ.

The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are two lienholders, NewFirst National Bank and K. Hovnanian of Houston II, LLC, on the property to be included in the proposed District and the aforementioned entities have consented to the petition; (3) the proposed District will contain approximately 94.248 acres located within Fort Bend County, Texas; and (4) all of the land within the proposed District is entirely outside the corporate limits or extraterritorial jurisdiction of any City. The petition further states that the proposed District will: (1) purchase, construct, acquire, provide, operate, maintain, repair, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, industrial, or commercial purposes or provide adequate drainage for the proposed District; (2) collect, transport, process, dispose of and control domestic, industrial, or commercial wastes; (3) gather, conduct, divert, abate, amend, and control local storm water or other local harmful excesses of water in the proposed District; and (4) purchase, construct, acquire, provide, operate, maintain, repair, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. Additionally, the proposed District may purchase, construct, acquire, provide, operate, maintain, repair, improve, extend, and develop a roadway system for the proposed District.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately $4,610,000 ($3,050,000 for water, wastewater, and drainage plus $1,560,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and

fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202200362
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 2, 2022

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Notice of Hearing on City of Liberty Hill: SOAH Docket No. 582-22-1222; TCEQ Docket No. 2021-0999-MWD; Permit No. WQ0014477001

APPLICATION.

City of Liberty Hill, 926 Loop 332, Liberty Hill, Texas 78642, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014477001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. TCEQ received this application on September 5, 2018.

The facility is located approximately 8,800 feet southeast of the intersection of U.S. Highway 29 and U.S. Highway 183, in Williamson County, Texas 78641. The treated effluent is discharged to South Fork San Gabriel River in Segment No. 1250 of the Brazos River Basin. The designated uses for Segment No. 1250 are primary contact recreation, public water supply, aquifer protection, and high aquatic life use. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-97.861666%2C30.631944&level=12. For the exact location, refer to the application.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at City of Liberty Hill City Hall, 926 Loop 332, Liberty Hill, Texas.

CONTESTED CASE HEARING.

Considering directives to protect public health, the State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - March 28, 2022

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 160 661 7368

Password: TCEQ32822

or

To join the Zoom meeting via telephone:

(669) 254-5252 or (646) 828-7666

Meeting ID: 160 661 7368

Password: 516463718

Visit the SOAH website for registration at: http://www.soah.texas.gov/

or call SOAH at (512) 475-4993.

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on October 19, 2021. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 Texas Administrative Code (TAC) Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our website at www.tceq.texas.gov.

Further information may also be obtained from City of Liberty Hill at the address stated above or by calling Mr. Wayne Bonnet, Utility Director, City of Liberty Hill, at (512) 778-5449

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Issued: February 2, 2022

TRD-202200359
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 2, 2022

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Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 22, 2022.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 22, 2022.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing.**

(1) COMPANY: Bowles Redi Mix, Inc.; DOCKET NUMBER: 2019-0235-AIR-E; TCEQ ID NUMBER: RN106095573; LOCATION: 200 Sandtown Road, Avalon, Ellis County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §101.24(b), by failing to submit the emissions/inspections fee basis form within 60 days after being provided the emissions/inspection fee information packet for Fiscal Year 2019; THSC, §382.085(b) and 30 TAC §101.24(b), by failing to submit the emissions/inspections fee basis form within 60 days after being provided the emissions/inspection fee information packet for Fiscal Year 2020; THSC, §382.085(b), 30 TAC §116.115(c), and Standard Permit Registration Number 95190, Air Quality Standard Permit for Concrete Batch Plants with Enhanced Controls, Special Condition (SC) Design and Operating Requirements Number (3)(E), by failing to pave each road, parking lot, or other area at the plant used by vehicles with a cohesive hard surface to minimize dust emissions; and THSC, §382.085(b), 30 TAC §116.115(c), and Standard Permit Registration Number 95190, Air Quality Standard Permit for Concrete Batch Plants with Enhanced Controls, SC Design and Operating Requirements Number (3)(D), by failing to install a warning device of each bulk storage silo; PENALTY: $4,724; STAFF ATTORNEY: Megan Grace, Litigation, MC 175, (512) 239-3334; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202200419
Gitanjali Yadav
Acting Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: February 8, 2022

