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

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

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 106. REGISTRATION OF DATA BROKERS

The Office of the Secretary of State (Office) proposes new Chapter 106, §§106.1 - 106.5, concerning registration of data brokers. The Office proposes these rules to implement the new registration requirements for data brokers in Senate Bill 2105, enacted by the 88th Legislature, Regular Session, codified at Chapter 509 of the Texas Business and Commerce Code (SB 2105).

BACKGROUND INFORMATION AND JUSTIFICATION

SB 2105, adopted by the 88th Legislature, Regular Session, creates a comprehensive framework in Chapter 509 of the Texas Business and Commerce Code to regulate data brokers. The bill took effect on September 1, 2023.

As enacted by SB 2105, Chapter 509 of the Texas Business and Commerce Code requires a data broker (as defined in Texas Business and Commerce Code §509.001(4)) to register annually with the Office. Texas Business and Commerce Code §509.005 specifies the amount of the registration or renewal fee and identifies the information that must be included in a data broker's registration statement filed with the Office. Texas Business and Commerce Code §509.006 directs the Secretary of State to establish and maintain, on its Internet website, a searchable, central registry of data brokers registered under §509.005. Texas Business and Commerce Code §509.004 requires a data broker that maintains an Internet website or mobile application to post a conspicuous notice on the website or application that, in part, contains the language provided by rule of the Office for inclusion in the notice.

Section 2 of SB 2105 requires the Office, not later than December 1, 2023, to adopt rules necessary to facilitate registration by a data broker under Texas Business and Commerce Code §509.005. Section 2 also directs the Office to incorporate into the rules adequate time for a data broker to comply with Chapter 509 of the Texas Business and Commerce Code following the adoption of the rules.

The purpose of these new rules under Chapter 106 (Registration of Data Brokers) is to provide information regarding the procedures for data broker registration with the Office and the posting of a notice on the data broker's Internet website or mobile application, in accordance with SB 2105.

SECTION-BY-SECTION SUMMARY

Proposed §106.1 defines terms used within Chapter 106.

Proposed §106.2 specifies the procedures for a data broker to register with the Office, or to renew an existing registration certificate, as required by Texas Business and Commerce Code §509.005.

Proposed §106.3 provides that a registration of a data broker is valid for one year from the date of issuance and must be renewed annually. The section also designates the time period for a data broker to submit a renewal application. Consistent with Section 2 of Senate Bill 2105, this section requires a data broker subject to Chapter 509 of the Texas Business and Commerce Code to file an initial registration with the Office on or before March 1, 2024.

Proposed §106.4 establishes the procedures for a data broker to submit a statement of correction.

Proposed §106.5 sets forth the required notice language for posting by a data broker on its Internet website or mobile application pursuant to Texas Business and Commerce Code §509.004.

FISCAL NOTE

SB 2105 requires a data broker subject to Chapter 509 of the Texas Business and Commerce Code to register with the Office by filing a registration statement and paying a registration fee or renewal fee of $300. The proposed new rules do not impose any additional costs on a data broker seeking to register with the Office.

Accordingly, Traci Cotton, Director of the Office's Business & Public Filings Division, has determined that for each year of the first five years that the proposed new sections will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed rules. In addition, the Office does not anticipate that enforcing or administering the proposed rules will result in any reductions in costs or in any additional costs to the Office, the state, or local governments. The Office also does not anticipate that there will be any loss or increase in revenue to the Office, the state, or local governments as a result of enforcing or administering the proposed rules.

PUBLIC BENEFIT

Ms. Cotton has determined that for each year of the first five years that the proposed new sections will be in effect, the public benefit expected as a result of adopting the proposed new rules will be clarity with respect to the Office's application of Texas Business and Commerce Code §509.005. The proposed new rules will benefit the public by providing information regarding the registration of data brokers with the Office in accordance with Chapter 509 of the Texas Business and Commerce Code. The rules also will provide guidance to data brokers regarding the

required notice language under Texas Business and Commerce Code §509.004.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons required to comply with the proposed new rules. There is a cost imposed on a data broker seeking to register with the Office, or submitting a renewal application related to an existing registration certificate, pursuant to Texas Business and Commerce Code §509.005. However, the Office's proposed new rules do not impose any additional costs on such entities. There is no effect on local economy for the first five years that the proposed new rules will be in effect; therefore, no local employment impact statement is required under Texas Government Code §§2001.022 and 2001.024(a)(6).

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

The proposed new rules will have no direct adverse economic impact on small businesses, micro-businesses, or rural communities. Accordingly, the preparation of an economic impact statement and a regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code §2001.0221, the Office provides the following government growth impact statement for the proposed rules. For each year of the first five years that the proposed new rules will be in effect, the Office has determined the following:

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

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

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

(4) the proposed rules will not require an increase or decrease in fees paid to the agency;

(5) the proposed rules are new rules and therefore create new regulations;

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

(7) the proposed rules will not increase or decrease the number of individuals subject to the rules' applicability; and

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

REQUEST FOR PUBLIC COMMENTS

Comments or questions on the proposed new rules may be submitted in writing and directed to Adam Bitter, General Counsel, Office of the Secretary of State, P.O. Box 12887, Austin, Texas 78711-2887, or by e-mail to generalcounsel@sos.texas.gov. Comments will be accepted for thirty (30) days from the date of publication of the proposed rules in the *Texas Register.* Comments should be organized in a manner consistent with the organization of the proposed new rules.

SUBCHAPTER A. DEFINITIONS

1 TAC §106.1

STATUTORY AUTHORITY

The proposed new rule is authorized by Texas Business and Commerce Code §509.010 and Texas Government Code §2001.004(1). Texas Business and Commerce Code §509.010 authorizes the Office to adopt rules as necessary to implement Chapter 509 of the Texas Business and Commerce Code. Texas Government Code §2001.004 requires a state agency to adopt rules of practice stating the nature and requirements of formal and informal procedures.

CROSS REFERENCE TO STATUTE

The proposed new rules implement Chapter 509 of the Texas Business and Commerce Code. No other statute, code, or article is affected by the proposed rules.

§106.1. Definitions.

Words and terms defined in Chapter 509 of the Business and Commerce Code shall have the same meaning in this chapter. In addition, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Primary physical address--The physical address at which the relevant individual or entity is available for contact.

(2) Registrant--A data broker who has registered with the secretary and has been issued a registration certificate.

(3) Secretary--The Texas Secretary of 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 18, 2023.

TRD-202303478
Adam Bitter
General Counsel
Office of the Secretary of State
Earliest possible date of adoption: October 29, 2023
For further information, please call: (512) 463-5770

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SUBCHAPTER B. REGISTRATION AND RENEWAL OF DATA BROKERS

1 TAC §106.2, §106.3

STATUTORY AUTHORITY

The proposed new rules are authorized by Texas Business and Commerce Code §509.010 and Texas Government Code §2001.004(1). Texas Business and Commerce Code §509.010 authorizes the Office to adopt rules as necessary to implement Chapter 509 of the Texas Business and Commerce Code. Texas Government Code §2001.004 requires a state agency to adopt rules of practice stating the nature and requirements of formal and informal procedures.

CROSS REFERENCE TO STATUTE

The proposed new rules implement Chapter 509 of the Texas Business and Commerce Code. No other statute, code, or article is affected by the proposed rules.

§106.2. Registration and Renewal of Data Brokers.

(a) A complete registration statement or renewal application is comprised of:

(1) A completed registration statement or renewal application, signed and sworn to by or on behalf of the data broker, in the form promulgated by the secretary; and

(2) Payment of the registration fee or renewal fee stated in Business and Commerce Code §509.005(a) or §509.005(d), as applicable.

(b) A registration statement or renewal application must comply with Business and Commerce Code §509.005, and also provide:

(1) For the individual submitting the registration statement or renewal application:

(A) The individual's legal name;

(B) The individual's telephone number;

(C) The individual's primary physical address;

(D) The individual's mailing address; and

(E) The individual's e-mail address.

(2) For all renewals, the renewal application must also:

(A) Specify that the submission is a renewal application related to an existing registration certificate; and

(B) Provide the registration number assigned to the data broker by the secretary.

§106.3. Timing of Registration.

(a) A registration certificate expires on the first anniversary of its date of issuance by the Office.

(b) A data broker seeking to renew an existing registration certificate shall file a renewal application within ninety (90) days before the expiration of the registration certificate.

(c) The initial registration of a data broker to which Chapter 509 of the Business and Commerce Code applies must be filed on or before March 1, 2024.

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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Adam Bitter
General Counsel
Office of the Secretary of State
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For further information, please call: (512) 463-5770

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SUBCHAPTER C. STATEMENT OF CORRECTION

1 TAC §106.4

STATUTORY AUTHORITY

The proposed new rule is authorized by Texas Business and Commerce Code §509.010 and Texas Government Code §2001.004(1). Texas Business and Commerce Code §509.010 authorizes the Office to adopt rules as necessary to implement Chapter 509 of the Texas Business and Commerce Code. Texas Government Code §2001.004 requires a state agency to adopt rules of practice stating the nature and requirements of formal and informal procedures.

CROSS REFERENCE TO STATUTE

The proposed new rules implement Chapter 509 of the Texas Business and Commerce Code. No other statute, code, or article is affected by the proposed rules.

§106.4. Corrections.

(a) A data broker must submit a statement of correction if, during the year, it becomes known to the registrant that any information given at the time of registration or renewal, as applicable, was inaccurate.

(b) A statement of correction must include the following information:

(1) The legal name of the data broker;

(2) The date of the last filed registration statement or renewal application;

(3) The registration number assigned to the data broker by the secretary; and

(4) A statement that identifies the inaccuracy and provides the corrected information.

(c) The statement of correction must be signed and sworn to by or on behalf of the data broker in the same manner as a registration statement or renewal application.

(d) There is no filing fee for a correction.

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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Adam Bitter
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SUBCHAPTER D. NOTICE REQUIREMENTS

1 TAC §106.5

STATUTORY AUTHORITY

The proposed new rule is authorized by Texas Business and Commerce Code §509.010 and Texas Government Code §2001.004(1). Texas Business and Commerce Code §509.010 authorizes the Office to adopt rules as necessary to implement Chapter 509 of the Texas Business and Commerce Code. Texas Government Code §2001.004 requires a state agency to adopt rules of practice stating the nature and requirements of formal and informal procedures.

CROSS REFERENCE TO STATUTE

The proposed new rules implement Chapter 509 of the Texas Business and Commerce Code. No other statute, code, or article is affected by the proposed rules.

§106.5. Notice Requirements.

A data broker that maintains an Internet website or mobile application shall post a conspicuous notice on the website or mobile application that states:

(1) For websites:

Figure: 1 TAC §106.5(1)

(2) For mobile applications:

Figure: 1 TAC §106.5(2)

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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Adam Bitter
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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §351.3, §351.6

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §351.3, concerning Recognition of Out-of-State License of Military Spouse; and new §351.6, concerning Alternative Licensing for Military Service Members, Military Spouses, and Military Veterans.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Senate Bill (S.B.) 422, 88th Legislature, Regular Session, 2023, which amended Texas Occupations Code Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. The proposed amendment to §351.3 would allow military service members who are currently licensed in good standing with another jurisdiction to engage in a business or occupation in Texas if the other jurisdiction has licensing requirements substantially equivalent to the requirements for the license in Texas. Proposed new §351.6 would create an alternative licensing process for military service members, military spouses, and military veterans. This amendment establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §351.3 replaces "military spouse" in the title with "military service members and military spouses" and otherwise makes the rule applicable to military service members in addition to military spouses. The proposed amendment also adds a requirement that HHSC verify the licensure and issue a verification letter recognizing the licensure within 30 days of the date a military service member or military spouse submits the information required by the rule. The proposed amendment further provides that, in the event of a divorce or similar event that affects a person's status as a military spouse, the spouse may continue to engage in the business or occupation until the third anniversary of the date the spouse received the verification letter.

New §351.6 establishes alternative licensing for military service members, military spouses, and military veterans. Alternative licensing is appropriate when the military service member, military spouse, or military veteran is currently licensed in good standing with another jurisdiction that has licensing requirements substantially equivalent to the requirements of a license in Texas; or held the same license in Texas within the preceding five years. The new rule provides that HHSC has 30 days from the date a military service member, military spouse, or military veteran submits an application for alternative licensing to process the application and issue a license to a qualified applicant.

FISCAL NOTE

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

There are no fees imposed when a military service member or military spouse submits the request for recognition under §351.3 or during the alternative licensing process for military service members, military spouses, and military veterans under §351.6, and HHSC may review such requests and applications with current resources.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

(6) the proposed rules will expand an existing rule;

(7) the proposed rules will increase the number of individuals subject to the rule; and

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not impose any additional costs on

small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons and the rules are necessary to implement legislation that does not specifically state that Section 2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public will benefit from additional licensed individuals being able to serve them. Members of the public who are military service members on active duty, military veterans, or military spouses will benefit from the ability to engage in their licensed profession in Texas.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the proposed rules are not expected to have any economic costs for persons required to comply because there are no fees or costs imposed on those required to comply.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC Regulatory Rules by email to Regulatory_Rules@hhs.texas.gov.

To be considered, comments must be submitted no later than 21 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R069" in the subject line.

STATUTORY AUTHORITY

The proposed amendment and new rule are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of services by HHSC and for the administration of Texas Health and Safety Code Chapter 1001.

The amendment and new rule affect Texas Government Code §531.0055, Texas Health and Safety Code Chapter 1001, and Texas Occupations Code Chapter 55.

§351.3. Recognition of Out-of-State License of Military Service Members and Military Spouses [~~Spouse~~].

