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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 26. FOOD AND NUTRITION DIVISION

SUBCHAPTER B. NUTRITION WORKING GROUPS

4 TAC §26.20

The Texas Department of Agriculture (Department) proposes the repeal of 4 Texas Administrative Code §26.20, regarding the Early Childhood Health and Nutrition Interagency Council.

The Early Childhood Health and Nutrition Interagency Council, which was created by Chapter 116, Texas Health and Safety Code, previously issued its final report and is no longer operational. Section 56 of Senate Bill 703, 87th Texas Legislature, Regular Session (2021), among other things, repealed Chapter 116, Texas Health and Safety Code. As a result of the repeal of Chapter 116, Texas Health and Safety Code, rules for the Early Childhood Health and Nutrition Interagency Council are no longer necessary.

LOCAL EMPLOYMENT IMPACT STATEMENT: The Department has determined that the proposed repeal will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, the Department provides the following Government Growth Impact Statement for the proposed repeal. For each year of the first five years the proposed repeal will be in effect, the Department has determined the following:

1. the proposed repeal does not create or eliminate a government program;

2. implementation of the proposed repeal does not require the creation or elimination of employee positions;

3. implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Department;

4. the proposed repeal does not require an increase or decrease in fees paid to the Department;

5. the proposed repeal does not create a new regulation;

6. the proposed repeal will repeal an existing regulation;

7. the proposed repeal does not increase or decrease the number of individuals subject to the rule's applicability; and

8. the proposed repeal does not positively or adversely affect this state's economy.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Lisa Hoyt, Deputy General Counsel for Food and Nutrition, has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the proposed repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST: Ms. Hoyt has determined that for each year of the first five-year period the proposed repeal is in effect, the public benefit will be the elimination of rules that will no longer be administered by the Department. Ms. Hoyt has also determined that for each year of the first five-year period the proposed repeal is in effect, there will be no cost to persons who are required to comply with the proposed repeal.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed repeal, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002, are not required.

Comments on the proposed repeal may be submitted to Skyler Shafer, Assistant General Counsel, P.O. Box 12847, Austin, Texas 78711, or by email to skyler.shafer@texasagriculture.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The repeal is proposed under Section 12.016 of the Texas Agriculture Code, which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the Code. No other sections are affected by this repeal.

§26.20. Early Childhood Health and Nutrition Interagency Council.

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 September 14, 2021.

TRD-202103649
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: October 31, 2021
For further information, please call: (512) 936-9360

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.65, §3.107

The Railroad Commission of Texas (the "Commission") proposes new §3.65, relating to Critical Designation of Natural Gas Infrastructure, and amendments to §3.107, relating to Penalty Guidelines for Oil and Gas Violations. The new section and amendments are proposed to implement changes made by House Bill 3648 and Senate Bill 3 from the 87th Texas Legislative Regular Session.

House Bill 3648 amends Texas Natural Resources Code, Chapter 81, to add new §81.073, regarding critical natural gas facilities and entities. The new section requires the Commission to collaborate with the Public Utility Commission of Texas (the "PUC") to adopt rules to establish a process to designate certain natural gas facilities and entities associated with providing natural gas in this state as critical customers or critical gas suppliers during energy emergencies. The rules adopted by the Commission under new §81.073 must provide that those designated as critical natural gas facilities and entities provide critical customer information, as defined by the Commission, to the entities described by §38.074(b)(1) of the Texas Utilities Code (hereinafter "the electric entities"). The rules must also consider essential operational elements when designating critical natural gas facilities and entities. House Bill 3648 requires that the Commission adopt the new rules not later than December 1, 2021.

Senate Bill 3 is the 87th Legislature's sweeping response to the February 2021 Winter Weather Event ("Winter Storm Uri") in Texas and generally creates new law related to preparing for, preventing, and responding to weather emergencies and power outages. Senate Bill 3 requires several state agencies and regulated industries to make significant changes in response to Winter Storm Uri. This proposed rulemaking implements Section 4 of Senate Bill 3 and is the first of many steps in implementing the requirements of Senate Bill 3. Section 4 of Senate Bill 3 creates new §81.073 of the Texas Natural Resources Code, identical to the version created in House Bill 3648 with one exception--it adds an extra requirement in §81.073(b)(3), which states the Commission's critical designation rules must require only facilities and entities that are prepared to operate during a weather emergency may be designated as critical customers.

Proposed new §3.65 implements Section 4 of Senate Bill 3 and Section 1 of House Bill 3648 by specifying the criteria and process by which entities associated with providing natural gas in Texas are designated as critical customers or critical gas suppliers during an energy emergency. As required by House Bill 3648 and Senate Bill 3, the Commission developed the criteria for critical designation by considering facilities and entities associated with providing natural gas in the state of Texas and the essential operational elements of those facilities and entities. Designation as a critical customer prompts a requirement for the facility's operator to directly provide the electric entities described in new §38.074(b)(1) of the Texas Utilities Code (created by Section 2 and Section 16 of House Bill 3648 and Senate Bill 3, respectively) with critical customer information. Providing the information positions a critical customer to receive power during an energy emergency so that it can continue to supply natural gas in the state for power generation and/or other important uses. However, proposed new §3.65 does not prioritize the critical facilities for load-shed purposes. As indicated in House Bill 3648 and Senate Bill 3, the electric entities have discretion to prioritize power delivery and power restoration among the facilities and entities designated as critical customers and critical gas suppliers by the Commission.

Proposed new subsection (a) defines "energy emergency," "weather emergency," and "critical customer information." The Commission worked with the PUC to define these terms, particularly the "critical customer information." The Commission and the PUC also collaborated to determine the process by which the facilities would be designated as critical and how those designees would provide the required information to the electric entities. The definition of "energy emergency" is tied to an event that results in or has the potential to result in load shed that causes an electric outage. The need to load shed is required by an independent organization certified under Texas Utilities Code §39.151. This definition reflects the purpose of House Bill 3648 and sections 4 and 16 of Senate Bill 3, which is to prevent the loss of power to critical natural gas facilities and entities that, if they receive power, could help alleviate the need to load shed. The definition of "weather emergency" is defined as any weather condition that results in or has the potential to result in an energy emergency because there are a variety of weather conditions that could occur across the state or in particular regions of the state that could result in load shed. Finally, "critical customer information" is defined as the critical customer and critical gas supply information specified on proposed new Table CCI such as facility identification information, facility location information, emergency contact information, gas production and/or handling information, electrical power and backup power capabilities, and electric utility information. Table CCI will be proposed at an upcoming Commission open meeting. Table CCI specifies the information that an operator is required to submit to the electric entities so that the electric entities may use the information to prioritize load shed. As discussed further below, Table CCI does not specify the format in which the critical customer information should be captured.

Proposed new subsection (b) lists the criteria for critical designation. The Commission makes no distinction between critical customers and critical gas suppliers in its critical designation criteria list because all entities designated in subsection (b) are critical gas suppliers and are therefore necessarily critical customers of electric entities during an energy emergency. Subsection (b) designates the following facilities as critical customers unless a facility's operator submits the proposed new Critical Customer/Critical Gas Supplier Designation Exception Application, Form CI-X, to the Commission certifying the facility is not prepared to operate in a weather emergency: wells producing gas or casinghead gas, gas processing plants, natural gas pipelines and pipeline facilities including compressor stations, local distribution company pipelines and pipeline facilities including compressor stations, natural gas storage facilities, natural gas liquids transportation and storage facilities, and saltwater disposal facilities including saltwater disposal pipelines. These facilities are listed in paragraphs (1) through (7) of subsection (b). The facilities covered under paragraph (8) are those under the jurisdiction of the Commission the operation of which is necessary to operate any of the facilities in paragraphs (1) through (7) of the subsection. These could

include facilities such as ancillary well or pipeline facilities and equipment that an operator considers critical because they must have power in order for the facilities in paragraphs (1) through (7) to operate.

The list in subsection (b) is not a priority list to be used by electric entities. The Commission does not have jurisdiction over electric utilities or the prioritization of electric load shed and does not purport to exercise such jurisdiction in this proposed rulemaking. Instead, the list in subsection (b) is a comprehensive list of the facilities that are required to submit the critical customer information to the electric entities in accordance with subsection (e). The list in subsection (b) includes the significant components of the natural gas supply chain. The Commission chooses to include these facility types, located up and down the entire natural gas supply chain, because the statistics from Winter Storm Uri reveal that during the storm, every molecule of natural gas was important. Additionally, House Bill 3648 and Senate Bill 3 require the Commission to designate certain natural gas facilities and entities associated with providing natural gas in this state as critical customers or critical gas suppliers during energy emergencies. Each piece of the supply chain included in subsection (b) contributes to the delivery of gas downstream. If one piece of the supply chain cannot operate, then the gas cannot be delivered for electric generation or other important uses. Further, daily gas production alone may not be adequate for peak demand during a weather emergency, which makes gas storage an important source of natural gas. Thus, natural gas storage facilities are included in subsection (b)(5).

As stated above, designation as critical in subsection (b) does not guarantee a facility will receive power during an energy emergency. First, the facility may not be prepared to operate during a weather emergency. If the facility is not prepared, it must comply with proposed subsection (d). Second, even when the facility is prepared to operate and it provides the critical customer information to the electric entities as required by proposed subsection (e), the electric entities have discretion to prioritize electric load shed in the event of an energy emergency.

Proposed new subsection (c) requires an operator of a facility designated as critical under subsection (b) of this section to acknowledge the facility's critical status by filing proposed new Form CI-D, the Acknowledgement of Critical Customer/Critical Gas Supplier Designation, or by submitting the acknowledgment electronically as provided in the subsection. The operator must submit the acknowledgment unless subsection (d) applies. The acknowledgment shall be made bi-annually on Form CI-D. In the year 2022, the Form CI-D acknowledgment shall be filed by January 15, 2022 and September 1, 2022. Beginning in 2023, the Form CI-D acknowledgment is required to be filed bi-annually by March 1 and September 1 of each year. Until the electronic system is established, operators shall file Form CI-D in accordance with the Form CI-D Instructions. When an electronic system is established, the acknowledgment shall be submitted through the electronic system.

The Form CI-D, to be proposed at an upcoming Commission open meeting, consists of two pages: an acknowledgment page and an attachment. An operator required to file Form CI-D will acknowledge its critical facilities and certify that it has provided, or will within five business days provide, the critical customer information specified on Table CCI to the electric entities as required by §3.65(e). The operator will also complete the Form CI-D attachment, which allows the operator to list all the operator's facilities designated critical under subsection (b) and include identifying information for each facility. Pursuant to subsection (b)(8), the operator must include on its attachment any facilities under the jurisdiction of the Commission that are not listed in subsection (b)(1) - (7) but must operate for the facilities in subsection (b)(1) - (7) to operate.

Proposed new subsection (d) allows a facility listed in subsection (b) of this section to obtain an exception if the facility's operator asserts the facility is not prepared to operate during a weather emergency. This provision is incorporated to comply with Texas Natural Resources Code §81.073(b)(3), as added by Senate Bill 3. An operator shall submit its exception by filing a proposed new Form CI-X exception application. Each Form CI-X shall be accompanied by a one-time $150 exception application fee. Form CI-X will be due at the same time as the Form CI-D acknowledgement. Therefore, the first Form CI-X filings are due by January 15, 2022 and September 1, 2022. Beginning in 2023, the Form CI-X shall be filed bi-annually by March 1 and September 1 of each year. When an electronic system is established, Form CI-X shall be submitted through the electronic system.

Like Table CCI and Form CI-D, the Form CI-X will be proposed at an upcoming Commission open meeting. Form CI-X also consists of two pages: an exception application and an attachment that allows the operator to list all its facilities that are not prepared to operate in a weather emergency. Until the electric system is established, operators shall file Form CI-X in accordance with the Form CI-X Instructions. An operator may file one Form CI-X for all the facilities for which it claims an exception. If an operator chooses to file multiple forms concurrently, multiple filings are permitted. However, the $150 exception application fee will be charged for each filing. Subsequent amendment of or updates to an approved exception does not require an additional $150 exception application fee. The Commission notes that an operator may have some facilities for which it files a Form CI-D and some facilities for which it files a Form CI-X.

Proposed new subsection (e) ensures that the electric entities have the information they need to prioritize power delivery and power restoration to the facilities designated critical in subsection (b). During an energy emergency caused by a weather emergency, factors unrelated to power may hinder a facility's ability to provide natural gas. These factors include road conditions and telecommunication availability. However, subsection (e) implements the purpose of House Bill 3648 and sections 4 and 16 of Senate Bill 3, which is to prevent the loss of power to critical natural gas facilities and entities that, if they receive power, could help alleviate the need to load shed. Proposed new subsection (e) states that unless a facility is identified on an approved Form CI-X exception application, the facility's operator shall provide the critical customer information to the electric entities. As mentioned above, the critical customer information will be detailed on Commission Table CCI. The critical customer information shall be provided in accordance with PUC's rule 16 Texas Administrative Code §25.52 (relating to Reliability and Continuity of Service) as certified on the operator's Form CI-D acknowledgment. PUC's §25.52 specifies the method by which the information shall be provided to the required electric entities. Subsection (e) also requires that the critical customer information be provided in a format that is usable by the electric entity receiving the information. The operator is required to certify on its Form CI-D that the critical customer information has been provided to the electric entities at the time the Form CI-D acknowledgment is filed, or within five business days of the date the acknowledgement was filed.

Proposed new subsection (f) specifies that exceptions are not transferable upon a change of operatorship. When a facility is transferred, both the transferor operator and the transferee operator shall ensure the transfer is reflected on each operator's Form CI-D or Form CI-X when the applicable form update is submitted in accordance with the bi-annual filing timelines in subsections (c) and (d) of this section. If the facility has an exception under subsection (d) of this section, the exception shall remain in effect until the next bi-annual filing deadline. If the transferee operator seeks to continue the exception beyond that time period, the transferee operator shall indicate the transferred facility on the Form CI-X pursuant to subsection (d) of this section. If the transferee operator elects to continue the exception but does not have a Form CI-X on file, the $150 exception application fee would be required.

Proposed new subsection (g) states that an operator who fails to comply with this section may be subject to penalties under §3.107 of this title.

The proposed amendments in §3.107 are found in the tables in subsection (e)(1) and subsection (j) and add references to the requirements of proposed new §3.65, along with the dollar amounts for the specified penalties.

Corey Crawford, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rules as proposed. The effect on state government for each year of the first five years the proposed rules are in effect is an estimated cost of $2,463,638 in Fiscal Year (FY) 2022, $1,265,558 in FY 2023, $1,190,678 in FY 2024, $1,115,798 in FY 2025, and $1,115,798 in FY 2026. The Commission included these costs in its Senate Bill 3 fiscal note submitted to the Legislature.

The Commission may have an increase in revenue from fees from operators who file a Form CI-X application for an exception pursuant to §3.65(d). The Commission lacks sufficient data on the number of operators that will file the exception application to estimate revenue generated from this proposed rule. However, the Commission estimates that approximately 6200 operators are subject to proposed §3.65. For each operator that files an exception application, the Commission will collect $150. There will be no fiscal effect on local government.

Randall Collins, Director, Chief Operating Officer, has determined that for each year of the first five years the new rule and amendments as proposed are in effect the primary public benefit will be establishing a clear process for facilities who are critical natural gas suppliers and who are prepared to operate in a weather emergency to be given priority in a load shed event, thus increasing the availability of natural gas for electric power generation in an energy emergency. The public benefit will also be compliance with applicable state law.

Mr. Collins has determined that for each year of the first five years that the new rule and amendments will be in full effect, there will be economic costs for persons required to comply as a result of adoption of the proposed new rule and amendments. The Commission estimates that 6200 operators are required to comply with the proposed new rule and amendments. Under the proposed new rule, each operator will have bi-annual filing requirements that may impose operational costs. An operator that files a Form CI-X because some or all of its facilities are not prepared to operate in a weather emergency will incur a cost of $150. An operator that fails to comply with the proposed filing requirements in the new rule will be subject to a minimum penalty of $1000. An operator that fails to provide the critical customer information as required under proposed subsection (e) will be subject to a minimum penalty of $2500.

Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, directs that, as part of the rulemaking process, a state agency prepare an economic impact statement that assesses the potential impact of a proposed rule on rural communities, small businesses, and micro-businesses, and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule if the proposed rule will have an adverse economic effect on rural communities, small businesses, or micro-businesses. The proposed amendments will not have an adverse economic effect on rural communities. The statute defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than $6 million in annual gross receipts. A "micro-business" is a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has no more than 20 employees.

Entities that perform activities under the jurisdiction of the Commission are not required to report to the Commission their number of employees or their annual gross receipts, which are elements of the definitions of "micro-business" and "small business" in Texas Government Code, §2006.001; therefore, the Commission has no factual bases for determining whether any persons required to comply with the proposed new rule classify as small businesses or micro-businesses, as those terms are defined. However, based on the information available, the Commission expects that there are operators subject to the proposed requirements that fall within the definition of a small business or micro-business.

In preparing the proposed rule, the Commission considered whether the purpose of the rule amendment could still be achieved if (1) small or micro-businesses have different reporting requirements, or (2) small or micro-businesses pay reduced fees. The Commission rejected these alternatives because House Bill 3648 and Senate Bill 3 require the Commission to define critical customer information, to designate entities as critical customers, and require those entities to provide the critical customer information to the electric entities. The proposed new rule and amendments merely implement these statutory requirements. Although an operator will likely incur operational costs associated with providing the critical customer information, these operational costs are mostly due to compiling the information for the first filing. The operational costs will likely decrease dramatically for future filings. Also, the operational cost an operator incurs should correlate to the number of facilities it operates. Thus, an operator with less facilities will likely expend less effort (i.e., less time and resources) to collect the required information. Further, the $150 fee is only required if an operator chooses to file an exception application. Even if the exception application is filed, each operator will only incur a one-time cost of $150 for the first filing of the application. The $150 exception application fee is set by statute in Texas Natural Resources Code §81.0521 and, therefore, cannot be reduced for certain operators.

The Commission has also determined that the proposed new rule and amendments will not affect a local economy. Therefore,

the Commission has not prepared a local employment impact statement pursuant to Texas Government Code §2001.022.

The Commission has determined that the new rule and amendments do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory analysis conducted pursuant to that section is not required.

During the first five years that the rules would be in full effect, the proposed new rule and amendments adopted pursuant to recent legislation would create a new government program, create a new regulation, expand the Commission's existing penalty regulations to encompass violations of the proposed new rule, and increase responsibility for persons under the Commission's jurisdiction. The proposed new rule and amendments do require an increase in future legislative appropriations. Senate Bill 3, the legislation requiring adoption of the rules and amendments, prompted this increase. Because proposed §3.65 is a new rule, it would not increase or decrease the number of individuals subject to the rule's applicability. Finally, the proposed rule and amendments would not affect the state's economy.

In addition to accepting written comments, the Commission has scheduled a workshop pursuant to Texas Government Code §2001.029 to allow members of the public to engage with Commission staff on the proposed new rule and amendments. The workshop will be held on Tuesday, October 5, 2021 beginning at 9:30 a.m. Details and any updates on the workshop will be available on the Commission's website.

Comments on the proposed new rule and amendments may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until 5:00 p.m. on Monday, November 1, 2021. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website more than two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Collins at (512) 463-5928. The status of Commission rulemakings in progress is available at www.rrc.texas.gov/general-counsel/rules/proposed-rules. Once received, all comments are posted on the Commission's website at https://rrc.texas.gov/general-counsel/rules/proposed-rules/. If you submit a comment and do not see the comment posted at this link within three business days of submittal, please call the Office of General Counsel at (512) 463-7149. The Commission has safeguards to prevent emailed comments from getting lost; however, your operating system's or email server's settings may delay or prevent receipt.

The Commission proposes the new rule under Texas Natural Resources Code §81.073, which requires the Commission to adopt rules to establish a process to designate natural gas facilities and entities associated with providing natural gas in this state as critical customers or critical gas suppliers during an energy emergency; and Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission. The amendments are proposed under Texas Natural Resources Code, §81.0531, which gives the Commission authority to assess a penalty if a person violates provisions of Texas Natural Resources Code, Title 3, that pertain to safety or the prevention or control of pollution or the provisions of a rule, order, license, permit, or certificate that pertain to safety or the prevention or control of pollution that are issued under Title 3.

Statutory authority: Natural Resources Code §§81.051, 81.052, 81.0531, and 81.073.

Cross reference to statute: Natural Resources Code Chapter 81.

§3.65. Critical Designation of Natural Gas Infrastructure.

(a) Definitions.

(1) Energy emergency--Any event that results in or has the potential to result in load shed required by an independent organization certified under Texas Utilities Code, §39.151 resulting in an electric outage.

(2) Weather emergency--Any weather condition that results in or has the potential to result in an energy emergency as defined in this section.

(3) Critical customer information--The critical customer and critical gas supply information specified on Commission Table CCI such as facility identification information, facility location information, emergency contact information, gas production and/or handling information, electrical power and backup power capabilities, and electric utility information.

(b) Critical designation criteria. The following facilities are designated critical gas suppliers and critical customers of the entities described by Texas Utilities Code, §38.074(b)(1) during an energy emergency:

(1) wells producing gas or casinghead gas;

(2) gas processing plants;

(3) natural gas pipelines and pipeline facilities including compressor stations;

(4) local distribution company pipelines and pipeline facilities including compressor stations;

(5) natural gas storage facilities;

(6) natural gas liquids transportation and storage facilities;

(7) saltwater disposal facilities including saltwater disposal pipelines; and

(8) other facilities under the jurisdiction of the Commission the operation of which is necessary to operate any of the facilities in paragraphs (1) through (7) of this subsection.

(c) Acknowledgment of critical status. Except as provided by subsection (d) of this section, an operator of a facility designated as critical under subsection (b) of this section shall acknowledge the facility's critical status by filing Form CI-D or submitting an electronic acknowledgment as provided in this subsection.

(1) Until an electronic system is established, the acknowledgment shall be made on Form CI-D. In the year 2022, the Form CI-D acknowledgment shall be filed bi-annually by January 15, 2022 and September 1, 2022. Beginning in 2023, the Form CI-D acknowledgment shall be filed bi-annually by March 1 and September 1 of each year.

(2) When the electronic system is established, the Form CI-D acknowledgment shall be submitted through the electronic system.

(d) Critical designation exception. A facility listed in subsection (b) of this section is designated as a critical gas supplier unless the facility's operator asserts the facility is not prepared to operate during a weather emergency. An operator shall submit a Form CI-X exception application that identifies each such facility. The Form CI-X shall be accompanied by a $150 exception application fee.

(1) Until an electronic system is established, the exception application shall be filed on Form CI-X. In the year 2022, the Form CI-X exception application shall be filed bi-annually by January 15, 2022 and September 1, 2022. Beginning in 2023 the Form CI-X exception application shall be filed bi-annually by March 1 and September 1 of each year.

(2) When the electronic system is established, the Form CI-X exception application shall be submitted through the electronic system.

(3) Once an operator has an approved Form CI-X on file with the Commission, the operator is not required to pay the $150 exception application fee when the operator updates the facilities identified on its Form CI-X.

(e) Providing critical customer information. Unless a facility is identified on an approved Form CI-X exception application under subsection (d) of this section, the facility's operator shall provide the critical customer information to the entities described in Texas Utilities Code §38.074(b)(1). The critical customer information shall be provided in accordance with 16 Tex. Admin. Code §25.52 (relating to Reliability and Continuity of Service). The operator shall certify on its Form CI-D that it has provided, or will within five business days provide, the critical customer information to the electric entity in a format usable to the electric entity.

(f) Exceptions not transferable. Exceptions are not transferable upon a change of operatorship. When a facility is transferred, both the transferor operator and the transferee operator shall ensure the transfer is reflected on each operator's Form CI-D or Form CI-X when the applicable form update is submitted in accordance with the bi-annual filing timelines in subsections (c) and (d) of this section. If the facility has an exception under subsection (d) of this section, the exception shall remain in effect until the next bi-annual filing deadline. If the transferee operator seeks to continue the exception beyond that time period, the transferee operator shall indicate the transferred facility on the Form CI-X pursuant to subsection (d) of this section.

(g) Failure to file or provide required information. An operator who fails to comply with this section may be subject to penalties under §3.107 of this title (relating to Penalty Guidelines for Oil and Gas Violations).

§3.107. Penalty Guidelines for Oil and Gas Violations.

(a) - (d) (No change.)

(e) Typical penalties. Regardless of the method by which the guideline typical penalty amount is calculated, the total penalty amount will be within the statutory limit.

(1) A guideline of typical penalties for violations of Texas Natural Resources Code, Title 3; the provisions of Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the Commission; and the provisions of a rule adopted or an order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29, are set forth in Table 1.

Figure: 16 TAC §3.107(e)(1)
[~~Figure: 16 TAC §3.107(e)(1)~~]

(2) (No change.)

(f) - (i) (No change.)

(j) Penalty calculation worksheet. The penalty calculation worksheet shown in Table 5 lists the guideline minimum penalty amounts for certain violations; the circumstances justifying enhancements of a penalty and the amount of the enhancement; and the circumstances justifying a reduction in a penalty and the amount of the reduction.
Figure: 16 TAC §3.107(j)
[~~Figure: 16 TAC §3.107(j)~~]

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 September 14, 2021.

TRD-202103643
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: October 31, 2021
For further information, please call: (512) 475-1295

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PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY

16 TAC §25.52

The Public Utility Commission of Texas Staff proposes amendments to existing 16 Texas Administrative Code (TAC) §25.52, relating to Reliability and Continuity of Service. These proposed amendments will implement amendments to the Public Utility Regulatory Act (PURA) enacted by the 87th Texas Legislature. Specifically, these amendments will implement changes made to PURA §38.072(a) and (b), adding end stage renal disease facilities to the list of health facilities prioritized during system restoration following an extended power outage. These amendments will also implement PURA §38.074 by requiring a critical natural gas facility to provide critical customer information to the utility from which it receives electric delivery service and requiring the utility to incorporate this information into its load-shed and restoration planning.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

(1) the proposed rule will not create a government program and will not eliminate a government program;

(2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;

(3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;

(4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;

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

(6) the proposed rule will not expand, limit, or repeal an existing regulation;

(7) the proposed rule will change the number of individuals subject to the rule's applicability by applying certain requirements to municipally owned utilities and electric cooperatives, which were previously excluded from the rule; and

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

Harika Basaran, Economist, Market Analysis Division, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Ms. Basaran has also determined that, for each year of the first five years the proposed rules and amendments are in effect, the anticipated public benefits expected as a result of the adoption of the proposed amendments will be the alignment of commission rules with the requirements of PURA §38.072 and §38.074. Ms. Basaran also anticipates that the proposed rules will assist utilities in keeping critical facilities from losing electric service during energy emergencies. Ms. Basaran does not believe there will be any major economic costs to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking on October 12, 2021, at 9:30 a.m. in the Commissioners' Hearing Room, 7th floor, William B. Travis Building if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by October 7, 2021. If no request for public hearing is received and the commission staff cancels the hearing, it will file in this project a notification of the cancellation of the hearing prior to the scheduled date for the hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by October 7, 2021. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. *Please include a bulleted executive summary to assist the commission in reviewing the filed comments in a timely fashion.* All comments should refer to project number 52345.

Statutory Authority

These amendments are proposed under the following provision of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §38.072, which requires the commission to adopt a rule requiring an electric utility to give end stage renal disease facilities the same priority it gives to hospitals in the utility's emergency operations plan for restoring power after an extended power outage; and §38.074, which requires the commission to, in collaboration with the Railroad Commission of Texas, rules to establish a process to designate certain natural gas facilities and entities as critical natural gas customers during energy emergencies and to require utilities to prioritize these facilities for load-shed and power restoration purposes during an energy emergency.

Cross reference to statutes: PURA §§14.001, 14.002, 38.072, and 38.074.

§25.52. Reliability and Continuity of Service.

(a) Application. This section applies to all electric utilities as defined by §25.5(41) of this title (relating to Definitions) [~~the Public Utility Regulatory Act (PURA)~~] and all transmission and distribution utilities as defined by §25.5(137) of this title [~~PURA §31.002(19)~~]. When specifically stated, this section also applies to electric cooperatives and municipally-owned utilities (MOUs). The term "utility" as used in this section means [~~shall mean~~] an electric utility and a transmission and distribution utility. In subsection (h) of this section, the term "utility" also includes electric cooperatives and MOUs.

(b) General.

(1) Every utility must [~~shall~~] make all reasonable efforts to prevent interruptions of service. When interruptions occur, the utility must [~~shall~~] reestablish service within the shortest possible time.

(2) Each utility must [~~shall~~] make reasonable provisions to manage emergencies resulting from failure of service, and each utility must [~~shall~~] issue instructions to its employees covering procedures to be followed in the event of emergency in order to prevent or mitigate interruption or impairment of service.

(3) In the event of national emergency or local disaster resulting in disruption of normal service, the utility may, in the public interest, interrupt service to other customers to provide necessary service to civil defense or other emergency service entities on a temporary basis until normal service to these agencies can be restored.