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Notice of Public Meeting for an Air Quality Permit: Permit Number 1157C

APPLICATION. Gladieux Metals Recycling, LLC, P.O. Box 2290, Freeport, Texas 77542-2290, has applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment to Air Quality Permit Number 1157C, which would authorize modification to a Metals Recovery and Recycling Operation Facility located at 302 Midway Road, Freeport, Brazoria County, Texas 77542. This application was submitted to the TCEQ on April 21, 2014. The existing facility will emit the following contaminants: ammonia, arsenic, carbon monoxide, cobalt, hazardous air pollutants, hydrogen chloride, hydrogen peroxide, nitrogen oxides, nickel, organic compounds, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less, sulfur dioxide, sulfuric acid mist and vanadium.

The executive director has completed the technical review of the application and prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision to issue the permit because it meets all rules and regulations.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below. The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, March 10, 2022 at 7:00 p.m.

Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast by fol-

lowing this link: https://www.gotomeeting.com/webinar/join-webinar and entering Webinar ID 192-569-315. It is recommended that you join the webinar and register for the public meeting at least 15 minutes before the meeting begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access must call (512) 239-1201 **at least one day prior** to the meeting to register for the meeting and to obtain information for participating telephonically. Members of the public who wish to **only listen** to the meeting may call, toll free, (415) 655-0052 and enter access code 606-037-579.

Las personas que deseen escuchar o participar en la reunión en español pueden llamar al (844) 368-7161 e ingresar el código de acceso 904535#. Para obtener más información o asistencia, comuníquese con Jaime Fernández al (512) 239-2566.

Additional information will be available on the agency calendar of events at the following link:

https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html.

Information. Members of the public are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Website at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

The permit application, executive director's preliminary decision, and draft permit will be available for viewing and copying at the TCEQ central office, the TCEQ Houston regional office, and at the Freeport Branch Library, 410 Brazosport Boulevard, Freeport, Texas 77541. The facility's compliance file, if any exists, is available for public review at the TCEQ Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas. Further information may also be obtained from Gladieux Metals Recycling, LLC at the address stated above or by calling Ms. Alison Landis, Vice President - Environmental Affairs, at (717) 873-7260.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Notice Issuance Date: February 09, 2022

TRD-202200434
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 9, 2022

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Notice of Public Meeting for an Air Quality Permit: Proposed Permit Number 166788l001

APPLICATION. Big City Crushed Concrete, L.L.C., 11143 Goodnight Lane, Dallas, Texas 75229-4412, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of Proposed Air Quality Permit Number 166788L001, which would authorize construction of a Rock Crushing Plant located at 430 West Risinger Road, Fort Worth, Tarrant County, Texas 76140. This application was processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This application was submitted to the TCEQ on October 14, 2021. The proposed facility will emit the following contaminants: particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less.

The executive director has completed the technical review of the application and prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision to issue the permit because it meets all rules and regulations.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below. The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Tuesday, March 8, 2022 at 7:00 p.m.

Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast by following this link: https://www.gotomeeting.com/webinar/join-webinar and entering Webinar ID 424-756-587. It is recommended that you join the webinar and register for the public meeting at least 15 minutes before the meeting begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access must call (512) 239-1201 **at least one day prior** to the meeting to register for the meeting and to obtain information for participating telephonically. Members of the public who wish to **only listen** to the meeting may call, toll free, (415) 655-0052 and enter access code 936-189-359.

Additional information will be available on the agency calendar of events at the following link:

https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html.