(a) For the purposes of this section, the definitions found in Texas Occupations Code §55.001 are hereby adopted by reference. This section establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

(b) This section applies to all licenses to engage in a business or occupation which the Texas Health and Human Services Commission (HHSC) issues to an individual under authority granted by the laws of the State of Texas. A[~~, unless a~~] more specific rule concerning recognition of out-of-state licenses of military service members and military spouses may also apply but only to the extent the more specific rule does not conflict with this rule. Any conflicts between this rule and the more specific rule are resolved in favor of this rule. [~~applies to a license type issued by HHSC.~~]

(c) A military service member or military spouse may engage in a business or occupation as if licensed in the State of Texas without obtaining the applicable license in Texas if the military service member or military spouse:

(1) is currently licensed in good standing with [~~by~~] another jurisdiction that has licensing requirements substantially equivalent to the requirements of a license in this state;

(2) notifies HHSC in writing of the military service member's or military spouse's intent to practice in this state;

(3) submits to HHSC proof of the military service member's or military spouse's residency in this state and a copy of the military service member's or military spouse's military identification card; and

(4) receives a verification letter from HHSC that:

(A) HHSC has verified the military service member's or military spouse's license in another [~~the other~~] jurisdiction; and

(B) the military service member or military spouse is authorized to engage in the business or occupation in accordance with Texas Occupations Code §55.0041 and rules for that business or occupation.

(d) HHSC will review and evaluate the following criteria, if relevant to a Texas license, when determining whether another state's licensing requirements are substantially equivalent to the requirements for a license under the statutes and regulations of this state:

(1) whether the other state requires an applicant to pass an examination that demonstrates competence in the field [~~in order~~] to obtain the license;

(2) whether the other state requires an applicant to meet any experience qualifications [~~in order~~] to obtain the license;

(3) whether the other state requires an applicant to meet any education qualifications [~~in order~~] to obtain the license; and

(4) the other state's license requirements, including the scope of work authorized to be performed under the license issued by the other state.

(e) The military service member or military spouse must submit:

(1) a written request to HHSC for recognition of the military service member's or military spouse's license issued by the other state; no fee will be required;

(2) any form and additional information regarding the license issued by the other state required by the rules of the specific program or division within HHSC that licenses the business or occupation;

(3) if required by the program, proof of residency in this state, which includes a copy of the permanent change of station order for the military service member or the military spouse;

(4) a copy of the military service member's or military spouse's identification card; and

(5) proof the military service member or, with respect to a military spouse, the military service member to whom the spouse is married is stationed at a military installation in Texas.

(f) HHSC has 30 days from the date a military service member or military spouse submits the information required by subsection (e) of this section to: [~~Upon verification from the licensing jurisdiction of the military spouse's license and if the license is substantially equivalent to a Texas license, HHSC shall issue a verification letter recognizing the licensure as the equivalent license in this state.~~]

(1) verify that the member or spouse is licensed in good standing in a jurisdiction that has licensing requirements that are substantially equivalent to the requirements for a license under the statutes and regulations of this state; and

(2) issue a verification letter recognizing the licensure as the equivalent license in this state.

(g) The verification letter will expire three years from date of issuance or when the military service member or, with respect to a military spouse, the military service member to whom the spouse is married is no longer stationed at a military installation in Texas, whichever comes first. The verification letter may not be renewed.

(h) In the event of a divorce or similar event that affects a person's status as a military spouse, the spouse may continue to engage in the business or occupation under the authority of this section until the third anniversary of the date the spouse received the verification described by subsection (f) of this section. A similar event includes the death of the military service member or the military service member's discharge from the military.

(i) [~~(h)~~] A replacement letter may be issued after receiving a request for a replacement letter in writing or on a form, if any, required by the rules of the specific program or division within HHSC that licenses the business or occupation; no fee will be required.

(j) [~~(i)~~] The military service member or military spouse shall comply with all applicable laws, rules, and standards of this state, including applicable Texas Health and Safety Code chapters and all relevant Texas Administrative Code provisions.

(k) [~~(j)~~] HHSC may withdraw or modify the verification letter for reasons including the following:

(1) the military service member or military spouse fails to comply with subsection (j)[~~(i)~~] of this section; or

(2) the military service member's or military spouse's licensure required under subsection (c)(1) of this section expires or is suspended or revoked in another jurisdiction.

§351.6. Alternative Licensing for Military Service Members, Military Spouses, and Military Veterans.

(a) For the purposes of this section, the definitions found in Texas Occupations Code §55.001 are hereby adopted by reference. This section establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

(b) This section applies to all licenses to engage in a business or occupation which the Texas Health and Human Services Commission (HHSC) issues to an individual under authority granted by the laws of the State of Texas. A more specific rule concerning alternative licensing for military service members, military spouses, and military veterans may also apply but only to the extent the more specific rule does not conflict with this rule. Any conflicts between this rule and the more specific rule are resolved in favor of this rule.

(c) Notwithstanding any other rule, HHSC may issue a license to an applicant who is a military service member, military spouse, or military veteran if the military service member, military spouse, or military veteran:

(1) is currently licensed in good standing with another jurisdiction that has licensing requirements substantially equivalent to the requirements of a license in this state; or

(2) held the same license in Texas within the preceding five years.

(d) HHSC may waive any requirement to obtaining a license for an applicant described by subsection (c) of this section after reviewing the applicant's credentials.

(e) If an applicant described by subsection (c) of this section must demonstrate competency to meet the requirements for obtaining the license, HHSC may accept alternate forms of competency including:

(1) proof of a passing score for any national exams required to obtain the occupational license;

(2) if specific professional experience is required, proof of duration or hours that meet the professional experience requirement; and

(3) if specific training hours are required for obtaining the license, proof of verified hours related to training experience.

(f) If required by the specific program or division within HHSC that licenses the business or occupation, a military service member or military spouse must provide proof of residency in this state, which includes a copy of the permanent change of station order for the military service member or the military spouse or any other documentation HHSC deems appropriate to verify residency.

(g) HHSC has 30 days from the date a military service member, military spouse, or military veteran submits an application for alternative licensing to process the application and issue a license to an applicant who qualifies for the 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 15, 2023.

TRD-202303439
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: October 29, 2023
For further information, please call: (512) 574-2228

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

SUBCHAPTER H. CERTIFICATES OF CONVENIENCE AND NECESSITY

16 TAC §24.240

The Public Utility Commission of Texas (Commission Staff) proposes new 16 Texas Administrative Code (TAC) §24.240, relating to Water and Sewer Utility Rates After Acquisition. The proposed rule implements Texas Water Code (TWC) §13.3011, added by House Bill 1484 enacted by the 87th Texas Legislature (R.S.). It allows an acquiring water and sewer utility to apply an existing tariff to the customers of an acquired utility without initiating a new rate proceeding. To be eligible to apply, an existing tariff must be currently in force and filed with a regulatory authority for another water and sewer system owned by the acquiring utility.

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 not change the number of individuals subject to the rule's applicability; 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

Tammy Benter, Director, Division of Utility Outreach, 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. Benter has determined that for each year of the first five years the proposed rule is in effect the anticipated public benefit is that it will make it easier for smaller or underperforming water and sewer utilities to be purchased by utilities with more resources that can operate these utilities comparatively efficiently ensuring access to reliable and quality water, wastewater service for acquired utilities' customers. The rule will allow the acquiring utility to recover the costs of implementing system improvements quicker. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section.

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 if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by October 14, 2023. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Commission Staff requests comments from market participants and other interested persons on the proposed rule. Interested persons may propose alternative language as a part of their filed comments. Interested persons may submit written comments on this proposal for publication draft by October 14, 2023. Comments should be organized in a manner consistent with the organization of the proposed draft rule. 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. All comments should refer to Project Number 53924.

Each set of comments should include a standalone executive summary as the first page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should list each substantive recommendation made in the comments. Citations to detailed discussion in the comments are permissible but not required.

Statutory Authority

The new rule is proposed under TWC §13.041(b), which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. The new rule is also proposed under TWC §13.301

which governs the Sale, Merger, etc.; Investigation; Disallowance of Transaction and TWC §13.3011 that relates to Initial Rates for Certain Water or Sewer Systems after Purchase or Acquisition.

Cross Reference to Statute: Texas Water Code §§13.041,13.301, and 13.3011.

§24.240. Water and Sewer Utility Rates After Acquisition.

(a) Applicability. This section applies to a person who files an application with the commission under Texas Water Code (TWC) §13.301(a) and a request for authorized acquisition rates under TWC §13.3011.

(b) Definitions. In this section, the following definitions apply unless the context indicates otherwise.

(1) Authorized acquisition rates--Initial rates that are in force and shown in a tariff filed with a regulatory authority by the acquiring utility for another water or sewer system owned by the acquiring utility.

(2) Initial rates--Rates charged by an acquiring utility to the customers of an acquired utility upon acquisition.

(3) Existing rates--Rates an acquired utility charged its customers under a tariff filed with a regulatory authority prior to the utility being acquired.

(c) Rates.

(1) An acquiring utility must use existing rates as initial rates until the commission approves other rates. If the acquiring utility requests approval to charge authorized acquisition rates, the acquiring utility must continue to charge existing rates until the request to charge authorized acquisition rates is approved.

(2) An acquiring utility may request commission approval to charge authorized acquisition rates to the customers of the system for which the utility seeks approval to acquire as part of an application filed in accordance with §24.239 of this title (relating to Sale, Transfer, Merger, Consolidation, Acquisition, Lease, or Rental).

(3) An authorized acquisition rate must be in force and shown in a tariff filed with a regulatory authority by the acquiring utility for another water and sewer system on the date an application is filed for the acquisition of the utility under §24.239 of this title.

(4) If the acquiring utility has multiple in-force tariffs filed with regulatory authorities, there is a rebuttable presumption that authorized acquisition rates should be based upon an in-force tariff that was approved by the regulatory authority that has original jurisdiction over the rates charged to the acquired customers.

(5) If the in-force tariff contains rates that are phased in over time, any step of the phase-in rates included in the tariff may be considered an authorized acquisition rate if it is in the public interest. If the authorized acquisition rate is a phased-in rate, the phases must proceed along a similar schedule as the phases in the in-force tariff.

(6) The acquiring utility is not required to initiate a rate proceeding under subchapter F of chapter 13 of the Texas Water Code to request authorized acquisition rates.

(d) Application. In addition to other applicable requirements, a request for authorized acquisition rates in a §24.239 of this title proceeding must include the following:

(1) financial projections including a comparison of expected revenues under the acquired utility's existing rates and the requested authorized acquisition rates;

(2) a capital improvements plan for the acquired system;

(3) an explanation for the tariff or rate schedule the acquiring utility proposes to use for authorized acquisition rates, if the acquiring utility has multiple eligible in force tariffs or rate schedules;

(4) a rate schedule showing the existing rates and the requested authorized acquisition rates;

(5) a disclosure of whether the acquired and acquiring systems are affiliates or have been affiliates in the five year period before the proposed transaction;

(6) a billing comparison for usage of 5,000 and 10,000 gallons at existing rates and the requested authorized acquisition rates;

(7) provide documentation from the most recent base rate case in which the tariff that the acquiring utility is requesting to be approved as Authorized Acquisition Rates was approved; and

(8) any other information necessary to demonstrate that the authorized acquisition rates are just and reasonable and that the request is in the public interest.

(e) Notice requirements. In addition to the notice requirements for applications filed under §24.239 of this title, the acquiring utility must include the following information in the application for authorized acquisition rates. Commission staff must incorporate this information into the notice provided to the acquiring utility for distribution after the application is determined to be administratively complete that contains:

(1) how intervention differs from protesting a rate increase;

(2) a rate schedule showing the existing rates and the authorized acquisition rates; and,

(3) a billing comparison for usage of 5,000 and 10,000 gallons at existing rates and authorized acquisition rates.

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, 2023.

TRD-202303411
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 29, 2023
For further information, please call: (512) 936-7322

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CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY

16 TAC §25.62

The Public Utility Commission of Texas (commission) proposes new 16 Texas Administrative Code (TAC) §25.62 relating to Transmission and Distribution System Resiliency Plans. The proposed rule will implement Public Utility Regulatory Act (PURA) §38.078 as enacted by House Bill 2555 during the Texas

88th legislative session (R.S). The proposed rule establishes the requirements and procedures for an electric utility to submit a resiliency plan to enhance the resiliency of its transmission and distribution systems.

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 create a new regulation;

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

(7) the proposed rule will not change the number of individuals subject to the rule's applicability; 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

Chris Roelse, Director, Engineering, Infrastructure 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

Mr. Roelse has determined that for each year of the first five years the proposed section is in effect the anticipated public benefit of enforcing the section will be more resilient electric transmission and distribution systems that can withstand weather related and other emergency events to improve overall electric service quality and reliability for customers. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section.

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 §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by October 6, 2023. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by October 6, 2023. 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. All comments should refer to Project Number 55250.

Each set of comments should include a standalone executive summary as the first page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should list each substantive recommendation made in the comments. Citations to detailed discussion in the comments are permissible but not required.

Statutory Authority

The rule is proposed under PURA §14.002, which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. The new rule is also adopted under PURA §38.078 which allows electric utilities to submit to the commission, plans to enhance transmission and distribution system resiliency.

Cross Reference to Statute: Public Utility Regulatory Act §14.002 and §38.078

§25.62. Transmission and Distribution System Resiliency Plans.

(a) Applicability. This section applies to an electric utility that owns and operates a transmission and distribution system.

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

(1) Distribution invested capital -- The parts of the electric utility's invested capital that are categorized as distribution plant and, once they are placed into service, are properly recorded in Federal Energy Regulatory Commission (FERC) Uniform System of Accounts 352, 353, and 360 through 374. Distribution invested capital includes only costs: for plant that has been placed into service or will be placed into service prior to rates going into effect; that comply with Public Utility Regulatory Act (PURA), including §36.053 and §36.058; and that are prudent, reasonable, and necessary. Distribution invested capital does not include: generation-related costs; transmission-related costs, including costs recovered through rates set pursuant to §25.192 of this title (relating to Transmission Service Rates), §25.193 of this ti-

tle (relating to Distribution Service Provider Transmission Cost Recovery Factors (TCRF)), or §25.239 of this title (relating to Transmission Cost Recovery Factor for Certain Electric Utilities); indirect corporate costs; capitalized operations and maintenance expenses; and distribution invested capital recovered through a separate rate, including a surcharge, tracker, rider, or other mechanism.