(4) Each utility must [~~shall~~] maintain adequately trained and experienced personnel throughout its service area so that the utility is able to fully and adequately comply with the service quality and reliability standards.

(5) With regard to system reliability, a [~~no~~] utility must not [~~shall~~] neglect any local neighborhood or geographic area, including rural areas, communities of less than 1,000 persons, and low-income areas.

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

(1) Critical loads--Loads for which electric service is considered crucial for the protection or maintenance of public safety; including but not limited to hospitals, police stations, fire stations, critical water and wastewater facilities, and customers with special in-house life-sustaining equipment.

(2) Critical natural gas--A facility designated as a critical gas supplier by the Railroad Commission of Texas under §3.65(b) of this title (relating to Critical Designation of Natural Gas Infrastructure) unless the critical gas supplier has obtained an exception from its critical status under §3.65(d) of this title. Critical natural gas is a critical load during an energy emergency.

(3) [~~(2)~~] Interruption classifications:

(A) Forced--Interruptions, exclusive of major events, that result from conditions directly associated with a component requiring that it be taken out of service immediately, either automatically or manually, or an interruption caused by improper operation of equipment or human error.

(B) Scheduled--Interruptions, exclusive of major events, that result when a component is deliberately taken out of service at a selected time for purposes of construction, preventative maintenance, or repair. If it is possible to defer an interruption, the interruption is considered a scheduled interruption.

(C) Outside causes--Interruptions, exclusive of major events, that are caused by influences arising outside of the distribution system, such as generation, transmission, or substation outages.

(D) Major events--Interruptions that result from a catastrophic event that exceeds the design limits of the electric power system, such as an earthquake or an extreme storm. These events shall include situations where there is a loss of power to 10% or more of the customers in a region over a 24-hour period and with all customers not restored within 24 hours.

(4) [~~(3)~~] Interruption, momentary--Single operation of an interrupting device which results in a voltage zero and the immediate restoration of voltage.

(5) [~~(4)~~] Interruption, sustained--All interruptions not classified as momentary.

(6) [~~(5)~~] Interruption, significant--An interruption of any classification lasting one hour or more and affecting the entire system, a major division of the system, a community, a critical load, or service to interruptible customers; and a scheduled interruption lasting more than four hours that affects customers that are not notified in advance. A significant interruption includes a loss of service to 20% or more of the system's customers, or 20,000 customers for utilities serving more than 200,000 customers. A significant interruption also includes interruptions adversely affecting a community such as interruptions of governmental agencies, military bases, universities and schools, major retail centers, and major employers.

(7) [~~(6)~~] Reliability indices:

(A) System Average Interruption Frequency Index (SAIFI) -- The average number of times that a customer's service is interrupted. SAIFI is calculated by summing the number of customers interrupted for each event and dividing by the total number of customers on the system being indexed. A lower SAIFI value represents a higher level of service reliability.

(B) System Average Interruption Duration Index (SAIDI) -- The average amount of time a customer's service is interrupted during the reporting period. SAIDI is calculated by summing the restoration time for each interruption event times the number of customers interrupted for each event, and dividing by the total number of customers. SAIDI is expressed in minutes or hours. A lower SAIDI value represents a higher level of service reliability.

(d) Record of interruption. Each utility must [~~shall~~] keep complete records of sustained interruptions of all classifications. Where possible, each utility must [~~shall~~] keep a complete record of all momentary interruptions. These records must [~~shall~~] show the type of interruption, the cause for the interruption, the date and time of the interruption, the duration of the interruption, the number of customers interrupted, the substation identifier, and the transmission line or distribution feeder identifier. In cases of emergency interruptions, the remedy and steps taken to prevent recurrence must [~~shall also~~] be recorded. Each utility must [~~shall~~] retain records of interruptions for five years.

(e) Notice of significant interruptions.

(1) Initial notice. A utility must [~~shall~~] notify the commission, in a method prescribed by the commission, as soon as reasonably possible after it has determined that a significant interruption has occurred. The initial notice must [~~shall~~] include the general location of the significant interruption, the approximate number of customers affected, the cause if known, the time of the event, and the estimated time of full restoration. The initial notice must [~~shall~~] also include the name and telephone number of the utility contact person, and must [~~shall~~] indicate whether local authorities and media are aware of the event. If the duration of the significant interruption is greater than 24 hours, the utility must [~~shall~~] update this information daily and file a summary report.

(2) Summary report. Within five working days after the end of a significant interruption lasting more than 24 hours, the utility must [~~shall~~] submit a summary report to the commission. The summary report must [~~shall~~] include the date and time of the significant interruption; the date and time of full restoration; the cause of the interruption, the location, substation and feeder identifiers of all affected facilities; the total number of customers affected; the dates, times, and numbers of customers affected by partial or step restoration; and the total number of customer-minutes of the significant interruption (sum of the interruption durations times the number of customers affected).

(f) Priorities for power restoration to certain medical facilities [~~Power Restoration to Certain Medical Facilities~~].

(1) A utility must [~~shall~~] give the same priority that it gives to a hospital in the utility's emergency operations plan for restoring power after an extended power outage, as defined by Texas Water Code, §13.1395, to the following:

(A) An assisted living facility, as defined by Texas Health and Safety Code, §247.002;

(B) A facility that provides hospice services, as defined by Texas Health and Safety Code, §142.001; [~~and~~]

(C) A nursing facility, as defined by Texas Health and Safety Code, §242.301; and

(D) An end stage renal disease facility, as defined by Texas Health and Safety Code, §251.001.

(2) The utility may use its discretion to prioritize power restoration for a facility after an extended power outage in accordance with the facility's needs and with the characteristics of the geographic area in which power must be restored.

(g) System reliability. Reliability standards [~~Standards shall~~] apply to each utility[~~,~~] and are [~~shall be~~] limited to the Texas jurisdiction. A "reporting year" is the 12-month period beginning January 1 and ending December 31 of each year.

(1) System-wide standards. The standards must [~~shall~~] be unique to each utility based on the utility's performance, and may be adjusted by the commission if appropriate for weather or improvements in data acquisition systems. The standards will be the average of the utility's performance from the later of reporting years 1998, 1999, and 2000, or the first three reporting years the utility is in operation.

(A) SAIFI. Each utility must [~~shall~~] maintain and operate its electric distribution system so that its SAIFI value does [~~shall~~] not exceed its system-wide SAIFI standard by more than 5.0%.

(B) SAIDI. Each utility must [~~shall~~] maintain and operate its electric distribution system so that its SAIDI value does [~~shall~~] not exceed its system-wide SAIDI standard by more than 5.0%.

(2) Distribution feeder performance. The commission will evaluate the performance of distribution feeders with ten or more customers after each reporting year. Each utility must [~~shall~~] maintain and operate its distribution system so that no distribution feeder with ten or more customers sustains a SAIDI or SAIFI value for a reporting year that is more than 300% greater than the system average of all feeders during any two consecutive reporting years.

(3) Enforcement. The commission may take appropriate enforcement action, including action against a utility, if the system and feeder performance is not operated and maintained in accordance with this subsection. In determining the appropriate enforcement action, the commission will [~~shall~~] consider:

(A) the feeder's operation and maintenance history;

(B) the cause of each interruption in the feeder's service;

(C) any action taken by a utility to address the feeder's performance;

(D) the estimated cost and benefit of remediating a feeder's performance; and

(E) any other relevant factor as determined by the commission.

(h) Critical natural gas. In accordance with §3.65 of this title, critical natural gas standards apply to each facility designated as a critical gas supplier in the state.

(1) Critical customer information.

(A) The operator of a critical natural gas facility must provide critical customer information, as defined by §3.65(a)(3) of this title, to the entities listed in clauses (i) and (ii) of this subparagraph. The critical customer information must be provided in usable format via email:

(i) The utility from which the critical natural gas facility receives electric delivery service; and

(ii) For critical natural gas facilities located in the ERCOT region, the independent organization certified under PURA §39.151.

(B) The commission will maintain on its website a list of utility email addresses to be used for the provision of critical customer information under subparagraph (A) of this paragraph. Each utility must ensure that the email address listed on the commission's website is accurate. If the utility's email address changes or is inaccurate, the utility must immediately provide the commission with an updated email address.

(C) Within five business days of receipt, the utility must evaluate the critical customer information for completeness and provide written notice to the operator of the critical natural gas facility regarding the status of its critical natural gas designation.

(i) If the information submitted is incomplete, the utility's notice must specify what additional information is required.

(ii) If the information submitted is complete, the utility's notice must notify the operator of the facility's critical natural gas status, the date of its designation, any additional classifications assigned to the facility, and notice that its critical status does not constitute a guarantee of an uninterrupted supply of energy.

(D) A utility or an independent system operator receiving critical customer information from a critical natural gas facility under this subsection must not release critical customer information to any person unless authorized by the commission or the operator of the critical natural gas facility. This prohibition does not apply to the release of such information to the commission, the Railroad Commission of Texas, the utility from which the critical natural gas facility receives electric service, or the independent system operator for the region in which the critical natural gas facility is located. This prohibition also does not apply if the critical customer information is redacted, aggregated, or organized in such a way as to make it impossible to identify the critical natural gas facility to which the information applies.

(2) Prioritization of critical natural gas facilities. A utility must incorporate critical natural gas facilities into its load-shed and restoration planning.

(A) A utility must prioritize critical natural gas facilities for load-shed purposes during an energy emergency.

(B) A utility may use its discretion to prioritize power delivery and power restoration among critical natural gas facilities and other critical loads on its system.

(C) A utility must consider any additional guidance or prioritization criteria provided by the commission, the Railroad Commission of Texas, or the independent system operator for its power region to prioritize among critical natural gas facilities during an energy emergency.

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 September 16, 2021.

TRD-202103682
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 31, 2021
For further information, please call: (512) 936-7244

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT SUBCHAPTER B. POWERS AND RESPONSIBILITIES

16 TAC §60.24

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 60, Subchapter B, §60.24, regarding the Procedural Rules of the Commission and the Department.

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The rules under 16 TAC Chapter 60 implement Texas Occupations Code, Chapter 51, the enabling statute for the Texas Commission of Licensing and Regulation (Commission) and the Department, and other laws applicable to the Commission and the Department.

Texas Government Code, Chapter 2110 addresses state agency advisory committees. In accordance with Texas Government Code §2110.008, Duration of Advisory Committees, the Commission has adopted 16 TAC §60.24, which lists the agency's advisory boards and committees (advisory boards) and establishes the abolishment date of each of these advisory boards.

The proposed rule updates the list of the Department's advisory boards and their abolishment dates, as applicable. The proposed rule reflects the separate statutory changes that have been made to the Department's program statutes to add programs, to deregulate programs, or to add or repeal advisory boards for certain programs. The proposed rule is necessary to ensure that the rule reflects the current advisory boards and their abolishment dates, if applicable, as required under Texas Government Code §2110.008.

SECTION-BY-SECTION SUMMARY

The proposed rule amends §60.24, Advisory Boards. The proposed rule amends subsection (c) to update the list of the Department's advisory boards. The proposed rule adds advisory boards to subsection (c) with an abolishment date of September 1, 2024, to align with the other advisory boards in the list. The proposed rule also removes advisory boards from the list to reflect the programs that have been deregulated or the advisory boards that have been repealed through separate statutory changes. A few clean-up changes also have been made to this subsection.

The proposed rule adds new subsection (d). A separate list is created for those advisory boards that are specifically exempt from Texas Government Code, Chapter 2110 and do not have a designated abolishment date. The exempt advisory boards have been listed to avoid confusion and to account for the Department's advisory boards.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rule is in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule.

Mr. Couvillon has determined that for each year of the first five years the proposed rule is in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rule.

Mr. Couvillon has determined that for each year of the first five years the proposed rule is in effect, enforcing or administering the proposed rule does not have foreseeable implications relating to costs or revenues of state governments or local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rule will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rule is in effect, the public benefit is that the rule will reflect the current list of advisory boards and their abolishment dates. The proposed rule will provide notice to the agency's advisory boards and to the public regarding the date on which the advisory boards will be abolished if action is not taken to continue their existence. The proposed rule also allows the public to be aware of the advisory boards that are exempt by statute and do not have abolishment dates.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

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

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rule does not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rule. For each year of the first five years the proposed rule will be in effect, the agency has determined the following:

1. The proposed rule does not create or eliminate a government program.

2. Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rule does not require an increase or decrease in fees paid to the agency.

5. The proposed rule does not create a new regulation.

6. The proposed rule does not expand, limit, or repeal an existing regulation.

7. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability.

8. The proposed rule does not positively or adversely affect this state's economy.

The proposed rule updates the list of the Department's advisory boards and their abolishment dates, if applicable, as required by statute.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

Comments on the proposed rule may be submitted electronically on the Department's website at https://ga.tdlr.texas.gov:1443/form/gcerules; by facsimile to (512) 475-3032; or by mail to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register.*

STATUTORY AUTHORITY

The proposed rule is proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department. The proposed rule also is proposed under Texas Government Code, Chapter 2110, §2110.008, regarding the duration of advisory committees.

The statutory provisions affected by the proposed rule are those set forth in Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 2110. In addition, the following statutes for the programs that have advisory boards are affected by the proposed rule: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapter 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 754 (Elevators, Escalators, and Related Equipment) and 755 (Boilers); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1302 (Air Conditioning and Refrigeration Contractors); 1305 (Electricians); 1601 (Barbers); 1602 (Cosmetologists); 1603 (Barbers and Cosmetologists); 1703 (Polygraph Examiners); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers): 1952 (Code Enforcement Officers); 1953 (Sanitarians); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); and 2310 (Motor Fuel Metering and Quality); and Transportation Code, Chapter 662 (Motorcycle Operator Training and Safety).

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

§60.24. Advisory Boards.

(a) Unless otherwise provided by law, the presiding officer of the commission, with the commission's approval, shall appoint the members of each advisory board.

(b) The purpose, duties, manner of reporting, and membership requirements of each advisory board are detailed in the statutes and rules of the specific program regulated by the department.

(c) In accordance with Texas Government Code[~~,~~] §2110.008, the commission establishes the following periods during which the advisory boards listed will continue in existence. The automatic abolishment date of each advisory board will be the date listed for that board unless the commission subsequently establishes a different date:

(1) Advisory Board of Athletic Trainers--09/01/2024;

(2) Air Conditioning and Refrigeration Contractors Advisory Board--09/01/2024;

~~[(2) Advisory Board on Barbering--09/01/2024];~~

~~[(3) Advisory Board on Cosmetology--09/01/2024];~~

(3) [~~(4)~~] Architectural Barriers Advisory Committee--09/01/2024;

~~[(5) Air Conditioning and Refrigeration Contractors Advisory Board--09/01/2024;]~~

(4) [~~(6)~~] Auctioneer Education Advisory Board--09/01/2024;

(5) Barbering and Cosmetology Advisory Board--09/01/2024;

(6) Behavior Analyst Advisory Board--09/01/2024;

(7) Board of Boiler Rules--09/01/2024;

(8) Code Enforcement Officers Advisory Committee--09/01/2024;

(9) [~~(8)~~] Combative Sports Advisory Board--09/01/2024;

(10) [~~(9)~~] Dietitians Advisory Board--09/01/2024;

(11) [~~(10)~~] Dyslexia Therapists and Practitioners Advisory Committee--09/01/2024;

(12) [~~(11)~~] Electrical Safety and Licensing Advisory Board--09/01/2024;

(13) [~~(12)~~] Elevator Advisory Board--09/01/2024;

(14) [~~(13)~~] Hearing Instrument Fitters and Dispensers Advisory Board--09/01/2024;

[~~(14) Licensed Breeders Advisory Committee--09/01/2024;~~]

(15) Massage Therapy Advisory Board--09/01/2024;

(16) [~~(15)~~] Midwives Advisory Board--09/01/2024;

(17) Motor Fuel Metering and Quality Advisory Board--09/01/2024;

(18) [~~(16)~~] Orthotists and Prosthetists Advisory Board--09/01/2024;

[~~(17) Polygraph Advisory Committee--09/01/2024;~~]

(19) Podiatric Medical Examiners Advisory Board--09/01/2024;

(20) [~~(18)~~] Property Tax Consultants Advisory Council--09/01/2024;

(21) Registered Sanitarian Advisory Committee--09/01/2024;

(22) [~~(19)~~] Speech-Language Pathologists and Audiologists Advisory Board--09/01/2024;

(23) [~~(20)~~] Texas Tax Professional Advisory Committee--09/01/2024;

(24) [~~(21)~~] Towing and [~~,~~] Storage[~~, and Booting~~] Advisory Board--09/01/2024;

(25) [~~(22)~~] Used Automotive Parts Recycling Advisory Board--09/01/2024;

[~~(23) Vehicle Protection Product Warrantor Advisory Board--09/01/2024;~~]

(26) [~~(24)~~] Water Well Drillers Advisory Council--09/01/2024; and

(27) [~~(25)~~] Weather Modification Advisory Committee--09/01/2024.

(d) The following advisory boards are specifically exempt from Texas Government Code, Chapter 2110 and do not have a designated abolishment date:

(1) Driver Training and Traffic Safety Advisory Committee (exempt under Education Code §1001.058(i));

(2) Licensed Breeder Advisory Committee (exempt under Occupations Code §802.065(j)); and

(3) Motorcycle Safety Advisory Board (exempt under Transportation Code §662.0037(h)).

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 September 20, 2021.

TRD-202103714
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Earliest possible date of adoption: October 31, 2021
For further information, please call: (512) 475-4879

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TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

SUBCHAPTER B. LICENSING REQUIREMENTS

22 TAC §463.11

The Texas Behavioral Health Executive Council proposes amendments to §463.11, relating to Supervised Experience Required for Licensure as a Psychologist.

Overview and Explanation of the Proposed Rule. The proposed amendment is intended to allow applicants for licensure as a psychologist to petition the Texas State Board of Examiners of Psychologists regarding a deficiency in the applicant's required supervised experience for licensure. The Board can then examine the applicant and either approve, deny, or condition the approval on reasonable terms and conditions designed to ensure the applicant's education, training, and experience provide reasonable assurance that the applicant has the knowledge and skills necessary for entry-level practice as a licensed psychologist. Prior to submitting such a petition, an applicant must have completed at least 1,500 hours of supervised experience in a formal internship, obtained a doctoral degree in psychology, completed at least 1,500 hours of supervised experience following conferral of a doctoral degree, and obtained a passing score on all requisite examinations, the jurisprudence examination and the EPPP. If an applicant has not met these minimum requirements then an applicant is not eligible to submit the petition described in the proposed amendment. The proposed rule does not allow the Board to waive or modify any requirements that are required by federal law, state constitution or statute, or Council rule found in 22 TAC Part 41.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The proposed rule pertains to the qualifications necessary to obtain a license to practice psychology. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Psychologists, in accordance with §501.1515 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose this rule to the Execu-

tive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may propose this rule.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity, efficiency, and fairness in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701 or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on October 31, 2021, which is at least 30 days from the date of publication in the *Texas Register.*

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule is proposed 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 proposes 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 Board previously voted and, by a majority, approved to propose 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 proposes 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 501 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes 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.

No other code, articles or statutes are affected by this section.

§463.11. Supervised Experience Required for Licensure as a Psychologist.

(a) Required Supervised Experience. In order to qualify for licensure, an applicant must submit proof of a minimum of 3,500 hours of supervised experience, at least 1,750 of which must have been obtained through a formal internship that occurred within the applicant's doctoral degree program and at least 1,750 of which must have been received as a provisionally licensed psychologist (or under provisional trainee status under prior versions of this rule).

(1) A formal internship completed after the doctoral degree was conferred, but otherwise meeting the requirements of this rule, will be accepted for an applicant whose doctoral degree was conferred prior to September 1, 2017.

(2) The formal internship must be documented by the Director of Internship Training. Alternatively, if the Director of Internship Training is unavailable, the formal internship may be documented by a licensed psychologist with knowledge of the internship program and the applicant's participation in the internship program.

(3) Following conferral of a doctoral degree, 1,750 hours obtained or completed while employed in the delivery of psychological services in an exempt setting, while licensed or authorized to practice in another jurisdiction, or while practicing as a psychological associate or specialist in school psychology in this state may be substituted for the minimum of 1,750 hours of supervised experience required as a provisionally licensed psychologist if the experience was obtained or completed under the supervision of a licensed psychologist. Post-doctoral supervised experience obtained without a provisional license or trainee status prior to September 1, 2016, may also be used to satisfy, either in whole or in part, the post-doctoral supervised experience required by this rule if the experience was obtained under the supervision of a licensed psychologist.

(b) Satisfaction of Post-doctoral Supervised Experience with Doctoral Program Hours.

(1) Applicants who received their doctoral degree from a degree program accredited by the American Psychological Association (APA), the Canadian Psychological Association (CPA), or a substantially equivalent degree program, may count the following hours of supervised experience completed as part of their degree program toward the required post-doctoral supervised experience:

(A) hours in excess of 1,750 completed as part of the applicant's formal internship; and

(B) practicum hours certified by the doctoral program training director (or the director's designee) as meeting the following criteria:

(i) the practicum training is overseen by the graduate training program and is an organized, sequential series of supervised experiences of increasing complexity, serving to prepare the student for internship and ultimately licensure;

(ii) the practicum training is governed by a written training plan between the student, the practicum training site, and the graduate training program. The training plan must describe how the trainee's time is allotted and assure the quality, breadth, and depth of the training experience through specification of the goals and objectives of the practicum, the methods of evaluation of the trainee's performance, and reference to jurisdictional regulations governing the supervisory experience. The plan must also include the nature of supervision, the identities of the supervisors, and the form and frequency of feedback from the agency supervisor to the training faculty. A copy of the plan must be provided to the Council upon request;

(iii) the supervising psychologist must be a member of the staff at the site where the practicum experience takes place;

(iv) at least 50% of the practicum hours must be in service-related activities, defined as treatment or intervention, assessment, interviews, report-writing, case presentations, and consultations;

(v) individual face-to-face supervision shall consist of no less than 25% of the time spent in service-related activities;

(vi) at least 25% of the practicum hours must be devoted to face-to-face patient or client contact;

(vii) no more than 25% of the time spent in supervision may be provided by a licensed allied mental health professional or a psychology intern or post-doctoral fellow; and

(viii) the practicum must consist of a minimum of 15 hours of experience per week.

(2) Applicants applying for licensure under the substantial equivalence clause must submit an affidavit or unsworn declaration from the program's training director or other designated leader familiar with the degree program, demonstrating the substantial equivalence of the applicant's degree program to an APA or CPA accredited program at the time of the conferral of applicant's degree.

(3) An applicant and the affiant or declarant shall appear before the agency in person to answer any questions, produce supporting documentation, or address any concerns raised by the application if requested by a council or board member or the Executive Director. Failure to comply with this paragraph shall constitute grounds for denial of substantial equivalency under this rule.

(c) General Requirements for Supervised Experience. All supervised experience for licensure as a psychologist, including the formal internship, must meet the following requirements:

(1) Each period of supervised experience must be obtained in not more than two placements, and in not more than 24 consecutive months.

(2) Gaps Related to Supervised Experience.

(A) Unless a waiver is granted by the Council, an application for a psychologist's license will be denied if a gap of more than seven years exists between the date an applicant's doctoral degree was officially conferred and the date of the application.

(B) The Council shall grant a waiver upon a showing of good cause by the applicant. Good cause shall include, but is not limited to:

(i) proof of continued employment in the delivery of psychological services in an exempt setting as described in §501.004 of the Psychologists' Licensing Act, during any gap period;

(ii) proof of professional development, which at a minimum meets the Council's professional development requirements, during any gap period;

(iii) proof of enrollment in a course of study in a regionally accredited institution or training facility designed to prepare the individual for the profession of psychology during any gap period; or

(iv) proof of licensure as a psychologist and continued employment in the delivery of psychological services in another jurisdiction.

(3) A formal internship with rotations, or one that is part of a consortium within a doctoral program, is considered to be one placement. A consortium is composed of multiple placements that have entered into a written agreement setting forth the responsibilities and financial commitments of each participating member, for the purpose of offering a well-rounded, unified psychology training program whereby trainees work at multiple sites, but obtain training from one primary site with some experience at or exposure to aspects of the other sites that the primary site does not offer.

(4) The supervised experience required by this rule must be obtained after official enrollment in a doctoral program.

(5) All supervised experience must be received from a psychologist licensed at the time supervision is received.

(6) The supervising psychologist must be trained in the area of supervision provided to the supervisee.

(7) Experience obtained from a psychologist who is related within the second degree of affinity or consanguinity to the supervisee may not be utilized to satisfy the requirements of this rule.

(8) All supervised experience obtained for the purpose of licensure must be conducted in accordance with all applicable Council rules.

(9) Unless authorized by the Council, supervised experience received from a psychologist practicing with a restricted license may not be utilized to satisfy the requirements of this rule.

(10) The supervisee shall be designated by a title that clearly indicates a supervisory licensing status such as "intern," "resident," "trainee," or "fellow." An individual who is a Provisionally Licensed Psychologist or a Licensed Psychological Associate may use that title so long as those receiving psychological services are clearly informed that the individual is under the supervision of a licensed psychologist. An individual who is a Licensed Specialist in School Psychology may use that title so long as the supervised experience takes place within a school, and those receiving psychological services are clearly informed that the individual is under the supervision of an individual who is licensed as a psychologist and specialist in school psychology. Use of a different job title is permitted only if authorized under §501.004 of the Psychologists' Licensing Act, or another Council rule.

(d) Formal Internship Requirements. The formal internship hours must be satisfied by one of the following types of formal internships:

(1) The successful completion of an internship program accredited by the American Psychological Association (APA) or Canadian Psychological Association (CPA), or which is a member of the Association of Psychology Postdoctoral and Internship Centers (APPIC); or

(2) The successful completion of an organized internship meeting all of the following criteria:

(A) It must constitute an organized training program which is designed to provide the intern with a planned, programmed sequence of training experiences. The primary focus and purpose of the program must be to assure breadth and quality of training.

(B) The internship agency must have a clearly designated staff psychologist who is responsible for the integrity and quality of the training program and who is actively licensed/certified by the licensing board of the jurisdiction in which the internship takes place and who is present at the training facility for a minimum of 20 hours a week.

(C) The internship agency must have two or more full-time licensed psychologists on the staff as primary supervisors.

(D) Internship supervision must be provided by a staff member of the internship agency or by an affiliate of that agency who carries clinical responsibility for the cases being supervised.

(E) The internship must provide training in a range of assessment and intervention activities conducted directly with patients/clients.

(F) At least 25% of trainee's time must be in direct patient/client contact.

(G) The internship must include a minimum of two hours per week of regularly scheduled formal, face-to-face individual supervision. There must also be at least four additional hours per week in learning activities such as: case conferences involving a case in which the intern was actively involved; seminars dealing with psychology issues; co-therapy with a staff person including discussion; group supervision; additional individual supervision.

(H) Training must be post-clerkship, post-practicum and post-externship level.

(I) The internship agency must have a minimum of two full-time equivalent interns at the internship level of training during applicant's training period.

(J) The internship agency must inform prospective interns about the goals and content of the internship, as well as the expectations for quantity and quality of trainee's work, including expected competencies; or

(3) The successful completion of an organized internship program in a school district meeting the following criteria:

(A) The internship experience must be provided at or near the end of the formal training period.

(B) The internship experience must require a minimum of 35 hours per week over a period of one academic year, or a minimum of 20 hours per week over a period of two consecutive academic years.

(C) The internship experience must be consistent with a written plan and must meet the specific training objectives of the program.

(D) The internship experience must occur in a setting appropriate to the specific training objectives of the program.

(E) At least 600 clock hours of the internship experience must occur in a school setting and must provide a balanced exposure to regular and special educational programs.

(F) The internship experience must occur under conditions of appropriate supervision. Field-based internship supervisors, for the purpose of the internship that takes place in a school setting, must be licensed as a psychologist and, if a separate credential is required to practice school psychology, must have a valid credential to provide psychology in the public schools. The portion of the internship which appropriately may take place in a non-school setting must be supervised by a psychologist.

(G) Field-based internship supervisors must be responsible for no more than two interns at any given time. University internship supervisors shall be responsible for no more than twelve interns at any given time.

(H) Field-based internship supervisors must provide at least two hours per week of direct supervision for each intern. University internship supervisors must maintain an ongoing relationship

with field-based internship supervisors and shall provide at least one field-based contact per semester with each intern.

(I) The internship site shall inform interns concerning the period of the internship and the training objectives of the program.

(J) The internship experience must be systematically evaluated in a manner consistent with the specific training objectives of the program.

(K) The internship experience must be conducted in a manner consistent with the current legal-ethical standards of the profession.

(L) The internship agency must have a minimum of two full-time equivalent interns at the internship level during the applicant's training period.

(M) The internship agency must have the availability of at least two full-time equivalent psychologists as primary supervisors, at least one of whom is employed full time at the agency and is a school psychologist.