Information. Members of the public are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Website at

www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

The permit application, executive director's preliminary decision, and draft permit will be available for viewing and copying at the TCEQ central office, the TCEQ Dallas/Fort Worth regional office, and the Everman Public Library, 100 North Race Street, Everman, Tarrant County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Dallas/Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas. Further information may also be obtained from Big City Crushed Concrete, L.L.C. at the address stated above or by calling Mrs. Lacretia White REM, Project Manager at (972) 768-9093.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Notice Issuance Date: February 08, 2022

TRD-202200422
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 8, 2022

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Notice of Public Meeting for TPDES Permit for Municipal Wastewater: New Permit No. WQ0015990001

APPLICATION. Gram Vikas Partners, Inc., 215 West Bandera Road, #114-474, Boerne, Texas 78006, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015990001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day.

The facility will be located approximately 0.3 mile south-southeast of the intersection of Farm-to-Market Road 1101 and Watson Lane, in Comal County, Texas 78130. The treated effluent will be discharged to Mesquite Creek, thence to York Creek, thence to the Lower San Marcos River in Segment No. 1808 of the Guadalupe River Basin. The unclassified receiving water uses are limited aquatic life use for Mesquite Creek and York Creek. The designated uses for Segment No. 1808 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Code Section 307.5 and the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-98.011944%2C29.746388&level=12.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

PUBLIC COMMENT / PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Monday, March 21, 2022 at 7:00 p.m.

Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast by following this link: https://www.gotomeeting.com/webinar/join-webinar and entering Webinar ID 269-837-643. It is recommended that you join the webinar and register for the public meeting at least 15 minutes before the meeting begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access must call (512) 239-1201 **at least one day prior** to the meeting to register for the meeting and to obtain information for participating telephonically. Members of the public who wish to **only listen** to the meeting may call, toll free, (562) 247-8422 and enter access code 611-130-710.

Additional information will be available on the agency calendar of events at the following link: https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html.

INFORMATION. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our website at https://www.tceq.texas.gov. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at New Braunfels Public Library, 700 East Common Street, New Braunfels, in Comal County, Texas and Seguin Public Library, 313 West Nolte Street, Seguin, in Guadalupe County, Texas. Further information may also be obtained from Gram Vikas Partners, Inc. at the address stated above or by calling Mr. Kelly Leach at (210) 827-7918.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issuance Date: February 09, 2022

TRD-202200438
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 9, 2022

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Texas Health and Human Services Commission

Public Notice - Texas State Plan Amendment to Allow Advance Telecommunications for Physicians' and Dentists' Services and Targeted Case Management for individuals with Chronic Mental Illness

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan to allow the use of advance telecommunications for Physicians' and Dentists' Services and Targeted Case Management for individuals with Chronic Mental Illness under Title XIX of the Social Security Act. The proposed amendment is effective April 1, 2022.

The purpose of this amendment, Transmittal Number 22-0005, seeks to ensure that Medicaid recipients, child health plan program enrollees, and other individuals receiving benefits under a public benefits program administered by HHSC, regardless of the delivery model, have the option to receive certain services using advanced telecommunications.

Rate Hearing - No rate hearing will be needed as the rates will not change.

Copy of Proposed Amendment - Interested parties may obtain additional information and/or a free copy of the proposed amendments by contacting Shae James, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; or by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of proposed amendment will be available for review at the local county offices of HHSC, (which were formerly the local offices of Texas Department of Aging and Disability Services).

Written Comments - Written comments about the proposed amendment and/or requests to review comments may be sent by U.S, mail, overnight mail special delivery mail, hand delivery, fax, or email:

U.S. Mail

Texas Health and Human Services Commission

Attention: Medical Benefits Office of Policy

Mail Code H-310

P.O. Box 149030

Austin, Texas 78756

Overnight Mail, special Deliver mail, or hand delivery

Texas Health and Human Services Commission

Attention: Medical Benefits Office of Policy

John H. Winters Building

Mail Code H-310

701 W. 51st St.

Austin, Texas 78751

Fax

Attention: Office of Policy at (512) 730-7474

Email

MedicaidBenefitRequest@hhsc.state.tx.us

Preferred Communication - During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than normal business operations. For the quickest response, and to help curb the possible transmission of infection, please use email or phone if possible for communication with HHSC related to this state plan amendment.