(2) Resiliency cost recovery rider (RCRR) billing determinant -- Each rate class's annual billing determinant (kilowatt-hour, kilowatt, or kilovolt-ampere) for the most recent 12 months ending no earlier than 90 days prior to an application for a Resiliency Cost Recovery Rider, weather-normalized and adjusted to reflect the number of customers at the end of the period.

(3) Resiliency event -- a low frequency, high impact event that, if not mitigated, poses a material risk to the safe and reliable operation of an electric utility's transmission and distribution systems. A resiliency event is not primarily associated with resource adequacy or an electric utility's ability to deliver power to load under normal operating conditions.

(4) Resiliency-related distribution invested capital -- Distribution invested capital associated with a resiliency plan approved under this section that will be placed into service before or at the time the associated rates become effective under this section, and that are not otherwise included in a utility's rates.

(5) Resiliency-related net distribution invested capital -- Resiliency-related invested capital that is adjusted for accumulated depreciation and any changes in accumulated deferred federal income taxes, including changes to excess accumulated deferred federal income taxes, associated with all resiliency-related distribution invested capital included in the electric utility's RCRR.

(6) Weather-normalized -- Adjusted for normal weather using weather data for the most recent ten-year period prior to the year from which the RCRR billing determinants are derived.

(c) Resiliency Plan. An electric utility may file a plan to mitigate the risks posed by resiliency events to its transmission and distributions systems. A resiliency plan may be updated, but the updated plan must not take effect earlier than three years from the date of approval of the electric utility's most recently approved resiliency plan.

(1) Resiliency measures. A resiliency plan is comprised of one or more measures designed to mitigate the risks posed to the electric utility's transmission and distribution systems by resiliency events, as described in subsection (d) of this section. Each measure must utilize one or more of the following methods:

(A) hardening electric transmission and distribution facilities;

(B) modernizing electric transmission and distribution facilities;

(C) undergrounding certain electric distribution lines;

(D) lightning mitigation measures;

(E) flood mitigation measures;

(F) information technology;

(G) cybersecurity measures;

(H) physical security measures;

(I) vegetation management; or

(J) wildfire mitigation and response.

(2) Contents of the resiliency plan. The resiliency plan must be organized by measure, including a description of the activities, actions, standards, services, procedures, practices, structures, and equipment associated with each measure.

(A) Chosen resiliency measures and programs. The resiliency plan must identify, for each measure, one or more resiliency events that the measure is intended to mitigate.

(i) The resiliency plan must explain the electric utility's prioritization of the identified resiliency event and, if applicable, the prioritization of the particular geographic area, system, or facilities where the measure will be implemented.

(ii) The resiliency plan must include evidence of the effectiveness of the measure in preventing, responding to, or recovering from the identified resiliency event. The commission will give greater weight to evidence that is quantitative, performance-based, or provided by an independent entity with relevant expertise.

(iii) A resiliency plan must explain the benefits of the resiliency measures including but not limited to reduced system restoration costs, reduction in the frequency or duration of outages for customers. and any improvement in the overall service reliability for customers, including the classes of customers served and any critical load designations.

(iv) The electric utility should identify if a resiliency measure is a coordinated effort with federal, state, or local government programs and funding opportunities.

(v) The resiliency plan must explain the selection of each measure over any reasonable and readily-identifiable alternatives. The resiliency plan must contain sufficient analysis and evidence, such as cost or performance comparisons, to support the selection of each measure. In selecting between measures, whether a measure would support the plan's systematic approach may be considered.

(B) Resiliency events.

(i) A resiliency plan must define each type of resiliency event the plan is designed to mitigate. A resiliency event may be defined using an established definition (e.g., a hurricane) or a plan- or measure-specific definition based on the risks posed by that type of event to the electric utility's systems (e.g., flooding of a specified depth). Each type of resiliency event must be defined with sufficient detail to allow the electric utility or commission to determine whether an actual set of circumstances qualifies as a resiliency event of that type.

(ii) If appropriate, one or more magnitude thresholds must be included in the definition of a resiliency event type based on the risks posed to the electric utility's systems by that type of event. A resiliency plan may establish multiple magnitude thresholds for a single type of resiliency event (e.g., categories of hurricanes) when necessary to conduct a more granular analysis of the risks posed by the event and the options available to address it.

(iii) The resiliency plan must include a description of the system characteristics that make the electric utility's transmission and distribution systems susceptible to each identified resiliency event type. The resiliency plan must explain the electric utility's experience with, if applicable, and forecasted risk of the identified event type, including whether the forecasted risk is specific to a particular system or geographic area.

(iv) A resiliency plan must provide sufficient evidence to support the presence of and risk posed by each identified resiliency event including historical evidence of the frequency and magnitude of each event type. In assessing the presence and risk posed by each resiliency event, the commission will give great weight to any

studies conducted by an independent system operator or independent entity with relevant expertise.

(C) Evaluation metric or criteria. Each measure in the resiliency plan must include a proposed metric, or criteria for evaluating the effectiveness of that measure in mitigating the associated resiliency event.

(i) The resiliency plan must include documentation necessary to support the use of the selected evaluation metric or criteria.

(ii) For an evaluation metric or criteria that is not quantitative, the resiliency plan must explain why quantitative evaluation of the effectiveness of that measure is not possible.

(iii) The resiliency plan must also include an estimate of the expected effectiveness of each measure using the selected evaluation metric or criteria.

(D) If a resiliency plan includes measures that are similar to other existing programs or measures otherwise required by law, such as a storm hardening plan under §25.95 of this title (relating to Electric Utility Infrastructure Storm Hardening) or a vegetation management plan under §25.96 of this title (relating to Vegetation Management) the electric utility must distinguish the measures in the resiliency plan from the other program's measures and, if appropriate, explain how the related items work in conjunction with one another.

(E) A resiliency plan must be implemented using a systematic approach over a period of at least three years. The resiliency plan must explain this systematic approach and provide implementation details for each of the plan's measures, including estimated capital costs, estimated operations and maintenance expenses, and an estimated timeline for completion. the resiliency plan should identify relevant cost drivers (e.g., line miles, frequency of inspections, frequency of trim cycles, etc.) that would affect the estimates.

(F) The resiliency plan must include an executive summary of the plan objectives, event to be mitigated, measures taken, and metrics used to evaluate effectiveness, cost and benefits, and how the overall plan is in the public interest.

(3) An electric utility may designate portions of the resiliency plan as critical energy infrastructure information, as defined by applicable law, and file such portions confidentially.

(d) Commission processing of resiliency plan

(1) Notice and intervention deadline. The electric utility must provide notice of its filed resiliency plan, including the docket number assigned to the resiliency plan and the deadline for intervention, in accordance with this paragraph. The notice must be provided by first class mail or, if the recipient has agreed to receive electronic notifications, electronic mail. The notice must be mailed the same day the application is filed. The intervention deadline is 20 days after the filing of the application. The notice must be delivered to:

(A) all municipalities in the electric utility's service area that have retained original jurisdiction;

(B) all parties in the electric utility's last base rate proceeding; and

(C) the Office of Public Utility Counsel. Notice delivered to the Office of Public Utility Counsel must include a complete copy of the resiliency plan.

(2) Sufficiency of resiliency plan. An application is sufficient if it includes the information required by subsection (c) of this section and the electric utility has filed proof that notice has been provided in accordance with this subsection. A motion to find a resiliency plan materially deficient must be filed no later than 20 calendar days after the resiliency plan is filed. The motion must specify the nature of the deficiency and the relevant portions of the resiliency plan, and cite the particular requirement with which the resiliency plan is alleged not to comply. The electric utility's response to a motion to find a resiliency plan materially deficient must be filed no later than five working days after such motion is received. A motion to find an amended resiliency plan deficient, when the amendment is filed in response to an order concluding that material deficiencies exist in the resiliency plan, must be filed no later than five working days after the amended resiliency plan is filed. If the presiding officer has not issued a written order within 35 calendar days of the filing of the resiliency plan, or 25 calendar days of the filing of an amended resiliency plan, concluding that material deficiencies exist in the resiliency plan, the resiliency plan is deemed sufficient.

(3) The commission will approve, modify, or deny a resiliency plan not later than 180 days after a complete resiliency plan is filed. A resiliency plan is complete if it is deemed sufficient in accordance with this subsection. The presiding officer must establish a procedural schedule that will enable the commission to approve, modify, or deny the plan not later than 180 days after a complete plan is filed. If the resiliency plan is determined to be materially deficient, the presiding officer must toll the 180-day deadline until a complete application is filed.

(A) The commission's denial of a resiliency plan is not a finding on the prudence or imprudence of a measure or estimated cost in the resiliency plan. Upon denial of a resiliency plan, an electric utility may file a revised resiliency plan for review and approval by the commission.

(B) If the commission modifies a resiliency plan, the electric utility may withdraw the resiliency plan without prejudice or propose alternative modifications for the commission's consideration. The deadline for withdrawing a modified resiliency plan or proposing alternative modifications is the deadline for a motion for rehearing under §22.264 of this title (relating to Rehearing).

(4) Commission review of resiliency plan. The commission will approve or modify an electric utility's proposed resiliency plan if it determines that approving or modifying the plan is in the public interest. In determining the public interest, the commission may consider:

(A) the verifiability and severity of the resiliency risks posed by the resiliency events the resiliency plan is designed to address;

(B) the extent to which the plan will enhance resiliency of the electric utility's system, mitigate system restoration costs, reduce the frequency or duration of outages, and improve overall service reliability for customers;

(C) the extent to which the resiliency plan prioritizes areas of lower performance;

(D) the extent to which the resiliency plan prioritizes critical load as defined in §25.52 of this title (relating to Reliability and Continuity of Service);

(E) the estimated time and costs of implementing the measures proposed in the resiliency plan;

(F) whether there are more efficient or cost-effective means of addressing the resiliency events addressed by the resiliency plan; and

(G) other factors deemed relevant by the commission.

(e) Good cause exception. An electric utility must implement each measure in its most recently approved resiliency plan unless the commission grants a good cause exception to implementing one or more measure in the plan. The commission will grant a good cause exception if the electric utility demonstrates that operational needs, business needs, financial conditions, or supply chain or labor conditions dictate the exception. The commission may also grant a good cause exception allowing the electric utility to delay implementation of one or more measures in its resiliency plan if the electric utility has a pending application for a revised resiliency plan that addresses the same resiliency events.

(f) Resiliency Plan Cost Recovery. A utility may request cost recovery for costs associated with a resiliency plan approved under this section that are not otherwise included in the utility's rates.

(1) Resiliency Cost Recovery Rider. This paragraph provides a mechanism for an electric utility to request to recover certain resiliency-related costs through a resiliency cost recovery rider (RCRR) outside of a base-rate proceeding or a distribution cost recovery proceeding as part of a resiliency plan approved under this section, consistent with PURA §38.078(i).

(A) RCRR Requirements. The RCRR rate for each rate class, and any other terms or conditions related to those rates, will be specified in a rider to the utility's tariff.

(i) An electric utility must not have more than one RCRR.

(ii) An electric utility with an existing RCRR may apply to amend the RCRR to include additional costs associated with an updated resiliency plan under PURA §38.078(g).

(iii) Any RCRR established under this section may not take effect until all facilities with costs included in the RCRR begin providing service to the electric utility's customers.

(iv) As part of its next base-rate proceeding or distribution cost recovery factor proceeding for the electric utility, the electric utility may request to include its costs included in its RCRR in that proceeding and must request that RCRR rates be set to zero as of the effective date of rates resulting from that proceeding.

(B) Calculation of RCRR Rates. The RCRR rate for each rate class must be calculated according to the provisions of this subparagraph and subparagraphs (C) and (D) of this paragraph.

(i) The RCRR rate for each rate class will be calculated using the following formula: $RCRR_{CLASS} = RR_{CLASS} / BD_{C\text{-}CLASS}$

(ii) The values of the terms used in this paragraph will be calculated as follows:

(I) $RR_{CLASS} = RR_{TOT} * ALLOC_{C\text{-}CLASS}$

(II) $RR_{TOT} = ((RNDC * ROR_{RC}) + RDDEPR + RNDCFIT + RDOT) - IDCCR$

(III) $ALLOC_{C\text{-}CLASS} = ALLOC_{RC\text{-}CLASS} * (BD_{C\text{-}CLASS} / BD_{RC\text{-}CLASS}) / \Sigma (ALLOC_{RC\text{-}CLASS} * (BD_{C\text{-}CLASS} / BD_{RC\text{-}CLASS}))$

(IV) $IDCCR = \Sigma (DISTREV_{RC\text{-}CLASS} * \%GROWTH_{CLASS}) - DCRFLGA$

(V) $DISTREV_{RC\text{-}CLASS} = (DIC_{RC\text{-}CLASS} * ROR_{AT}) + DEPR_{RC\text{-}CLASS} + FIT_{RC\text{-}CLASS} + OT_{RC\text{-}CLASS}$, with the variables in this formula as defined in §25.239 of this title.

(VI) $\%GROWTH_{CLASS} = (BD_{C\text{-}CLASS} - BD_{RC\text{-}CLASS}) / BD_{RC\text{-}CLASS}$

(iii) The terms used in this paragraph represent or are defined as follows:

(I) Descriptions of calculated values.

(-a-) $RCRR_{CLASS}$ -- RCRR rate for a rate class.

(-b-) RR_{CLASS} -- RCRR class revenue requirement.

(-c-) RR_{TOT} -- Total RCRR Texas retail revenue requirement.

(-d-) $ALLOC_{C\text{-}CLASS}$ -- RCRR class allocation factor for a rate class.