(e) Industrial/Organizational Requirements. Individuals from an Industrial/Organizational doctoral degree program are exempt from the formal internship requirement but must complete a minimum of 3,500 hours of supervised experience, at least 1,750 of which must have taken place after conferral of the doctoral degree and in accordance with subsection (a) of this section. Individuals who do not undergo a formal internship pursuant to this paragraph should note that Council rules prohibit a psychologist from practicing in an area in which they do not have sufficient training and experience, of which a formal internship is considered to be an integral requirement.

(f) Licensure Following Respecialization.

(1) In order to qualify for licensure after undergoing respecialization, an applicant must demonstrate the following:

(A) conferral of a doctoral degree in psychology from a regionally accredited institution of higher education prior to undergoing respecialization;

(B) completion of a formal post-doctoral respecialization program in psychology which included at least 1,750 hours in a formal internship;

(C) completion of respecialization within the two year period preceding the date of application for licensure under this rule; and

(D) upon completion of the respecialization program, at least 1,750 hours of supervised experience obtained as a provisionally licensed psychologist (or under provisional trainee status under prior versions of this rule).

(2) An applicant meeting the requirements of this subsection is considered to have met the requirements for supervised experience under this rule.

(3) The rules governing the waiver of gaps related to supervised experience shall also govern any request for waiver of a gap following respecialization.

(g) Remedy for Incomplete Supervised Experience.

(1) An applicant who has completed at least 1,500 hours of supervised experience in a formal internship, 1,500 hours of supervised experience following conferral of a doctoral degree, and who does not meet all of the supervised experience qualifications for licensure set out in subsections (a), (c), and (d) of this section or in §465.2 of this title (relating to Supervision), may petition for a waiver or modification of the areas of deficiency. An applicant may not however, petition for the waiver or modification of the requisite doctoral degree or passage of the requisite examinations.

(2) The Council may waive or modify a qualification identified in paragraph (1) of this subsection if the prerequisite is not mandated by federal law, the state constitution or statute, or 22 TAC Part 41.

(3) The Council may approve or deny a petition under this subsection, and in the case of approval, may condition the approval on reasonable terms and conditions designed to ensure the applicant's education, training, and experience provide reasonable assurance that the applicant has the knowledge and skills necessary for entry-level practice as a licensed psychologist.

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 September 16, 2021.

TRD-202103689
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: October 31, 2021
For further information, please call: (512) 305-7706

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CHAPTER 465. RULES OF PRACTICE

22 TAC §465.13

The Texas Behavioral Health Executive Council proposes amendments to §465.13, relating to Personal Problems, Conflicts, and Dual Relationship.

Overview and Explanation of the Proposed Rule. 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 proposed amendment is intended to clarify these requirements in the rule, 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.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The proposed rule pertains to the scope of practice, standards of care, or ethical practice for the practice of psychology. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Psychologists, in accordance with §501.1515 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may propose this rule.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701 or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on October 31, 2021, which is at least 30 days from the date of publication of this proposal in the *Texas Register.*

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule is proposed 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 proposes 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 Board previously voted and, by a majority, approved to propose 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 proposes 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 501 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes 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.

No other code, articles or statutes are affected by this section.

§465.13. Personal Problems, Conflicts and Dual Relationships.

(a) In General.

(1) Licensees shall refrain from providing services when they know or should know that their personal problems or a lack of objectivity are likely to impair their competency or harm a patient, client, colleague, student, supervisee, research participant, or other person with whom they have a professional relationship.

(2) Licensees shall seek professional assistance for any personal problems, including alcohol or substance abuse likely to impair their competency.

(3) Licensees shall [~~do~~] not exploit persons over whom they have supervisory evaluative, or other authority such as students, supervisees, employees, research participants, and clients or patients.

(4) A licensee shall conduct the practice of psychology with the best interest of a patient, client, supervisee, student, or research participant in mind. [~~Licensees refrain from entering into or withdraw from any professional relationship that conflicts with their ability to comply with all Council rules applicable to other existing professional relationships.~~]

(b) Dual Relationships.

(1) A licensee shall [~~must~~] refrain from entering into a dual relationship with a client, patient, supervisee, student, group, organization, or any other party if such a relationship is likely to impair the licensee's objectivity, prevent the licensee from providing competent psychological services, or exploit or otherwise cause harm to the other party.

(2) A licensee shall [~~must~~] refrain from entering into [~~or withdraw from~~] a professional relationship where personal, financial, or other relationships are likely to impair the licensee's objectivity or pose an unreasonable risk of harm to a patient or client.

(3) Licensees shall withdraw from any professional or non-professional relationship if they would be precluded from entering the relationship under this rule. If a licensee has reason to believe that a harmful dual relationship exists or may arise, the licensee shall take reasonable steps to ensure the wellbeing and best interest of the affected person is placed ahead of the licensee's interests. Reasonable steps include obtaining professional consultation or assistance, to determine whether the existing or potential dual relationship is likely to impair the licensee's objectivity or cause harm to the other party. [~~A licensee who is considering or involved in a professional or non-professional relationship that could result in a violation of this rule must take appropriate measures, such as obtaining professional consultation or assistance, to determine whether the licensee's relationships, both existing and contemplated, are likely to impair the licensee's objectivity or cause harm to the other party.~~]

(4) Licensees shall [~~do~~] not provide psychological services to a person with whom they have had a sexual or dating relationship.

(5) Licensees shall [~~do~~] not terminate psychological services with a person in order to have a sexual or dating relationship with that person. Licensees do not terminate psychological services with a person in order to have a sexual or dating relationship with individuals who the licensee knows to be the parents, guardians, spouses, significant others, children, or siblings of the client.

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 September 16, 2021.

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: October 31, 2021
For further information, please call: (512) 305-7706

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER B. CONTINUING PROFESSIONAL EDUCATION RULES FOR INDIVIDUALS

22 TAC §523.112

The Texas State Board of Public Accountancy (Board) proposes an amendment to 22 TAC §523.112, concerning Required CPE Participation.

Background, Justification and Summary

The relationship between the Board and CPE sponsors is not a contractual relationship. The CPE sponsors are authorized by the Board to offer continuing professional education.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment clarifies that CPE sponsors are authorized by the Board to provide CPE.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on November 1, 2021.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151 and §901.655 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§523.112. Required CPE Participation.

(a) A licensee shall complete at least 120 CPE credits in each three-year period, and a minimum of 20 CPE credits in each one-year period.

(b) CPE, except as provided by board rule, shall be offered by board authorized [~~board-contracted~~] CPE sponsors.

(c) CPE requirements for the issuance or renewal of a license are as follows:

(1) Licensees who have been certified or registered for less than 12 months do not have a CPE credit requirement. The first license period begins on the date of certification and ends with the last day of the licensee's birth month.

(2) To be issued a license for the first full 12-month license period, the licensee does not have a CPE requirement. CPE earned prior to the first 12-month license period will not be applied toward the three-year requirement.

(3) To be issued a license for the second full 12-month period, the licensee shall report a minimum of 20 CPE credits. The CPE credits shall be completed in the 12 months preceding the second year of licensing.

(4) To be issued a license for the third full 12-month license period, the licensee shall report a total of at least 60 CPE credits that were completed in the 24 months preceding the license period. At least 20 CPE credits of the requirement shall be completed in the 12 months preceding the third year of licensing.

(5) To be issued a license for the fourth full 12-month period, the licensee shall report a total of at least 100 CPE credits that were completed in the 36 months preceding the license period. At least 20 CPE credits of the requirement shall be completed in the 12 months preceding the fourth year of licensing.

(6) To be issued a license for the fifth and subsequent license periods, the licensee shall report a total of at least 120 CPE credits that were completed in the 36 months preceding the license period, and at least 20 CPE credits of the requirement shall be completed in the 12 months preceding the fifth year of licensing.

(d) A former licensee whose certificate or registration has been revoked for failure to pay the license fee and who makes application for reinstatement shall pay the required fees and applicable late fees and must report the minimum CPE credits missed.

(e) A non-resident licensee seeking renewal of a license in Texas shall be determined to have met the CPE requirement by meeting the CPE requirements for renewal of a certificate/license in the state in which the licensee's principal place of business is located.

(1) Non-resident licensees shall demonstrate compliance with the CPE renewal requirements of the state in which the licensee's principal place of business is located by signing a statement to that effect during the renewal process of this state.

(2) If a non-resident licensee's principal place of business state has no CPE requirements for renewal of a certificate/license, the non-resident licensee must comply with all CPE requirements for renewal of a certificate in Texas.

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 September 16, 2021.

TRD-202103679
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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SUBCHAPTER C. ETHICS RULES: INDIVIDUALS AND SPONSORS

22 TAC §523.131

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.131, concerning Board Approval of Ethics Course Content.

Background, Justification and Summary

The amendment distinguishes between CPE courses taken live and those that are self-study.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will clarify that those taking CPE courses that are self-study online will be required to pass a test at the completion of the course to demonstrate competency.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on November 1, 2021.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151 and §901.655 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§523.131. Board Approval of Ethics Course Content.

(a) The content of an ethics course designed to satisfy the four CPE credit ethics CPE requirements of §523.130 of this chapter (relating to Ethics Course Requirements) must be submitted to the CPE committee of the board for initial approval and upon request thereafter. The primary objectives of the ethics course shall be to:

(1) encourage the licensee to become educated in the ethics of the profession;

(2) convey the intent of the board's Rules of Professional Conduct in the licensee's performance of professional accounting services, and not mere technical compliance;

(3) apply ethical judgment in interpreting the rules and provide for a clear understanding of the public interest. The public interest shall be placed ahead of self-interest, even if it means a loss of job or client;

(4) emphasize the ethical standards of the profession, as described in this section; and

(5) review and discuss the board's Rules of Professional Conduct and their implications for persons in a variety of practices, including at least one example from subparagraph (A) of this paragraph and at least one example from either subparagraph (B) or (C) of this paragraph:

(A) a licensee engaged in the client practice of public accountancy who performs attest and non-attest services, as defined in §501.52 of this title (relating to Definitions); and

(B) a licensee employed in industry who provides internal accounting and auditing services; or

(C) a licensee employed in education or in government accounting or auditing.

(b) To meet the objectives of subsection (a) of this section, a course must be four hours in length and its components should be approximately:

(1) 25% on ethical principles and values;

(2) 25% on ethical reasoning and dilemmas;

(3) 15% on the board's Rules of Professional Conduct with special focus on recent changes in those rules and including information on the peer assistance available to Texas CPAs, CPA candidates and accounting students with alcohol or other substance abuse, depression, stress or other mental health issues through the Accountants Confidential Assistance Network (ACAN); and

(4) 35% on case studies that require application of ethical principles, values, and ethical reasoning within the context of the board's Rules of Professional Conduct.

(c) Course content shall be approved only after demonstrating, either in a live instructor format, a blended program format, or interactive (computer based) format, as defined in §523.102(c)(1) of this chapter (relating to CPE Purpose and Definitions), that the course contains the underlying intent established in the following criteria:

(1) the course shall be designed to teach CPAs to achieve and maintain the highest standards of ethical conduct through ethical reasoning and the core values of the profession: integrity, objectivity, and independence, as ethical principles in addition to rules of conduct;

(2) the course shall address ethical considerations and the application of the board's Rules of Professional Conduct to all aspects of the professional accounting work whether performed by CPAs in client practice or CPAs who are not in client practice; and

(3) the course shall convey the spirit and intent of the board's Rules of Professional Conduct in the licensee's performance of accounting services, and not mere technical compliance.

(d) Live ethics [~~Ethics~~] Ethics courses must be taught in one single four-hour session, including one 10-minute break each hour or its equivalent.

(e) Ethics courses may be reevaluated every three years or as required by the CPE committee. Updated versions of the course and any other course materials, such as course evaluations, shall be provided when requested by the committee for the course to be continued as an approved course.

(f) At the conclusion of each self-study course, the sponsor shall administer a test to determine whether the program participants have obtained a basic understanding of the course content, including the need for a high level of ethical standards in the accounting profession.

(g) A sponsor of an ethics course approved by the board pursuant to this section shall comply with the board's rules concerning sponsors of CPE and shall provide its advertising materials to the board's CPE committee for approval. Such advertisements shall:

(1) avoid commercial exploitation;

(2) identify the primary focus of the course; and

(3) be professionally presented and consistent with the intent of §501.82 of this title (relating to Advertising).

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 September 16, 2021.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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SUBCHAPTER D. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION PROGRAMS AND RULES FOR SPONSORS

22 TAC §523.140

The Texas State Board of Public Accountancy (Board) proposes an amendment to 22 TAC §523.140, concerning Program Standards.

Background, Justification and Summary

The amendment establishes the relationship between the Board and CPE sponsors as an authorization and not contractual. The CPE sponsors are authorized by the Board to offer continuing professional education.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment clarifies that CPE sponsors are authorized by the Board to offer continuing professional education.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed

rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on November 1, 2021.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151 and §901.655 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§523.140. Program Standards.

(a) Potential participants should be informed in advance of course content, learning objectives, prerequisites, and recommended credits so they can determine whether they are qualified to participate in and benefit from the program. The stated learning objectives should clearly communicate the specific areas of knowledge that will be covered. If there are no prerequisites for the course, a statement to this effect must be made.

(b) The program developer must organize the program around the stated learning objectives and must retain a copy of the final program, including electronic media, in accordance with §523.143(b) of this chapter (relating to Sponsor's Record). The final program must contain sufficient documentation to support the number of CPE credits granted. The course materials must be periodically reviewed to assure that they are accurate and consistent with currently accepted standards relating to the program's subject matter. The program developer should provide the instructor with separate materials that emphasize sections of the course that need reinforcement, if appropriate.

(c) Instructors must be qualified both with respect to program content and teaching methods used. Sponsors shall evaluate the performance of instructors at the conclusion of each program to determine their suitability for continuing to serve as instructors.

(d) All programs must provide for some means to evaluate both the competence of the instructor and the course material. Refer to §523.141 of this chapter (relating to Evaluation).

(e) Self-study programs must conform to the requirements outlined in §523.102(c)(2) of this chapter (relating to CPE Purpose and Definitions).

(1) Program must include at least three review questions for each CPE credit, or two review questions if the program is marketed for one-half CPE credits to allow the participant the opportunity to understand the material. Evaluative feedback must be provided for each incorrect response.

(2) To provide evidence of satisfactory completion of the course, CPE sponsors must require participants to successfully complete a final exam with a passing grade of at least 70%. The final exam must have at least five questions for each CPE credit granted and no more than 25% of the questions be "true/false" in nature.

(3) Program or course expiration date. Course documentation must include an expiration date (the time by which the participant must complete the final exam). The expiration date should be no longer than one year from the date of purchase.

(f) Nano programs must use instructional methods that clearly define a minimum of one learning objective, guide the participant through a program of learning, and provide evidence of a participant's satisfactory completion of the program. Satisfactory completion of the program must be confirmed at the conclusion of the program by passing a final exam.

(1) To provide evidence of satisfactory completion of the course, CPE sponsors must require participants to successfully complete a final exam with a passing grade of 100 percent before issuing CPE credit for the course. The final exam may contain questions of varying format (for example, multiple choice, rank order, and matching). Only two questions must be included on the final exam. "True or false" questions are not permissible on the final exam. If the participant fails the final exam CPE credit will not be granted. The participant may re-take the program and the number of re-takes permitted is at the sponsor's discretion.

(2) Program or course expiration date. Course documentation must include an expiration date. The expiration date is no longer than one year from the date of purchase.

(3) Based on materials developed for instructional use, Nano programs must be based on materials specifically developed for instructional use and not on third-party materials. Nano learning programs requiring only the reading of general professional literature, IRS publications, or reference manuals followed by an assessment will not be acceptable.

(g) Blended programs must use instructional methods that clearly define learning objectives and guide the participant through a program of learning. Pre-program, post-program, and homework assignments should enhance the learning program experience and must relate to the defined learning objectives of the program.

(1) Blended programs include different learning or instructional methods (for example, lectures, discussion, guided practice, reading, games, case studies, and simulation); different delivery methods (group live, group Internet based, nano learning, or self study); and/or different levels of guidance (for example, individual, instructor or subject matter expert led, or group and social learning). To guide participants through the learning process, CPE program sponsors

must provide clear instructions and information to participants that summarize the different components of the program and what must be completed or achieved during each component in order to qualify for CPE credits. The CPE program sponsor must document the process and components of the course progression and completion of components by the participants.

(2) To provide evidence of satisfactory completion of sections of the course that are not "live" (such as nano or self-study) CPE sponsors must require participants to successfully complete an exam with a passing grade appropriate to the delivery method (i.e. 70% for self-study, 100% for nano).

(h) Sponsors are responsible for ensuring the participants register their attendance during the program. Sponsors are responsible for assigning the appropriate number of CPE credits for participants, including reduced CPE credits for those participants who arrive late or leave early. Refer to §523.142 of this chapter (relating to Program Time Credit Measurement for Sponsors).

(i) Sponsors must comply with all CPE rules including §523.143 of this chapter.

(j) Sponsors awarding CPE credit for a board authorized [~~board-approved~~] ethics course defined in §523.131 of this chapter (relating to Board Approval of Ethics Course Content) must do so through a board authorized [~~contracted~~] instructor as defined in §523.132 of this chapter (relating to Board Authorized [~~Contracted~~] Ethics Instructors).

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 September 16, 2021.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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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 proposes amendments to 22 TAC §681.2, relating to Definitions.

Overview and Explanation of the Proposed Rule. The proposed amendment to §681.2 is intended to provide clarity to the definition of art therapy and correct a typographical error. The proposed amendment also provides a definition for the term independent practice, which is proposed to be defined as the practice of providing professional counseling services to a client without the supervision of an LPC-S.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The proposed rule provides definitions for the rules in Chapter 681, which pertain to the qualifications necessary to obtain a license as well as the scope of practice, standards of care, or ethical practice for the practice of professional counseling. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Professional Counselors, in accordance with § 503.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may propose this rule.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed

rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701 or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m. Central Time, on October 31, 2021, which is at least 30 days from the date of publication of this proposal in the *Texas Register.*

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule is proposed 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 proposes 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 Board previously voted and, by a majority, approved to propose 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 proposes 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 propose this rule.

Lastly, the Executive Council proposes 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.

No other code, articles or statutes are affected by this section.

§681.2. Definitions.

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

(1) Accredited school--An institution of higher education accredited by a regional accrediting agency recognized by the Council for Higher Education Accreditation, the Texas Higher Education Coordinating Board, or the United States Department of Education.

(2) Act--The Licensed Professional Counselor Act, Texas Occupations Code, Chapter 503.

(3) Art therapy--A form of counseling [~~human service profession~~] in which clients[~~, facilitated by the art therapist,~~] use art media, the creative process, and the resulting artwork to explore their feelings, reconcile emotional conflicts, foster self-awareness, manage behavior, develop social skills, improve reality orientation, reduce anxiety and increase self-esteem.

(4) Board--The Texas State Board of Examiners of Professional Counselors.

(5) Client(s)--A person(s) who requests and receives counseling services from a licensee or who has engaged in a therapeutic relationship with a licensee.

(6) Consent for services--Process for receiving permission from the legally authorized person who agrees to services.

(7) Consent Form--A document executed by the legally authorized person to ensure the client is aware of fees and arrangements for payment; counseling purposes, goals, and techniques; restrictions placed on the license by the Council; limits on confidentiality; intent of the licensee to use another individual to provide counseling treatment intervention to the client; supervision of the licensee by another licensed health care professional including the name, address, contact information, and qualifications of the supervisor; and the name, address, and telephone number of the Council for the purpose of reporting violations of the Act or this chapter.

(8) Council--The Texas Behavioral Health Executive Council.

(9) Counseling-related field--A mental health discipline using human development, psychotherapeutic, and mental health principles including, but not limited to, clinical or counseling psychology, psychiatry, social work, marriage and family therapy, and counseling and guidance. Non-counseling related fields include, but are not

limited to, sociology, education, administration, dance therapy and theology.

(10) Executive Director--The executive director for the Texas Behavioral Health Executive Council. The executive director may delegate responsibilities to other staff members.

(11) Direct client contact--Time spent counseling clients.

(12) Health care professional--Any person licensed, certified, or registered by the state in a health related profession.

(13) Independent practice--The practice of providing professional counseling services to a client without the supervision of an LPC-S.

(14) [~~(13)~~] Indirect hours--Time spent in management, administration or other aspects of counseling service ancillary to direct client contact.

(15) [~~(14)~~] Jurisprudence exam--The Texas State Board of Examiners of Licensed Professional Counselors Jurisprudence exam. An online exam based upon the statutes and rules relating to the practice of counseling.

(16) [~~(15)~~] License--An LPC license, LPC license with art therapy specialty designation, or LPC Associate license issued by the Council.

(17) [~~(16)~~] Licensee---A person who holds an LPC license, LPC license with art therapy specialty designation, or LPC Associate license.

(18) [~~(17)~~] LPC--Licensed Professional Counselor. A person holding an LPC license as a professional counselor with authority to practice in independent practice.

(19) [~~(18)~~] LPC Associate--Licensed Professional Counselor Associate. A person who holds an LPC Associate license to practice counseling only under a [~~board~~] Council-approved supervisor and not as an independent practitioner.

(20) [~~(19)~~] Recognized religious practitioner--A rabbi, clergyman, or person of similar status who is a member in good standing of and accountable to a denomination, church, sect or religious organization legally recognized under the Internal Revenue Code, 26 U.S.C. §501(c)(3) and other individuals participating with them in pastoral counseling if:

(A) the counseling activities are within the scope of the performance of their regular or specialized ministerial duties and are performed under the auspices of sponsorship of the legally recognized denomination, church, sect, religious organization or an integrated auxiliary of a church as defined in Federal Tax Regulations, 26 Code of Federal Regulations, L1.6033-2(g)(i)(2012);

(B) the individual providing the service remains accountable to the established authority of that denomination, church, sect, religious organization or integrated auxiliary; and

(C) the person does not use the title of or hold himself or herself out as a professional counselor.

(21) [~~(20)~~] Supervisor--An LPC approved by the Council as meeting the requirements set out in §681.93 of this title (relating to Supervisor Requirements) to supervise an LPC Associate.

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 September 16, 2021.

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Professional Counselors
Earliest possible date of adoption: October 31, 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 proposes amendments to §681.91, relating to LPC Associate License.

Overview and Explanation of the Proposed Rule. The proposed amendment still requires an LPC-Associate to only practice professional counseling under the supervision of an LPC-S, but the proposed amendment no longer prohibits LPC-Associates from owning their own business or accepting direct payment. The proposed amendment 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 proposed amendment also clarifies how LPC-Associates must represent themselves, and which licensee is responsible for the retention and maintenance of client records.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The proposed rule pertains to the qualifications necessary to obtain a license, as well as the scope of practice, standards of care, or ethical practice for a profession. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Professional Counselors, in accordance with § 503.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may propose this rule.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity, consistency, and fairness in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the

public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701 or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on October 31, 2021, which is at least 30 days from the date of publication of this proposal in the *Texas Register.*

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule is proposed 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 proposes 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 Board previously voted and, by a majority, approved to propose 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 proposes 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 propose this rule.

Lastly, the Executive Council proposes 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.

No other code, articles or statutes are affected by this section.

§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 [~~may~~] not engage in independent practice. [~~own an independent professional counseling 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. [~~An LPC Associate does not own client records; they are the property of the agency, organization, or LPC-S.~~]

(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) An LPC Associate must not accept direct payment for services from a client.~~]

(l) [~~(m)~~]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) [~~(n)~~]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, [~~advertisements, billings, and announcements, including but not limited to~~] websites and intake documents.

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

Filed with the Office of the Secretary of State on September 16, 2021.

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Professional Counselors
Earliest possible date of adoption: October 31, 2021
For further information, please call: (512) 305-7706

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22 TAC §681.93

The Texas Behavioral Health Executive Council proposes amendments to §681.93, relating to Supervisor Requirements.

Overview and Explanation of the Proposed Rule. The Council is no longer mailing renewal permits; verification of licensure status is done online. The proposed amendment 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 proposed amendment requires a supervisor to keep a written record acknowledging the supervisee is self-employed, if applicable. And the proposed amendment 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.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The proposed rule pertains to the qualifications necessary to obtain a license, as well as the scope of practice, standards of care, or ethical practice for a profession. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Professional Counselors, in accordance with §503.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may propose this rule.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity, consistency, and fairness in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be

no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701 or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on October 31, 2021, which is at least 30 days from the date of publication of this proposal in the *Texas Register.*

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule is proposed 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 proposes 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 Board previously voted and, by a majority, approved to propose 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 proposes 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 propose this rule.

Lastly, the Executive Council proposes 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.

No other code, articles or statutes are affected by this section.

§681.93. Supervisor Requirements.

(a) A supervisor must keep a written record of each supervisory session in the file for the LPC Associate.

(1) The supervisory written record must contain:

(A) a signed and dated copy of the Council's supervisory agreement form for each of the LPC Associate's supervisors;

(B) a copy of the LPC Associate's online license verification [~~wall certificate~~] noting the dates of issuance and expiration;

(C) fees and record of payment;

(D) the date of each supervisory session;

(E) a record of an LPC Associate's leave of one month or more, documenting the supervisor's approval and signed by both the LPC Associate and the supervisor; [~~and~~]

(F) a record of any concerns the supervisor discussed with the LPC Associate, including a written remediation plan as prescribed in subsection (e) of this section; and[.]

(G) a record of acknowledgement that the supervisee is self-employed, if applicable.

(2) The supervisor must provide a copy of all records to the LPC Associate upon request.

(b) Both the LPC-Associate and the supervising LPC-S are fully responsible for the professional counseling activities of the LPC-Associate. The 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. [~~The full professional responsibility for the counseling activities of the LPC Associate rests with the LPC Associate's approved supervisor(s). If the LPC Associate receives disciplinary action by the Council, the supervisor may also be subject to disciplinary action.~~]

(1) Supervisors must review all provisions of the Act and Council rules in this chapter during supervision.

(2) The supervisor must ensure the LPC Associate is aware of and adheres to all provisions of the Act and Council rules.

(c) The supervisor must avoid any relationship that impairs the supervisor's objective, professional judgment.

(1) The supervisor may not be related to the LPC Associate within the second degree of affinity or within the third degree of consanguinity.

(2) The supervisor may not be an employee of his or her LPC Associate.

(d) The supervisor must submit to the Council accurate documentation of the LPC Associate's supervised experience within 30 days of the end of supervision or the completion of the LPC Associate's required hours, whichever comes first.

(e) If a supervisor determines the LPC Associate may not have the counseling skills or competence to practice professional counseling under an LPC license, the supervisor will develop and implement a written plan for remediation of the LPC Associate, which must be reviewed and signed by the LPC Associate and maintained as part of the LPC Associate's file.

(f) The supervisor must ensure the supervised counseling experience of the LPC Associate were earned:

(1) after the LPC Associate license was issued; and

(2) in not less than 18 months of supervised counseling experience.

(g) A supervisor whose license has expired is no longer an approved supervisor and:

(1) must immediately inform all LPC Associates under his or her supervision and assist the LPC Associates in finding alternate supervisors; and

(2) must refund all supervisory fees for supervision after the expiration of the supervisor status.

(3) Hours accumulated under the person's supervision after the date of license expiration may not count as acceptable hours.

(h) Upon execution of a Council order for probated suspension, suspension, or revocation of the LPC license with supervisor status, the supervisor status is revoked. A licensee whose supervisor status is revoked:

(1) must immediately inform all LPC Associates under his or her supervision and assist the LPC Associates in finding alternate supervisors; and

(2) must refund all supervisory fees for supervision after the date the supervisor status is revoked; and

(3) hours accumulated under the person's supervision after the date of license expiration may not count as acceptable hours.

(i) Supervision of an LPC Associate without having Council approved supervisor status is grounds for disciplinary action

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 September 16, 2021.

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Professional Counselors
Earliest possible date of adoption: October 31, 2021
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 proposes the repeal of 22 TAC §781.206, relating to Board Minutes.

Overview and Explanation of the Proposed Rule. The proposed repeal 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.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because all will have greater and easier access to Board meeting deliberations and determinations. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to this agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701 or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on October 31, 2021, which is at least 30 days from the date of publication of this proposal in the *Texas Register.*

Statutory Authority. The repeal is proposed 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 proposes this repeal 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 this repeal to the Executive Council. The repeal 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 proposes this repeal 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 repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal 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.

No other code, articles or statutes are affected by this section.

§781.206. Board Minutes.

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 September 16, 2021.

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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 proposes amendments to 22 TAC §781.401, relating to qualifications for licensure.

Overview and Explanation of the Proposed Rule. The proposed amendment 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 proposed amendment seeks to implement this policy into the rules. 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.

If a rule will pertain to the qualifications necessary to obtain a license then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The proposed amendment pertains to qualifications for licensure; therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may propose this rule.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701 or by email to rules@bhec.texas.gov, The deadline for receipt of comments is 5:00 p.m., Central Time, on October 31, 2021, which is at least 30 days from the date of publication of this proposal in the *Texas Register.*

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule is proposed 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 proposes 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 Board previously voted and, by a majority, approved to propose 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 proposes 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 505 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes 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.

No other code, articles or statutes are affected by this section.