TRD-202200428
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: February 8, 2022

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Public Notice - Texas State Plan for Medical Assistance Amendment

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of the amendment is to make clarifying revisions to the inflation projection methodology for the DAHS, HCBS, Intermediate Care Facilities for Individuals with an Intellectual Disability (ICF/IID), NF, and PHC programs. A revision will also be made to the nursing wage inflation methodology, which will affect only the DAHS, HCBS, ICF/IID, and NF programs.

The proposed amendments are effective March 1, 2022.

The proposed amendments are estimated to result in an annual aggregate expenditure of $1,191,549 for federal fiscal year (FFY) 2022, consisting of $761,400 in federal funds and $430,149 in state general revenue. For FFY 2023, the estimated annual aggregate expenditure is $2,580,900, consisting of $1,545,185 in federal funds and $1,035,715 in state general revenue. For FFY 2024, the estimated annual aggregate expenditure is $2,626,365, consisting of $1,572,405 in federal funds and $1,053,960 in state general revenue.

Information about the proposed changes can be found in the September 17, 2021, issue of the *Texas Register* (46 TxReg 6002) at http://www.sos.state.tx.us/texreg/index.shtml.

Copy of Proposed Amendment(s). Interested parties may obtain additional information or a free copy of the proposed amendments from Holly Freed, State Plan Team Lead, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, TX 78711; by telephone at (512) 428-1932; by facsimile at (512) 730-7472; or by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposed amendments will be available for review at the local county offices of HHSC, (which were formerly the local offices of the Texas Department of Aging and Disability Services).

Written Comments. Written comments and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail: Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400 P.O. Box 149030 Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery: Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400 North Austin Complex, 4601 West Guadalupe Street Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax: Attention: Provider Finance at (512) 730-7475

Email: PFD-LTSS@hhs.texas.gov

Preferred Communication. During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For the quickest response, and to help curb the possible transmission of infection, please use email or phone if possible for communication with HHSC related to this rate hearing.

TRD-202200435
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: February 9, 2022

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Public Notice - Texas State Plan for Medical Assistance Amendment for EPSDT Transportation

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act.

The purpose of the amendment is to amend the Early and Periodic Screening, Diagnosis and Treatment (EPSDT), Prescribed Pediatric Extended Care Centers (PPECC) transportation rate to align with the HHSC PPECC biennial fee review. The proposed amendment is effective March 1, 2022.

The proposed amendment is estimated to result in an annual aggregate expenditure of $51,606 for federal fiscal year (FFY) 2022, consisting of $32,976 in federal funds and $18,630 in state general revenue. For FFY 2023, the estimated annual aggregate expenditure is $90,489, consisting of $54,176 in federal funds and $36,313 in state general revenue. For FFY 2024, the estimated annual aggregate expenditure is $94,562, consisting of $56,614 in federal funds and $37,948 in state general revenue.

Further detail on specific reimbursement rates and percentage changes is available on the HHSC Provider Finance website under the proposed effective date at http://pfd.hhs.texas.gov/rate-packets.

Rate Hearing. A rate hearing was held on November 12, 2021, at 9:00 a.m. in Austin, Texas. Information about the proposed rate change and the hearing can be found in the October 29, 2021, issue of the *Texas Register* (46 TexReg 7454) at http://www.sos.state.tx.us/texreg/index.shtml.

Copy of Proposed Amendment(s). Interested parties may obtain additional information or a free copy of the proposed amendments by Holly Freed, State Plan Team Lead, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 428-1932; by facsimile at (512) 730-7472; or by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposed amendments will be available for review at the local county offices of HHSC, (which were formerly the local offices of the Texas Department of Aging and Disability Services).

Written Comments. Written comments and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail

Texas Health and Human Services Commission

Attention: Provider Finance, Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Provider Finance, Mail Code H-400

North Austin Complex

4601 West Guadalupe Street

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax

Attention: Provider Finance at (512) 730-7475

Email

PFD-LTSS@hhsc.texas.gov

Preferred Communication. During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For the quickest response and to help curb the possible transmission of infection, please use email or phone if possible for communication with HHSC related to this rate hearing.