(-e-) IDCCR -- Incremental distribution capital cost recovery.

(-f-) $DISTREV_{RC\text{-}CLASS}$ -- Distribution Revenues by rate class based on Net Distribution Invested Capital from the last comprehensive base-rate proceeding.

(-g-) $\%GROWTH_{CLASS}$ - Growth in billing determinants by class.

(II) RCRR billing determinants and distribution investment values.

(-a-) $BD_{C\text{-}CLASS}$ -- RCRR billing determinants.

(-b-) RNDC -- Resiliency-related net distribution invested capital.

(-c-) RDDEPR -- Resiliency-related distribution invested capital depreciation expense.

(-d-) RNDCFIT -- Federal income tax expense associated with the return on the resiliency-related net distribution invested capital.

(-e-) RDOT -- Other tax expense associated with the resiliency-related distribution invested capital.

(III) Baseline values. The following values are based on those values used to establish rates in the electric utility's most recent base-rate proceeding or distribution cost recovery factor proceeding, or if an input to the RCRR calculation from the electric utility's last base-rate proceeding is not separately identified in that proceeding, it will be derived from information from that proceeding:

(-a-) $BD_{RC\text{-}CLASS}$ -- Rate class billing determinants used to establish distribution base rates in the last base-rate proceeding. Energy-based billing determinants will be used for those rate classes that do not include any demand charges, and demand-based billing determinants will be used for those rate classes that include demand charges.

(-b-) ROR_{RC} -- After-tax rate of return approved by the commission in the electric utility's last base-rate proceeding.

(-c-) $ALLOC_{RC\text{-}CLASS}$ -- Rate class allocation factor value determined under the provisions of subparagraph (C) of this paragraph.

(-d-) DCRFLGA -- The value of $\Sigma(DISTREV_{RC\text{-}CLASS} * \%GROWTH_{CLASS})$ in the most recent distribution cost recovery factor proceeding for the utility since its late base rate proceeding, or zero if there are no distribution cost recovery factor proceedings since the utility's last base rate proceeding.

(C) Class allocation factors. For calculating RCRR rates, the baseline rate-class allocation factors used to allocate distribution invested capital in the last base-rate proceeding will be used.

(D) Customer classification. For the purposes of establishing RCRR rates, customers will be classified according to the rate classes established in the electric utility's most recently completed base-rate proceeding.

(2) Resiliency Cost Recovery Factor. This paragraph provides a mechanism for an electric utility to request to recover certain re-

siliency-related costs deferred as a regulatory asset through a resiliency cost recovery factor (RCRF) rate as part of a transmission cost recovery factor proceeding under §25.239 of this title, consistent with PURA §38.078(k).

(A) Notwithstanding the existing requirements of §25.239 of this title, a utility eligible to request a transmission cost recovery factor under §25.239 of this title may, as part of an application under §25.239 of this title request to include RCRF rates calculated consistent with this paragraph in addition to the TCRF rates allowed under §25.239 of this title.

(B) RCRF rates established as part of a TCRF application under §25.239 of this title must be calculated in a manner identical to the RCRR rates described in paragraph (1) of this subsection, with the exception that the value of RRTOT must be equal to a reasonable annual amortization amount of the resiliency-related regulatory asset, less the value of IDCRR.

(C) Upon the establishment of an RCRF rate, the resiliency-related regulatory asset balance will be reduced at an annual rate by the annual amortization amount used to establish the RCRF rates.

(3) Distribution Cost Recovery Factor. This paragraph provides a mechanism for an electric utility to request to recover certain resiliency-related costs deferred as a regulatory asset as part of a distribution cost recovery factor proceeding under §25.234 of this title (relating to Rate Design), consistent with PURA §38.078(k).

(A) Notwithstanding the existing requirements of §25.234 of this title, a utility eligible to request a distribution cost recovery factor under §25.234 of this title may, as part of an application under §25.234 of this title, request to include resiliency-related costs deferred as a regulatory asset in its DCRF rates.

(B) DCRF rates established consistent with this paragraph must be calculated in a manner identical to the DCRF rates described in §25.234 of this title, with the exception that the DCRF rate for each rate class must be calculated using the following formula: $[((DIC_{C} - DIC_{RC}) * ROR_{AT}) + (DEPR_{C} - DEPR_{RC}) + (FIT_{C} - FIT_{RC}) + (OT_{C} - OT_{RC}) + RAMORT - \Sigma (DISTREV_{RC\text{-}CLASS} * \%GROWTH_{CLASS})] * ALLOC_{CLASS} / BD_{C\text{-}CLASS}$ Where the value of RAMORT must be equal to a reasonable annual amortization amount of the resiliency-related regulatory asset.

(C) Upon the establishment of an DCRF rate under this paragraph, the resiliency-related regulatory asset balance will be reduced at an annual rate by the value of RAMORT.

(4) Reconciliation.

(A) Resiliency-related amounts recovered through rates approved under this subsection are subject to reconciliation in the first base-rate proceeding for the electric utility that is filed after the effective date of the rates. As part of the reconciliation, the commission will determine if the resiliency-related costs are reasonable, necessary, and prudent.

(B) Any amounts recovered through rates approved under this subsection that are found to have been unreasonable, unnecessary, or imprudent, plus the corresponding return and taxes, must be refunded with carrying costs. Carrying costs will be determined as follows:

(i) For the time period beginning with the date on which over-recovery is determined to have begun to the effective date of the electric utility's base rates set in the base-rate proceeding in which the costs are reconciled, carrying costs will accrue monthly and will be calculated using an effective monthly interest rate based on the same rate of return that was applied to the resiliency costs included in rates.

(ii) For the time period beginning with the effective date of the electric utility's rates set in the base-rate proceeding in which the costs are reconciled, carrying costs will accrue monthly and will be calculated using an effective monthly interest rate based on the electric utility's rate of return authorized in that base-rate proceeding.

(g) Reporting requirements. An electric utility with a commission-approved resiliency plan must file an annual resiliency plan report by May 1 of each year. The annual resiliency plan report must include the following information:

(1) until the resiliency plan is fully implemented, an implementation status update consisting of:

(A) a list of each resiliency plan measure completed in the prior calendar year, and the actual capital costs and operations and maintenance expenses incurred in the prior year attributable to each measure;

(B) a list of each resiliency plan measure scheduled for completion in the upcoming year, and an estimate of capital costs and operations and maintenance expenses for each resiliency plan measure scheduled for completion in the upcoming calendar year; and

(C) an explanation for any material changes in the implementation timeline or costs associated with implementing the resiliency plan; and

(2) until the third anniversary of the plan being fully implemented, a resiliency benefit update consisting of:

(A) a report on the occurrence of any resiliency events the resiliency plan or a previously-implemented resiliency plan was intended to address, including a comparison of the frequency and magnitude of these events with any projections contained in the resiliency plan or previously-implemented resiliency plan;

(B) an evaluation of the effectiveness of each implemented resiliency plan measure in addressing any resiliency events that measure was implemented to address. This evaluation must include an analysis using the metric or criteria contained in the resiliency plan for that measure, and a comparison of the measure's actual effectiveness with its projected effectiveness.

(C) an update on the expected impact of implemented resiliency plan measures on system restoration costs, reduction in the frequency or duration of outages for customers at the location for which a resiliency plan was implemented, and any improvement in the overall service reliability for customers. An electric utility may report realized benefits and SAIDI, SAIFI, and CAIDI statistics at the feeder level when possible. The index statistics must include all interruption classifications and must display the number of critical and chronic customers on each feeder.

(3) An electric utility is required to maintain records associated with the information referred to in this subsection. Upon request by commission staff an electric utility must provide any additional information and updates on the status of the resiliency plan submitted.

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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Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 29, 2023
For further information, please call: (512) 936-7322

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SUBCHAPTER S. WHOLESALE MARKETS

16 TAC §25.509

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §25.509, relating to Scarcity Pricing Mechanism for the Electric Reliability Council of Texas Power Region. The proposed amendments will implement Senate Bill 3, Section 18, passed in the 87th Texas Legislative Session (R.S.), by establishing an emergency pricing program for the wholesale electric market as required by Public Utility Regulatory Act (PURA) §39.162.

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 create a new regulation;

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

(7) the proposed rule will not change the number of individuals subject to the rule's applicability; 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

Werner Roth, Senior Market 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

Mr. Roth has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be protecting electric consumers from excessive energy prices during prolonged scarcity events while ensuring generators are able to recover costs incurred during those events. There will be no probable economic cost 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 if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by October 13, 2023. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by October 13, 2023. 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. All comments should refer to Project Number 54585.

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments. Comments should be limited to ten pages, excluding the executive summary, and any attached redlines.

Statutory Authority

The amendment is proposed under PURA §14.001, which grants 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 this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; and §39.162, which directs the commission to establish an emergency pricing program for the wholesale electric market.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, and 39.162.

§25.509. Scarcity Pricing Mechanism for the Electric Reliability Council of Texas Power Region.

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

(1) Generation entity--an entity that owns or controls a generation resource.

(2) Generation resource--a generator capable of providing energy or ancillary services to the ERCOT grid and that is registered with ERCOT as a generation resource.

(3) Load entity--an entity that owns or controls a load resource.

(4) Load resource--a load capable of providing ancillary service to the ERCOT system or energy in the form of demand response and is registered with ERCOT as a load resource.

(5) Resource entity--an entity that is a generation entity or a load entity.

(b) Scarcity Pricing Mechanism [~~pricing mechanism~~] (SPM). ERCOT will administer the SPM. The SPM will operate as follows:

(1) The SPM will operate on a calendar year basis.

(2) For each day, the peaking operating cost (POC) will be 10 times the natural gas price index value determined by ERCOT. The POC is calculated in dollars per megawatt-hour (MWh).

(3) For the purpose of this section, the real-time energy price (RTEP) will be measured as an average system-wide price as determined by ERCOT.

(4) Beginning January 1 of each calendar year, the peaker net margin will be calculated as: $\sum$((RTEP - POC) * (number of minutes in a settlement interval / 60 minutes per hour)) for each settlement interval when RTEP - POC >0.

(5) Each day, ERCOT will post at a publicly accessible location on its website the updated value of the peaker net margin, in dollars per megawatt (MW).

(6) System-Wide Offer Caps.

(A) The low system-wide offer cap (LCAP) will be set at $2,000 per MWh and $2,000 per MW per hour.

(B) The high system-wide offer cap (HCAP) will be $5,000 per MWh and $5,000 per MW per hour.

(C) The system-wide offer cap will be set equal to the HCAP at the beginning of each calendar year and maintained at this level until the peaker net margin during a calendar year exceeds a threshold of three times the cost of new entry of new generation plants.

(D) If the peaker net margin exceeds the threshold established in subparagraph (C) of this paragraph during a calendar year, the system-wide offer cap will be set to the LCAP for the remainder of that calendar year. In this event, ERCOT will continue to apply the operating reserve demand curve and the reliability deployment price adder for the remainder of that calendar year. Energy prices, exclusive of congestion prices, will not exceed the LCAP plus $1 for the remainder of that calendar year.

(7) Reimbursement for Operating Losses when the LCAP is in Effect. When the system-wide offer cap is set to the LCAP, ERCOT must reimburse resource entities for any actual marginal costs in excess of the larger of the LCAP or the real-time energy price for the resource. ERCOT must utilize existing settlement processes to the extent possible to verify the resource entity's costs for reimbursement.

(c) Emergency Pricing Program (EPP). ERCOT will administer the EPP. The EPP will operate as follows.

(1) Activation of the EPP. The EPP must be activated if the average system-wide energy price, as determined by ERCOT, has been at the HCAP for 12 hours within a rolling 24-hour period.

(2) Emergency Offer Cap (ECAP). While the EPP is active, the system-wide offer cap will be set to the ECAP. The ECAP will be set equal to the value of the LCAP.

(3) Duration of the EPP. The EPP will remain in effect until the later of:

(A) 72 hours after the activation of the EPP; or

(B) 24 hours after ERCOT exits emergency operations.

(4) Market Notice. ERCOT will issue a market notice both when the EPP is activated and when the EPP is terminated.

(5) Reimbursement for Costs That Exceed the ECAP. While the EPP is active, ERCOT must reimburse resource entities for any actual marginal costs in excess of the larger of the ECAP or the real-time energy price for the resource. ERCOT must utilize existing settlement processes to the extent practicable to verify the resource entity's costs for reimbursement.

(6) Report. Within 60 calendar days from the date the EPP is terminated, ERCOT must file a report with the commission that contains the following information:

(A) A summary of the event that triggered the EPP;

(B) An analysis of the EPP's performance while the program was active;

(C) The number of generators that filed for cost recovery under paragraph (5) of this subsection and the total dollar amount of costs recovered with this mechanism; and

(D) Any recommendations to modify or improve the EPP.

(d) Review of System-Wide Offer Cap Programs. Beginning January 1, 2026, and every five years thereafter, the commission will review each of the system-wide offer cap programs to determine whether to update aspects of each program.

(e) [~~(c)~~] Development and Implementation [~~implementation~~]. ERCOT must use a stakeholder process, in consultation with commission staff, to develop and implement rules that comply with this section. Nothing in this section prevents the commission from taking actions necessary to protect the public interest, including actions that are otherwise inconsistent with the other provisions in this section.

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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TRD-202303432

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 29, 2023
For further information, please call: (512) 936-7322

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16 TAC §25.515

The Public Utility Commission of Texas (commission) proposes new 16 Texas Administrative Code (TAC) §25.515 relating to Texas Backup Power Package Advisory Committee. This proposed rule will implement Public Utility Regulatory Act (PURA) Chapter 34 §34.0203 as enacted by Senate Bill (SB) 2627 during the Texas 88th Regular Legislative Session. The proposed rule will establish the advisory committee specified by PURA §34.0203 to advise the commission on the administration of the Texas backup power package program in accordance with Texas Government Code Chapter 2110.