§781.401. Qualifications for Licensure.

(a) Licensure. The following education and experience is required for licensure as designated. If an applicant for a license has held a substantially equivalent license in good standing in another jurisdiction for one year immediately preceding the date of application, the applicant will be deemed to have met the experience requirement under this chapter.

(1) Licensed Clinical Social Worker (LCSW).

(A) Has been conferred a master's degree in social work from a CSWE-accredited social work program, or a doctoral degree in social work from an accredited institution of higher learning acceptable to the Council, and has documentation in the form of a university transcript of successfully completing a field placement in social work.

(B) Has had 3000 hours of supervised professional clinical experience over a period of 24 to 48 months, or its equivalent if the experience was completed in another jurisdiction. Hours 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 as defined in §781.102 of this title (relating to Definitions). [~~Supervised professional experience must comply with §781.404 of this title (relating to Recognition as a Council-approved Supervisor and the Supervision Process) and all other applicable laws and rules.~~]

(C) Has had a minimum of 100 hours of supervision, over the course of the 3000 hours of supervised experience, with a Council-approved supervisor. [~~Supervised experience must have occurred within the five calendar years immediately preceding the date of LCSW application.~~] If the social worker completed supervision in another jurisdiction, the social worker shall have the supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the Council accept alternate verification of supervision.

(D) Has passed the Clinical examination administered nationally by ASWB.

(2) Licensed Master Social Worker (LMSW).

(A) Has been conferred a master's degree in social work from a CSWE-accredited social work program, or a doctoral degree in social work from an accredited university acceptable to the Council, and has documentation in the form of a university transcript of successfully completing a field placement in social work.

(B) Has passed the Master's examination administered nationally by ASWB.

(3) Licensed Baccalaureate Social Worker (LBSW).

(A) Has been conferred a baccalaureate degree in social work from a CSWE accredited social work program.

(B) Has passed the Bachelors examination administered nationally by ASWB.

(b) Specialty Recognition. The following education and experience is required for Independent Non-clinical Practice specialty recognitions.

[~~(1) Licensed Master Social Worker-Advanced Practitioner (LMSW AP).~~]

[~~(A) Is currently licensed in the State of Texas or meets the current requirements for licensure as an LMSW.~~]

[~~(B) While fully licensed as a social worker, has had 3000 hours of supervised professional non-clinical social work experience over a period of 24 to 48 months, or its equivalent if the experience was completed in another jurisdiction. Supervised professional experience must comply with §781.404 of this title and all other applicable laws and rules.~~]

[~~(C) Has had a minimum of 100 hours of supervision, over the course of the 3000 hours of experience, with a Council approved supervisor. Supervised experience must have occurred within the five calendar years immediately preceding the date of LMSW-AP application. If supervision was completed in another jurisdiction, the social worker must have the supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the Council accept alternate verification of supervision.~~]

[~~(D) Has passed the Advanced Generalist examination administered nationally by the ASWB.~~]

[~~(2) Independent Non-clinical Practice.~~]

(1) [~~(A)~~] Is currently licensed in the State of Texas as an LBSW or LMSW.

(2) [~~(B)~~] While fully licensed as a social worker has had 3000 hours of supervised full-time social work experience over a minimum two-year period, but within a maximum five-year period or its equivalent if the experience was completed in another state. Supervised professional experience must comply with §781.404 of this title and all other applicable laws and rules.

(3) [~~(C)~~] Has had a minimum of 100 hours of supervision, over the course of the 3000 hours of experience, with a Council-approved supervisor. Supervised experience must have occurred within the 5 calendar years immediately preceding the date of application for IPR specialty recognition. If supervision was completed in another jurisdiction, the social worker shall have the supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the Council accept alternate verification.

(c) Applicants for a license must complete the Council's jurisprudence examination and submit proof of completion at the time of application.

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

Filed with the Office of the Secretary of State on September 16, 2021.

TRD-202103695
Darrel D. Spinks
Executive Director
Texas State Board of Social Worker Examiners
Earliest possible date of adoption: October 31, 2021
For further information, please call: (512) 305-7706

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22 TAC §781.404

The Texas Behavioral Health Executive Council proposes amendments to §781.404, relating to Recognition as a Council-approved Supervisor and the Supervision Process.

Overview and Explanation of the Proposed Rule. The proposed amendment clarifies and simplifies the requirements for gaining supervised experience. The proposed amendment 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.

If a rule will pertain to the qualifications necessary to obtain a license then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The proposed amendment pertains to qualifications for licensure; therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may propose this rule.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701 or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on October 31, 2021, which is at least 30 days from the date of publication of this proposal in the *Texas Register.*

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic im-

pact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule is proposed 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 proposes 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 Board previously voted and, by a majority, approved to propose 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 proposes 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 505 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes 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.

No other code, articles or statutes are affected by this section.

§781.404. Recognition as a Council-approved Supervisor and the Supervision Process.

(a) Types of supervision include:

(1) administrative or work-related supervision of an employee, contractor or volunteer that is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;

(2) clinical supervision of a Licensed Master Social Worker in a setting in which the LMSW is providing clinical services; the supervision may be provided by a Licensed Professional Counselor, Licensed Psychologist, Licensed Marriage and Family Therapist, Licensed Clinical Social Worker or Psychiatrist. This supervision is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;

(3) clinical supervision of a Licensed Master Social Worker, who is providing clinical services and is under a supervision plan to fulfill supervision requirements for achieving the LCSW; a Licensed Clinical Social Worker who is a Council-approved supervisor delivers this supervision;

(4) non-clinical supervision of a Licensed Master Social Worker or Licensed Baccalaureate Social Worker who is providing non- clinical social work service toward qualifications for independent non-clinical practice recognition; this supervision is delivered by a Council-approved supervisor; or

~~[(5) non-clinical supervision of a Licensed Master Social Worker who is providing non-clinical social work service toward qualifications for the LMSW-AP; this supervision is delivered by a Council approved supervisor; or]~~

(5) [~~(6)~~] Council-ordered supervision of a licensee by a Council-approved supervisor pursuant to a disciplinary order or as a condition of new or continued licensure.

(b) A person who wishes to be a Council-approved supervisor must file an application and pay the applicable fee.

(1) A Council-approved supervisor must be actively licensed in good standing by the Council as an LBSW, an LMSW, an LCSW, or be recognized as an Advanced Practitioner (LMSW-AP), or hold the equivalent social work license in another jurisdiction. The person applying for Council-approved status must have practiced at his/her category of licensure for two years. The Council-approved supervisor shall supervise only those supervisees who provide services that fall within the supervisor's own competency.

(2) The Council-approved supervisor is responsible for the social work services provided within the supervisory plan.

(3) The Council-approved supervisor must have completed a supervisor's training program acceptable to the Council.

(4) The Council-approved supervisor must complete three hours of continuing education every biennium in supervision theory, skills, strategies, and/or evaluation.

(5) The Council-approved supervisor must designate at each license renewal that he/she wishes to continue Council-approved supervisor status.

(6) The Council-approved supervisor must submit required documentation and fees to the Council.

(7) When a licensee is designated Council-approved supervisor, he or she may perform the following supervisory functions.

(A) An LCSW may supervise clinical experience toward the LCSW license, [~~non-clinical experience toward the Advanced Practitioner specialty recognition,~~] non-clinical experience toward the Independent Practice Recognition (non-clinical), and Council-ordered probated suspension;

(B) An LMSW-AP may supervise [~~non-clinical experience toward the Advanced Practitioner specialty recognition;~~] non-clinical experience toward the non-clinical Independent Practice Recognition; and Council-ordered probated suspension for non-clinical practitioners;

(C) An LMSW with the Independent Practice Recognition (non-clinical) who is a Council-approved supervisor may supervise an LBSW's or LMSW's non-clinical experience toward the non-clinical Independent Practice Recognition; and an LBSW or LMSW (non-clinical) under Council-ordered probated suspension;

(D) An LBSW with the non-clinical Independent Practice Recognition who is a Council-approved supervisor may supervise an LBSW's non-clinical experience toward the non-clinical Independent Practice Recognition; and an LBSW under Council-ordered probated suspension.

(8) The approved supervisor must renew the approved supervisor status in conjunction with the biennial license renewal. The approved supervisor may surrender supervisory status by documenting the choice on the appropriate Council renewal form and subtracting the supervisory renewal fee from the renewal payment. If a licensee who has surrendered supervisory status desires to regain supervisory status, the licensee must reapply and meet the current requirements for approved supervisor status.

(9) A supervisor must maintain the qualifications described in this section while he or she is providing supervision.

(10) A Council-approved supervisor who wishes to provide any form of supervision or Council-ordered supervision must comply with the following:

(A) The supervisor is obligated to keep legible, accurate, complete, signed supervision notes and must be able to produce such documentation for the Council if requested. The notes shall document the content, duration, and date of each supervision session.

(B) A social worker may contract for supervision with written approval of the employing agency. A copy of the approval must accompany the supervisory plan submitted to the Council.

(C) A Council-approved supervisor may not charge or collect a fee or anything of value from his or her employee or contract employee for the supervision services provided to the employee or contract employee.

(D) Before entering into a supervisory plan, the supervisor shall be aware of all conditions of exchange with the clients served by her or his supervisee. The supervisor shall not provide supervision if the supervisee is practicing outside the authorized scope of the license. If the supervisor believes that a social worker is practicing outside the scope of the license, the supervisor shall make a report to the Council.

(E) A supervisor shall not be employed by or under the employment supervision of the person who he or she is supervising.

(F) A supervisor shall not be a family member of the person being supervised.

(G) A supervisee must have a clearly defined job description and responsibilities.

(H) A supervisee who provides client services for payment or reimbursement shall submit billing to the client or third-party payers which clearly indicates the services provided and who provided the services, and specifying the supervisee's licensure category and the fact that the licensee is under supervision.

(I) If either the supervisor or supervisee has an expired license or a license that is revoked or suspended during supervision, supervision hours accumulated during that time will be accepted only if the licensee appeals to and receives approval from the Council.

(J) A licensee must be a current Council-approved supervisor in order to provide professional development supervision toward licensure or specialty recognition, or to provide Council-ordered supervision to a licensee. Providing supervision without having met all requirements for current, valid Council-approved supervisor status may be grounds for disciplinary action against the supervisor.

(K) The supervisor shall ensure that the supervisee knows and adheres to Subchapter B, Rules of Practice, of this Chapter.

(L) The supervisor and supervisee shall avoid forming any relationship with each other that impairs the objective, professional judgment and prudent, ethical behavior of either.

(M) Should a supervisor become subject to a Council disciplinary order, that person is no longer a Council-approved supervisor and must so inform all supervisees, helping them to find alternate supervision. The person may reapply for Council-approved supervisor status by meeting the terms of the disciplinary order and having their license in good standing, in addition to submitting an application for Council-approved supervisor, and proof of completion of a 40-hour Council-approved supervisor training course, taken no earlier than the date of execution of the Council order.

(N) The Council may deny, revoke, or suspend Council-approved supervisory status for violation of the Act or rules. Continuing to supervise after the Council has denied, revoked, or suspended Council-approved supervisor status, or after the supervisor's supervisory status expires, may be grounds for disciplinary action against the supervisor.

(O) If a supervisor's Council-approved status is expired, suspended, or revoked, the supervisor shall refund all supervisory fees the supervisee paid after the date the supervisor ceased to be Council-approved.

(P) A supervisor is responsible for developing a well-conceptualized supervision plan with the supervisee, and for updating that plan whenever there is a change in agency of employment, job function, goals for supervision, or method by which supervision is provided.

(Q) All Council-approved supervisors shall have taken a Council-approved supervision training course by January 1, 2014 in order to renew Council-approved supervisor status. The Council recognizes that many licensees have had little, if any, formal education about supervision theories, strategies, problem-solving, and accountability, particularly LBSWs who may supervise licensees toward the IPR. Though some supervisors have functioned as employment supervisors for some time and have acquired practical knowledge, their practical supervision skills may be focused in one practice area, and may not include current skills in various supervision methods or familiarity with emerging supervisory theories, strategies, and regulations. Therefore, the Council values high-quality, contemporary, multi-modality supervision training to ensure that all supervisors have refreshed their supervisory skills and knowledge in order to help supervisees practice safely and effectively.

(11) A Council-approved supervisor who wishes to provide supervision towards licensure as an LCSW or towards specialty recognition in Independent Practice (IPR) or Advanced Practitioner (LMSW-AP), which is supervision for professional growth, must comply with the following:

(A) Supervision toward licensure or specialty recognition may occur in one-on-one sessions, in group sessions, or in a combination of one-on-one and group sessions. Session may transpire in the same geographic location, or via audio, web technology or other electronic supervision techniques that comply with HIPAA and Texas Health and Safety Code, Chapter 611, and/or other applicable state or federal statutes or rules.

(B) Supervision groups shall have no fewer than two members and no more than six.

(C) Supervision shall occur in proportion to the number of actual hours worked for the 3,000 hours of supervised experience[~~, with a base line of one hour of supervision for every 40 hours worked~~]. [~~If the supervisee works full-time, supervision shall occur on average at least twice a month and for no less than four hours per month; if the supervisee works part-time (at least 20 hours per week), supervision shall occur on average at least once a month and no less than two hours per month. Supervisory sessions shall last at least one hour and no more than two hours per session.~~] No more than 10 hours of supervision may be counted in any one month, or 30-day period, as appropriate, towards satisfying minimum requirements for licensure or specialty recognition.

(D) The Council considers supervision toward licensure or specialty recognition to be supervision which promotes professional growth. Therefore, all supervision formats must encourage clear, accurate communication between the supervisor and the supervisee, including case-based communication that meets standards for confidentiality. Though the Council favors supervision formats in which the supervisor and supervisee are in the same geographical place for a substantial part of the supervision time, the Council also recognizes that some current and future technology, such as using reliable, technologically-secure computer cameras and microphones, can allow personal face-to-face, though remote, interaction, and can support professional growth. Supervision formats must be clearly described in the supervision plan, explaining how the supervision strategies and methods of delivery meet the supervisee's professional growth needs and ensure that confidentiality is protected.

(E) Supervision toward licensure or specialty recognition must extend over a full 3000 hours over a period of not less than 24 full months and a period of not more than 48 full months for LCSW [~~or LMSW-AP~~] or not more than 60 full months for Independent Practice Recognition (IPR). Even if the individual completes the minimum of 3000 hours of supervised experience and minimum of 100 hours of supervision prior to 24 months from the start date of supervision, supervision which meets the Council's minimum requirements shall extend to a minimum of 24 full months. [~~A month is a 30-day period or the length of the actual calendar month, whichever is longer.~~]

(F) The supervisor and the supervisee bear professional responsibility for the supervisee's professional activities.

(G) If the supervisor determines that the supervisee lacks the professional skills and competence to practice social work under a regular license, the supervisor shall develop and implement a written remediation plan for the supervisee.

(H) Supervised professional experience required for licensure must comply with §781.401 of this title (relating to Qualifications for Licensure) and §781.402 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for [~~LMSW-AP and~~] Independent Practice Recognition) of this title and all other applicable laws and rules.

(12) A Council-approved supervisor who wishes to provide supervision required as a result of a Council order must comply with this title, all other applicable laws and rules, and/or the following.

(A) A licensee who is required to be supervised as a condition of initial licensure, continued licensure, or disciplinary action must:

(i) submit one supervisory plan for each practice location to the Council for approval by the Council or its designee within 30 days of initiating supervision;

(ii) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from the potential supervisor that the supervisor has reviewed the contract and is qualified to supervise the licensee in the setting;

(iii) ensure that the supervisor submits reports to the Council on a schedule determined by the Council. In each report, the supervisor must address the supervisee's performance, how closely the supervisee adheres to statutes and rules, any special circumstances that led to the imposition of supervision, and recommend whether the supervisee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must provide specific reasons for not recommending the supervisee. The Council may consider the supervisor's reservations as it evaluates the supervision verification the supervisee submits; and

(iv) notify the Council immediately if there is a disruption in the supervisory relationship or change in practice location and submit a new supervisory plan within 30 days of the break or change in practice location.

(B) The supervisor who agrees to provide Council-ordered supervision of a licensee who is under Council disciplinary action must understand the Council order and follow the supervision stipulations outlined in the order. The supervisor must address with the licensee those professional behaviors that led to Council discipline, and must help to remediate those concerns while assisting the licensee to develop strategies to avoid repeating illegal, substandard, or unethical behaviors.

(C) Council-ordered and mandated supervision timeframes are specified in the Council order.

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 September 16, 2021.

TRD-202103696
Darrel D. Spinks
Executive Director
Texas State Board of Social Worker Examiners
Earliest possible date of adoption: October 31, 2021
For further information, please call: (512) 305-7706

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22 TAC §781.406

The Texas Behavioral Health Executive Council proposes amendments to §781.406, relating to Required Documentation of Qualifications for Licensure.

Overview and Explanation of the Proposed Rule. The proposed amendment clarifies the requirements for gaining supervised experience. The proposed amendment 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 Council rule 22 TAC §882.22, the application would not be an initial or upgrade application so this part of the rule would not apply.

If a rule will pertain to the qualifications necessary to obtain a license then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Ex-

ecutive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The proposed amendment pertains to qualifications for licensure; therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may propose this rule.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701 or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on October 31, 2021, which is at least 30 days from the date of this proposal in the *Texas Register.*

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule is proposed 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 proposes 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 Board previously voted and, by a majority, approved to propose 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 proposes 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 Ex-

ecutive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes 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.

No other code, articles or statutes are affected by this section.

§781.406. Required Documentation of Qualifications for Licensure.

(a) Application form. An applicant for licensure must submit a completed official application form with all requested information.

(b) Education verification.

(1) The applicant's education must be documented by official college transcripts from social work educational units accredited by CSWE.

(2) Degrees for licensure as an LBSW or LMSW must be from programs accredited or in candidacy for accreditation by CSWE.

(c) Experience verification.

(1) An applicant's experience for licensure or for specialty recognition must meet the requirements of §781.401 of this title (relating to Qualifications for Licensure), §781.402 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for Independent Practice Recognition), and §781.404 of this title (relating to Recognition as a Council-approved Supervisor and the Supervision Process). The applicant must document the names and addresses of supervisors; beginning and ending dates of supervision; job description; and average number of hours of social work activity per week. The applicant must further document the appropriate supervision plan and verification form for each practice location.

(2) The applicant's experience must have been in a position providing social work services, under the supervision of a qualified supervisor, with written evaluations to demonstrate satisfactory performance.

(3) Supervised experience must have occurred within the five calendar years immediately preceding the date of an initial or upgrade application.

(4) The applicant must maintain and upon request, provide to the Council documentation of employment status, pay vouchers, or supervisory evaluations.

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 September 16, 2021.

TRD-202103697
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 §781.412

The Texas Behavioral Health Executive Council proposes amendments to §781.412, relating to Examination Requirement.

Overview and Explanation of the Proposed Rule. The proposed amendment clarifies and simplifies the examination requirements for applicants. The proposed amendment 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 Council rule 22 TAC §882.22, the proposed amendment clarifies that this part of the rule would not apply. The proposed rule also deletes a reference to Council rule 22 TAC §882.6, pertaining to limitation on number of examination attempts; even though the limitation on examination attempts will still apply the refence to that rule here is duplicative and unnecessary.

If a rule will pertain to the qualifications necessary to obtain a license then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The proposed amendment pertains to qualifications for licensure; therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may propose this rule.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not

required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701 or by email to rules@bhec.texas.gov, The deadline for receipt of comments is 5:00 p.m., Central Time, on October 31, 2021, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule is proposed 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 proposes 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 Board previously voted and, by a majority, approved to propose 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 proposes 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 505 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes 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.

No other code, articles or statutes are affected by this section.

§781.412. Examination Requirement.

(a) An applicant for licensure or specialty recognition must pass an examination designated by the Council.

(b) Applicants must have received a passing score on the ASWB national examination within the two-year period preceding the date of the initial or upgrade application. The Council will not accept an exam score received more than two years prior to the date of the initial or upgrade application. [~~When an applicant passes the examination, the individual has no more than one year from the date of passing the examination to complete the requirements for licensure, completing all documentation and paying all fees or the passing examination score will no longer count towards licensure.~~]

[~~(c) If an applicant fails the examination on the first attempt of his/her lifetime, the individual may retake the examination no more than two additional times. An applicant who has failed the examination on the first, second, and third attempts must comply with Council §882.6 of this title (relating to Limitation on Number of Examination Attempts).~~]

(c) [~~(d)~~] The Council may waive the examination for an applicant with a valid certificate or license from another state if the certificate or license was issued before January 1, 1986, if petitioned in writing.

(d) [~~(e)~~] On the basis of a verified report from ASWB that an applicant has cheated on the examination, the application shall be denied.

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 September 16, 2021.

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Darrel D. Spinks
Executive Director
Texas State Board of Social Worker Examiners
Earliest possible date of adoption: October 31, 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 proposes amendments to 22 TAC §801.2, relating to Definitions.

Overview and Explanation of the Proposed Rule. The proposed amendment 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).

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The proposed rule provides definitions for the rules in Chapter 801, which pertain to the qualifications necessary to obtain a license as well as the scope of practice, standards of care, or ethical practice for the practice of marriage and family therapy. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Marriage and Family Therapists, in accordance with §502.1515 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose this amended rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Tex. Occ. Code and may propose this rule amendment.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701 or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on October 31, 2021, which is at least 30 days from the date of publications of this proposal in the *Texas Register.*

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic im-

pact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule is proposed 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 proposes 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 Board previously voted and, by a majority, approved to propose 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 the 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 proposes 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.

No other code, articles or statutes are affected by this section.

§801.2. Definitions.

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

(1) Accredited institutions or programs--An institution of higher education accredited by a regionally accrediting agency recognized by the Council for Higher Education Accreditation, the Texas Higher Education Coordinating Board, or the United States Department of Education.

(2) Act--Texas Occupations Code, Chapter 502, the Licensed Marriage and Family Therapist Act.

(3) Board--The Texas State Board of Examiners of Marriage and Family Therapists.

(4) Client--An individual, family, couple, group, or organization who receives or has received services from a person identified as a marriage and family therapist who is either licensed by the council or unlicensed.

(5) Council--The Texas Behavioral Health Executive Council.

(6) Council Act--Texas Occupations Code, Chapter 507, concerning the Texas Behavioral Health Executive Council.

(7) Council rules--22 Texas Administrative Code, Chapters 801 and 881 to 885.

(8) Endorsement--The process whereby the council reviews licensing requirements that a license applicant completed while under the jurisdiction of an out-of-state marriage and family therapy regulatory board. The council may accept, deny or grant partial credit for requirements completed in a different jurisdiction.

(9) Executive director--the executive director for the Texas Behavioral Health Executive Council.

(10) Family system--An open, on-going, goal-seeking, self-regulating, social system which shares features of all such systems. Certain features such as its unique structuring of gender, race, nationality and generation set it apart from other social systems. Each individual family system is shaped by its own particular structural features (size, complexity, composition, and life stage), the psychobiological characteristics of its individual members (age, race, nationality, gender, fertility, health and temperament) and its socio-cultural and historic position in its larger environment.

(11) Group supervision--Supervision that involves a minimum of three and no more than six marriage and family therapy supervisees or LMFT Associates in a clinical setting during the supervision hour.

(12) Individual supervision--Supervision of no more than two marriage and family therapy supervisees or LMFT Associates in a clinical setting during the supervision hour.

(13) Jurisprudence exam--An online learning experience based on the Act, the Council Act, and council rules, and other state laws and rules relating to the practice of marriage and family therapy.

(14) License--A marriage and family therapist license, a marriage and family therapist associate license, a provisional marriage and family therapist license, or a provisional marriage and family therapist associate license.

(15) Licensed marriage and family therapist (LMFT)--As defined in §502.002 of the Occupations Code, a person who offers marriage and family therapy for compensation. [~~A qualified individual licensed by the council to provide marriage and family therapy for compensation.~~]

(16) Licensed marriage and family therapist associate (LMFT Associate)--As defined in §502.002 of the Occupations Code, an individual who offers to provide marriage and family therapy for compensation under the supervision of a supervisor approved by the executive council. [~~A qualified individual licensed by the council to provide marriage and family therapy for compensation under the supervision of a council-approved supervisor.~~] The appropriate council-approved terms to refer to an LMFT Associate are: "Licensed Marriage and Family Therapist Associate" or "LMFT Associate." Other terminology or abbreviations like "LMFT A" are not council-approved and may not be used.

(17) Licensee--Any person licensed by the council.

(18) Licensure examination--The national licensure examination administered by the Association of Marital and Family Therapy

Regulatory Boards (AMFTRB) or the State of California marriage and family therapy licensure examination.

(19) Marriage and family therapy--The rendering of professional therapeutic services to clients, singly or in groups, and involves the professional application of family systems theories and techniques in the delivery of therapeutic services to those persons. The term includes the evaluation and remediation of cognitive, affective, behavioral, or relational dysfunction or processes.

(20) Month--A calendar month.

(21) Person--An individual, corporation, partnership, or other legal entity.

(22) Recognized religious practitioner--A rabbi, clergyman, or person of similar status who is a member in good standing of and accountable to a legally recognized denomination or legally recognizable religious denomination or legally recognizable religious organization and other individuals participating with them in pastoral counseling if:

(A) the therapy activities are within the scope of the performance of regular or specialized ministerial duties and are performed under the auspices of sponsorship of an established and legally recognized church, denomination or sect, or an integrated auxiliary of a church as defined in 26 CFR §1.6033-2(h) (relating to Returns by exempt organizations (taxable years beginning after December 31, 1969) and returns by certain nonexempt organizations (taxable years beginning after December 31, 1980));

(B) the individual providing the service remains accountable to the established authority of that church, denomination, sect, or integrated auxiliary; and

(C) the person does not use the title of or hold himself or herself out as a licensed marriage and family therapist.

(23) Supervision--

(A) Supervision for licensure--The guidance or management in the provision of clinical services by a marriage and family therapy supervisee or LMFT Associate, which must be conducted for at least one supervision hour each week, except for good cause shown.

(B) Supervision, Council-ordered--For the oversight and rehabilitation in the provision of clinical services by a licensee under a Council Order, defined by the Order and the Council-Ordered Supervision Plan, and must be conducted as specified in the Council Order and Supervision Plan (generally in face-to-face, one-on-one sessions).

(24) Supervision hour--50 minutes.

(25) Supervisor--An LMFT with supervisor status meeting the requirements set out in §801.143 of this title (relating to Supervisor Requirements). The appropriate council-approved terminology to use in reference to a Supervisor is: "Supervisor," "Licensed Marriage and Family Therapist Supervisor," "LMFT-S" or "LMFT Supervisor." Other terminology or abbreviations may not be used.

(26) Technology-assisted services--Providing therapy or supervision with technologies and devices for electronic communication and information exchange between a licensee in one location and a client or supervisee in another location.

(27) Therapist--A person who holds a license issued by the council.

(28) Waiver--The suspension of educational, professional, or examination requirements for an applicant who meets licensing requirements under special conditions.

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 September 16, 2021.

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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

SUBCHAPTER C. APPLICATIONS AND LICENSING

22 TAC §801.74

The Texas Behavioral Health Executive Council proposes amendments to §801.74, relating to Application to Take Licensure Examination.

Overview and Explanation of the Proposed Rule. The proposed amendment is intended to streamline the application process for the approval and registration for licensure examinations resulting in anticipated greater agency efficiencies.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The proposed rule pertains to the qualifications necessary to obtain a license for the practice of marriage and family therapy. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Marriage and Family Therapists, in accordance with §502.1515 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose this amended rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Tex. Occ. Code and may propose this rule amendment.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be

no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701 or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on October 31, 2021, which is at least 30 days from the date of publication in the *Texas Register.*

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule is proposed 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 proposes 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 Board previously voted and, by a majority, approved to propose 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 the 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 proposes 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.

No other code, articles or statutes are affected by this section.

§801.74. Application to Take Licensure Examination.

An applicant must submit a complete application to sit for examination as prescribed by the Council.[~~:~~]

[~~(1) all requirements in council rules, 22 Texas Administrative Code, §§882.1 and 882.2 (concerning Application Process and General Application File Requirements);~~]

[~~(2) in lieu of an official transcript as required in council rules, a letter from a college or university official stating the applicant is in good academic standing and has completed or is enrolled in a graduate internship in marriage and family therapy or an equivalent internship may be submitted to approve the applicant to sit for licensure examination, but the applicant must still submit an official transcript before the license may be issued;~~]

[~~(3) a copy of government-issued picture identification (i.e., driver's license, passport); and~~]

[~~(4) an Examination Security Information Acknowledgement Form.~~]

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 September 16, 2021.

TRD-202103688
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family
Earliest possible date of adoption: October 31, 2021
For further information, please call: (512) 305-7706

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PART 41. TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL

CHAPTER 882. APPLICATIONS AND LICENSING

SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

22 TAC §882.37

The Texas Behavioral Health Executive Council proposes new 22 TAC §882.37, relating to COVID-19 Vaccine Passports Prohibited.