TRD-202200436
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: February 9, 2022

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Department of State Health Services

Licensing Actions for Radioactive Materials

During the first half of January 2022, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Business Filing and Verification Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
THROUGHOUT TX	A&E IMAGING SERVICES LLC	L07146	HOUSTON	00	01/04/22
HOUSTON	INFINITY DOWNHOLE SOLUTIONS LLC	L07147	HOUSTON	00	01/11/22

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
ARLINGTON	THE UNIVERSITY OF TEXAS AT ARLINGTON	L00248	ARLINGTON	63	01/03/22
CORPUS CHRISTI	BAY AREA HEALTHCARE GROUP LTD	L04723	CORPUS CHRISTI	66	01/07/22
EDINBURG	DOCTORS HOSPITAL AT RENAISSANCE LTD	L05761	EDINBURG	39	01/03/22
ENNIS	PRHC ENNIS LP	L05427	ENNIS	16	01/07/22
HOUSTON	GULF COAST HEART CLINIC PLLC	L06286	HOUSTON	07	01/07/22
HUNTSVILLE	PULSE PHYSICIAN ORGANIZATION PLLC	L07007	HUNTSVILLE	04	01/07/22
IRVING	BAYLOR MEDICAL CENTER AT IRVING DBA BAYLOR SCOTT & WHITE MEDICAL CENTER – IRVING	L02444	IRVING	120	01/12/22
LA PORTE	NOURYON FUNCTIONAL CHEMICALS LLC	L04372	LA PORTE	24	01/03/22
MEXIA	MEXIA PRINCIPAL HEALTHCARE LIMITED PARTNERSHIP	L05144	MEXIA	30	01/11/22

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

ORANGE	BAPTIST HOSPITALS OF SOUTHEAST TEXAS DBA BAPTIST BEAUMONT HOSPITAL	L01597	ORANGE	40	01/11/22
PALESTINE	PALESTINE PRINCIPAL HEALTHCARE LIMITED PARTNERSHIP	L02728	PALESTINE	54	01/07/22
RICHMOND	OAKBEND MEDICAL CENTER	L02406	RICHMOND	62	01/07/22
SAN ANTONIO	SOUTH TEXAS RADIOLOGY IMAGING CENTERS	L00325	SAN ANTONIO	257	01/10/22
THROUGHOUT TX	IIA FIELD SERVICES LLC	L06933	ABILENE	09	01/12/22
THROUGHOUT TX	REED ENGINEERING GROUP LTD	L04343	DALLAS	22	01/06/22
THROUGHOUT TX	D&S ENGINEERING LABS LLC	L06677	DENTON	21	01/07/22
THROUGHOUT TX	ECS SOUTHWEST LLP	L07073	FORT WORTH	04	01/05/22
THROUGHOUT TX	QUARTET ENGINEERS PLLC	L06879	HOUSTON	07	01/13/22
THROUGHOUT TX	ONE SUBSEA PROCESSING INC	L05867	HOUSTON	17	01/04/22
THROUGHOUT TX	TOTAL NDT LLC	L06736	LONGVIEW	06	01/12/22
THROUGHOUT TX	TETRA TECH INC	L06868	MIDLAND	05	01/04/22
THROUGHOUT TX	B2Z ENGINEERING LLC	L06996	MISSION	05	01/12/22
THROUGHOUT TX	KLX ENERGY SERVICES LLC	L06620	ROSHARON	31	01/05/22
THROUGHOUT TX	WATER REMEDIATION TECHNOLOGY LLC	L06316	SAN ANGELO	13	01/04/22
THROUGHOUT TX	SCHLUMBERGER TECHNOLOGY CORPORATION	L01833	SUGAR LAND	223	01/10/22
THROUGHOUT TX	AXIO CASED HOLE SERVICES LLC	L07008	VICTORIA	02	01/07/22