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 not change the number of individuals subject to the rule's applicability; 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 Texas Government Code chapter 2007.

Fiscal Impact on State and Local Government

David Gordon, Executive Counsel, Executive Director 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

Mr. Gordon has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the establishment of the advisory committee to recommend criteria for the commission to employ in making a grant or loan for Texas backup power package projects. There will be no probable economic cost 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 §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by October 12, 2023. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by October 19, 2023. 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. All comments should refer to Project Number 55407.

Each set of comments should include a stand-alone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments.

Statutory Authority

The rule is proposed under Public Utility Regulatory Act (PURA) §14.001, which grants 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 this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; and §34.0203, which requires the establishment of advisory committee to recommend criteria for the commission to employ in making a grant or loan for funding of Texas backup power packages. The amendment is also proposed under Texas Government Code Chapter 2110 which governs the establishment and oversight of state agency advisory committees.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, and 34.0203.

§25.515. Texas Backup Power Package Advisory Committee.

(a) Definitions.

(1) Advisory committee--the advisory committee convened under the authority described in PURA §34.0203.

(2) Texas backup power package--a stand-alone, behind-the-meter, multiday backup power source that can be used for islanding.

(b) Purpose and Duties. The advisory committee is established to recommend criteria for the commission to employ in making a grant or loan under PURA chapter 34, subchapter B. The advisory committee must:

(1) No later than October 1, 2024, submit, in writing, recommendations for the types of Texas backup power package projects that should be funded by loans and the types of Texas backup power package projects that should be funded by grants.

(2) No later than October 1, 2024, submit, in writing, a report to the commission with recommendations for procedures for the application for and award of a grant or loan in accordance with PURA chapter 34, subchapter B.

(3) Make any other recommendation to the commission regarding matters associated with PURA chapter 34, subchapter B that the advisory committee finds appropriate.

(4) Record minutes of each advisory committee meeting and provide a copy of those minutes to the commission.

(c) Composition and Membership. The advisory committee will consist of no fewer than three and no more than nine members. The executive director is authorized to solicit candidates, evaluate their qualifications, and make appointments to the advisory committee to fill any open position on the advisory committee. The executive director will select members of the advisory committee after reviewing qualifications of potential members. Persons interested in serving on the advisory committee may submit a resume and statement of interest to the executive director at TexasBackupPower@puc.texas.gov.

(d) Membership Term. An advisory committee member's term begins when the executive director files notice of the member's appointment on the commission's filing interchange. Each member will serve on the advisory committee until the member resigns or is removed. A member may resign by submitting written notice of resignation to the executive director. The commission or the executive director may remove an advisory committee member for any reason or for no reason.

(e) Reimbursement. Members of the advisory committee will not be reimbursed for expenses.

(f) Meetings. The first advisory committee meeting will be called by the executive director. At this first meeting, the advisory committee members must designate a presiding officer to preside over the advisory committee and report to the commission. The presiding officer must call all subsequent meetings of the advisory committee as frequently as necessary to carry out the advisory committee's purpose. A majority of seated members will constitute a quorum necessary for carrying out advisory committee business. The advisory committee may seek and incorporate the input of any person while carrying out its duties.

(g) Duration. The advisory committee will automatically be abolished on the earlier of 180 days after the date the advisory committee delivers the reports described in subsection (b) of this section or four years after the effective date of this rule.

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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Adriana Gonzales
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Public Utility Commission of Texas
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For further information, please call: (512) 936-7322

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT SUBCHAPTER K. LICENSING PROVISIONS RELATED TO MILITARY SERVICE MEMBERS, MILITARY VETERANS, AND MILITARY SPOUSES

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 60, Subchapter K, §§60.500-60.504, 60.510, 60.512, 60.514, 60.516, and 60.519; proposes a new rule at Subchapter K, §60.518; and proposes the repeal of an existing rule at Subchapter K, §60.518, regarding the Procedural Rules of the Commission and the Department. These proposed changes are referred to as the "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 60, Subchapter K, implement Texas Occupations Code, Chapter 51, General Provisions Related to Licensing; Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses; and the license portability provisions of the federal Servicemembers' Civil Relief Act found at 50 U.S.C. §4025a.

The proposed rules are necessary to implement Senate Bill (SB) 422, 88th Legislature, Regular Session (2023), and the federal Servicemembers' Civil Relief Act by: (1) updating current definitions and terms in Chapter 55, Occupations Code to comport with federal and state standards; (2) extending the license portability of out-of-state occupational licenses for military service members stationed in Texas consistent with federal and state law; (3) extending residency status for non-resident license applicants to military service members; and (4) implementing a three-year recognition of out-of-state occupational licenses for military spouses whose status as a spouse changes due to a divorce or other occurrence. The proposed rules also repeal the issuance of a three-year temporary license - formerly available in conjunction with the recognition of an out-of-state license - for eligible military members, as it is redundant with other licensing options. The proposed rules also introduce new §60.518 to implement the provisions of SB 422 and the federal legislation. Current §60.518 is repealed by the proposed rules.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §60.500, Military Subchapter, to include a reference to the license portability provisions of the federal Servicemembers' Civil Relief Act found at 50 U.S.C. §4025a.

The proposed rules amend §60.501, Definitions, by: (1) expanding the definition of "active duty" to include an added portion of the federal definition for "military service" from 50 U.S.C. §3911(2)(C) which requires any period during which a person is absent from duty on account of sickness, wounds, leave, or other lawful cause to be classified as active duty; and (2) shortening the length of defined terms used throughout the rules.

The proposed rules amend §60.502, Determining the Amount of Military Experience, Service, Training, or Education, to remove redundant or unnecessary language.

The proposed rules amend §60.503, Exemption from Late Renewal Fees, to remove redundant or unnecessary language.

The proposed rules amend §60.504, Extension of Certain Deadlines, to remove redundant or unnecessary language.

The proposed rules amend §60.510, License Requirements for Applicants with Military Experience, Service, Training, or Education, to remove redundant or unnecessary language.

The proposed rules amend §60.512, Expedited Alternative Licensing Requirements--Substantially Equivalent License, to remove redundant or unnecessary language.

The proposed rules amend §60.514, Expedited Alternative Licensing Requirements--Previously Held Texas License, to remove redundant or unnecessary language.

The proposed rules amend §60.516, Expedited Alternative Licensing Requirements--Demonstration of Competency by Alternative Methods, to remove redundant or unnecessary language.

The proposed rules add new §60.518, Recognition of Out-of-State License of Military Service Members and Military Spouses, which describes the out-of-state license recognition process related to a regulated business or occupation for eligible service members and their spouses. The new rule will: (1) implement pertinent provisions of the federal Servicemembers' Civil Relief Act alongside SB 422 to provide for recognition of out-of-state occupational licenses for service members and spouses; (2) describe the specific prerequisites and procedure by which the department will grant recognition to out-of-state occupational licenses to eligible persons; (3) repeal the department's issuance of a three-year temporary license to an eligible person whose out-of-state occupational has been recognized; (4) authorize a military spouse who is recognized to engage in a business or occupation in Texas under a current out-of-state license to continue to engage in that business or occupation for three years after formal department recognition, in the event of divorce or similar event that affects the spouse's status as a military spouse; (5) acknowledge the applicability of interstate licensure compacts to state law; and (6) remove redundant or unnecessary language. This rule replaces existing §60.518.

The proposed rules amend §60.519, License Eligibility-Establishing License Residency Requirement for Out-of-State Military Service Members and Military Spouses, to: (1) acknowledge the applicability of interstate licensure compacts to state law; and (2) remove redundant or unnecessary language.

The proposed rules repeal existing §60.518.

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, enforcing or administering the proposed rule does not have foreseeable implications relating to costs or revenues of state or local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

As Mr. Couvillon has determined that the proposed rules will not affect a local economy, 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 rules are in effect, the public benefit will be that military service members and their spouses will be able to continue in their occupation with little interruption in their affairs upon being stationed in Texas. Moreover, department recognition of a military service member's out-of-state occupational license would authorize the member to work for the duration of their military orders, rather than a one- or two-year duration for a Texas license, depending on the program.

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 rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. Military service members or spouses who meet the requirements for department recognition under Section 55.0041 of the Texas Occupations Code would obtain the work authorization letter at no cost, and these authorizations would impose no cost on any other persons.

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 rules. Because 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 rules do 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 rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.

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

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

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

5. The proposed rules do not create a new regulation.

6. The proposed rules expand, limit, or repeal an existing regulation. The proposed rules expand an existing regulation by: (a) extending department recognition of out-of-state occupational licenses for military service members in addition to their spouses under Section 55.0041 of the Texas Occupations Code, and (b) authorizing a military spouse who is authorized to engage in a business or occupation in Texas without obtaining the required license to continue to engage in that business or occupation for the remainder of the authorized three years following a divorce or similar event that affects the spouse's status as a military spouse.

The proposed rules repeal an existing regulation by removing the department's issuance of a three-year temporary license to a military spouse whose out-of-state license authorizes them to work in Texas.

7. The proposed rules increase the number of individuals subject to the rules' applicability. Once the proposed rules are adopted, military service members will be afforded department recognition for their out-of-state occupational licenses. Once department recognition for military service members takes place, each new eligible applicant will result in an increase in the number of individuals subject to the rules' applicability.

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules do 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 rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules 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.*

16 TAC §§60.500 - 60.504, 60.510, 60.512, 60.514, 60.516, 60.518, 60.519

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 55, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 55, and the Federal Servicemembers Civil Relief Act at 50 U.S.C. §4025a, and the program statutes for all of the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); 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); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers): 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); 2311 (Electric Vehicle Charging Stations); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is Senate Bill 422, 88th Legislature, Regular Session (2023).

§60.500. Military Subchapter.

This subchapter implements the provisions related to military service members, military veterans, and military spouses under Texas Occupations Code, Chapters 51 and 55 and other statutes applicable to specific programs regulated by the commission and the department, and the license portability provisions of the federal Servicemembers' Civil Relief Act found at 50 U.S.C. §4025a.

§60.501. Military Definitions.

The following words and terms, when used in this subchapter, have the following meanings.

(1) Active duty--Current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by §437.001, Government Code, or similar military service of another state. The term does not include service performed exclusively for training, such as basic combat training, advanced individual training, annual training, inactive duty training, and special training periodically made available to service members. The term includes any period during which a person is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(2) Apprenticeship or apprenticeship program--This term has the same meaning as defined by statute or rule for a specific license.

(3) Armed forces of the United States--The Army, Navy, Air Force, Space Force, Coast Guard, or Marine Corps of the United States or a reserve unit of one of those branches of the armed forces.

(4) Military service member (service member)--A person who is on active duty.

(5) Military spouse (spouse)--A person who is married to a military service member.

(6) Military veteran (veteran)--A person who has served on active duty and who was discharged or released from active duty.

(7) Reserve unit of the armed forces of the United States--The Army National Guard of the United States, the Air National Guard of the United States, the Army Reserve, the Navy Reserve, the Air Force Reserve, the Coast Guard Reserve, and the Marine Corps Reserve.

(8) Similar military service of another state--The state Army National Guard, state Air National Guard, or state guard.

§60.502. Determining the Amount of Military Experience, Service, Training, or Education.

(a) The amount of military experience, service, training or education, which an applicant submits for purposes of meeting the licensing requirements of a specific license, will be determined in accordance with §60.35 [~~and based on the experience, service, training, and education requirements as required by a specific license~~].

(b) An applicant will receive credit for [~~the amount of~~] time incurred in training or in performing the specific work, duties, or functions that are applicable for a specific license. The amount of time credited may be limited to a maximum amount of time (hours, months or years) as specified by statute or rule for a specific license or may be less than the total amount of time (hours, months or years) the applicant has served in the military.

§60.503. Exemption from Late Renewal Fees.

Pursuant to Texas Occupations Code §55.002, an individual who provides the department with satisfactory documentation that the individual was serving as a [~~military~~] service member during a license renewal period may renew that license by paying the renewal fee and is exempt from paying a late renewal fee.

§60.504. Extension of Certain Deadlines.

Pursuant to Texas Occupations Code, §55.003, a [~~military~~] service member whose license expired while on active duty is entitled to two years of additional time from the date of discharge to complete:

(1) any continuing education requirements; and

(2) any other requirement related to the renewal of the [~~military~~] service member's license.

§60.510. License Requirements for Applicants with Military Experience, Service, Training, or Education.

(a) This section implements Texas Occupations Code §§51.4013, 55.007, 55.008, 55.009, and 1305.1645(a).

(b) This section applies to a ["] military service member ["] and a ["] military veteran ["] as defined under §60.501.

(c) An applicant under this section will be eligible to receive credit for verified military experience, service, training, or education in meeting the licensing requirements, other than an examination requirement, for a specific license issued by the department.

(d) If an apprenticeship is required for a license issued by the department, the department will credit verified military experience, service, training, or education that is relevant to the occupation toward the apprenticeship requirements for the license.

(e) An applicant who seeks to receive credit for verified military experience, service, training, or education must submit the following documentation:

(1) completed license application and any supporting documents associated with the specific department license; and

(2) completed Military Service Member, Military Veteran, or Military Spouse Supplemental Application and supporting documents including;

(A) copy of the military orders or documents showing proof of active duty status (for [~~military~~] service members);

(B) copy of the military orders or documents showing proof of veteran status (for [~~military~~] veterans); and

(C) copy of the military orders or documents showing the type and amount of related military experience, service, training, or education applicable to a specific license.

(f) The amount of military experience, service, training, or education, which an applicant submits for purposes of meeting the licensing requirements of a specific license, will be determined in accordance with §60.502.

(g) The applicant under this section must still take and pass any applicable examination required for obtaining a specific license.

(h) The initial license application fee and any examination fees paid to the department are waived for an applicant who meets the requirements under this section. The applicant is still responsible for paying any examination fees that are charged by a third-party examination vendor.