Overview and Explanation of the Proposed Rule. The proposed 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.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules with existing statutory requirements. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, because the requirements of this rule already exist in statute; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701 or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on October 31, 2021, which is at least 30 days from the date of publication in the *Texas Register.*

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule is proposed 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 proposes 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 proposes 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.

No other code, articles or statutes are affected by this section.

§882.37. COVID-19 Vaccine Passports Prohibited.

(a) In this rule, COVID-19 has the same meaning assigned by §161.0085 of the Health and Safety Code.

(b) A licensee shall not require an individual to provide any documentation certifying the individual's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the licensee or the licensee's practice.

(c) Notwithstanding subsection (b) of this section, licensees may implement COVID-19 screening and infection control protocols in accordance with state and federal law to protect public health.

(d) This rule shall not operate or be construed to interfere with an individual's right to access the individual's personal health information under federal law.

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

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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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SUBCHAPTER G. EMERGENCY TEMPORARY LICENSE

22 TAC §882.70

The Texas Behavioral Health Executive Council proposes amendments to §882.70, relating to Emergency Temporary License.

Overview and Explanation of the Proposed Rule. The proposed amendment 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 proposed amendment, 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.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater opportunity to provide services in response to a declared disaster. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701 or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on October 31, 2021, which is at least 30 days from the date of publication of this proposal in the *Texas Register.*

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule is proposed 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 proposes 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 proposes 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.

No other code, articles or statutes are affected by this section.

§882.70. Emergency Temporary License.

(a) The Council shall issue an emergency temporary license to practice marriage and family therapy, professional counseling, psychology, or social work if:

(1) the Governor declares a disaster under §418.014 and issues a proclamation in accordance with Government Code §418.016 suspending regulatory statutes and rules which would prevent, hinder, or delay necessary action in coping with the declared disaster;

(2) the Executive Director determines that enacting these emergency licensing provisions are necessary in that disaster area; and

(3) the applicant meets the requirements set forth herein below.

(b) An emergency temporary license issued pursuant to this rule will expire [~~thirty (30) days after issuance or~~] upon termination of the suspension or state of disaster, whichever occurs first.

(c) An emergency temporary license issued pursuant to this rule is valid only for the practice of marriage and family therapy, professional counseling, psychology, or social work within the disaster area designated by the governor.

(d) To be eligible for an emergency temporary license, an applicant must:

(1) submit an application in the form prescribed by the Council; and

(2) submit written verification that the applicant is actively licensed, certified, or registered to practice, marriage and family therapy, professional counseling, psychology, or social work in another jurisdiction and that the licensure, certification, or registration is in good standing.

(e) For purposes of subsection (d) of this section, the term "good standing" means there is not current disciplinary action on the out-of-state license, certification, or registration.

[~~(f) An emergency temporary license may be renewed in thirty (30) day increments if the disaster declaration has not expired or been terminated. To renew a license, an individual must submit a renewal application on a board-approved form on or before the license expiration date.~~]

(f) [~~(g)~~] An individual practicing under an emergency temporary license must:

(1) display a copy of the emergency temporary license in a conspicuous location when delivering services, or provide written notification of the license number and instructions on how to verify the status of a license when initiating services with a patient or client;

(2) provide notification to the public and the patient or client regarding how a complaint may be filed with the Council; and

(3) comply with all other applicable Council rules.

(g) [~~(h)~~] There is no fee associated with the application[~~,~~] or issuance[~~, or renewal~~] of an emergency temporary license.

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 September 16, 2021.

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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 884. COMPLAINTS AND ENFORCEMENT

SUBCHAPTER A. FILING A COMPLAINT

22 TAC §884.4

The Texas Behavioral Health Executive Council proposes new §884.4, relating to Special Requirements for Complaints Alleging Violations Related to Court Ordered Therapy or Parenting Facilitator Services.

Overview and Explanation of the Proposed Rule. The proposed 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 proposed 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.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity, consistency, and fairness in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, it clarifies the regulatory authority and procedures of the Executive Council so this agency does not get involved in a matter pending before a court; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701 or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on October 31, 2021, which is at least 30 days from the date of publication of this proposal in the *Texas Register.*

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule is proposed 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 proposes 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 proposes 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.

No other code, articles or statutes are affected by this section.

§884.4. Special Requirements for Complaints Alleging Violations Related to Court-ordered Therapy or Parenting Facilitator Services.

(a) A person who seeks to file a complaint alleging a statutory or rule violation arising out of or related to court ordered therapy or parenting facilitator services must, in addition to submitting a Council-

approved complaint form, comply with the requirements of this rule when filing a complaint.

(b) A complaint may not be filed while the licensee is under appointment to provide therapy or parenting facilitator services. A complaint received by the Council while the licensee is appointed will be dismissed by staff as premature but may be resubmitted as a new complaint after the appointment is concluded or terminated.

(c) A complaint will be considered timely filed if brought within the time period specified by the general rule governing timeliness of complaints or within one year of the appointment being concluded or terminated, whichever is greater.

(d) A complaint must include each of the following:

(1) Documentation reflecting the licensee's appointment in the case. A copy of a court order, docket sheet, or transcript from the proceedings or a letter from an attorney involved in the case will meet the requirements of this rule;

(2) a copy of any documents provided by the licensee describing the costs, nature, or limitations of the services to be provided, or a statement that no such documents were provided;

(3) an attestation that the licensee's appointment in the case has been concluded or terminated. A letter from an attorney involved in the case will also meet the requirements of this rule.

(e) A complaint that does not substantially comply with subsection (d) of this section shall be dismissed by agency staff. A complaint may be held open for no more than 30 days following notice to the complainant regarding any such deficiency, after which, agency staff shall dismiss the complaint if the deficiency is not cured.

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 September 16, 2021.

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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 proposes amendments to 22 TAC §885.1, relating to Fees.

Overview and Explanation of the Proposed Rule. The proposed amendment 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 proposed amendment combines the fees for an initial LMFT Associate application with the fee for the initial licensure, but the result is the same fee.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees and the general public because the proposed rule will provide greater clarity and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be nominal additional economic costs to persons required to comply with this rule. Some applicants may have to pay an additional fee of $3.00 to $10.00, depending on the application type. This fee is required by law, so there are no alternative methods available for this agency to pursue other than this proposed rule change. Because this increase in some fees is expected to so small and will only apply to applications for licensure and not renewal applications, which means this should in all likelihood be a one-time fee and not a reoccurring fee, the agency anticipates this change to have no impact on persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because, even though the cost to regulated persons is expected to increase slightly, the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state, the regulatory costs imposed by the Executive Council on applicants is expected to only nominally increase, and the transition to online applications from paper applications is expected to decrease applicants' costs for compliance and reduce applicants' burdens to comply with application requirements.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a gov-

ernment program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to the agency, the Texas.gov fees are paid to a different state agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701 or by email to reules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on October 31, 2021, which is at least 30 days from the date of publication of this proposal in the *Texas Register.*

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule is proposed 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 proposes 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 proposes this amended 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 proposes 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.

No other code, articles or statutes are affected by this section.

§885.1. Executive Council Fees.

(a) General provisions.

(1) All fees are nonrefundable and cannot be waived except as otherwise permitted by law.

(2) Fees required to be submitted online to the Council must be paid by debit or credit card. All other fees paid to the Council must be in the form of a personal check, cashier's check, or money order.

(3) For applications and renewals the Council is required to collect fees to fund the Office of Patient Protection (OPP) in accordance with Texas Occupations Code §101.307, relating to the Health Professions Council.

(4) For applications, examinations, and renewals the Council is required to collect subscription or convenience fees to recover costs associated with processing through Texas.gov.

(5) All examination fees are to be paid to the Council's designee.

(b) The Executive Council adopts the following chart of fees:
Figure: 22 TAC §885.1
[~~Figure:~~ ~~22 TAC §885.1~~]

(c) Late fees. (Not applicable to Inactive Status)

(1) If the person's license has been expired (i.e., delinquent) for 90 days or less, the person may renew the license by paying to the Council a fee in an amount equal to one and one-half times the base renewal fee.

(2) If the person's license has been expired (i.e., delinquent) for more than 90 days but less than one year, the person may renew the license by paying to the Council a fee in an amount equal to two times the base renewal fee.

(3) If the person's license has been expired (i.e., delinquent) for one year or more, the person may not renew the license; however, the person may apply for reinstatement of the license.

(d) Open Records Fees. In accordance with §552.262 of the Government Code, the Council adopts by reference the rules developed by the Office of the Attorney General in 1 TAC Part 3, Chapter 70 (relating to Cost of Copies of Public Information) for use by each governmental body in determining charges under Government Code, Chapter 552 (Public Information) Subchapter F (Charges for Providing Copies of Public Information).

(e) Military Exemption for Fees. All licensing and examination base rate fees payable to the Council are waived for the following individuals:

(1) military service members and military veterans, as those terms are defined by Chapter 55, Occupations Code, whose military service, training, or education substantially meets all licensure requirements; and

(2) military service members, military veterans, and military spouses, as those terms are defined by Chapter 55, Occupations Code, who hold a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements of this state.

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 September 20, 2021.

TRD-202103705

Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
Earliest possible date of adoption: October 31, 2021
For further information, please call: (512) 305-7706

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER A. STATEWIDE HUNTING PROCLAMATION

DIVISION 1. GENERAL PROVISIONS

31 TAC §65.4

The Texas Parks and Wildlife Department proposes new 31 TAC §65.4, concerning Proof of Sex for Deer. The proposed new section would replace the provisions of current §65.10(e) with respect to deer for the upcoming hunting season. Section 65.10 cannot be amended at the present time because of pending rule action relating to the implementation of rules regarding digital hunting and fishing licenses. The department will comport the provisions of the two sections at a future date.

The proposed new section is in response to the threat to free-ranging deer populations posed by chronic wasting disease (CWD). CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (referred to collectively as susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans. CWD can be transmitted both directly (through animal-to-animal contact) and indirectly (through environmental contamination). CWD has been detected in multiple locations in Texas, primarily in deer breeding facilities but also in free-ranging populations in several counties. The department, along with the Texas Animal Health Commission, has been engaged in a long-term battle to detect and contain CWD. If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion-dollar ranching, hunting, wildlife management, and real estate economies could be significant.

The 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 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.

Mitch Lockwood, Big Game Program Director, 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. Lockwood also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be the protection of indigenous wildlife resources for public use and enjoyment.

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 impacts to small businesses, micro-businesses, or rural communities. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rule will not result in direct adverse impacts on small businesses, micro-businesses, or rural communities because the proposed rule regulates various aspects of recreational license privileges that allow individual persons to pursue and harvest public wildlife resources in this state and therefore does 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 rule as proposed will not impact local economies.

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

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

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation (but will augment an existing regulations); not repeal, expand, or limit a 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 Mitch Lockwood at (830) 792-9677, e-mail: mitch.lockwood@tpwd.texas.gov. Comments also may be submitted via the department's website

at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The new section 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 new rule affects Parks and Wildlife Code, Chapter 61.

§65.4. Proof of Sex for Deer.

(a) Until repealed, the provisions of this section replace the provisions of §65.10(e) of this title (relating to Possession of Wildlife Resources) that apply to deer.

(b) All other provisions of §65.10 continue in force and effect.

(c) Proof of sex for deer must remain with the carcass until tagging requirements cease.

(d) Proof of sex for deer consists of:

(1) buck: the head, with antlers still attached; and

(2) female antlerless ("doe"):

(A) the head; or

(B) the mammary organ (udder) or vulva, and tail; and

(3) male antlerless ("nubbin," "button," "shed-antlered" buck): the head.

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 September 20, 2021.

TRD-202103707
James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: October 31, 2021
For further information, please call: (512) 389-4775

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SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

The Texas Parks and Wildlife Department proposes the repeal of 31 TAC §65.99, amendments to §§65.80 - 65.83, 65.88, and 65.90 - 65.98, and new §65.99 and §65.100, concerning Disease Detection and Response. The proposed rules would impose new testing requirements for deer breeding facilities and incorporate the provisions of an emergency rule adopted on June 22, 2021, (46 TexReg 3991) in response to multiple detections of chronic wasting disease (CWD) earlier this year in additional deer breeding facilities. The intent of the proposed rules is to reduce the probability of CWD being spread from facilities where it does or might exist and to increase the probability of detecting and containing CWD where it does exist.

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 better wildlife management (popularly referred to as "Triple T" permits). Under Parks and Wildlife Code, Chapter 43, Subchapter L, the department regulates the possession of captive-raised deer for breeding purposes. A deer breeder permit affords deer breeders certain privileges, such as (among other things) the authority to buy, sell, transfer, lease, and release captive-bred white-tailed and mule deer, subject to the regulations of the commission and the conditions of the permit. Breeder deer may be purchased, sold, transferred, leased, or received only for purposes of propagation or liberation. Under Parks and Wildlife Code, Chapter 43, Subchapters R and R-1, the department may issue a Deer Management Permit (DMP) allowing the temporary possession of free-ranging white-tailed or mule deer within an enclosure on property surrounded by a fence capable of retaining white-tailed deer (under reasonable and ordinary circumstances) for propagation purposes. At the current time, there are no rules authorizing DMP activities for mule deer.

The department, along with the Texas Animal Health Commission (TAHC), has been engaged in an ongoing battle against CWD in Texas since 2002, including in response to repeated detections within deer breeding facilities. Since 2002, more than 123,000 "not detected" post-mortem CWD test results have been obtained from free-ranging (i.e., not breeder) deer in Texas, and deer breeders have submitted approximately 47,000 "not detected" post-mortem test results as well. The recent detections of CWD in seven additional breeding facilities create an unprecedented situation because they are at a scale that is orders of magnitude greater than earlier instances of detection encountered by the department.

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, both the CDC 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. Moreover, a high prevalence of the disease correlates with deer population decline in at least one free-ranging population in the United States, and there is evidence that hunters tend to avoid areas of high CWD prevalence. 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 annual, 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 strategy 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 department has also engaged in several rulemakings (both emergency and via the normal rulemaking process) to create containment and surveillance zones in response to CWD detections in both free-ranging and captive deer in various parts of the state. Those rules are contained in Division 1 of Chapter 65, Subchapter B.

The current rules in Division 2 of Chapter 65, Subchapter B have been referred to commonly as the "comprehensive" rules. One of the changes made in this proposed rulemaking would be to incorporate the word "comprehensive" in the title of the division for ease of reference and reduction of confusion. The references to "current rules" in this preamble do not include the emergency rule adopted on June 22, 2021.

The current rules can be generally described as functioning together to impose testing standards necessary to provide a statistically representative sampling effort within deer breeding facilities for purposes of minimally effective surveillance for CWD. The current rules set forth specific CWD testing requirements for deer breeders, which must be satisfied in order to transfer deer to other deer breeders or for purposes of release. One of the most effective approaches to managing infectious diseases and arresting the spread of a disease is to segregate populations of unknown disease risk, suspicious individuals, and suspicious populations from unexposed populations. As a matter of epidemiological probability, when animals from a population at higher risk of harboring an infectious disease are introduced to a population of animals at a lower risk of harboring an infectious disease, the confidence that the receiving population will remain disease-free is reduced. The current rules implement such an approach, albeit at a level that the department unfortunately has concluded, based on the continued spread of CWD, is ineffective in sufficiently reducing the risk of transmission of CWD between breeder facilities or from breeding facilites to release sites. Under current rule, breeding facilities are classified into two broad categories: those facilities authorized to transfer deer (MQ facilities) and those facilities not authorized to transfer deer (NMQ facilities). MQ facilities are further classified according to the relative level of risk for the presence of CWD within each facility, based on the provenance of the deer within each facility and the results of continuous annual testing. Breeding facilities are classified as Transfer Category 1 (TC 1), Transfer Category 2 (TC 2), or Transfer Category 3 (TC 3). Similarly, release sites are classified as a Class I, Class II, or Class III. The proposed amendments act collectively to eliminate the concept of the "transfer category" and condition the movement of breeder deer solely on the movement status of deer breeding facilities. The former Transfer Category 3 facilities are those facilities in which CWD has been detected and are under TAHC quarantines, and those facilities that are under TAHC hold orders and have either received an exposed deer within the previous five years, transferred deer to a CWD-positive facility within the five-year period preceding the confirmation of CWD in the CWD-positive facility, or possessed a deer that was in a CWD-positive facility within the previous five years. Surveillance at those facilities would be governed under the proposed amended rules and under proposed new §65.99, concerning Breeding Facilities Epidemiologically Connected to Deer Infected with CWD." In general, the proposed amended and new rules are intended to address the various epidemiological implications resulting from the movement of deer into and out of positive breeding facilities.

To achieve or maintain Movement Qualified (MQ) status under current rules, a facility must have achieved "fifth-year" or "certified" status in the TAHC CWD Herd Certification Program, or provide valid test results of "not detected" for at least 80 percent of the total number of eligible mortalities that occurred in the breeding facility in each reporting year. The department recognizes that if a breeding facility has an unusually low number of eligible mortalities, the requirement to submit post-mortem tests for 80 percent of all eligible mortalities during the year could result in a lower number of post-mortem tests than necessary to achieve adequate CWD surveillance. Therefore, a minimum number of post-mortem tests to be submitted each report year is required. That number is calculated as the sum of the eligible-aged population in the breeding facility at the end of each reporting year, plus the sum of the eligible mortalities that have occurred within the breeding facility during the previous reporting year, multiplied by 3.6 percent. To develop this number, the department considered, based on mortality data required to be reported by permittees, that the average natural mortality in a deer breeding facility was 4.5 percent of the eligible-aged deer population in the breeding facility each year. Therefore, if a deer breeding facility with an average number of natural mortalities among eligible-aged deer tested 80% of those mortalities, the breeding facility would test 3.6 percent (i.e., 80% of 4.5%) of the eligible-aged population each year. This formula was developed with stakeholder

input and was intended to create the least burdensome regulatory footprint possible.

Under current rule, when CWD is detected in a facility (a "positive facility"), that facility is immediately prohibited from transferring deer and the department and TAHC staff immediately begin epidemiological investigations to determine the extent and significance of possible disease transmission. Epidemiologically connected facilities, both trace in and trace out, identified by the department and TAHC are subject to quarantines (for positive facilities) and hold orders (for trace facilities) issued by TAHC. Current rule prohibits the transfer of deer to or from a facility if the transfer is prohibited by a TAHC herd plan associated with a quarantine or hold order.

With respect to the most recent detections in 2021 (necessitating the emergency action currently in effect), department records indicate that within the last five years, the seven positive facilities referenced earlier transferred a total of 2,525 deer to 138 deer breeding facilities and 118 release sites located in a total of 92 counties. These breeding facilities and release sites are therefore directly connected to at least one of the positive facilities and by current rule were designated "not movement qualified" (NMQ), which prohibits the transfer of deer. As a result of the ongoing epidemiological investigation and pursuant to existing regulations, 114 of the 138 directly connected breeding facilities have regained movement qualified status if otherwise eligible, leaving 25 facilities of epidemiological concern. An additional 214 deer breeding facilities received deer from one or more of those 72 directly connected breeding facilities; these facilities are indirectly connected to the positive facilities and are or were of epidemiological concern because it is possible that within the last five years any or all of them could have received CWD-infected deer. The five-year window is important because (based on the literature) it encompasses the time period from possible exposure to CWD, through the incubation period, to the time at which the disease can be transmitted to another animal or the environment. As a result of the ongoing epidemiological investigation and pursuant to existing emergency regulations, 185 of the 214 indirectly connected breeding facilites have regained movement qualified status if otherwise eligible, leaving 29 indirectly connected indirectly connected facilities of epidemiological concern.

The current comprehensive rules do not address disease response with respect to indirectly connected facilities (facilities that receive deer that were in the same facility with an exposed deer prior to being transferred to another facility). As noted previously, the recent discovery of CWD in seven more breeding facilities and the resultant extended network of epidemiological connectivity necessitated the adoption of an emergency rule on June 22, 2021 (46 TexReg 3993), which addresses the situation by imposing requirements for disease testing and movement of breeder deer to and from indirectly connected facilities. In addition, the emergency rule requires ante-mortem testing of all age-eligible deer prior to transfer to a release site. The department and TAHC have continued to conduct epidemiological investigations and this rulemaking is intended to implement the pertinent provisions of the emergency rule by way of the normal administrative process, including a minimum 30-day public comment opportunity.

The proposed rules are necessary to protect the state's white-tailed and mule deer populations, as well as the long-term viability of associated hunting, wildlife management, and deer breeding industries. To minimize the severity of biological and economic impacts resulting from CWD, the proposed rules implement a more rigorous testing protocol within certain deer breeding facilities and at release sites than was previously required. The proposed rules would provide a pathway for all deer breeders (with the exception of CWD-positive facilities) to continue to move and release breeder deer. The proposed rules in this rulemaking continue the existing extensive cooperation between the department and TAHC and the continued involvement of various stakeholder groups and interested parties.

The department notes that several types of alterations are made repeatedly in the proposed amendments. Throughout Subchapter B there are references and provisions relating to "transfer category" and release-site "classes." Those terms reflect a regulatory structure that is no longer necessary because the current rules have been in place long enough that the distinctions they represent no longer exist. The proposed amendments eliminate references to and provisions regarding those distinctions throughout the subchapter. The only distinction with respect to risk management at this time is MQ versus NMQ.

Similarly, the proposed amendments and new section replace references to TAHC herd plans with the term "herd plan" in order to reflect the interagency cooperation between the department and TAHC. Those changes are also made throughout the proposed rules.

In general, the proposed amendments to sections within Division 1 comport the contents of that division with proposed amendments to Division 2. The sections within Division 1 provide a regulatory structure for the creation of CWD management zones within which special provisions apply to the movement of live deer under department permits and deer carcasses following harvest by hunters.

The proposed amendment to §65.80, concerning Definitions, would eliminate definitions for terms that are no longer used in the rules and add a definition of "herd plan" to comport the division with changes being proposed to Division 2.

The proposed amendment to §65.88, concerning Deer Carcass Movement Restrictions, inserts clarifying language in subsection (b)(4) to emphasize that skull plates must be cleaned of internal soft tissue.

The terms "eligible mortality" and "adult deer" are being removed because those terms are artifacts of previous iterations of the rules and the current zone rules no longer employ them, as all CWD testing requirements are now contained in Division 2. The proposed amendment would define "herd plan" as "a set of requirements for disease testing and management developed by the department and TAHC for a specific facility." Elsewhere in this rulemaking, the department proposes to eliminate specific references to TAHC herd plans and replace them with generic references to herd plans to reflect the fact that herd plans are jointly developed by the department and TAHC.

As noted earlier in this preamble, the proposed amendments would remove references to the term "transfer category," "release category," and various provisions associated with those terms throughout the division. The proposed amendments to Division 2 would implement an improved methodology for determining the risk of deer breeding facilities with respect to the spread of CWD by conditioning movement restrictions solely on MQ status, which makes the concepts of transfer category and release site class unnecessary. The proposed amendment also references the provisions of proposed §65.99, concerning Breeding Facilities Epidemiologically Connected

to Deer Infected with CWD, where necessary, to preserve current limitations on deer movement to and from deer breeding facilities determined to present the highest risk of spreading CWD (currently referred to as "TC 3" facilities). The proposed amendments also make nonsubstantive housekeeping-type changes in the interest of clarity and organization.

The proposed amendments and new section within Division 2 would incorporate the provisions of the current emergency rule in effect and comport the existing provisions of the division accordingly, with exceptions as noted.

The proposed amendments to §65.90, concerning Definitions, would eliminate definitions for "eligible-aged deer" "eligible mortality," "Interim Breeder Rules," "NUES tag," "originating facility," "status," "TAHC Herd Certification Program," and "TAHC Herd Plan," add definitions for "exposure," "herd plan," "inconclusive," "insufficient follicles," "last known exposure," "release," "test-eligible," "Tier 1 facility," "trace deer," and "trace-out breeding facility," and modify the definitions for "confirmed," "CWD-positive facility," "exposed deer," and "reconciled herd."

The definition of "eligible-aged deer" is being eliminated because the proposed amendment would replace it with a new definition for "test-eligible."

The definition of "eligible mortality" is being eliminated because the term is no longer used in the rules.

The definition of "Interim Breeder Rules" is being eliminated because it existed only to provide a point of reference for the transition from a previous set of rules intended to contain and manage CWD in breeding facilities to the current rules implementing a comprehensive CWD management plan.

The definition of "NUES tag" is being eliminated because the retention and visibility of NUES tags is suboptimal.

The definition of "originating facility" is being eliminated because the proposed rules would eliminate the current structure based on transfer and release status assigned to individual breeding and release facilities based on their comparative risk of spreading CWD; thus, the term is no longer used and is therefore unnecessary.

The definition of "status" is being eliminated because the term no longer has a specific meaning in the context of transfer and release facility designations.

The definitions of "TAHC CWD Herd Certification Program" and "TAHC herd plan" are being eliminated because the proposed rules acknowledge the cooperative nature of interagency planning and resource management activities between the department and the TAHC and the reality that the repeated emergence of CWD in deer breeding facilities has created operational stressors necessitating a shared burden in the development of plans for individual breeding facilities.

The proposed amendment would define "exposure" as "the period of time that has elapsed following the introduction of an exposed deer to a breeding facility." Because individual deer that have been exposed to CWD can incubate the disease at different rates, it is epidemiologically critical to establish a timeline to determine the highest likelihood of early detection of the disease if it is present.

The proposed amendment would define "inconclusive" as "a test result that is neither "positive" nor "not detected" on the basis of clinical deficiency." Current rules allow for the restoration of MQ status in certain situations on the basis of ante-mortem testing of an entire captive herd. Due to a number of factors, not all test samples yield definitive results as to the presence or absence of CWD. The department acknowledges that fact; therefore, the proposed rules would allow a certain percentage of test results to be inconclusive without jeopardizing the adequacy of surveillance. The most common cause of inconclusive test results is due to the lack of enough specific tissue in a sample to contain enough lymphoid follicles to produce a reliable test result, referred to as a result of "insufficient follicles." Therefore, the proposed amendment would include a definition of "insufficient follicles" for clarity's sake. The term would be defined as "a test result indicating that a tonsil or rectal biopsy sample contained an insufficient number of lymphoid follicles to produce a valid test result."

The proposed amendment would define "last known exposure" as "the last date a deer in a trace-out breeding facility was exposed to a trace deer prior to the death or transfer of that trace deer." The definition is necessary because the CWD testing requirements imposed by proposed new §65.99 are predicated upon the length of time since an exposed deer was in a facility.

The proposed amendment would define "release" as "the act of liberating a deer from captivity. For the purposes of this division the terms "release" and "liberate" are synonymous." The definition is necessary because Parks and Wildlife Code, Chapter 43, Subchapter L uses the terms "release" and "liberation" interchangeably and the department intends to provide a definitive affirmation that the two terms are indeed synonymous.

The proposed amendment would define "test-eligible" as "a deer at least 16 months of age prior to the effective date of the rules and following the effective date of the rules, a deer at least 12 months of age." The proposed rules lower the minimum age at which deer may be tested; however, that change will take place during the reporting year. The definition is necessary to make that clear.

The proposed amendment would define "Tier 1 facility" as "a breeding facility that has received an exposed deer that was in a trace-out breeding facility." The definition is necessary to acknowledge the epidemiological importance of exposed deer that were received indirectly via a Category A or Category B trace-out breeding facility.

The proposed amendment would define "trace deer" as "a deer that the department has determined had been in a CWD-positive deer breeding facility on or after the date the facility was first exposed to CWD, if known; otherwise, within the previous five years from the reported mortality date of the CWD-positive deer, or the date of the ante-mortem test result." The definition is necessary because proposed new §65.99 would create testing requirements for breeding facilities that have received deer epidemiologically connected to a positive facility.

The proposed amendment would define "trace-out breeding facility" as "a breeding facility that has received an exposed deer that was in a CWD-positive deer breeding facility."

The definition is necessary because new §65.99 would create testing requirements for breeding facilities that have received deer directly from a positive facility.

The proposed amendment would alter the definition of "confirmed" to include the Texas A&M Veterinary Medical Diagnostic Laboratory as a testing authority.

The proposed amendment would alter the definition of "CWD-positive facility" to include the term "positive facility" in order to reduce the repetition of an unwieldy term throughout the rules.

The proposed amendment would replace the definition of "exposed deer" with a more nuanced definition that reflects the emergency rule currently in effect and proposed for incorporation into Division 2 by this rulemaking. The proposed new definition is based on the importance of determining the extent to which any given deer breeding facility is epidemiologically connected to facilities where CWD is known to exist, which in turn determines the CWD testing requirements necessary to both determine the epidemiological status of the facility and the nature and extent of CWD testing necessary to allow the resumption of transfers by the facility. The current definition states that an exposed deer is a deer that is in a CWD-positive facility or was in a CWD-positive facility within five years prior to the discovery of CWD in that facility. The proposed new definition would define an exposed deer as a deer meeting any of three criteria: the deer is or was in a breeding facility after the date that the facility held a CWD-positive deer, the deer is or was in a facility within five years preceding the discovery of a CWD-positive deer that was in the same facility, or the deer is in a facility as of a determination that either of the first two conditions exists with respect to a given facility. The definition is based on the epidemiological need to characterize the potential of any given breeder deer to have been in any facility where the possibility of contracting CWD could have existed.