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

TYLER	ALLENS NUTECH INC DBA NUTECH INC	L04274	TYLER	100	01/07/22

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
AUSTIN	TEXAS DEPARTMENT OF STATE HEALTH SERVICES	L01594	AUSTIN	37	01/14/22
THROUGHOUT TX	AMERAPEX CORPORATION	L06417	HOUSTON	23	01/14/22

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
ARLINGTON	ALAMO PRESSURE PUMPING LLC	L07094	ARLINGTON	04	01/03/22
AUSTIN	THERMO PROCESS INSTRUMENTS LP	L06804	AUSTIN	09	01/07/22
BORGER	GPCH LLC	L07069	BORGER	01	01/04/22

TRD-202200378
Cynthia Hernandez
General Counsel
Department of State Health Services
Filed: February 4, 2022

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Texas Department of Insurance

Company Licensing

Application for Sirius America Insurance Company, a foreign fire and/or casualty company, to change its name to SiriusPoint America Insurance Company. The home office is in New York City, New York.

Application to do business in the state of Texas for Keystone National Insurance Company, a foreign fire and/or casualty company. The home office is in Wyalusing, Pennsylvania.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-202200439
Justin Beam
Chief Clerk
Texas Department of Insurance
Filed: February 9, 2022

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Texas Lottery Commission

Scratch Ticket Game Number 2392 "777 SLOTS"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2392 is "777 SLOTS". The play style is "slots - straight line".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2392 shall be $2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2392.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: STAR SYMBOL, CHERRY SYMBOL, HEART SYMBOL, MOON SYMBOL, DIAMOND SYMBOL, LEMON SYMBOL, ELEPHANT SYMBOL, COIN SYMBOL, BANANA SYMBOL, CLUB SYMBOL, RAINBOW SYMBOL, MELON SYMBOL, SUN SYMBOL, GOLD BAR SYMBOL, HORSESHOE SYMBOL, ANCHOR SYMBOL, SAIL BOAT SYMBOL, LIGHTNING BOLT SYMBOL, DICE SYMBOL, STACK OF CASH SYMBOL, SPADE SYMBOL, CROWN SYMBOL, PINEAPPLE SYMBOL, 7 SYMBOL, $2.00, $3.00, $6.00, $9.00, $10.00, $20.00, $30.00, $60.00, $100, $1,000 and $30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2392 - 1.2D

PLAY SYMBOL	CAPTION
STAR SYMBOL	STAR
CHERRY SYMBOL	CHERRY
HEART SYMBOL	HEART
MOON SYMBOL	MOON
DIAMOND SYMBOL	DIAMND
LEMON SYMBOL	LEMON
ELEPHANT SYMBOL	ELEPHT
COIN SYMBOL	COIN
BANANA SYMBOL	BANANA
CLUB SYMBOL	CLUB
RAINBOW SYMBOL	RAINBW
MELON SYMBOL	MELON
SUN SYMBOL	SUN
GOLD BAR SYMBOL	BAR
HORSESHOE SYMBOL	HRSHOE
ANCHOR SYMBOL	ANCHOR
SAIL BOAT SYMBOL	BOAT
LIGHTNING BOLT SYMBOL	BOLT
DICE SYMBOL	DICE
STACK OF CASH SYMBOL	CASH
SPADE SYMBOL	SPADE
CROWN SYMBOL	CROWN
PINEAPPLE SYMBOL	PNAPLE
7 SYMBOL	TRP
$2.00	TWO$
$3.00	THR$
$6.00	SIX$

$9.00	NIN$
$10.00	TEN$
$20.00	TWY$
$30.00	TRTY$
$60.00	SXTY$
$100	ONHN
$1,000	ONTH
$30,000	30TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2392), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2392-0000001-001.

H. Pack - A Pack of the "777 SLOTS" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "777 SLOTS" Scratch Ticket Game No. 2392.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "777 SLOTS" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty (40) Play Symbols. If a player reveals 3 matching Play Symbols in the same SPIN, the player wins the PRIZE for that SPIN. If the player reveals 3 "7" Play Symbols in the same SPIN, the player wins TRIPLE the PRIZE for that SPIN. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly forty (40) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly forty (40) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the forty (40) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the forty (40) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to ten (10) times, once in each SPIN.