(i) The applicant under this section must [~~undergo and successfully~~] pass a criminal history background check.

(j) A [~~military~~] service member or military veteran who obtains a license under this section must comply with all [~~of the~~] license renewal requirements including fees for the specific license obtained.

§60.512. Expedited Alternative Licensing Requirements--Substantially Equivalent License.

(a) This section implements Texas Occupations Code §§55.004, 55.005, 55.006, and 55.009, as they relate to an applicant who holds a "substantially equivalent" license.

(b) This section applies to a military service member, a military veteran, and a military spouse, as defined under §60.501.

(c) An applicant under this section is eligible to obtain a license issued by the department if the applicant holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the Texas licensing requirements.

(d) The department will determine whether the licensing requirements of the other jurisdiction are substantially equivalent to the Texas requirements as prescribed under §60.34.

(e) The following documentation must be submitted to apply for a license under this section:

(1) completed license application and any supporting documents associated with the specific department license;

(2) completed Military Service Member, Military Veteran, or Military Spouse Supplemental Application and supporting documents including;

(A) copy of the military orders or documents showing proof of active duty status (for [~~military~~] service member and [~~military~~] spouse);

(B) copy of the military orders or documents showing proof of veteran status (for [~~military~~] veteran); and

(C) copy of document showing proof of status as a [~~military~~] spouse [(~~for military spouse~~)]; and

(3) copy of the applicant's current occupational license from another jurisdiction.

(f) The applicant who qualifies for a license under this section is not required to take and pass any applicable examination required for obtaining that specific license.

(g) The initial license application fees paid to the department are waived for an applicant under this section.

(h) The applicant under this section must [~~undergo and successfully~~] pass a criminal history background check.

(i) An application under this section shall be expedited in accordance with Texas Occupations Code §55.005.

(j) Pursuant to Texas Occupations Code §55.004(b), the executive director may waive any prerequisite to obtaining a license for an applicant under this section after reviewing the applicant's credentials.

(k) A [~~military~~] service member, [~~military~~] veteran, or [~~military~~] spouse who obtains a license under this section must comply with all [~~of~~] the license renewal requirements including fees for the specific license obtained.

§60.514. Expedited Alternative Licensing Requirements--Previously Held Texas License.

(a) This section implements Texas Occupations Code §§55.004, 55.005, and 55.006, as they relate to an applicant who held the same Texas license within the last five years.

(b) This section applies to a military service member, a military veteran, and a military spouse, as defined under §60.501.

(c) An applicant under this section is eligible to obtain a license issued by the department if the applicant within the five years preceding the application date held the same license in Texas.

(d) The following documentation must be submitted to apply for a license under this section:

(1) completed license application and any supporting documents associated with the specific department license; and

(2) completed Military Service Member, Military Veteran, or Military Spouse Supplemental Application and supporting documents including;

(A) copy of the military orders showing proof of active duty status (for [~~military~~] service member and [~~military~~] spouse);

(B) copy of the military orders or documents showing proof of veteran status (for [~~military~~] veteran); and

(C) copy of document showing proof of status as a [~~military~~] spouse [(~~for military spouse~~)].

(e) The applicant who qualifies for a license under this section is not required to take [~~and pass~~] any applicable examination required for obtaining that specific license.

(f) An applicant under this section must pay the license application fees associated with obtaining that specific license.

(g) The applicant under this section must [~~undergo and successfully~~] pass a criminal history background check.

(h) An application under this section shall be expedited in accordance with Texas Occupations Code §55.005.

(i) Pursuant to Texas Occupations Code §55.004(b), the executive director may waive any prerequisite to obtaining a license for an applicant under this section after reviewing the applicant's credentials.

(j) A [~~military~~] service member, [~~military~~] veteran, or [~~military~~] spouse[~~,~~] who obtains a license under this section[~~,~~] must comply with all [~~of the~~] license renewal requirements, including fees for the specific license obtained.

§60.516. Expedited Alternative Licensing Requirements--Demonstration of Competency by Alternative Methods.

(a) This section implements Texas Occupations Code §§55.004, 55.005, and 55.006, as they relate to an applicant that demonstrates competency by alternative methods.

(b) This section applies to a military service member, a military veteran, and a military spouse, as defined under §60.501.

(c) The department may allow an applicant under this section to demonstrate competency by alternative methods [~~in order~~] to meet the requirements for obtaining a specific license issued by the department. For purposes of this section, the standard method of demonstrating competency is the specific examination, education, and/or experience required to obtain a specific license.

(d) In lieu of the standard method(s) of demonstrating competency for a specific license and based on the applicant's circumstances, the alternative methods for demonstrating competency may include any combination of the following as determined by the department:

(1) education;

(2) continuing education;

(3) examinations (written and/or practical);

(4) letters of good standing;

(5) letters of recommendation;

(6) work experience; or

(7) other methods approved or accepted by the executive director.

(e) The following documentation must be submitted to apply for a license under this section:

(1) completed license application and any supporting documents associated with the specific department license;

(2) completed Military Service Member, Military Veteran, or Military Spouse Supplemental Application and supporting documents including;

(A) copy of the military orders showing proof of active duty status (for [~~military~~] service member and [~~military~~] spouse);

(B) copy of the military orders or documents showing proof of veteran status (for [~~military~~] veteran); and

(C) copy of document showing proof of status as a [~~military~~] spouse [(~~for military spouse~~)]; and

(3) documents specified under subsection (d) that demonstrate the applicant's competency and that will be evaluated by the department.

(f) An applicant under this section must pay the license application fees associated with obtaining that specific license.

(g) The applicant under this section must [~~undergo and successfully~~] pass a criminal history background check.

(h) An application under this section shall be expedited in accordance with Texas Occupations Code §55.005.

(i) A [~~military~~] service member, [~~military~~] veteran, or [~~military~~] spouse, who obtains a license under this section, must comply with all [~~of the~~] license renewal requirements including fees for the specific license obtained.

§60.518. Recognition of Out-of-State License of Military Service Members and Military Spouses.

(a) This section implements Texas Occupations Code §55.0041 and the license portability provisions of the federal Servicemembers' Civil Relief Act found at 50 U.S.C. §4025a.

(b) This section applies to a military service member or military spouse, as defined under §60.501, and to a member or the spouse of a member of the commissioned corps of the National Oceanic and Atmospheric Administration or Public Health Service.

(c) A person described in subsection (b) may engage in a business or occupation for which a license is required without obtaining the applicable Texas license if the department recognizes the out-of-state license.

(d) In order for an out-of-state license to be recognized under this section, a person described in subsection (b) must provide, in a manner determined by the department:

(1) notice of the person's or spouse's intent to practice in this state;

(2) a copy of the person's military identification card;

(3) a copy of the person's or spouse's military orders showing relocation to Texas;

(4) a copy of the out-of-state license, or if unavailable, other identifying information required by the department;

(5) proof that the person remains in good standing with any licensing authority that issued to the service member or their spouse a license valid at a similar scope of practice and in the discipline applied in such jurisdiction of the licensing authority, and has no restrictions, pending enforcement actions, or unpaid fees or penalties relating to the license; and

(6) an acknowledgment that the person submits to the department's authority over the standards of practice regarding the license, discipline, and fulfillment of continuing education requirements.

(e) If the requirements of subsection (d) have been met, the department will provide written confirmation that the license is recognized by the department.

(f) A person who is issued the confirmation described in subsection (e):

(1) may engage in the authorized business or occupation for the duration of the person's military orders; and

(2) must immediately notify the department if the person is no longer in good standing with the licensing authority that issued the license recognized by the department.

(g) The department shall withdraw its recognition of a person's out-of-state license if it determines that the person is no longer in good standing with the licensing authority that issued the license.

(h) In the event of a divorce or similar event that affects a person's status as a spouse, a former spouse whose out-of-state license has been recognized pursuant to this section may continue to engage in the business or occupation until the third anniversary of the date the former spouse received the confirmation described by subsection (e).

(i) An individual who engages in a business or occupation under the authority or license established by this section is subject to the enforcement authority granted under Texas Occupations Code, Chapter 51, this chapter, and the laws and regulations applicable to the business or occupation in Texas.

(j) An application under this section shall be expedited in accordance with Texas Occupations Code §55.005.

(k) If a service member or spouse of a service member is licensed by way of an interstate licensure compact with Texas, the service member or spouse shall be subject to the requirements of the compact and the applicable laws of this State, and not this section.

§60.519. License Eligibility--Establishing License Residency Requirement for Out-of-State Military Service Members and Military Spouses.

(a) This section implements Texas Occupations Code §55.004(d) as it relates to a non-resident service member or [~~military~~] spouse applicant to the department for a license with a residency requirement for license eligibility.

(b) This section applies to a service member or military spouse, as defined under §60.501, that is not a resident of the State of Texas at the time of the filing of an application with the department for a license that requires residency status.

(c) A non-resident service member or [~~military~~] spouse applicant under this section is eligible to obtain a license issued by the department if the applicant provides documentation sufficient to establish residency within the State of Texas.

(d) A non-resident service member or [~~military~~] spouse applicant seeking to establish in-state residency to demonstrate eligibility to apply for a specific license under this section must submit the following documentation:

(1) a completed license application and supporting documents associated with the specific department license;

(2) documents sufficient to establish residency, including but not limited to, a copy of the permanent change of station order for the [~~military~~] service member or the spouse applicant [~~to whom the spouse is married~~];

(3) documents showing proof of active duty status for the [~~military~~] service member; and

(4) if a spouse applicant, a copy of a document showing proof of status as a military spouse.

(e) An applicant under this section must comply with all [~~of the~~] license requirements for the specific license obtained.

(f) If a service member or spouse of a service member is licensed by way of an interstate licensure compact with Texas, the service member or spouse shall be subject to the requirements of the compact and the applicable laws of this State, and not this section.

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 18, 2023.

TRD-202303459

Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Earliest possible date of adoption: October 29, 2023
For further information, please call: (512) 475-4879

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16 TAC §60.518

STATUTORY AUTHORITY

The proposed repeal is proposed under Texas Occupations Code, Chapters 51 and 55, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed repeal is those set forth in Texas Occupations Code, Chapters 51 and 55, and the Federal Servicemembers Civil Relief Act at 50 U.S.C. §4025a, and the program statutes for all of the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); 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); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers): 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); 2311 (Electric Vehicle Charging Stations); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

The legislation that enacted the statutory authority under which the proposed repeal is proposed to be adopted is Senate Bill 422, 88th Legislature, Regular Session (2023).

§60.518. Recognition of Out-of-State License of Military Spouse.

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, 2023.

TRD-202303460

Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Earliest possible date of adoption: October 29, 2023
For further information, please call: (512) 475-4879

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 102. FEES

22 TAC §102.1

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §102.1, concerning fees. The proposed amendment increases the peer assistance fees for registered dental assistants to account for the increased peer assistance costs to the agency. Specifically, the proposed amendment increases the peer assistance fees by $1 for initial and renewal registered dental assistant applications.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does require an increase in peer assistance fees for initial and renewal applications pertaining to dental assistants; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: The Board finds that the provisions of Texas Government Code Section 2001.0045(b) do not apply to the proposal because the estimated costs associated with the proposal implement statutory requirements and are necessary to protect the health, safety, and welfare of the people of Texas, as provided in Section 2001.045(c)(6) and (9).

Comments on the proposed amendment may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register.* To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety, and Texas Occupations Code §254.004, which directs the Board to establish reasonable and necessary fees sufficient to cover the cost of administering the Board's duties.

No statutes are affected by this proposed rule.

§102.1. Fees.

(a) Effective November 3, 2023 [~~September 1, 2023~~], the Board has established the following reasonable and necessary fees for the administration of its function. Upon initial licensure or registration, and at each renewal, the fees provided in subsections (b) - (d) of this section shall be due and payable to the Board.
Figure: 22 TAC §102.1(a)
[~~Figure: 22 TAC §102.1(a)~~]

(b) - (f) (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 13, 2023.

TRD-202303401
Lauren Studdard
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: October 29, 2023
For further information, please call: (512) 305-8910

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 527. PEER REVIEW

22 TAC §527.5

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.5 concerning Deficient Reviews.

Background, Justification and Summary

Upon on a finding of deficient peer reviews, current Board rules provide for a three-year suspension of attest work by a licensee. Upon the expiration of the three years, the suspension is automatically lifted without any demonstration by the licensee they are now competent to perform attest services. The proposed rule revision will eliminate the three-year suspension but require a licensee to have a third-party CPA review the licensee's work prior to being authorized to independently offer attest services to the public. Only upon a recommendation to the Board by the CPA performing the third-party review will the Board consider reinstating their ability to offer attest services to the public.

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 rule amendment will better protect the public from improperly prepared attest services.

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 October 30, 2023.

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 pro-

posed 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, §901.655 and §901.307(b) 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.

§527.5. Deficient Reviews.

(a) The board at its sole discretion may require a firm which has received a rating of pass with deficiencies or fail to have an accelerated peer review or subject it to any other disciplinary or corrective action under the Act.

(b) A firm, including a successor firm, which receives two consecutive reviews on a system or engagement review with ratings of either pass with deficiencies or fail in any order, or two pass with deficiencies shall be required to have an accelerated review. If that accelerated review results in a rating of pass with deficiencies or fail:

(1) the firm may complete attest engagements for which field work has already begun only if:

(A) prior to issuance of any report, the engagement is reviewed and approved by a third-party reviewer acceptable to the chairman of the Technical Standards Review Committee or the Peer Review Committee; and

(B) the engagement is completed within 60 days of the acceptance of the peer review report and LOR by the sponsoring organization; and

(2) the firm shall not perform any other attest services [~~for a period of three years or~~] until given permission by the board and if approved by the Board may do so only under the supervision of a third-party reviewer approved by the chair of the Technical Standards Review Committee or Peer Review Committee; and [~~to resume this practice.~~]

(3) the firm may only perform an attest service not under the supervision of a third-party reviewer following the recommendation of the Technical Standards Review Committee or the Peer Review Committee with the board's approval.