The proposed amendment to §65.91, concerning General Provisions, would eliminate current subsections (e) and (f) because they relate to the transfer categories and release site classes of the current rule as discussed earlier in this preamble. The proposed amendment would also conform language regarding herd plans as discussed previously, and make nonsubstantive housekeeping-type changes to standardize terminology (i.e., replacing phrases such as "introduce into or remove from" with "transfer," which means the same thing.

The proposed amendment to §65.91 would alter current subsection (g) to include exceptions for scientific research.

The proposed amendment to §65.91 would alter current subsection (h) to include "reports" in the list of various communications with the department that are required to be made via the department's online system for deer breeder permit administration, which is necessary for the sake of thoroughness in describing the types of documentation affected by the rules.

The proposed amendment to §65.91 would add new subsection (f), which is being relocated from current §65.94(e) because it is generally applicable to all breeding facilities, to provide upon the determination that a facility has received a CWD "suspect" test result, that all trace facilities that have been in possession of deer that was present within the CWD suspect facility within the previous five years shall be NMQ until it is determined that the facility is not epidemiologically linked to the CWD suspect deer or the CWD "suspect" test result is not confirmed positive. The intent of the proposed new subsection is to prohibit the transfer of breeder deer from trace facilities to another facility from the time when the initial CWD "suspect" test result is received and the result is confirmed.

The proposed amendment to §65.92, concerning CWD Testing, would consist of several substantive and nonsubstantive changes. Current rules require tissue samples for ante-mortem testing to be collected within six months of submission from deer at least 16 months of age that have not been the source of a "not detected" test within the previous 24 months. The proposed amendment to subsection (b) would change that standard by requiring samples to be collected within eight months of submission from a deer at least 12 months of age that has not been the source of a "not detected" test result within the previous 12 months. Both the current rules and the rules as proposed reflect the agency's strategy to establish some sort of general surveillance of captive deer populations. Because other provisions of this rulemaking would increase the minimum level of ante-mortem testing and require the testing of all mortalities occurring within breeding facilities, as well as the ante-mortem testing of all breeder deer prior to release, the department has determined that it is possible to allow test results from younger deer, increase the frequency with which deer may be tested, and increase the interval between sample collection and sample submission. In addition, the proposed change to subsection (b) includes references to other provisions that create exceptions allowing for the testing of deer that had been the source of a "not detected" test result with the previous 12 months.

Current subsection (c) provides that a post-mortem test is not valid unless performed on the obex or medial retropharyngeal lymph node (RLN). The proposed amendment would require the submission of the obex and the RLN. CWD in white-tailed deer and mule deer is typically detected in the RLN sooner than in the obex andthe department therefore reasons that requiring the submission of the RLN in addition to the obex will result in earlier detection of CWD positive deer and increase the efficacy of post-mortem CWD testing. In addition, by requiring the submission of both tissues, the possibility of wasted test effort is reduced. For example, if an obex from a deer yields inconclusive post-mortem testing results, an RLN from the same animal may not.

The proposed amendment to subsection (d) and proposed new subsection (e) would establish new standards regarding the use of ante-mortem tests to substitute for inadequate post-mortem testing and provide for a transition from the current rules to the amended rules (if adopted). As described earlier in this preamble, the department determines any given breeding facility's MQ status on the basis of a series of calculations intended to provide assurance that the level of post-mortem CWD-testing in a breeding facility is sufficient to monitor for the presence of CWD in the facility. If a facility is unable to provide sufficient post-mortem test results to be designated MQ on that basis alone, the current rules allow ante-mortem testing to be utilized to make up for the inadequate post-mortem surveillance; however, because post-mortem tests are of extremely high epidemiological value, a higher number of ante-mortem substitution tests are required in order to provide the same level of confidence that CWD can be detected. The proposed amendments would replace the testing rate in the current rules with a testing rate developed by the Center for Epidemiology and Animal Health (CEAH), which is an organization within the Animal Plant Health Inspection Service operated under the United States Department of Agriculture. Because ante-mortem substitution testing is a method of compensating for the lack of sufficient and more-desirable post-mortem testing and is calculated for each reporting year, the regulations must stipulate specific timeframes for the collection and submission of the samples in order to make substitution testing meaningful. In other words, MQ status in such situations, because it is dependent upon the herd collectively (rather than individual post-mortem samples) must be reflective of the herd over time within each reporting year. Therefore, the proposed subsection would stipulate that all provisions other than paragraphs (3) and

(4), if adopted, would take effect April 1, 2022, which is the beginning of the next reporting year. Paragraphs (3) and (4) would take effect 20 days after the notice of adoption is filed with the Secretary of State. Proposed subsection (d)(1) would require ante-mortem test samples to be collected within eight months of the end of the reporting year to match the eight-month submission window created in the proposed amendment to subsection (b). Additionally, and for the same reasons, proposed new subsection (e) would accommodate the transition from the current rate at which ante-mortem test results may be substituted for post-mortem test results (3:1) to the proposed new ratio (5:1) by allowing the 3:1 substitution ratio to remain until the end of the current permit year.

Proposed subsection (d)(2) would provide that the number of ante-mortem results could not exceed 30 percent of the total number of required post-mortem results (multiplied by five, to reflect the new ratio of substitution imposed by the proposed amendment) in more than two reporting years. A post-mortem test conducted quickly after the death of a deer is the gold standard for CWD testing efficacy. Also (and described in the discussion of the proposed amendment to §65.94), the proposed rules would require deer breeders to test all mortalities instead of the current minimum of 80 percent. Because the department acknowledges the reality that it may not always be possible to locate a mortality and extract a sample that will be valid, both the current and proposed rules allow ante-mortem tests to be substituted for a portion of the required post-mortem test results. Because ante-mortem tests are less reliable, however, the department believes that it would not be prudent to allow them to be substituted for post-mortem test results at either a high percentage or on a repeated basis. Therefore, the proposed rules provide for what the department has determined, based on what is known about the incubation period and transmissibility of CWD, as well as the efficacy of ante-mortem testing compared to post-mortem testing, is a reasonable substitution standard and a limit on how frequently that standard may be exceeded. Similarly, the department considers that there will be circumstances in which a deer breeder may possess enough deer to make it possible to achieve MQ status, but is unable to meet the requirements of the rules because not enough time has elapsed since previous testing efforts on specific deer. Therefore, proposed subsection (d)(3) would allow test results from deer that were tested within the previous 12 months to be submitted, provided all test-eligible deer within the facility have been tested prior to the testing of deer that were tested within the previous 12 months. As explained above, because other provisions of this rulemaking would increase the minimum level of ante-mortem testing and require the testing of all mortalities occurring within breeding facilities, as well as the ante-mortem testing of all breeder deer prior to release, proposed subsection (d)(3) would allow test results from deer six months of age or older provided all test-eligible deer in the facility have been tested prior to the testing prior to the testing of any deer that is six months of age or older but younger than 12 months. Proposed subsection (d)(4) would establish a limit of 10 percent on the number of "inconclusive" test results that could be submitted to satisfy the provisions of §65.94(d), excluding facilities that test fewer than ten deer. The provision in question pertains to a small subpopulation of NMQ breeding facilities that although unable to meet the testing requirements of §65.94(a), are in compliance with inventory and inspection requirements, haven't received exposed deer, and don't contain enough deer to meet ante-mortem substitution requirements. Current rules allow such facilities to be designated MQ following two "whole herd" rounds of ante-mortem tests 12 months apart, provided the tests are begun within 12 months of being designated NMQ. It is not uncommon for test results to be inconclusive, which can happen for a variety of reasons; however, the department has determined that when the number of "inconclusive" results rises above 10 percent, confidence that the detection of CWD will be detected if it exists erodes significantly. Therefore, the department has determined that it is appropriate to limit the number of "inconclusive" test results that can be submitted for purposes of MQ designation, particularly in view of the fact that the facilities in question are unable to meet the testing requirements of §65.94(a). Proposed subsection (d)(5) would clarify that permittees are required to test 100 percent of mortalities that occur within a facility and that no provision of the rules is to be construed to create an exception to that requirement. The proposed amendment to §65.92 would alter current subsection (e) and add new subsections (g) and (h) to make it abundantly clear that test results are tied to the breeding facility in which the samples are taken, are valid only if the deer from which the sample was taken is still in the facility, and cannot be used more than once except as specifically provided by the division. The department seeks to avoid any misunderstandings or confusion regarding the utilization of test results. The purpose of the testing requirements of the division is to provide a representative sampling frame that the department can use for determination of MQ status. An ante-mortem test result is a snapshot in time at the breeding facility where the deer resides and has an epidemiological value that is limited by a variety of factors, including how recently the test was performed. Allowing multiple breeders to re-utilize the same test results would mean that the results are no longer a statistically valid representation of the population of a single facility, meaning the surveillance value of the tests is compromised. Similarly, a test result cannot be used more than once for the same reason (with the sole exception of allowing sufficiently recent ante-mortem test results used for another purpose to be used to meet the ante-mortem testing requirements for release as provided in the proposed amendment to §65.95). Therefore, the proposed rules would explicitly state those conditions.

Finally, the proposed amendment would alter the time periods within which permittees must report and submit samples for post-mortem testing. The current rules stipulate that mortalities must be reported within 14 days of detection; the rules also require samples from mortalities to be submitted within 14 days of collection. As has been noted at various points in this discussion, time is critical with respect to CWD testing. The department has determined that the efficacy of post-mortem testing would be significantly increased by reducing the timeframes for reporting, collection, and submission of post-mortem samples. Previous rules allowed samples to be submitted at any time within the reporting year; rules promulgated earlier this year imposed a 14-day requirement. The department concludes that imposing a seven-day requirement will result in improved and more accurate data collection as well as enhancing the likelihood of earlier detection and subsequent epidemiological investigation.

The proposed amendment would eliminate current subsection (g), which is no longer necessary if all breeder deer are required to be ante-mortem tested prior to release as provided in the proposed amendment to §65.95.

The proposed amendment to §65.93, concerning Harvest Log, would eliminate references to the NUES tag for reasons explained in the discussion of the proposed amendment to §65.90, concerning Definitions.

The proposed amendment to §65.94, concerning Breeding Facility Minimum Movement Qualification, would require permittees to post-mortem test all mortalities within a breeding facility to achieve MQ status. As noted earlier in this preamble, the calculations for MQ status under the current rules involve a benchmark requirement of "not detected" post-mortem test results for 80 percent of eligible mortalities within a breeding facility. The department has concluded that requiring 100 percent of test-eligible (the term replacing "eligible-aged," as noted in the discussion of the proposed amendment to §65.90) mortalities to be tested is necessary to increase the confidence of early detection of CWD. Additionally, mortality data reported to the department following the promulgation of the current rules in 2016 indicate a significant increasing trend in mortalities within the average breeding facility for whatever reason. This means that the original baseline of 4.5 percent average expected mortality employed in the calculations made under current rule is an under-representation of actual mortality, which in turn means that the current testing requirements are inadequate to provide the minimum acceptable confidence of at least a 50-50 probability of detecting CWD, should it exist in any given breeding facility in the first year of testing under the proposed rules, and an increasing probability of detection thereafter if the disesease is present and spreading. On that basis, and in consultation with TAHC, the department has determined that to obtain an acceptable detection probability if it exists in any given breeding facility, the combination of 100 percent post-mortem testing, a 5:1 ratio of ante-mortem to post-mortem substitution (with the limitations on the magnitude and frequency of ante-mortem substitutions), combined with ante-mortem testing of all breeder deer prior to release is required to suffice.

The proposed amendment to §65.94 also would add new subsection (g) to provide for denial of permit renewal for a permittee that has exceeded the maximum utilization of the 30 percent provision in more than two years during the life of the permit. Parks and Wildlife Code, §12.603, allows the department to refuse to issue or renew a deer breeder's permit if the permittee fails to submit accurate applicable reports, which under the rules as proposed would not allow for ante-mortem test results in excess of the 30 percent provision.

Provisions within the emergency rule currently in effect would be incorporated in the proposed amendment to §65.94 in the form of new subsections (h) and (i), dealing with breeder deer reported to the department as escaped and deer that cannot be confirmed as present in a breeding facility. A persistent issue over the years has been the discrepancies between the inventories reported to the department and the actual number of deer present in facilities when inspections are conducted. A related issue is the number of deer reported by deer breeders as having escaped captivity. A third issue is the accuracy of mortality reporting. Department records indicate that for each of the last five years an average of 26 deer breeders have reported a shared total of 159 escapes. Department records for the same time period indicate an average of 31 breeding facilities reported a shared total of 825 missing deer (deer that department records indicate should be present in the facility, but cannot be located or verified). The department suspects that at least some of the reporting, inventory, and escape issues are the result of intentional attempts to avoid compliance with the rules. Therefore, the proposed amendment would stipulate that deer reported as escaped and deer that cannot be accounted for will be treated as mortalities for the purposes of the rules. The proposed amendment would also stipulate that lawfully recaptured deer would not be treated as mortalities.

Finally, the proposed amendment to §65.94 also would implement transition provisions to provide for data and reporting integrity for the same reasons identified in the discussion of the proposed amendment to §65.92.

The proposed amendment to §65.95, concerning Movement of Breeder Deer, would alter subsection (a) to incorporate provisions from the current emergency rule regarding fawns sent to nursing facilities. A popular practice with deer breeders is the transfer of fawns (young deer) to a nursing facility. The department does not believe that deer younger than 120 days old in an MQ facility pose a significant risk of disease transmission; however, whatever risk there is can be mitigated by prohibiting any nursing facility from receiving fawns from more than one breeding facility per year.

The proposed amendment also would add provisions to current subsection (c) to require all breeder deer to be ante-mortem tested with "not detected" results prior to release, provided the deer is at least six months old and the test sample is collected within eight months of release. The department believes that it is imperative to test all breeder deer before they are released according to a testing protocol that provides an acceptable probability of detecting CWD if it exists in any given breeding facility. The proposed amendment also would create an exception to the requirements of §65.92 regarding the utilization of ante-mortem test results more than once.

Finally, the proposed amendment to §65.95 also would remove provisions regarding transfer and release site classifications, and effects various housekeeping-type changes.

The proposed amendment to §65.96, regarding Movement of DMP Deer, would remove testing requirements that are irrelevant in light of the proposed provisions that eliminate transfer category and release class provisions and would prohibit the return of breeder buck deer from DMP facilities to originating facilities, which is allowed under current rule. The proposed amendment also incorporates provisions from the current emergency rule that prohibit the transfer of breeder deer to a DMP facility from a breeding facility that is subject to the provisions of proposed new §65.99, concerning Breeding Facilities Epidemiologically Connected to Deer Infected with CWD or a trace-out release site.

The proposed amendment to §65.97, concerning Testing and Movement of Deer Pursuant to a Triple T or TTP Permit, would provide for the cessation of the issuance of Triple T permits until further notice and create provisions prohibiting the issuance of Triple T permits authorizing the trapping of deer at sites that have ever received breeder deer. While the proposed amendments are intended to achieve early detection of CWD, they do not eliminate the risk for spreading CWD from previous breeder deer release sites or adjacent properties; therefore, release sites are intended to be terminal sites for breeder deer. The department strongly believes that, given the number of breeder deer that have been released in virtually every part of the state (more than 141,000 in the last five years), the practice of trapping and transporting deer should be stopped, at least on a temporary basis, until there is sufficient assurance that CWD has not been spread as a consequence of previous deer releases. The proposed amendment also makes numerous nonsubstantive conforming and housekeeping-type changes as discussed previously in this preamble with respect to other sections.

The proposed amendment to §65.98, concerning Transition Provisions, would eliminate references to rules that either no longer exist or have no connection to the current or proposed rules, and provide that a release site that was not in compliance with the applicable testing requirements of this division in effect between August 15, 2016, and the effective date of this section is required to comply with the applicable provisions of the division regarding CWD testing with respect to release facilities, which is necessary to provide for continuity of testing effort moving forward.

Proposed new §65.99, concerning Breeding Facilities Epidemiologically Connected to Deer Infected with CWD, would consist of the provisions of the current emergency rule in effect, less those provisions with general applicability that would be relocated to other sections within the subdivision as noted. As discussed previously in this preamble, this proposed rulemaking is necessary because of additional detections of CWD in deer breeding facilities, which, because the source facilities met the requirements of current rules to attain MQ status, indicates the current rules have not been effective in providing for early detection of CWD. Indeed, the evidence suggests that CWD likely was present in at least two of the facilities for more than a year before being detected. In addition to the proposed testing provisions discussed earlier in this preamble intended to increase the efficacy of surveillance in deer breeding facilities generally, proposed new §65.99 would set forth provisions that would apply to those deer breeding facilities that epidemiological investigations reveal are connected to positive facilities, either directly or indirectly.

Proposed new subsection (a) would provide that in the event of conflicts with other rules, the provisions of proposed new §65.99 would prevail, which is necessary to prevent potential misunderstanding and confusion. The proposed new rule would affect facilities that pose a demonstrable threat to free-ranging and captive deer populations; therefore, the department must ensure that the threat is not exacerbated by conflicts with other regulations.

Proposed new subsection (b) would prohibit the transfer of deer from a facility subject to the provisions of the section except as specifically provided in a herd plan. The facilities that would be affected by the proposed new rule are facilities that pose a demonstrably significant risk of harboring and spreading CWD; therefore, in consultation with TAHC, the department will prepare a herd plan for each affected facility to prescribe specific mitigation and surveillance measures necessary to achieve confidence that CWD is not present or being spread as a result of transfer or release.

Proposed new subsection (c) would require all deer transferred from an affected facility to be tagged with a button-type RFID tag, which is necessary to identify released breeder deer in the event that further epidemiological investigation is necessary.

Proposed new subsections (d) and (e) would prescribe testing requirements to regain MQ status for directly connected ("trace-out") facilities, of which there are two categories: those facilities in which all trace deer received by the facility are either alive and still in the facility or have died and been post-mortem tested with "not detected" results ("Category A" facilities), and those facilities where that is not the case (i.e., some or all trace deer have been transferred, released, or died without being tested) ("Category B" facilities). For Category A facilities, proposed new subsection (d) would stipulate that the facility is immediately NMQ and require all trace deer to be euthanized and tested within seven days of the permittee being notified by the department of Category A status. Obviously, a facility that has received exposed deer poses a demonstrable threat of harboring and/or spreading CWD and should be prevented from transferring deer until a determination of disease status can be made. Requiring all trace deer to be euthanized and tested is necessary to gain the most immediate and definitive idea of the disease status of the exposed deer. The permittee would also be required to inspect the facility daily for mortalities, immediately report all test-eligible mortalities, and collect and submit test samples for those mortalities. Again, post-mortem testing provides the best basis for determining whether CWD is present or absent; thus, in concert with the euthanization and testing of all trace deer, the immediate reporting and testing of test-eligible mortalities is the most direct and efficacious method of determining if MQ status can be restored. The proposed new subsection would also provide that in lieu of euthanizing all trace deer, a permittee could request a custom testing plan while inspecting the facility daily and testing mortalities as specified. The department recognizes that some permittees for whatever reason could be reluctant to euthanize deer; however, the department also cautions that a custom testing plan would likely include a much longer timeframe for restoration of MQ status. Proposed new subsection (d)(4) would provide for the department in consultation with TAHC to decline to authorize a custom plan if an epidemiological assessment determines that a custom testing plan is inappropriate. The provision is necessary to address those situations in which there is simply no way to achieve statistical confidence that a captive population is free of CWD. Proposed new subsection (d)(5) would require, in addition to compliance with all applicable provisions of the subsection and the division, all test results to be "not detected" in order for MQ status to be restored. Because the facilities affected by the proposed new rule present a demonstrably higher risk of harboring and spreading CWD, it is prudent to require a perfect testing record.

Proposed new subsection (e) would set forth the requirements for those facilities designated as Category B. Because Category B trace-out facilities are not in possession of some or all trace-out deer that entered the facility, the testing regime necessary to restore MQ status is not as straightforward as with Category A trace-out facilities. As with Category A trace-out facilities, the proposed new subsection would make a Category B trace-out facility automatically NMQ and require the euthanization and testing of all trace deer in the facility, daily inspections for mortalities, and immediate reporting and testing of mortalities, for reasons explained in the discussion of proposed new subsection (d). Additionally, the proposed new subsection would require ante-mortem testing of all deer in the facility according to schedules based on the elapsed time since the last known exposure. The timing of the ante-mortem testing required by the proposed new subsection is determined by what is known about the incubation time of CWD and the length of time between exposure and the ability of ante-mortem testing to detect CWD if it is present. As with proposed new subsection (d), the proposed new subsection would require all test results to be "not detected" and offer permittees the option of requesting a custom testing plan, providing also that the department could decline to authorize such a plan if in consultation with TAHC it is determined that it is inappropriate.

Proposed new subsection (f) would set forth requirements for Tier 1 facilities, those facilities that have received an exposed deer from a trace-out facility. As with Category A and Category B facilities, Tier 1 facilities would be automatically NMQ upon

notification by the department and be required to conduct daily inspections for mortalities, and immediately report and test them. Additionally, the proposed new subsection would predicate the restoration of MQ status on the attainment of one of four possible avenues: post-mortem results of "not detected" for every exposed deer received from a trace facility; restoration of MQ status by the department to all trace facilities from which exposed deer were received; ante-mortem testing as specified for Category B trace-out facilities in subsection (e)(2)(E); or compliance with the provisions of a custom testing plan. The intent of the department is to provide as many ways as possible, defensible within the precepts of sound biological and epidemiological science, to enable affected breeding facilities to regain MQ status.

Proposed new subsection (g) would set forth the particular provisions affecting permittees who pursue the option of a custom testing plan in lieu of the testing requirements of subsection (d)-(f). The proposed new subsection would stipulate that within seven days of being notified of Category A trace-out facility, Category B trace-out facility, or Tier 1 facility status, a permittee could request the development of a custom testing plan approved by the department and TAHC. If the department in consultation with TAHC determines that a custom testing plan is feasible, the department will develop the plan and provide it to the permittee, who would then have seven days to decide whether to accept the plan or decline participation. Acceptance or refusal of the plan must be in writing. If a permittee chooses to accept the plan, the provisions of the subsection mandating the euthanasia of all trace deer do not apply; if the permittee declines participation in the plan, the requirements of the section resume applicability. The proposed subsection also stipulates that a participating facility remains NMQ until the provisions of the plan are satisfied.

Proposed new subsection (h) would prescribe the conditions under which deer younger than 120 days of age would be allowed to be transferred to a nursing facility.

Proposed new §65.100, concerning Violations and Penalties, would contain the provisions of current §65.99, with the addition of herd plans and custom testing plans to the list of components regulated by the division, violations of which are an offense.

Mitch Lockwood, Big Game Program director, 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, as the rules will be administered and enforced using existing personnel as part of their current duties under existing budgets.

Mr. Lockwood 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 restoration of the minimally acceptable probability that CWD will be detected if it exists and a concomitant reduction in the probability of CWD being spread from facilities where it might exist and an increase in the probability of detecting CWD if it does exist, thus ensuring the public of continued enjoyment of the resource and also ensuring the continued beneficial economic impacts of hunting in Texas. Additionally, the protection of free-ranging deer herds will have the simultaneous collateral benefit of protecting captive herds and maintaining the economic viability of deer breeding operations.

There will be an adverse economic impact on persons required to comply with the rules as proposed. Those impacts are the same as the adverse economic impacts to small and microbusinesses, which are addressed later in this preamble.

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 rules will result in increased costs to deer breeders in the form of additional required testing to maintain or acquire MQ status. Therefore, the department has prepared an economic impact statement and regulatory flexibility analysis described in Government Code, Chapter 2006.

Parks and Wildlife Code, §43.357(a), authorizes a person to whom a breeder permit has been issued to "engage in the business of breeding breeder deer in the immediate locality for which the permit was issued" and to "sell, transfer to another person, or hold in captivity live breeder deer for the purpose of propagation." As a result, deer breeders are authorized to engage in business activities; namely, the purchase and sale of breeder deer. The same is not true of DMP or Triple T permit holders, who are authorized only to trap, temporarily detain, and release deer and are not authorized by those permits to buy or sell deer, or to exchange deer for anything of value.

Government Code, §2006.001(1), defines a small or micro-business as a legal entity "formed for the purpose of making a profit" and "independently owned and operated." A micro-business is a business with 20 or fewer employees. A small business is defined as a business with fewer than 100 employees, or less than $6 million in annual gross receipts. Department data indicate that there are 999 permitted deer breeders in Texas as of the preparation of this analysis. Although the department does not require deer breeders to file financial information with the department, the department believes that most if not all deer breeders qualify as a small or micro-business. Since the rules as proposed would impact the ability of a deer breeder to engage in certain activities undertaken to generate a profit, the proposed rules will have an adverse impact on deer breeders.

The variety of business models utilized by deer breeders makes meaningful estimates of potential adverse economic impacts difficult. The department does not require deer breeders to report the buying or selling prices of deer. However, publicly available and anecdotal information indicates that sale prices, especially for buck deer, may be significant. The sale price for a single deer may range from hundreds of dollars to many thousands of dollars.

It should also be noted that some aspects of this analysis are based on anticipated marketplace behavior which cannot be accurately predicted. In addition, to the extent that any marketplace analysis can be conducted, it is difficult, if not impossible, to accurately separate and distinguish marketplace behavior that is the result of the proposed rules from marketplace behavior that is the result of the discovery of CWD. For reasons unrelated to the proposed rules, it is possible, perhaps even likely, that breeders and release site owners will be reluctant to purchase a breeder

deer from a facility with a close relationship or a perceived relationship to a facility at which CWD has been detected.

There will be no adverse economic impacts on sales of deer for MQ facilities as a result of the proposed new rules. As noted earlier in this analysis, the department for a variety of reasons views the rules as the minimally acceptable surveillance standard necessary to have an acceptable chance at detecting CWD; beyond that standard confidence regarding the health of deer in any given deer breeding facility is a matter of trust between buyer and seller.

For all permittees, the adverse economic impact of the proposed rules would consist of testing costs and the possible loss of sales for NMQ facilities. Historically there have been liberations of up to 290 deer; however, the vast majority of releases (more than 75% ever reported) involve 10 or fewer deer.

The proposed rules would require the submission of an obex and medial retropharyngeal lymph node to satisfy post-mortem testing requirements.

The proposed rules would require the testing of all test-eligible mortalities that occur within a breeding facility.

The proposed rules would increase the ratio at which ante-mortem tests could be substituted for required post-mortem tests. The current rules require a 3:1 ratio and the proposed rules would require a 5:1 ratio. Therefore, the rules as proposed would result in a 20 percent increase in cost of compliance for permittees utilizing ante-mortem testing to comply with the requirements of the rules, compared to the current rules.

The proposed rules would require the ante-mortem testing of all breeder deer prior to being released.

The proposed rules would require a deer breeder that is a Category A trace-out facility or Category B trace-out facility to euthanize all trace deer within the facility unless a custom testing plan is approved.

The proposed new rules would cause an adverse economic impact to deer breeders who must undertake disease-testing requirements to continue certain activities. As a result, deer breeders would incur costs related to the increased testing and monitoring requirements of the proposed new rules.

The cost of a CWD testing administered by the Texas A&M Veterinary Medicine Diagnostic Lab (TVMDL) on a sample collected and submitted by a deer breeder 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 fee for submitting an obex or obex/medial retropharyngeal lymph node pair for ELISA (enzyme linked immunoassay) testing would be $30, plus any veterinary cost (which the department cannot quantify), and the fee for submitting an entire head for testing would be $70.

Under the Veterinary Practice Act, the samples necessary for ante-mortem testing can only be obtained by a licensed veterinarian. Because veterinary practice models vary significantly (flat rates, graduated rates, included travel costs, herd call rates, sedation costs, etc.) in addition to pricing structures determined by the presence or absence of economic competition in different parts of the state, the cost of ante-mortem testing is difficult to quantify; however, based on anecdotal information and an informal survey of knowledgeable veterinarians, the department estimates the cost of tonsillar or rectal biopsies at approximately $70-200 to as much as $350 per head. It is important to note that ante-mortem procedures for CWD testing are relatively new, but the number of veterinarians with the training and expertise to perform them reliably is increasing; nevertheless, the fee structure for such procedures can best be described as still evolving.

The department also notes that for any given deer breeder that is currently not MQ, compliance with the proposed rules could be achieved over time at the additional direct economic cost of CWD testing requirements imposed by the rules.

If deer are euthanized for testing in order to reach the required number of post-mortem tests to become or remain MQ, there could be an economic impact from the loss of the deer and any revenue that might have been realized from the sale of the deer to another breeder or to a release site for liberation. As noted previously, the department does not require that breeders report financial data. The economic impact on a deer breeder would depend on whether the deer breeder euthanizes deer to achieve testing requirements, and the number and type of deer euthanized. As noted above, the lost revenue from the euthanized deer could range from a few hundred dollars or less per deer to thousands of dollars per deer.