D. On winning and Non-Winning Tickets, the top cash prizes of $1,000 and $30,000 will each appear at least once, except on Tickets winning ten (10) times, with respect to other parameters, play action or prize structure.

E. The play area consists of ten (10) SPINs with three (3) Play Symbols and one (1) Prize Symbol per SPIN.

F. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

G. On all SPINs, non-winning Prize Symbols will be different.

H. There will never be three (3) matching Play Symbols in a vertical or diagonal line.

I. On non-winning SPINs, a Play Symbol will never appear more than two (2) times in a SPIN.

J. Consecutive non-winning tickets within a pack will not have matching SPINs. For example, if the first ticket contains a "LEMON" Play Symbol, "BANANA" Play Symbol and a "STAR" Play Symbol, the next ticket will not contain a "LEMON" Play Symbol, "BANANA" Play Symbol and a "STAR" Play Symbol in any SPIN in any order.

K. Non-Winning Tickets will not have matching SPINs. For example, if SPIN 1 is a "LEMON" Play Symbol, "BANANA" Play Symbol and a "STAR" Play Symbol, then SPIN 2 - SPIN 10 will not contain a "LEMON" Play Symbol, "BANANA" Play Symbol and a "STAR" Play Symbol in any order.

L. Winning SPINs will contain three (3) matching Play Symbols in a horizontal SPIN.

M. Three (3) matching "7" (TRP) Play Symbols in the same SPIN will win TRIPLE the PRIZE for that SPIN and will win as per the prize structure.

N. There will never be more than one (1) set of three (3) matching "7" (TRP) Play Symbols in the same SPIN on a Ticket.

O. The "7" (TRP) Play Symbol will never appear on a non-winning SPIN.

2.3 Procedure for Claiming Prizes.

A. To claim a "777 SLOTS" Scratch Ticket Game prize of $2.00, $3.00, $6.00, $9.00, $10.00, $20.00, $30.00, $60.00 or $100, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $60.00 or $100 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "777 SLOTS" Scratch Ticket Game prize of $1,000 or $30,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "777 SLOTS" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "777 SLOTS" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "777 SLOTS" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 9,120,000 Scratch Tickets in Scratch Ticket Game No. 2392. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2392 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2.00	984,960	9.26
$3.00	462,080	19.74
$6.00	376,960	24.19
$9.00	206,720	44.12
$10.00	109,440	83.33
$20.00	72,960	125.00
$30.00	21,090	432.43
$60.00	10,640	857.14
$100	3,648	2,500.00
$1,000	16	570,000.00
$30,000	6	1,520,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.06. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2392 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2392, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202200437
Bob Biard
General Counsel
Texas Lottery Commission
Filed: February 9, 2022

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Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transactions

Acquisition of Land - Freestone County

Approximately 34 Acres at the Richland Creek Wildlife Management Area

In a meeting on March 24, 2022, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the acquisition of approximately 34 acres at the Richland Creek Wildlife Management Area. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Stan David, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to stan.david@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov. Please be aware that public participation options may change due to the COVID-19 pandemic. Visit the TPWD website at tpwd.texas.gov for the latest information regarding the Commission meeting.

Request for Utility Easement - Parker County

Approximately 0.1 acre at Lake Mineral Wells State Park and Trailway

In a meeting on March 24, 2022, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the grant of a utility easement of approximately 0.1 acre at Lake Mineral Wells State Park and Trailway. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Jason Estrella, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to jason.estrella@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov. Please be aware that public participation options may change due to the COVID-19 pandemic. Visit the TPWD website at tpwd.texas.gov for the latest information.

Request for Fiber Optic Cable Easement - Bastrop County

Approximately 0.2 acres at Buescher State Park

In a meeting on March 24, 2022, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the grant of a fiber optic cable easement of approximately 0.2 acre at Buescher State Park. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Jason Estrella, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to jason.estrella@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov. Please be aware that public participation options may change due to the COVID-19 pandemic. Visit the TPWD website at tpwd.texas.gov for the latest information.