(c) A firm, including a successor firm, which receives two consecutive reviews with a rating of fail on a system or engagement review shall not perform any other attest services for a period of three years or until given permission by the board to resume this practice. The firm may complete attest engagements for which field work has already begun only if:

(1) prior to issuance of any report, the engagement is reviewed and approved by a third party reviewer acceptable to the chairman of the Technical Standards Review Committee or the Peer Review Committee; and

(2) the engagement is completed within 60 days of the acceptance of the peer review report and LOR by the sponsoring organization; and[.]

(3) if approved by the Board, the firm may perform attest services under the supervision of a third-party reviewer approved by the chair of the Technical Standards Review Committee or Peer Review Committee; and

(4) the firm may only perform an attest service not under the supervision of a third-party reviewer following the recommendation of the Technical Standards Review Committee or the Peer Review Committee with the board's approval.

(d) A firm may petition the board in writing for a waiver from the provisions of this rule.

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, 2023.

TRD-202303409
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: October 29, 2023
For further information, please call: (512) 305-7842

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. MISCELLANEOUS PROVISIONS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes an amendment to §1.81, concerning Recognition of Out-of-State License of a Military Service Member and Military Spouse; and new §1.91, concerning Alternative Licensing for Military Service Members, Military Spouses, and Military Veterans.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Senate Bill (S.B.) 422, 88th Legislature, Regular Session, 2023, which amended Texas Occupations Code Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. S.B. 422 allows military service members, military spouses, and military veterans who are currently licensed by another jurisdiction to engage in a business or occupation in Texas and grants the person a verification letter or alternative license after meeting certain conditions to operate for three years. This amendment establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §1.81 adds the term "military service member" to the title of the rule and throughout §1.81. The proposed amendment also adds a requirement that DSHS ver-

ify the applicant is licensed in good standing within 30 days of the date a military service member or military spouse submits the application. The proposed amendment authorizes a person who receives a verification letter to continue to engage in the business or occupation until the third anniversary of the date the military spouse received the letter, even if that person's status as a military spouse has changed. A list of criteria is added for DSHS to review and evaluate whether another state's license requirements are substantially equivalent to the requirements of this state.

New §1.91 establishes alternative licensing for military service members, military spouses, and military veterans. A list of criteria is added for DSHS to review and evaluate whether another state's license requirements are substantially equivalent to the requirements of this state.

FISCAL

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

(2) implementation of the proposed rules will not affect the number of DSHS employee positions.

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

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

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

(6) the proposed rules will expand an existing rule;

(7) the proposed rules will increase the number of individuals subject to the rule; and

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

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

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

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Dr. Timothy Stevenson, Associate Commissioner, Consumer Protection Division, has determined that for each year of the first five years the rules are in effect, the public benefit will be improved continuity of care and services by active military service members or military spouses currently licensed in good standing by another jurisdiction that has licensing requirements substantially equivalent to the requirements of a license in this state.

Donna Sheppard has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the military service members, military veterans, or military spouses would be able to engage in the business or occupation in accordance with the Texas statutes without obtaining a state license for three years.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Joseph Schmider, State EMS Director, Office of EMS Trauma Systems, Mail Code 1876, P.O. Box 149347, Austin, Texas 78714-9347 or street address 1100 West 49th Street, Mail Code 1876, Austin, Texas 78756; Fax number (512) 834-6736 or emailed to EMSInfo@DSHS.Texas.Gov.

To be considered, comments must be submitted no later than 21 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule 23R054" in the subject line.

SUBCHAPTER F. LICENSURE EXEMPTIONS

25 TAC §1.81

STATUTORY AUTHORITY

The proposed amendment is authorized by Texas Occupations Code §§55.004, 55.005, and 55.0041; and Texas Government Code §531.0055(j) and Texas Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The amendment implements Texas Government Code Chapter 531, Texas Health and Safety Code Chapter 1001, and Texas Occupations Code Chapter 55.

§1.81. Recognition of Out-of-State License of a Military Service Member and Military Spouse.

(a) For the purposes of this section, the definitions in Texas Occupations Code Chapter 55 are hereby adopted by reference. This section establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

(b) This section applies to all licenses and verifications issued by the Department of State Health Services (department) under authority granted by the [~~applicable chapter of the~~] Texas Health and Safety Code or Texas Occupations Code.

(c) Notwithstanding any other rule, a military service member or military spouse may engage in a business or occupation as if licensed in the State of Texas without obtaining the applicable license in Texas, if the military service member or military spouse:

(1) is currently licensed in good standing by another jurisdiction that has licensing requirements substantially equivalent to the requirements of a license in this state;

(2) notifies the department, in writing, of the military service member's or military spouse's intent to practice in this state;

(3) submits [~~to the department~~] proof of the military service member's or military spouse's residency in this state and a copy of the military service member or military spouse's military identification card; and

(4) receives from the department a verification letter that:

(A) the department has verified the military service member's or military spouse's license in another [~~the other~~] jurisdiction; and

(B) the military service member or military spouse is authorized to engage in the business or occupation in accordance with the Texas statutes [~~Statutes~~] and rules for that business or occupation.

(d) To receive a verification letter, the military service member or military spouse, must submit:

(1) a request to the department for recognition of the military service member's or military spouse's license issued by the other jurisdiction, on a form prescribed by the department;

(2) proof of residency in this state, and this requirement is satisfied by providing a copy of the permanent change-of-station order for the military service member;

(3) a copy of the military service member's or military spouse's military identification card; and

(4) proof the military service member is stationed at a military installation in Texas.

(e) The department has 30 days from the date a military service member or military spouse submits an application complying with subsection (d) of this section to verify that the military service member or military spouse is licensed in good standing in a jurisdiction that has licensing requirements that are substantially equivalent to the requirements for a license under the statutes and regulations of this state. Upon verification [~~from the licensing jurisdiction of the spouses' license and if the license is substantially equivalent to a Texas license~~], the department shall issue a verification letter recognizing the licensure as the equivalent license in this state.

(f) The verification letter will expire three years from date of issuance or when the military service member is no longer stationed at a military installation in Texas, whichever comes first. The verification letter may not be renewed.

(g) In the event of a divorce or similar event that affects a person's status as a military spouse, the former military spouse that received a verification under subsection (d) of this section, may continue to engage in the business or occupation under the authority of this section until the third anniversary of the date the spouse received the verification letter described by subsection (e) of this section.

(h) [~~(g)~~] The military service member or military spouse shall comply with all applicable laws, rules, and standards of this state, including applicable Texas Health and Safety Code, [~~or~~] Texas Occupations Code, [~~Chapters~~] and all relevant Texas Administrative Code provisions.

(i) [~~(h)~~] The department may revoke the verification letter at its discretion. Grounds [~~Basis~~] for revocation include:

(1) the military service member or military spouse fails to comply with subsection (h) [~~(g)~~] of this section; or

(2) the military service member's or military spouse's license required under subsection (c)(1) of this section expires or is suspended or revoked in another jurisdiction.

(j) The department will review and evaluate the following criteria, if relevant to a Texas license, when determining whether another jurisdiction's licensing requirements are substantially equivalent to the requirements for a license under the statutes and regulations of this state.

(1) Whether the other jurisdiction requires an applicant to pass an examination that demonstrates competence in the field.

(2) Whether the other jurisdiction requires an applicant to meet any experience qualifications.

(3) Whether the other jurisdiction requires an applicant to meet any education qualifications.

(4) The other jurisdiction's license requirements, including the scope of work authorized by the 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 15, 2023.

TRD-202303443
Cynthia Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: October 29, 2023
For further information, please call: (512) 834-6737

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SUBCHAPTER G. ALTERNATIVE LICENSING FOR MILITARY

25 TAC §1.91

STATUTORY AUTHORITY

The proposed new rule is authorized by Texas Occupations Code §§55.004, 55.005, and 55.0041; and Texas Government Code §531.0055(j) and Texas Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The proposed new rule implements Texas Government Code Chapter 531, Texas Health and Safety Code Chapter 1001, and Texas Occupations Code Chapter 55.

§1.91. Alternative Licensing for Military Service Members, Military Spouses, and Military Veterans.

(a) For the purposes of this section, the definitions in Texas Occupations Code Chapter 55 are hereby adopted by reference. This section establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

(b) This section applies to all licenses issued by the Department of State Health Services (department) under authority granted by the Texas Health and Safety Code or Texas Occupations Code.

(c) Notwithstanding any other rule, a military service member, military spouse, or military veteran may apply for an occupational license offered by the department if the military service member, military spouse, or military veteran:

(1) is currently licensed by another jurisdiction that has licensing requirements substantially equivalent to the requirements of a license in this state, and the license is in good standing; or

(2) held the same license in Texas within the preceding five years.

(d) A military service member or military spouse must provide proof of residency in this state. This requirement is satisfied by providing a copy of the permanent change-of-station order assigning the military service member to a military installation in Texas.

(e) An applicant requesting a license under this section must meet all requirements for obtaining the license, including receiving appropriate credit for training, education, and professional experience.

(f) The department will review and evaluate the following criteria, if relevant to a Texas license, when determining whether another jurisdiction's licensing requirements are substantially equivalent to the requirements for a license under the statutes and regulations of this state.

(1) Whether the other jurisdiction requires an applicant to pass an examination that demonstrates competence in the field.

(2) Whether the other jurisdiction requires an applicant to meet any experience qualifications.

(3) Whether the other jurisdiction requires an applicant to meet any education qualifications.

(4) The other jurisdiction's license requirements, including the scope of work authorized under the license.

(g) The department will not charge a fee for the issuance of the license. The applicant will be responsible for fees associated with a required background check.

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 15, 2023.

TRD-202303444
Cynthia Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: October 29, 2023
For further information, please call: (512) 834-6737

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TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 122. COMPENSATION PROCEDURE--CLAIMANTS

SUBCHAPTER B. CLAIMS PROCEDURE FOR BENEFICIARIES OF INJURED EMPLOYEES

28 TAC §122.100

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC §122.100, Claim for Death Benefits. Section 122.100 implements Labor Code §§408.182 and 409.007, as amended by House Bill (HB) 2314, 88th Legislature, Regular Session (2023).

EXPLANATION. Amending §122.100 is necessary to clarify how legal beneficiaries may file claims, consistent with the statute and other rules about notice to insurance carriers, and outline what happens after filing. HB 2314 amended Labor Code §§408.182 and 409.007 to enable eligible beneficiaries to file claims for death benefits with DWC or an insurance carrier, and imposed recordkeeping and notice requirements on insurance carriers that receive those claims.

Section 122.100 provides requirements for legal beneficiaries to file claims for death benefits. The proposed amendments clarify that they may file a claim with DWC or an insurance carrier. The proposed amendments also cross-reference the associated rule for insurance carriers that receive notices of death or claims for death benefits (Chapter 124, §124.8 of this title, newly proposed to implement HB 2314), clarify that beneficiaries may provide additional evidence electronically, and include nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity and readability. The proposed amendments are necessary to ease administrative barriers for legal beneficiaries to claim the benefits to which they are entitled, and to ensure that, regardless of the way the claim was initially filed, DWC receives the documentation necessary to process the claim effectively and efficiently.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner for Claims and Customer Services Erica De La Cruz has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the section, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. De La Cruz does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. De La Cruz expects that enforcing and administering the proposed amendments will have the public benefits of ensuring that DWC's rules conform to Labor Code §§408.182 and 409.007, as amended by HB 2314, 88th Legislature, Regular Session (2023); enhancing regulatory efficiency, consistency, and transparency; and enabling legal beneficiaries to file claims for death benefits with fewer opportunities for the process to go awry.

Ms. De La Cruz expects that the proposed amendments will not increase the cost to comply with Labor Code §§408.182 and 409.007, as amended by HB 2314, 88th Legislature, Regular Session (2023), because they do not impose requirements be-

yond those in the statute or that exist in current rules. Instead, they cross-reference the associated rule for insurance carriers that receive notices of death or claims for death benefits (Chapter 124, §124.8 of this title); clarify how legal beneficiaries may file claims, consistent with the statute and other rules about notice to insurance carriers; and outline what happens after filing.

HB 2314 amended Labor Code §§408.182 and 409.007 to enable eligible beneficiaries to file claims for death benefits with DWC or an insurance carrier, and imposed recordkeeping and notice requirements on insurance carriers that receive those claims. As a result, any cost associated with the rule does not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because the proposed amendments implement legislation, clarify filing requirements, and make editorial changes for plain language and agency style. They do not change the people the rule affects or impose additional costs. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that this proposal does not impose a possible cost on regulated persons. In addition, no additional rule amendments are required under Government Code §2001.0045 because the proposed amendments to §122.100 are necessary to implement legislation. The proposed amendments implement Labor Code §§408.182 and 409.007, as amended by HB 2314, 88th Legislature, Regular Session (2023).

GOVERNMENT GROWTH IMPACT STATEMENT. DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;

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

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; or

- will not positively or adversely affect the Texas economy.

DWC made these determinations because the amendments to the rule are necessary to implement HB 2314. The amended rule does not affect additional persons or create duties beyond those the statute imposes.

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

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5 p.m., Central time, on October 30, 2023. Send your comments to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, PO Box 12050, Austin, Texas 78711-2050.

DWC will also consider written and oral comments on the proposal in a public hearing at 11 a.m., Central time, on October 24, 2023. The hearing will take place remotely. DWC will publish details of how to view and participate in the hearing on the agency website at www.tdi.texas.gov/alert/event/index.html.

STATUTORY AUTHORITY. DWC proposes amended §122.100 under Labor Code §§408.182, 409.007, 402.00111, 402.00116, and 402.061.

Labor Code §408.182, as amended by HB 2314, 88th Legislature, Regular Session (2023), provides for the distribution of death benefits to eligible beneficiaries of a deceased employee, when a compensable injury to the employee results in death, and allows an eligible parent to file a claim with DWC or an insurance carrier.