Several alternatives were considered to achieve the goals of the proposed new rules while reducing potential adverse impacts on small and micro-businesses and persons required to comply.

One alternative was to do nothing. This alternative was rejected because the presence of CWD in breeding facilities and free-ranging populations presents an actual, direct threat to free-ranging and captive cervid populations and the economies that depend upon them. Although the current rules provide some level of monitoring and containment, the repeated additional discoveries of CWD in captive populations indicates that the rules are not effective in providing early detection. Additionally, statistical modeling demonstrates that they do not provide at least a 50 percent probability of detection of CWD if it is present in a facility. Therefore, because the department has a statutory duty to protect and conserve the wildlife resources of the state, the current rules do not achieve the necessary level of vigilance needed to detect the presence and/or spread of CWD. Therefore, this alternative was rejected.

Another alternative would be an absolute prohibition on the movement of deer within the state for any purpose. While this alternative would significantly reduce the potential spread of CWD, it would deprive deer breeders of the ability to engage in the business of buying and selling breeder deer. Therefore, this alternative was rejected because the department determined that it placed an avoidable burden on the regulated community.

Another alternative would be imposing less stringent testing requirements. This alternative was rejected because the testing requirements in the proposed rules reflect mathematical models aimed at higher confidence than is possible under current disease-testing requirements to determine that CWD is or is not present. Less stringent testing requirements would reduce confidence and therefore impair the ability of the department to respond in the event that CWD actually is present. Less stringent testing requirements also could result in the spread of CWD to additional breeding facilities, which would be designated NMQ and prohibited from transferring deer, which would, in turn, result in the total loss of sales opportunity. The department also believes that a higher testing intensity is necessary to provide assurance to the hunting public, private landowners, and the regu-

lated community that wildlife resources are available for the use and enjoyment of present and future generations.

The department has determined that there will be no effect on rural communities, since the economic contribution of individual deer is not a significant driver of economic activities at either the macro or micro level.

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 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; create a new regulation (by creating provisions to impose testing requirements on deer breeding facilities indirectly connected to facilities where CWD has been detected); expand an existing regulation (by requiring an obex and RLN to be tested, by increasing the percentage of mortalities that must be tested and the ratio of ante-mortem tests that may be substituted for required post-mortem testing), but not limit or permanently repeal any regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Mitch Lockwood, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (830) 792-9677; email: mitch.lockwood@tpwd.texas.gov or via the department website at https://tpwd.texas.gov/business/feedback/meetings.

DIVISION 1. CHRONIC WASTING DISEASE (CWD)

31 TAC §§65.80 - 65.83, 65.88

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter E, which authorizes the commission to make regulations governing the trapping, transporting, and transplanting of game animals, Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, and sale of breeder deer held under the authority of the subchapter; Subchapter R, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that white-tailed deer may be temporarily detained in an enclosure; Subchapter R-1, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that mule deer may be temporarily detained in an enclosure (although the department has not yet established a DMP program for mule deer authorized by Subchapter R-1); and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

The proposed amendments affect Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, and R-1.

§65.80. 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 in this subchapter shall have the meanings assigned by Parks and Wildlife Code.

(1) [~~Adult deer--A white-tailed deer or mule deer that is 16 months of age or older.~~]

[~~(2)~~] Containment Zone (CZ)--A department-defined geographic area in this state within which CWD has been detected or the department has determined, using the best available science and data, CWD detection is probable.

[~~(3) Eligible mortality--Any lawfully possessed adult deer that has died.~~]

(2) Herd Plan--A set of requirements for disease testing and management developed by the department and TAHC for a specific facility.

(3) [~~(4)~~] Surveillance Zone (SZ)--A department-defined geographic area in this state within which the department has determined, using the best available science and data, that the presence of CWD could reasonably be expected.

(4) [~~(5)~~] Susceptible species--Any species or part of a species of wildlife resource that is susceptible to CWD.

§65.81. Containment Zones; Restrictions.

The areas described in paragraph (1) of this section are CZs.

(1) (No change.)

(2) Restrictions.

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

(D) Deer that escape from a deer breeding facility within a CZ may not be recaptured unless specifically authorized under a [~~hold order or~~] herd plan [~~issued by the Texas Animal Health Commission~~].

(E) A [~~TC 1~~] deer breeding facility that is located in a CZ and designated by the department as MQ under the provisions of Division 2 of this subchapter may:

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

[~~(F) A TC 2 deer breeding facility located within a CZ may release breeder deer to immediately adjoining acreage if:~~]

~~*(i)* the title in the county deed records reflects that the surface of the release site and of the breeding facility is held by the same owner or owners; and~~]

~~*(ii)* each breeder deer released has, within 60 days prior to release, been subjected to a tonsil biopsy test for CWD with a result of "not detected."~~]

(F) [~~(G)~~] Except as authorized by §65.83 of this title (relating to Special Provisions) breeder [~~Breeder~~] deer may not be transferred to or from a [~~TC 3~~] deer breeding facility that is:

(i) located within a CZ; and

(ii) subject to the provisions of §65.99 of this title (relating to Breeding Facilities Epidemiologically Connected to Deer Infected with CWD).

(G) [~~(H)~~] Breeder deer [~~from any deer breeding facility designated as Movement Qualified under the provisions of Division 2 of this subchapter may be~~] released within a CZ must be tested as provided in this subparagraph.[~~, provided the breeding facility is authorized to release deer under the provisions of this division; and~~]

[~~(i)~~] If breeder deer are released [~~that if a release occurs~~] during a "hunting year" (as defined in §65.90 of this title (relating to Definitions)), harvest at the release site must be equal to or greater than the number of breeder deer released at that site before the last day of the hunting year, otherwise the harvest and reporting requirements of this subparagraph must be met before the last day of the hunting year immediately following the release.[~~; and~~]

(H) [~~(ii)~~] The [~~the~~] owner of a release site located within a CZ shall comply [~~the release site complies~~] with the requirements of §65.93 of this title (relating to Harvest Log).

(I) [~~(iii)~~] A person who fails to comply with the requirements of subparagraph (G) [~~(H)~~] of this paragraph commits an offense as provided in Parks and Wildlife Code, §43.367 and §65.89 of this division, and the department shall not authorize the additional release of breeder deer to that release site.

§65.82. Surveillance Zones; Restrictions.

The areas described in paragraph (1) of this section are SZs.

(1) (No change.)

(2) Restrictions.

(A) (No change.)

(B) Breeder Deer.

(i) Except as provided in Division 2 of this subchapter, a breeding facility that is within a SZ [~~and designated as a:~~]

[~~(I)~~] [~~TC 1 breeding facility~~] may:

(I) [~~(-a-)~~] transfer to or receive breeder deer from any other deer breeding facility in this state that is authorized to transfer deer; and

(II) [~~(-b-)~~] transfer breeder deer in this state for purposes of liberation, including to release sites within the SZ.

[~~(II)~~ ~~TC 2 breeding facility:~~]

[~~(-a-) may receive deer from any facility in the state that is authorized to transfer deer;~~]

[~~(-b-) may transfer deer to a breeding facility or release site that is within the same SZ; and~~]

[~~(-c-) is prohibited from transferring deer to any facility outside of the SZ.~~]

(ii) Deer that escape from a breeding facility within a SZ may not be recaptured unless specifically authorized under a [~~hold order or~~] herd plan [~~issued by the Texas Animal Health Commission~~].

(C) Breeder deer from a deer breeding facility located outside a SZ may be released within a SZ if authorized by Division 2 of this subchapter.

(D) Except as authorized by §65.83 of this title (relating to Special Provisions) breeder deer may not be transferred to or from a deer breeding facility that is:

(i) located within a SZ; and

(ii) subject to the provisions of §65.99 of this title (relating to Breeding Facilities Epidemiologically Connected to Deer Infected with CWD).

(E) [~~(D)~~] Permits to Transplant Game Animals and Game Birds (Triple T permit). The department may authorize the release of susceptible species in a SZ under the provisions of a Triple T permit issued by the department under the authority of Parks and Wildlife Code, Chapter 43, Subchapter E and the provisions of Subchapter C of this chapter, but the department will not authorize the trapping of deer within a SZ for purposes of a Triple T permit.

(F) [~~(E)~~] Deer Management Permit (DMP). The department may issue a DMP for a facility in a SZ; however, any breeder deer introduced to a DMP facility in a SZ must be released to the property for which the DMP is issued and may not be transferred anywhere for any purpose.

§65.83. Special Provisions.

A [~~TC 3~~] breeding facility that is located in a CZ or SZ and subject to the provisions of §65.99 of this title (relating to Breeding Facilities Epidemiologically Connected to Deer Infected with CWD) may release breeder deer to adjoining acreage under the same ownership, provided:

(1) (No change.)

(2) the release is specifically authorized in a herd plan [~~prepared for the facility by the Texas Animal Health Commission and TPWD~~]; and

(3) the [~~TC 3~~] breeding facility that releases breeder deer under the provisions of this section is in compliance with all applicable provisions of this subchapter, including provisions relating to the testing of released breeder deer, except as specifically exempted under a herd plan [~~prepared and approved by the department and TAHC~~].

§65.88. Deer Carcass Movement Restrictions.

(a) (No change.)

(b) Subsection (a) of this section does not apply to susceptible species processed in accordance with this subsection, provided the applicable requirements of subsections (c) - (e) of this section have been met:

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

(4) a whole skull (or skull plate) with antlers attached, provided the skull plate has been completely cleaned of all internal soft tissue;

(5) - (7) (No change.)

(c) - (e) (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 September 20, 2021.

TRD-202103710
James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: October 31, 2021
For further information, please call: (512) 389-4775

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DIVISION 2. CHRONIC WASTING DISEASE - MOVEMENT OF DEER

31 TAC §§65.90 - 65.100

The amendments and new section are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, and sale of breeder deer held under the authority of the subchapter; Subchapter R, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that white-tailed deer may be temporarily detained in an enclosure; Subchapter R-1, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that mule deer may be temporarily detained in an enclosure (although the department has not yet established a DMP program for mule deer authorized by Subchapter R-1); and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

The proposed amendments and new section affect Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, and R-1.

§65.90. Definitions.

The following words and terms shall have the following meanings, except in cases where the context clearly indicates otherwise.

(1) Accredited testing laboratory--A laboratory approved by the United States Department of Agriculture to test white-tailed deer or mule deer for CWD.

(2) Ante-mortem test--A CWD test performed on a live deer.

(3) Breeder deer--A white-tailed deer or mule deer possessed under a permit issued by the department pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter.

(4) Confirmed--A CWD test result of "positive" received from the Texas A&M Veterinary Medical Diagnostic Laboratory or the National Veterinary Service Laboratories of the United States Department of Agriculture.

(5) CWD--Chronic wasting disease.

(6) CWD-positive facility (positive facility)--Any facility in or on which CWD has been confirmed.

(7) Deer breeder--A person who holds a deer breeder's permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter.

(8) Deer breeding facility (breeding facility)--A facility authorized to hold breeder deer under a permit issued by the department pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter (Deer Breeder's Permit).

(9) Department (department)--Texas Parks and Wildlife Department.

(10) Deer Management Permit (DMP)--A permit issued under the provisions of Parks and Wildlife Code, Subchapter R or R-1 and Subchapter D of this chapter (relating to Deer Management Permit (DMP)) that authorizes the temporary detention of deer for the purpose of propagation.

[(11) Eligible-aged deer--]

[(A) if the deer is held in a breeding facility enrolled in the TAHC CWD Herd Certification Program, 12 months of age or older; or]

[(B) for any other deer, 16 months of age or older.]

[(12) Eligible mortality--An eligible-aged deer that has died.]

(11) [(13)] Exposed deer--A deer that meets any of the following criteria: [Unless the department determines through an epidemiological investigation that a specific deer has not been exposed, an exposed deer is a white-tailed deer or mule deer that:]

(A) the deer is or has been in a breeding facility where a CWD-positive deer has been kept following the date the facility was first exposed to CWD (if known);

[(A) is in a CWD-positive facility; or]

(B) the deer is or has been in a breeding facility within the five-year period preceding the death date of any CWD-positive deer that was in the facility (or the date of a positive ante-mortem test result); or

[(B) was in a CWD-positive facility within the five years preceding the confirmation of CWD in the CWD-positive facility.]

(C) the deer is in a breeding facility on or after the date that the facility received a deer under the circumstances described in subparagraph (A) or (B) of this paragraph.

(12) Exposure--The period of time that has elapsed following the introduction of an exposed deer to a breeding facility.

(13) [(14)] Facility--Any location required to be registered in TWIMS under a deer breeder's permit, Triple T permit, TTP permit, or DMP, including release sites and/or trap sites.

(14) Herd Plan--A set of requirements for disease testing and management developed by the department and TAHC for a specific facility.

(15) Hunter-harvested deer--A deer required to be tagged under the provisions of Subchapter A of this chapter (relating to Statewide Hunting Proclamation).

(16) Hunting year--That period of time between September 1 and August 31 of any year when it is lawful to hunt deer under the provisions of Subchapter A of this chapter (relating to Statewide Hunting Proclamation).

(17) Inconclusive-- A test result that is neither "positive" nor "not detected" on the basis of clinical deficiency.

(18) "Insufficient follicles"--A test result indicating that a tonsil or rectal biopsy sample contained an insufficient number of lymphoid follicles to produce a valid test result.

[(17) Interim Breeder Rules--31 TAC §§65.90 - 65.93, concerning Chronic Wasting Disease - Movement of Deer, adopted by the Texas Parks and Wildlife Commission on November 5, 2015, and published in the January 29, 2016 issue of the *Texas Register* (41 TexReg 815).]

(19) [(18)] Landowner (owner)--Any person who has an ownership interest in a tract of land and includes landowner's authorized agent.

(20) [(19)] Landowner's authorized agent (agent)--A person designated by a landowner to act on the landowner's behalf.

(21) Last known exposure--The last date a deer in a trace-out breeding facility was exposed to a trace deer prior to the death or transfer of that trace deer, or the last date an exposed deer entered a Tier 1 facility.

(22) [~~(20)~~] Liberated deer--A free-ranging deer that bears evidence of having been liberated including, but not limited to a tattoo (including partial or illegible tattooing) or of having been eartagged at any time (holes, rips, notches, etc. in the ear tissue).

(23) [~~(21)~~] Movement Qualified (MQ)--A designation made by the department pursuant to this division that allows a deer breeder to lawfully transfer breeder deer.

(24) [~~(22)~~] Not Movement Qualified (NMQ)--A designation made by the department pursuant to this division that prohibits the transfer of deer by a deer breeder.

~~[(23) NUES tag--An ear tag approved by the United States Department of Agriculture for use in the National Uniform Eartagging System (NUES).]~~

~~[(24) Originating facility--Any facility from which deer have been transported, transferred, or released, as provided in this definition or as determined by an investigation of the department, including:]~~

~~[(A) for breeder deer, the source facility identified on a transfer permit; and]~~

~~[(B) for deer being moved under a Triple T permit, the trap site.]~~

(25) Post-mortem test--A CWD test performed on a dead deer.

(26) Properly executed--A form or report required by this division on which all required information has been entered.

(27) Reconciled herd--The breeder deer held in a breeding facility for which every birth, mortality, and transfer of breeder deer [~~in the previous reporting year~~] has been accurately reported as required by this division.

(28) Release--The act of liberating a deer from captivity. For the purposes of this division the terms "release" and "liberate" are synonymous.

(29) [~~(28)~~] Release site--A specific tract of land to which deer are released, including the release of deer under the provisions of this chapter or Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, or R-1.

(30) [~~(29)~~] Reporting year--For a deer breeder's permit, the period of time from April 1 of one calendar year through March 31 of the next calendar year.

(31) [~~(30)~~] RFID tag--A button-type ear tag conforming to the 840 standards of the United States Department of Agriculture's Animal Identification Number system.

~~[(31) Status--A level assigned under this division for any given facility on the basis of testing performance and the source of the deer. For the transfer categories established in §65.95(b) of this title (relating to Movement of Breeder Deer), the highest status is Transfer Category 1 (TC 1) and the lowest status is Transfer Category 3 (TC 3). For the release site classes established in §65.95(c) of this title, Class I is the highest status and Class III is the lowest.]~~

(32) Submit--When used in the context of test results, provided to the department, either directly from a deer breeder or via an accredited testing laboratory.

(33) Suspect--An initial CWD test result of "detected" that has not been confirmed.

(34) TAHC--Texas Animal Health Commission.

~~[(35) TAHC CWD Herd Certification Program--The disease-testing and herd management requirements set forth in 4 TAC §40.3 (relating to Herd Status Plans for Cervidae).]~~

~~[(36) TAHC Herd Plan--A set of requirements for disease testing and management developed by TAHC for a specific facility.]~~

(35) Test-eligible--

(A) Until the effective date of these rule amendments, a deer at least 16 months of age; and

(B) Beginning with the effective date of this rule, a deer at least 12 months of age.

(36) [~~(37)~~] Test, Test Result(s), or Test Requirement--A CWD test, CWD test result, or CWD test requirement as provided in this division.

(37) Tier 1 facility--A breeding facility that has received an exposed deer that was in a trace-out breeding facility.

(38) Trace deer--A deer that the department has determined had been in a CWD-positive deer breeding facility on or after the date the facility was first exposed to CWD, if known; otherwise, within the previous five years from the reported mortality date of the CWD-positive deer, or the date of the ante-mortem test result.

(39) Trace-out breeding facility--A breeding facility that has received an exposed deer that was in a CWD-positive deer breeding facility.

(40) [~~(38)~~] Trap Site--A specific tract of land approved by the department for the trapping of deer under this chapter and Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, and R-1.

(41) [~~(39)~~] Triple T permit--A permit to trap, transport, and transplant white-tailed or mule deer (Triple T permit) issued under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter E, and Subchapter C of this chapter (relating to Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds).

(42) [~~(40)~~] Trap, Transport and Process (TTP) permit--A permit issued under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter E, and Subchapter C of this chapter (relating to Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds), to trap, transport, and process surplus white-tailed deer (TTP permit).

(43) [~~(41)~~] TWIMS--The department's Texas Wildlife Information Management Services (TWIMS) online application.

§65.91. General Provisions.

(a) To the extent that any provision of this division conflicts with any provision of this chapter other than Division 1 of this subchapter, this division prevails.

(b) Except as provided in this division, no live breeder deer or deer trapped under a Triple T permit, TTP permit or DMP may be transferred anywhere for any purpose.

(c) Except as provided in this division, no person shall transfer [~~introduce into or remove~~] deer to or from [~~or allow or authorize deer to be introduced into or removed from~~] any facility for which a CWD test result of "suspect" has been obtained from an accredited testing laboratory, irrespective of how the sample was obtained or who collected the sample. The provisions of this subsection take effect immediately upon the notification of a CWD "suspect" test result, and continue in effect until the department expressly authorizes the resumption of permitted activities at that facility.

(d) Notwithstanding any provision of this division, no person may cause or allow breeder deer to be moved from a facility for any purpose if such movement is prohibited by a herd plan [~~TAHC Herd Plan~~] associated with a TAHC hold order or TAHC quarantine.

[~~(e) A facility (including a facility permitted after the effective date of this division) that receives breeder deer from an originating facility of lower status automatically assumes the status associated with the originating facility and becomes subject to the testing and release requirements of this division at that status for:~~]

[~~(1) a minimum of two years, if the facility is a breeding facility; or~~]

[~~(2) for the period specified in §65.95(c) of this title (relating to Movement of Breeder Deer), if the facility is a release site.~~]

[~~(f) A deer breeding facility that was initially permitted after March 31, 2016 will assume the lowest status among all originating facilities from which deer are received.~~]

(e) [~~(g)~~] Except as provided in §65.99(h) of this title (relating to Breeding Facilities Epidemiologically Connected to Deer Infected with CWD), no [~~The designation of status by the department in and of itself does not authorize the transfer or movement of deer. No~~] person may transfer [~~remove or cause the removal of~~] deer to or from a facility that has been designated NMQ by the department unless specifically authorized by the department for the holder of a scientific research permit when the proposed research is determined to be of use in advancing the etiology of CWD in susceptible species [~~pursuant to this division~~].

(f) Immediately upon the notification that a facility has received a CWD "suspect" test result (a CWD suspect facility), all facilities that have been in possession of a deer that was held in the CWD suspect facility within the previous five years shall be designated NMQ by the department until it is determined that the facility is not epidemiologically linked to the CWD suspect deer, or it is determined upon further testing that the "suspect" deer is not a confirmed positive.

(g) [~~(h)~~] Unless expressly provided otherwise in this division, all applications, reports, and[~~,~~] notifications[~~, and requests for change in status~~] required by this division shall be submitted electronically via TWIMS or by another method expressly authorized by the department.

(h) [~~(i)~~] In the event that technical or other circumstances prevent the development or implementation of automated methods for collecting and submitting the data required by this division via TWIMS, the department may prescribe alternative methods for collecting and submitting the data required by this division.

(i) [~~(j)~~] Except as provided in this division, no person shall introduce into, remove deer from or allow or authorize deer to be introduced into or removed from any facility unless a georeferenced map (a map image incorporating a system of geographic ground coordinates, such as latitude/longitude or Universal Transverse Mercator (UTM) coordinates) showing the exact boundaries of the facility has been submitted to the department prior to any such introduction or removal.

§65.92. CWD Testing.

(a) All CWD test samples at the time of submission for testing shall be accompanied by a properly executed, department-prescribed form provided for that purpose.

(b) Except as provided in §65.95(b)(6) of this title (relating to Movement of Breeder Deer) or subsection (d) of this section [~~For the purposes of this division,~~] an ante-mortem CWD test is not valid unless it is performed by an accredited laboratory on retropharyngeal lymph node, rectal mucosa, or tonsillar tissue with at least six [~~6~~] lymphoid follicles collected within eight [~~six~~] months of submission by a licensed veterinarian authorized pursuant to statutes and regulations governing the practice of veterinary medicine in Texas and regulations of the TAHC from a live deer that:

(1) is at least 12 [~~16~~] months of age; and

(2) has not been the source of a "not detected" ante-mortem test result submitted within the previous 12 [~~24~~] months.

(c) A post-mortem CWD test is not valid unless it is performed by an accredited testing laboratory on the obex and [~~or~~] medial retropharyngeal lymph node of a test-eligible [~~an eligible~~] mortality, and may be collected only by a qualified licensed veterinarian, TAHC-certified CWD sample collector, or other person approved by the department.

(d) Except for the provisions of paragraphs (3) and (4) of this subsection, the provisions of this subsection take effect April 1, 2022. To meet the requirements of §65.94[~~(a)(1)(A) and (B)~~] of this title (relating to Breeding Facility Minimum Movement Qualifications), or §65.95 of this title [~~(relating to Movement of Breeder Deer)~~], ante-mortem test results may be substituted for post-mortem test results at a ratio of five [~~three~~] "not detected" ante-mortem test results for each required "not detected" post-mortem test result; however:[~~.~~]

(1) the ante-mortem tests must be conducted within eight months of the end of the reporting year; and

(2) the number of ante-mortem test results submitted cannot exceed 30 percent of the total number of post-mortem results required by this division, multiplied by five, in more than two reporting years during the life of the permit.

(3) For a facility with sufficient deer to satisfy the ante-mortem substitution requirements of this subsection were it not for the testing frequency limitations imposed by subsection (b)(2) of this section, test results from deer at least six months of age at the time of testing may be submitted to satisfy the requirements of this subsection. The provisions of this paragraph do not apply unless all test-eligible deer in the facility have been tested prior to the testing of any deer that is six months of age or older but younger than 12 months of age.

(4) For a facility that must conduct ante-mortem testing of all test-eligible deer in the facility to regain MQ status, the department will not accept inconclusive ante-mortem test results (including, but not limited to "insufficient follicles") for more than 10 percent of the total number of deer tested. For facilities required to test less than ten deer, inconclusive ante-mortem test results (including but not limited to "insufficient follicles" will not be accepted.

(5) No provision of this subsection shall be construed as to relieve any permittee of the obligation to test every mortality that occurs within a breeding facility as required by §65.94 of this title.

(e) For purposes of satisfying the testing requirements of §65.94 or §65.95 of this title for the period of time between the reporting year that began April 1, 2017 and the reporting period ending March 31, 2022, ante-mortem test results may be substituted for post-mortem test results at a ratio of three "not detected" ante-mortem test results for each required "not detected" post-mortem test result.

(f) [~~(e)~~] Except as specifically provided in this division [~~section~~], an ante-mortem test result may not be used more than once to satisfy any testing requirement of this division.

(g) No ante-mortem test result may be utilized by more than one permittee to satisfy any requirement of this division.

(h) An ante-mortem test result is valid only if the deer from which it was taken is still in the inventory of the facility in which the sample was taken.

(i) [(f)] The testing requirements of this division cannot be altered by the sale or subdivision of a property to a related party if the purpose of the sale or subdivision is to avoid the requirements of this division.

[(g) The owner of a release site agrees, by consenting to the release of breeder deer on the release site, to submit all required CWD test results to the department as soon as possible but not later than May 1 of each year for as long as CWD testing is required at the release site under the provisions of this division.]

(j) [(h)] Deer breeders shall report all deer mortalities that occur within a breeding facility within seven [14] days of detection.

(k) [(i)] All CWD test samples shall be submitted to an accredited testing laboratory within seven [14] days of collection.

§65.93. Harvest Log.

(a) (No change.)

(b) For each deer harvested on the release site the landowner must, on the same day that the deer is harvested, legibly enter the following information in the daily harvest log:

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

(5) any RFID [or NUES] tag number of any RFID [or NUES] tag affixed to the deer; and

(6) (No change.)

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

§65.94. Breeding Facility Minimum Movement Qualification.

(a) Notwithstanding any other provision of this division, a breeding facility is designated NMQ and is prohibited from transferring breeder deer anywhere for any purpose if the breeding facility:

(1) has not:

(A) met the provisions of this subparagraph:

(i) had less than five eligible mortalities from May 23, 2006 through March 31, 2016; or

(ii) submitted CWD "not detected" test results for at least 20% of the total number of eligible mortalities that occurred in the facility since May 23, 2006; and

(B) beginning with the reporting [report] year that starts April 1, 2017, and ending March 31, 2022, [each April 1 thereafter:]

[(i) achieved "fifth-year" or "certified" status in the TAHC CWD Herd Certification Program; or]

[(ii)] submitted CWD "not detected" test results for:

(i) at least 80% of test-eligible [eligible] mortalities occurring in the facility before the effective date of this section; and

(ii) 100 percent of test-eligible mortalities occurring in the facility after the effective date of this subsection [during the previous reporting year]; provided, however, if the facility has been permitted for six months or more, the number of "not detected" test results submitted during the previous reporting year must be equal to or greater than the following number: the sum of the test-eligible [eligible-aged] deer reported in the breeding facility inventory on March 31 of the previous reporting year, plus the sum of the eligible mortalities that occurred within the breeding facility for the previous reporting year, multiplied by 3.6 percent; and

(C) beginning with the reporting year that starts April 1, 2022 and for each reporting year thereafter, submitted CWD "not detected" test results for 100 percent of eligible mortalities occurring in the facility during the previous reporting year; provided, however, if the facility has been permitted for six months or more, the number of "not detected" test results submitted during the previous reporting year must be equal to or greater than the following number: the sum of the test-eligible deer reported in the breeding facility inventory on March 31 of the previous reporting year, plus the sum of the eligible mortalities that occurred within the breeding facility for the previous reporting year, multiplied by five percent;

(2) is not authorized pursuant to a herd plan [TAHC Herd Plan] associated with a TAHC hold order or TAHC quarantine;

(3) does not have a reconciled herd inventory; or

(4) is not in compliance with the reporting and recordkeeping provisions of this division and §65.608 of this title (relating to Annual Reports and Records).

(b) A breeding facility that has been designated as NMQ for failure to comply with the testing requirements specified in subsection (a) of this section will be restored to MQ:

(1) when the required "not detected" test results prescribed by subsection (a) of this section are submitted; or

(2) the department has designated the breeding facility MQ under the provisions of subsections (d), (e), or (f) [(f) or (g)] of this section.

[(c) If a breeding facility that has obtained TC 1 status is unable to satisfy the criteria of this subchapter necessary to maintain TC 1 status by March 31 of any year solely because tissue samples have been documented by an accredited testing facility as having been received and lost, the breeding facility status will be reduced to TC 2 unless:]

[(1) ante-mortem substitution samples necessary to maintain TC 1 status are submitted to an approved diagnostic laboratory by the latter of the following:]

[(A) May 15 immediately following the report year to which the substitution test results would apply; or]

[(B) 30 days after the date on which the breeder is notified by the accredited testing facility that the tissue samples have been lost; and]

[(2) the required number of "not detected" test results are obtained from the ante-mortem substitute samples submitted to satisfy paragraph (1) of this subsection.]

(c) [(d)] A breeding facility designated NMQ shall report all mortalities within the facility to the department immediately upon discovery of the mortality.