Land Acquisition Strategy - Liberty County

Approximately 50 Acres at Davis Hill State Park

In a meeting on March 24, 2022, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing staff to acquire strategic tracts from willing sellers totaling approximately 50 acres at Davis Hill State Park. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Trey Vick, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to trey.vick@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov. Please be aware that public participation options may change due to the COVID-19 pandemic. Visit the TPWD website at tpwd.texas.gov for the latest information.

TRD-202200442
James Murphy
General Counsel
Texas Parks and Wildlife Department
Filed: February 9, 2022

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Public Utility Commission of Texas

Notice of Application for Approval of Special Amortization

The Public Utility Commission of Texas gives notice to the public of the filing of an application on December 30, 2021, for approval of special amortization.

Docket Title and Number: Application of Eastex Telephone Cooperative, Inc. for Approval of Special amortization Under 16 TAC §26.206(g), Docket Number 53035.

The Application: Eastex Telephone Cooperative, Inc. filed an application for special amortization in order to permit the retirement of certain Juniper Networks BTI packet optical 10Gpbs transport equipment effective January 1, 2021, and to begin booking straight-line amortization beginning January 1, 2021, in accordance with 16 Texas Administrative Code §26.206(f) related to interim booking.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline to intervene in this proceeding is February 25, 2022. Hearing and speech-impaired individuals with text telephone (TTY) may contact the Commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 53035.

TRD-202200423
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: February 8, 2022

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Texas Department of Transportation

Notice of Public Hearing on Proposed Truck Restrictions on a Portion of Interstate (I) 35E and I-35 in Denton County

The Texas Department of Transportation (TxDOT) will conduct a public hearing to receive comments on proposed lane use restrictions on a portion I-35E and I-35 in Denton County. The hearing will be held at 5:30 p.m. on Tuesday, March 1, 2022 at the following location:

TxDOT Dallas District Office, Dal-Trans Building

4625 East U.S. Hwy 80

Mesquite, Texas 75150

In accordance with Transportation Code, §545.0651 and 43 TAC §§25.601 - 25.604, the Department is proposing to initiate a lane use restriction applicable to trucks, as defined in Transportation Code, §541.201, with three or more axles, and to truck tractors, also as defined in Transportation Code, §541.201, regardless of whether the truck tractor is drawing another vehicle or trailer. The proposed restriction would prohibit those vehicles from using the left or inside lane in both directions on the following sections of highways:

l-35E and I-35 from Corinth Parkway to United States Highway (US) 380

The proposed restrictions would apply 24 hours a day, 7 days a week, and would allow the operation of those vehicles in a prohibited traffic lane for the purposes of passing another vehicle or entering or exiting the highway.

In accordance with 43 TAC §25.604, the department will evaluate the impact of the proposed restriction's compliance with the requirements of Transportation Code, §545.0651 and 43 TAC §§25.601 - 25.604, and will hold a public hearing to receive comments on the proposed restriction.

All interested citizens are invited to attend the hearing and to provide input. Those desiring to make official comments may register starting at 5:00 p.m. Oral and written comments may be presented at the public hearing and written comments may be submitted by regular postal mail during the 30-day public comment period. Written comments may be submitted to Mr. Bahman Afsheen, P.E., Texas Department of Transportation, 4777 E. U.S. Highway 80, Mesquite, Texas 75150. The deadline for receipt of written comments is 5:00 p.m. on Thursday, March 31, 2022.

Persons with disabilities who plan to attend the public hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print, or Braille, are requested to contact the TxDOT Public Information Office at (214) 320-4480 at least five business days prior to the hearing so that appropriate arrangements can be made. For more information concerning the public hearing, please contact the TxDOT Public Information Office at (214) 320-4480.

TRD-202200427
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: February 8, 2022

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How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 47 (2022) is cited as follows: 47 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "47 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 47 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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