[(e) Immediately upon the notification that a facility has received a CWD "suspect" test result (a CWD suspect facility), all facilities that have been in possession of a deer that was held in the CWD suspect facility within the previous five years shall be designated NMQ by the department until it is determined that the facility is not epidemiologically linked to the CWD suspect deer, or it is determined upon further testing that the "suspect" deer is not a confirmed positive.]

(d) [(f)] Notwithstanding the applicable provisions of §65.92[(b)(2)] of this title (relating to CWD Testing), a breeding facility that is designated NMQ and is unable to satisfy the requirements of subsection (a) of this section to achieve MQ status may be designated MQ by the department, provided:

(1) the facility has not received any exposed deer;

(2) there are no discrepancies between the deer physically present in the facility (number, sex, age, unique identifier) and the herd inventory reported in TWIMS;

(3) the department has determined that the number of test-eligible [~~eligible-aged~~] deer in the facility is not sufficient to provide the necessary ante-mortem test samples to substitute for post-mortem test results;

(4) a department herd inventory inspection has been completed at least 12 months prior to the initiation of any ante-mortem testing under paragraph (5) of this subsection;

(5) all test-eligible [~~eligible-aged~~] deer in the facility are subjected to ante-mortem testing two times at an interval of not less than 12 months, beginning not less than 12 months from being designated NMQ, provided:

(A) a deer that is not test-eligible [~~eligible-aged~~] when testing under this subsection begins but reaches test-eligible [~~eligible-aged~~] status during the 12 -month interval stipulated by this paragraph is not required to be tested twice, but must be tested at least once during the 12-month interval stipulated by this paragraph. The test result must be "not detected"; and

(B) a deer that is not test-eligible [~~eligible-aged~~] when testing under this paragraph begins and does not become test-eligible [~~eligible-aged~~] during the 12-month interval stipulated by this paragraph is not required to be tested; and

(6) a test result of "not detected" for all tests required under paragraph (5) of this subsection is obtained and submitted for each test-eligible [~~eligible-aged~~] deer in the facility.

(e) [~~(g)~~] The department may decline to designate a facility as MQ under subsection (d) [~~(f)~~] of this section:

(1) if the department determines that a permittee has intentionally failed to test a test-eligible mortality; or

(2) upon the recommendation of a licensed veterinarian or epidemiologist employed by the department or TAHC. The recommendation must:

(A) [~~(1)~~] be in writing and articulate the specific rationale supporting the recommendation; and

(B) [~~(2)~~] may include specific additional testing protocols to be undertaken at the facility that the department considers to be acceptable for rectifying the epidemiological or veterinary deficiencies identified in the recommendation.

(f) [~~(h)~~] Upon the successful completion of any additional testing requirements stipulated in the recommendation required by subsection (e) [~~(g)~~] of this section, the department may designate a facility MQ.

(g) The department may deny permit renewal for any facility for which substitute ante-mortem test results are utilized for more than 30 percent of the required postmortem test results, multiplied by five, pursuant to §65.92(d) of this title in more than two reporting years during the life of the permit.

(h) Deer required to be reported to the department under §65.605 of this title (relating to Holding Facility Standards and Care of Deer) are considered to be mortalities for the purposes of this division until lawfully recaptured. A deer that is not recaptured will be treated as a mortality that occurred within the facility from which the escape is required to be reported.

(i) Deer that according to department records should be present in a breeding facility but cannot be accounted for to the satisfaction of the department are considered to be mortalities for the purposes of this section.

§65.95. Movement of Breeder Deer.

(a) General. Except as otherwise provided in this division, a [~~TC 1 or TC 2~~] breeding facility may transfer breeder deer under a transfer permit that has been activated and approved by the department to:

(1) another breeding facility;

(2) an approved release site as provided in subsection (b)[~~paragraph (3) of this subsection~~];

(3) a DMP facility (however, deer transferred to DMP facilities cannot be recaptured and must be released as provided in the deer management plan); or

(4) a registered nursing facility, provided:

(A) the deer are less than 120 days of age;

(B) the facility from which the deer are transferred is MQ at the time of transfer; and

(C) no deer from any other breeding facility are or have been present in the nursing facility during the reporting year in which the transfer occurs.

(D) A registered nursing facility is prohibited from accepting deer from more than one breeding facility in one reporting year.

(E) No person may possess deer older than 120 days of age in a nursing facility.

[~~(4) to another person for nursing purposes.~~]

[~~(b) Breeder Facilities.~~]

[~~(1) TC 1. Except as may be otherwise provided in this division, a breeding facility that is in compliance with the requirements in 65.94(a) of this title(relating to Breeding Facility Minimum Movement Qualification) is a TC 1 facility if:~~]

[~~(A) the breeding facility has "fifth-year" or "certified" status in the TAHC CWD Herd Certification Program; or~~]

[~~(B) the breeding facility has submitted one of the following:~~]

[~~(i)~~ ~~"not detected" post-mortem test results for at least 80 percent of the total number of eligible mortalities that occurred in the breeding facility over the previous five consecutive reporting years, so long as the total number of "not detected" post-mortem test results submitted during the previous five consecutive reporting years is equal to or greater than the following number: the sum of the eligible-aged population in the breeding facility at the end of each of the previous five consecutive reporting years, plus the sum of the eligible mortalities that occurred within the breeding facility for each of the previous five consecutive reporting years, multiplied by 3.6 percent; or~~]

[~~(ii)~~ ~~"not detected" ante-mortem test results for at least 50 percent of eligible-aged deer in the facility's inventory as of the date the facility initiates the ante-mortem testing process. For the report year beginning April 1, 2016, a breeding facility will be construed to have temporarily complied with this item upon submission of "not detected" ante-mortem test results for at least 25 percent of eligible-aged deer in the facility as of the date the facility initiates the ante-mortem testing process; however, the breeding facility must submit the remaining ante-mortem tests results to achieve 50% testing by May 15, 2017.~~]

[(2) TC 2.]

[(A) A breeding facility is a TC 2 facility if:]

[(i) it is not a TC 1 facility; and]

[(ii) it is not a TC 3 facility.]

[(B) The testing requirements for a TC 2 facility are the minimum testing requirements established for MQ designation in §65.94(a)(1) of this title (relating to Breeding Facility Minimum Movement Qualification).]

[(3) TC 3.]

[(A) A TC 3 facility is any breeding facility registered in TWIMS that is under a TAHC hold order, quarantine, and/or herd plan and meets any of the following criteria:]

[(i) received an exposed deer within the previous five years;]

[(ii) transferred deer to a CWD-positive facility within the five-year period preceding the confirmation of CWD in the CWD-positive facility; or]

[(iii) possessed a deer that was in a CWD-positive facility within the previous five years.]

[(B) No deer from a TC 3 facility may be transferred or liberated unless expressly authorized in a TAHC herd plan and then only in accordance with the provisions of this division and the TAHC herd plan.]

[(C) A TC 3 breeding facility remains a TC 3 breeding facility until the TAHC hold order or quarantine in effect at the breeding facility has been lifted.]

[(D) A TC 3 breeding facility may not transfer a breeder deer for any purpose unless the deer has been tagged in one ear with a NUES tag or button-type RFID tag approved by the department.]

(b) [(c)] Release Sites; Release of Breeder Deer.

(1) [General.]

[(A)] An approved release site consists solely of the specific tract of land to which deer are released and the acreage is designated as a release site in TWIMS. A release site owner may modify the acreage registered as the release site to recognize changes in acreage (such as the removal of cross-fencing or the purchase of adjoining land), so long as the release site owner notifies the department of such modifications prior to the acreage modification. The release site requirements set forth in this division apply to the entire acreage modified under the provisions of this subparagraph.

(2) [(B)] Liberated breeder deer must have complete, unrestricted access to the entirety of the release site; provided, however, deer may be excluded from areas for safety reasons (such as airstrips) or for the purpose of protecting areas such as crops, orchards, ornamental plants, and lawns from depredation.

(3) [(C)] All release sites onto which breeder deer are liberated must be surrounded by a fence of at least seven feet in height that is capable of retaining deer at all times under reasonable and ordinary circumstances. The owner of the release site is responsible for ensuring that the fence and associated infrastructure retain deer under reasonable and ordinary circumstances.

[(D) The testing requirements of this subsection continue in effect until "not detected" test results have been submitted as required by this subsection. A release site that is not in compliance with the requirements of this subsection is ineligible to receive deer and must continue to submit test results until the testing requirements of this subsection are satisfied.]

(4) [(E)] No person may intentionally cause or allow any live deer to leave or escape from a release site onto which breeder deer have been liberated.

(5) [(F)] The owner of a [Class II or Class III] release site where deer from a facility subject to the provisions of §65.99 of this title (relating to Breeding Facilities Epidemiologically Connected to Deer Infected with CWD) or positive deer have been released shall maintain a harvest log at the release site that complies with §65.93 of this title (relating to Harvest Log).

(6) No person may transfer a breeder deer to a release facility or cause or allow a breeder deer to be transferred to a release facility unless:

(A) an ante-mortem test on rectal or tonsil tissue collected from the deer within the eight months immediately preceding the release has been returned with test results of "not detected" and

(B) the deer is at least six months of age at the time the test sample required by this subparagraph is collected.

(C) An ante-mortem test result of "not detected" submitted to satisfy the requirements of §65.92(d) of this title may be utilized a second time to satisfy the requirements of this paragraph.

(D) A facility from which deer are transferred in violation of this subparagraph becomes automatically NMQ and any further transfers are prohibited until the permittee has complied with the testing requirements of the department, based on an epidemiological assessment as specified in writing.

[(2) Class I Release Site. Except as provided in §65.98, a release site is a Class I release site and is not required to perform CWD testing if the release site:]

[(A) is not a Class II or Class III release site; and]

[(B) after August 15, 2016, the release site has received deer only from TC 1 facilities.]

[(3) Class II Release Site.]

[(A) A release site that is not a Class III release site and receives deer from a TC 2 breeding facility is a Class II release site.]

[(B) Beginning the first hunting year following the release of deer from any TC 2 breeding facility and continuing for each hunting year thereafter, the owner of a Class II release site must submit "not detected" post-mortem test results for the first deer harvested and each deer harvested thereafter at the release site; however, no release site owner is required to submit more than 15 "not detected" post-mortem test results in any hunting year.]

[(C) The requirements of subparagraph (B) cease as follows:]

[(i) for release sites that have submitted all test results required by this division, the requirements of subparagraph (B) cease on March 1, 2019;]

[(ii) for release sites that have not submitted all the test results required by this division, the requirements of subparagraph (B) shall cease upon submission of all required test results.]

(c) [(4)] Trace-out [Class III] Release Site.

(1) [(A)] A release site is a trace-out release site if it has: [Class III release site if:]

(A) received deer directly or indirectly from a positive breeding facility; and

[(i) it has:]

[(I) received deer from an originating facility that is a TC 3 facility; or]

[(II) received an exposed deer within the previous five years or has transferred deer to a CWD-positive facility within the five-year period preceding the confirmation of CWD in the CWD-positive facility; and]

(B) [(ii)] it has not been released from a [TAHC] hold order or quarantine related to activity described in subparagraph (A) of this paragraph [clause (i) of this subparagraph].

(2) [(B)] The landowner of a trace-out release site [Class III release site] must submit post-mortem CWD test results for one of the following values, whichever represents the greatest number of deer tested:

(A) [(i)] 100 percent of all hunter-harvested deer; or

(B) [(ii)] one hunter-harvested deer per liberated deer released on the release site between the last day of lawful hunting on the release site in the previous hunting year and the last day of lawful hunting on the release site during the current hunting year; provided, however, this minimum harvest and testing provision may only be substituted as prescribed in a [TAHC] herd plan.

(3) [(C)] No breeder deer may be transferred to a trace-out release site [Class III release site] unless the deer has been tagged in one ear with a [NUES tag or] button-type RFID tag approved by the department.

§65.96. Movement of DMP Deer.

This section applies to the movement of deer under a DMP.

[(1) Testing Requirements.]

[(A) There are no CWD testing requirements for a DMP facility that:]

[(i) does not receive breeder deer; or]

[(ii) receives breeder deer solely from TC 1 deer breeding facilities.]

[(B) Beginning the first hunting year after the release of deer from the following facilities, and continuing for each hunting year thereafter, the owner of the release site must submit "not detected" post-mortem test results for the first deer harvested and each deer harvested thereafter at the release site; however, no release site owner is required to submit more than 15 "not detected" post-mortem test results in any hunting year:]

[(i) deer from a DMP facility that receives breeder deer from a TC 2 deer breeding facility; or]

[(ii) deer from a DMP facility that receives deer trapped deer from a Class II release site.]

[(C) The requirements of subparagraph (B) cease as follows:]

[(i) for release sites that have submitted all test results required by this division, the requirements of subparagraph (B) cease on March 1, 2019;]

[(ii) for release sites that have not submitted all the test results required by this division, the requirements of subparagraph (B) shall cease upon submission of all required test results.]

(1) [(2)] The department will not authorize the transfer of deer to a DMP facility from a breeding facility subject to the provisions of §65.99 of this title (relating to Breeding Facilities Epidemiologically Connected to Deer Infected with CWD) or trace-out release site [TC 3 breeding facility, a Class III release site, or from a release site or deer breeding facility] that is not in compliance with the requirements of this division.

(2) The department will not authorize the transfer of deer from a DMP facility to any location other than the release site specified in the permit.

§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 [Unless expressly provided otherwise in this section, the provisions of §65.102 of this title (relating to Disease Detection Requirements) cease effect upon the effective date of this section].

(2) The department will not issue a Triple T permit authorizing deer to be trapped at a:

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

(B) release site that 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 under a [TAHC] hold order or quarantine.

(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) [listed in §65.103(c) of this title (relating to Trap, Transport, and Transplant 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.

(4) All deer released under the provisions of this section must be tagged prior to release in one ear with 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). RFID tag information must be submitted to the department.

(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).

(6) Except for a permit issued for the removal of urban deer, a test result is not valid unless the sample was collected and tested after the Saturday closest to September 30 of the year for which activities of the permit are authorized.

(7) For permits issued for the removal of urban deer, test samples may be collected between April 1 and the time of application.

(b) Testing Requirements for Triple T Permit.

(1) The department will not issue a Triple T permit unless "not detected" post-mortem test results have been submitted for 15 test-eligible [~~eligible-aged~~] 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) Testing Requirements for TTP Permit.

(1) "Not detected" test results for at least 15 test-eligible [~~eligible-aged~~] deer from the trap site must be submitted.

(2) The landowner of a trace-out release site [~~Class III release site~~] must submit CWD test results for 100% of the deer harvested pursuant to a TTP permit, which may include the samples required under paragraph (1) of this subsection.

(3) Test results related to a TTP permit must be submitted to the department by the method prescribed by the department by the May 1 immediately following the completion of permit activities.

§65.98. Transition Provisions.

[~~(a) This division does not apply to an offense committed before the effective date of this division. An offense committed before the effective date of this division is governed by the regulations that existed on the date the offense was committed, including, but not limited to the following:~~]

[~~(1) Deer Breeder: published in the *Texas Register* September 4, 2015 (40 TexReg 5566); January 1, 2016 (41 TexReg 9); January 29, 2016 (41 TexReg 815);~~]

[~~(2) DMP: published in the *Texas Register* October 23, 2015 (40 TexReg 7305); February 12, 2016 (41 TexReg 1049); February 19, 2016 (41 TexReg 1250); and,~~]

[~~(3) Triple T/TTP: published in the *Texas Register* October 23, 2015 (40 TexReg 7307); January 1, 2016 (41 TexReg 9).~~]

[~~(b) A release site that as of August 15, 2016, is in compliance with the Interim Deer Breeder Rules shall be not subject to testing requirements of this division until deer are liberated or released onto the release site under the provisions of this division.~~]

[~~(c) A release site that becomes a Class II release site as a result of the receipt of deer on or after August 15, 2016 from a TC 2 breeding facility will be designated as a Class I release site if the release site is in compliance with all Class II requirements as provided in §65.95(c) of this title (relating to Movement of Breeder Deer) in that season; and~~]

[~~(1) all TC 2 breeding facilities that provided deer to the release site achieve TC 1 status by May 15, 2017, as provided in 65.95(b)(1) of this title (relating to Movement of Breeder Deer); or~~]

[~~(2) all breeder deer liberated to the release site after August 15, 2016 and prior to October 1, 2016;~~]

[~~(A) are harvested and CWD-tested during the 2016-2017 hunting year; and~~]

[~~(B) no additional deer are received from a TC 2 or TC 3 facility during the 2016-2017 hunting year.~~]

[~~(d)~~] A release site that was not in compliance with the applicable testing requirements of this division in effect between August 15, 2016 and the effective date of this section [~~Interim Deer Breeder Rules~~] shall be:

(1) required to comply with the applicable provisions of this division regarding CWD testing with respect to release facilities [~~Class II or Class III sites for a period of three consecutive years beginning on the first day of lawful hunting for the 2016-2017 hunting year~~]; and

(2) ineligible to be a release site for breeder deer or deer transferred pursuant to a Triple T permit or DMP until the release site has complied with paragraph (1) of this section [~~subsection~~].

[~~(e) The department's executive director shall develop a transition plan and issue appropriate guidance documents to facilitate an effective transition to this division from previously applicable regulations. The transition plan shall include, but is not limited to, provision addressing a mechanism for classifying facilities that have obtained "not detected" ante-mortem test results at a level that meets or exceeds that required in this division prior to the effective date of this division.~~]

§65.99. Breeding Facilities Epidemiologically Connected to Deer Infected with CWD.

(a) Effectiveness.

(1) To the extent that any provision of this section conflicts with any provision of this division, the provisions of this section prevail.

(2) The provisions of Division 1 of this subchapter apply to any facility designated by the department as a Category A, Category B, or Tier 1 breeding facility subject to the provisions of this section.

(b) No deer from a facility subject to the provisions of this section may be transferred or liberated except as provided in this section or expressly authorized in a herd plan and then only in accordance with the provisions of this division and the herd plan.

(c) Deer transferred under the provisions of this section must be tagged in one ear with a button-type RFID tag approved by the department

(d) Category A trace-out breeding facility.

(1) A Category A facility is a trace-out breeding facility:

(A) in which all trace deer are alive in the facility; or

(B) for which post-mortem test results of "not detected" have been returned for trace deer that have died and all other trace deer are alive and present in the facility.

(2) Immediately upon notification by the department of Category A status, a facility is automatically NMQ. Except as provided in paragraph (3) of this subsection, a permittee shall, upon notification by the department of Category A status:

(A) within seven days euthanize all trace deer in the breeding facility and submit test samples for each of those deer for post-mortem testing within one business day;

(B) inspect the facility daily for mortalities;

(C) immediately report all test-eligible mortalities that occur within the facility; and

(D) immediately collect test samples from all test-eligible mortalities that occur within the facility and submit the samples for post-mortem testing within one business day of collection.

(3) In lieu of the testing requirements prescribed in paragraph (2)(A) of this subsection, a permittee may request the development of a custom testing plan as provided in subsection (g) of this section; provided however, the permittee must comply with the requirements of paragraph (2)(B) - (D) of this subsection.

(4) The department in consultation with TAHC may decline to authorize a custom testing plan under subsection (g) of this

section if an epidemiological assessment determines that a custom testing plan is inappropriate.

(5) The department will not restore MQ status unless CWD "not detected" test results are obtained for all required sample submissions and the permittee has complied with all applicable requirements of this subsection and this division.

(e) Category B trace-out breeding facility.

(1) A Category B facility is a trace-out breeding facility in which less than 100% of the trace deer that department records indicate were received by the facility are for whatever reason (including but not limited to transfer, release, or escape) available for testing.

(2) Immediately upon notification by the department of Category B status; a facility is automatically NMQ and the permittee shall:

(A) within seven days euthanize all trace deer in the breeding facility and submit test samples for each of those deer for post-mortem testing within one business day;

(B) inspect the facility daily for mortalities;

(C) immediately report all test-eligible mortalities that occur within the facility;

(D) immediately collect test samples from all test-eligible mortalities that occur within the facility and submit the samples for post-mortem testing within one business day of collection; and

(E) conduct ante-mortem testing of all test-eligible deer in the facility as specified in the following:

(i) for a facility for which the date of last known exposure is within the immediately preceding 18 months:

(I) submit rectal or tonsil biopsy samples collected on or after April 1, 2021; and

(II) submit tonsil biopsy samples collected no earlier than 24 months from the date of last known exposure;

(ii) for a facility for which the date of last known exposure is not within the immediately preceding 18 months and not at a time prior to the immediately preceding 36 months: collect and submit tonsil biopsy samples no earlier than 24 months from the date of last known exposure; and

(iii) for a facility for which the date of last known exposure occurred at a time after the immediately preceding 36 months: collect and submit rectal or tonsil biopsy samples collected no earlier than 36 months from the date of last known exposure.

(3) In lieu of the testing requirements prescribed by paragraph (2)(A) and (2)(E) of this subsection, a permittee may request the development of a custom testing plan as provided in subsection (g) of this section; provided, however, the permittee must comply with subparagraphs (B) - (D) of this paragraph.

(4) Samples required by paragraph (2)(E) of this subsection shall be submitted no later than 45 days after the applicable last known exposure period as determined by the department.

(5) The department in consultation with TAHC may decline to authorize a custom testing plan under subsection (g) of this section if an epidemiological assessment determines that a custom testing plan is inappropriate.

(6) The department will not restore MQ status unless CWD "not detected" test results are obtained for all required sample submissions and the permittee has complied with all applicable requirements of this subsection and this division.

(f) Tier 1 facility.

(1) Upon notification by the department of Tier 1 status, a facility is automatically NMQ and the permittee shall:

(A) inspect the facility daily for mortalities;

(B) immediately report all test-eligible deer mortalities that occur within the facility; and

(C) immediately collect test samples from all test-eligible deer mortalities that occur within the facility and submit for post-mortem testing within one business day of collection.

(2) A permittee may request the development of a custom testing plan as provided in subsection (g) of this section; provided, however, the permittee must comply with the provisions of paragraph (1)(A) - (C) of this subsection.

(3) The department will not restore MQ status unless the permittee has complied with all applicable requirements of this subsection and this division, and any one of the following:

(A) post-mortem results of "not detected" have been submitted for every exposed deer received from a trace facility; or

(B) the department has restored MQ status to all trace facilities from which deer were received; or

(C) the permittee has conducted ante-mortem testing as specified in subsection (e)(2)(E) of this section; or

(D) the permittee has conducted testing as specified in compliance with the provisions of a custom testing plan under the provisions of this subsection to the satisfaction of the department and TAHC.

(4) The department in consultation with TAHC may decline to authorize a custom testing plan under this subsection if an epidemiological assessment determines that a custom testing plan is inappropriate.

(g) Custom Testing Plan. Within seven days of being notified by the department that a breeding facility has been designated a Category A, Category B, or Tier 1 facility, a permittee may, in lieu of meeting the applicable testing requirements of subsections (d) - (f) of this section, request the development of a custom testing plan by the department in consultation with TAHC based upon an epidemiological assessment conducted by the department and TAHC. A custom testing plan under this subsection is not valid unless it has been approved by the department and TAHC.

(1) The department shall temporarily suspend the applicable testing provisions of subsections (d)(2)(A) and (e)(2)(A) and (E) of this section while the epidemiological assessment and custom testing plan development under this subsection take place.

(2) Upon the development of a custom testing plan under the provisions of this subsection, the department shall provide the permittee with a copy of the custom testing plan and the permittee shall, within seven days:

(A) agree in writing to comply with the provisions of the custom testing plan; or

(B) notify the department in writing that the permittee declines to participate in the custom testing plan.

(C) If a permittee chooses to decline participation in a custom testing plan under this subsection, the provisions of subsections

(d)(2)(A) and (e)(2)(A) and (E) of this section take effect as of the date of the notification required by subparagraph (B) of this paragraph and all time-dependent calculations of those subsections begin.

(D) If a permittee agrees in writing to comply with the provisions of a custom testing plan under this subsection, the custom testing plan replaces the testing provisions of subsections (d)(2)(A) and (e)(2)(A) and (E) of this section.

(3) A breeding facility designated by the department as Category A, Category B, or Tier 1 is NMQ as of the date of such notification and remains NMQ until the provisions of the custom testing plan under this subsection have been satisfied.

(4) If for any reason the permittee does not comply with the provisions of a custom testing plan under this subsection, the provisions of subsections (d) - (f) of this section resume applicability.

(5) The terms of a custom testing plan under this subsection are non-negotiable and final.

(h) Nursing facilities.

(1) Notwithstanding NMQ status, deer less than 120 days of age in any Category A, Category B, and or Tier 1 facility may be transferred to a registered nursing facility, provided:

(A) the facility from which the deer are transferred was MQ at the time the facility was designated Category A, Category B, or Tier 1; and

(B) no deer from any other breeding facility are or have been present in the nursing facility during the current reporting year.

(2) A registered nursing facility is prohibited from accepting deer from more than one breeding facility in one reporting year.

(3) No person may possess deer older than 120 days of age in a nursing facility.

§65.100. Violations and Penalties.

(a) A person who violates a provision of this division or a condition of a deer breeder's permit, DMP, Triple T permit, TTP permit, herd plan, or custom testing plan commits an offense and is subject to the penalties prescribed by the applicable provisions of the Parks and Wildlife Code.

(b) A person who possesses or receives white-tailed deer or mule deer under the provisions of this division and/or Subchapters C, D, or T of this chapter is subject to the provisions of TAHC regulations at 4 TAC Chapter 40 (relating to Chronic Wasting Disease) that are applicable to white-tailed or mule deer.

(c) A person who fails to comply with a provision of this division or a condition of a deer's breeder permit, DMP, Triple T permit, TTP permit, herd plan, or custom testing plan may be prohibited by the department from future permit eligibility or issuance.

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: October 31, 2021
For further information, please call: (512) 389-4775

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31 TAC §65.99

The repeal is proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter E, which authorizes the commission to make regulations governing the trapping, transporting, and transplanting of game animals, Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, and sale of breeder deer held under the authority of the subchapter; Subchapter R, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that white-tailed deer may be temporarily detained in an enclosure; Subchapter R-1, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that mule deer may be temporarily detained in an enclosure (although the department has not yet established a DMP program for mule deer authorized by Subchapter R-1); and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

The proposed repeal affects Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, and R-1.

§65.99. Violations and Penalties.

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

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SUBCHAPTER D. DEER MANAGEMENT PERMIT (DMP)

31 TAC §65.133

The Texas Parks and Wildlife Department proposes an amendment to 31 TAC §65.133, concerning General Provisions. Texas Parks and Wildlife Code, Chapter 43, Subchapter R, authorizes the department to issue a permit for the temporary detention of white-tailed deer for the purpose of propagation, known as the Deer Management Permit (DMP). The proposed amendment is intended to eliminate the risk of exposure to chronic wasting disease (CWD) for deer in deer breeding facilities as a result of breeder bucks returning from DMP facilities. Current permit rules allow a buck deer held under a deer breeder permit to be introduced to a DMP pen and then returned to a deer breeding facility prior to the release of deer from the DMP pen, if approved under a deer management plan. The proposed amendment would eliminate those provisions authorizing the return of buck breeder deer from DMP pens.

The proposed amendment is in response to the threat of possible exposure to chronic wasting disease (CWD). CWD is a fatal

neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (referred to collectively as susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans. CWD can be transmitted both directly (through animal-to-animal contact) and indirectly (through environmental contamination). CWD has been detected in multiple locations in Texas, primarily in deer breeding facilities. The department, along with the Texas Animal Health Commission, has been engaged in a long-term battle to detect and contain CWD. If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion dollar ranching, hunting, wildlife management, and real estate economies could be significant.

Mitch Lockwood, Big Game Program Director, 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. Lockwood also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be the protection of indigenous wildlife resources for public use and enjoyment.

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 impacts to small businesses, micro-businesses, or rural communities. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rule will not result in direct adverse impacts on small businesses, micro-businesses, or rural communities because the proposed rule regulates various aspects of recreational license privileges that allow individual persons to pursue and harvest public wildlife resources in this state and therefore does 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 rule as proposed will not impact local economies.

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

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

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation; will limit a regulation (by removing the opportunity for breeder bucks to be returned from DMP pens), but will not otherwise expand or repeal a 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 Mitch Lockwood at (830) 792-9677, e-mail: mitch.lockwood@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The amendment is proposed under the authority of Parks and Wildlife Code, Chapter Subchapter R, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that white-tailed deer may be temporarily detained in an enclosure.

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

§65.133. General Provisions.

(a) (No change.)

(b) Any [~~Except as provided in subsection (c) of this section, any~~] deer introduced into a pen containing deer detained under a DMP become free-ranging deer and must be released according to the provisions of §65.136 of this title (relating to Release of Deer).

(c) If approved under the deer management plan, [~~buck~~] deer held under the provisions of Subchapter T of this chapter (relating to Deer Breeder Permits) may be introduced into a pen containing deer detained under a DMP. Such deer may not be recaptured and must be [~~; however, any such deer within the pen when deer are~~] released with all other deer required to be released under the provisions of §65.136 of this title to become free-ranging deer.

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

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

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