Labor Code §409.007, as amended by HB 2314, 88th Legislature, Regular Session (2023), requires a person to file a claim for death benefits with DWC or an insurance carrier; and provides that, on receiving such a claim, the insurance carrier must, in the form and manner DWC prescribes, create and maintain a record documenting receipt of the claim and provide written notice to DWC that the person filed the claim.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

CROSS-REFERENCE TO STATUTE. The amendments to §122.100 implement Labor Code §§408.182 and 409.007, as amended by HB 2314, 88th Legislature, Regular Session (2023).

§122.100. Claim for Death Benefits

(a) Filing. For [~~In order for~~] a legal beneficiary, other than the subsequent injury fund, to receive the benefits available because [~~as a consequence~~] of the death of an employee that [~~which~~] results from a compensable injury, a person must [~~shall~~] file a written claim for death benefits [~~compensation with the Division~~] within one year after the date of the employee's death.

(b) An insurance carrier that receives a claim for death benefits under this section must comply with §124.8 of this title (relating to Receipt, Records, and Notice of Death or Claim for Death Benefits).

(c) [~~(b)~~] Form and information requirements. The claim should be submitted to the division or insurance carrier [~~Division~~] either on paper or via electronic transmission, in the form, format, and manner prescribed by the division [~~Division~~], and should include the following:

(1) the potential beneficiary's [~~claimant's~~] name, address, telephone number (if any), Social Security [~~social security~~] number, and relationship to the deceased employee;

(2) the deceased employee's name, last address, Social Security [~~social security~~] number (if known) and workers' compensation claim number (if any); and

(3) other information, as follows:

(A) a description of the circumstances and nature of the injury (if known);

(B) the name and location of the employer at the time of the injury;

(C) the date of the compensable injury, and date of death; and

(D) other known legal beneficiaries.

(d) [~~(c)~~] Required documents. A potential beneficiary must [~~claimant shall~~] file with the division or insurance carrier [~~Division~~] a copy of the deceased employee's death certificate and any additional documentation or other evidence that establishes that the potential beneficiary [~~claimant~~] is a legal beneficiary of the deceased employee.

(1) If the claim is filed [~~with the Division~~] in paper format, the additional evidence regarding legal beneficiary status must [~~shall~~] be filed at the same time as the claim.

(2) If the claim is filed via electronic transmission, the additional evidence regarding legal beneficiary status may be filed separately in paper or electronic format and sent either by mail, facsimile, [~~or~~] hand delivery, or secure upload.

(e) [~~(d)~~] One claim per person. Each person must file a separate claim for death benefits, unless the claim expressly includes or is made on behalf of another person.

(f) [~~(e)~~] Deadline. Failure to file a claim for death benefits within one year after the date of the employee's death bars [~~shall bar~~] the claim of a legal beneficiary, other than the subsequent injury fund, unless:

(1) that legal beneficiary is a minor or otherwise legally incompetent;

(2) except as provided by paragraph (3) of this subsection, good cause exists for failure to file the claim on time [~~in a timely manner~~]; or

(3) for a legal beneficiary who is an eligible parent as defined by §132.6(e) of this title (relating to Eligibility of Other Surviving Dependents and Eligible Parents To Receive Death Benefits), the parent submits proof satisfactory to the commissioner [~~Commissioner of Workers' Compensation~~] of a compelling reason for the delay in filing the claim for death benefits.

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 13, 2023.

TRD-202303406

Kara Mace
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: October 29, 2023
For further information, please call: (512) 804-4703

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CHAPTER 124. INSURANCE CARRIERS: NOTICES, PAYMENTS, AND REPORTING

SUBCHAPTER A. INSURANCE CARRIERS: REQUIRED NOTICES AND MODES OF PAYMENT

28 TAC §124.8

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes new 28 TAC §124.8, Receipt, Records, and Notice of Death or Claim for Death Benefits. Section 124.8 implements Labor Code §§408.182 and 409.007, as amended by House Bill (HB) 2314, 88th Legislature, Regular Session (2023).

EXPLANATION. New §124.8 is necessary to implement HB 2314. HB 2314 amended Labor Code §§408.182 and 409.007 to enable eligible beneficiaries to file claims for death benefits with DWC or an insurance carrier, and imposed recordkeeping and notice requirements on insurance carriers that receive those claims.

Section 124.8 cross-references the associated rule for beneficiaries filing claims for death benefits (Chapter 122, §122.100 of this title, with proposed amendments to implement HB 2314) for consistency and ease of use, and clarifies an insurance carrier's obligations, consistent with associated rules for electronic data transactions and other existing rules. It requires an insurance carrier that sends a plain-language notice of potential entitlement to workers' compensation death benefits to a potential beneficiary under existing rules to also send a copy of that notice to DWC.

New §124.8 is necessary to ensure that, if an insurance carrier receives a notice of death or a claim for death benefits, the insurance carrier knows what the requirements for recordkeeping and notice to DWC are. It is also necessary to ensure that procedures for receiving information from claimants, maintaining records, and transmitting information to DWC are as consistent as possible with procedures for other similar situations and with other rules to enhance compliance and reduce confusion. Finally, new §124.8 is necessary to ensure that DWC has the information needed to identify potential claims for death benefits and potential beneficiaries. Having that information is necessary for DWC to ensure that the potential beneficiaries have access to DWC's outreach services, and that insurance carriers have the information they need to process the claims efficiently.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner for Claims and Customer Services Erica De La Cruz has determined that during each year of the first five years the proposed new section is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the section, other than that imposed by the statute. This determination was made because the proposed new section does not add to or decrease state revenues or expenditures, and because local governments are not

involved in enforcing or complying with the proposed new section.

Ms. De La Cruz does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed new section is in effect, Ms. De La Cruz expects that enforcing and administering the proposed new section will have the public benefits of ensuring that DWC's rules conform to Labor Code §§408.182 and 409.007, as amended by HB 2314, 88th Legislature, Regular Session (2023); enhancing regulatory efficiency, consistency, and transparency; and enabling legal beneficiaries to file claims for death benefits with fewer opportunities for the process to go awry.

Ms. De La Cruz expects that the proposed new section will not increase the cost to comply with Labor Code §§408.182 and 409.007, as amended by HB 2314, 88th Legislature, Regular Session (2023), because it does not impose requirements beyond those in the statute or that exist in current rules. Instead, it cross-references the associated rule for beneficiaries filing claims for death benefits (Chapter 122, §122.100 of this title) for consistency and ease of use, and clarifies an insurance carrier's obligations, consistent with associated rules for electronic data transactions and other existing rules. In addition, the insurance carriers' ability to send documents to DWC electronically minimizes any possible cost from the requirement in the rule to send DWC a copy of the plain-language notice to potential beneficiaries.

HB 2314 amended Labor Code §§408.182 and 409.007 to enable eligible beneficiaries to file claims for death benefits with DWC or an insurance carrier, and imposed recordkeeping and notice requirements on insurance carriers that receive those claims. As a result, any cost associated with the rule does not result from the enforcement or administration of the proposed new section.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed new section will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because the proposed new section implements legislation and clarifies insurance carriers' obligations on receiving a claim for death benefits. The proposed new section does not change the people the statute affects or impose additional costs. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that this proposal does not impose a possible cost on regulated persons. In addition, no additional rule amendments are required under Government Code §2001.0045 because proposed new §124.8 is necessary to implement legislation. The proposed rule implements Labor Code §§408.182 and 409.007, as amended by HB 2314, 88th Legislature, Regular Session (2023).

GOVERNMENT GROWTH IMPACT STATEMENT. DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;

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

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will create a new regulation;

- will not expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; or

- will not positively or adversely affect the Texas economy.

DWC made these determinations because the new rule is necessary to implement HB 2314. It does not affect additional persons or create duties beyond those the statute imposes.

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

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5 p.m., Central time, on October 30, 2023. Send your comments to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050.

DWC will also consider written and oral comments on the proposal in a public hearing at 11 a.m., Central time, on October 24, 2023. The hearing will take place remotely. DWC will publish details of how to view and participate in the hearing on the agency website at www.tdi.texas.gov/alert/event/index.html.

STATUTORY AUTHORITY. DWC proposes new §124.8 under Labor Code §§408.182, 409.007, 402.00111, 402.00116, and 402.061.

Labor Code §408.182, as amended by HB 2314, 88th Legislature, Regular Session (2023), provides for the distribution of death benefits to eligible beneficiaries of a deceased employee, when a compensable injury to the employee results in death, and allows an eligible parent to file a claim with DWC or an insurance carrier.

Labor Code §409.007, as amended by HB 2314, 88th Legislature, Regular Session (2023), requires a person to file a claim for death benefits with DWC or an insurance carrier; and provides that, on receiving such a claim, the insurance carrier must, in the form and manner DWC prescribes, create and maintain a record documenting receipt of the claim and provide written notice to DWC that the person filed the claim.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

CROSS-REFERENCE TO STATUTE. New §124.8 implements Labor Code §§408.182 and 409.007, as amended by HB 2314, 88th Legislature, Regular Session (2023).

§124.8. Receipt, Records, and Notice of Death or Claim for Death Benefits.

(a) Definition. In this section, "claim for death benefits" means a claim that is filed under Chapter 122, Subchapter B, §122.100 of this title.

(b) General requirements. An insurance carrier that receives a notice of death in accordance with §132.17 of this title, or a claim for death benefits must comply with all of the requirements in this chapter.

(c) Recordkeeping and notice. An insurance carrier in subsection (b) of this section must:

(1) send the division a copy of the plain-language notice that the insurance carrier must provide to the potential beneficiary under §132.17 of this title not later than the seventh day after receiving the claim for death benefits.

(2) on receiving a claim for death benefits, create and maintain a record documenting receipt of the claim for death benefits. The record must include all of the information in the claim for death benefits. The insurance carrier must maintain the record in accordance with Chapter 102, §102.4 of this title.

(3) send the division a copy of a claim for death benefits the insurance carrier receives from the potential beneficiary not later than the seventh day after receiving it and include any other documents and information the insurance carrier received.

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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Kara Mace
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
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For further information, please call: (512) 804-4703

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

SUBCHAPTER A. STATEWIDE OYSTER FISHERY PROCLAMATION

31 TAC §58.21

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

The proposed amendment would temporarily prohibit the harvest of oysters for two years within the boundaries of restoration areas on two reefs: one site in Conditionally Approved Area TX-7 in Galveston Bay (East Redfish Reef, approximately 42.6 acres), and one site in Conditionally Approved Area TX-6 in Galveston Bay (North Dollar Reef, 21.8 acres). The proposed amendment would temporarily close a total of 64.4 acres of oyster reef for two years. The Texas Department of State Health Services (DSHS) regulates shellfish sanitation and designates specific areas where oysters may be harvested for human consumption. The designation of "Conditionally Approved" or "Approved" is determined by DSHS.

The temporary closures will allow for the planting of oyster cultch to repopulate in those areas and enough time for those oysters to reach legal size for harvest. Oyster cultch is the material to which oyster spat (juvenile oysters) attach in order to create an oyster bed.

Under Parks and Wildlife Code, §76.115, the department may close an area to the taking of oysters when the commission finds that the area is being overworked or damaged or the area is to be reseeded or restocked. Oyster reefs in Texas have been impacted due to drought, flooding, and hurricanes (Hurricane Ike, September 2008 and Hurricane Harvey, August 2017), as well as high harvest pressure. The department's oyster habitat restoration efforts to date have resulted in a total of approximately 1,709 acres of oyster habitat returned to productive habitat within these bays.

Over $3.4 million from the Coronavirus Aid, Relief, and Economic Security (CARES) Act, administered through the Gulf States Marine Fisheries Commission (GSMFC), was awarded to TPWD to restore oyster habitat to offset impacts to commercial oyster fisheries from decreased landings, workforce, and demand for oysters resulting from COVID-19. Funding was also generated as a result of the passage of House Bill 51 (85th Legislature, 2017), which included a requirement that certified oyster dealers re-deposit department-approved cultch materials in an amount equal to thirty percent of the total volume of oysters purchased in the previous license year. Additionally, Shell Oil and Gas has donated $50,000 to the Galveston Bay oyster restoration project. These funds will be used to restore approximately 21 acres on East Redfish Reef and nine acres on North Dollar Reef. Oyster abundance on these reefs has severely declined over time, and the portion of the reefs selected for restoration is characterized by degraded substrates. These sites were selected in collaboration with the commercial oyster industry, which provided input on site prioritization through a series of workshops. Commercial oyster industry representatives also accompanied TPWD on site surveys to determine the suitability of the substrate for restoration. The restoration activities will focus on establishing stable substrate and providing suitable conditions for spat settlement and oyster bed development.

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

Mr. Geeslin also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be the dispensation of the agency's statutory duty to protect and conserve the fisheries resources of this state; the duty

to equitably distribute opportunity for the enjoyment of those resources among the citizens; the execution of the commission's policy to maximize recreational opportunity within the precepts of sound biological management practices; the potential for increased oyster production by repopulating damaged public oyster reefs and allowing these oysters to reach legal size and subsequent recreational and commercial harvest; and providing protection from harvest to a reef complex thus establishing a continual supply of oyster larvae to colonize oyster habitat within the bay system.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that because the areas designated for closure have been degraded to the extent that they no longer support any commercial exploitation, the closures effected by the proposed rules will not result in direct adverse economic impacts to any small business, microbusiness, or rural community. The department does note, however, that numerous areas previously closed (South Redfish Reef, Texas City 1, Texas City 2, Hanna's Reef, and Middle Reef), are now home to healthy populations of oysters that have reached legal size and may be harvested by both recreational and commercial users.

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

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

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

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

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

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

Comments on the proposed rule may be submitted to Hanna Bauer, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8255; email: cfish@tpwd.texas.gov, or via the department website at www.tpwd.texas.gov.

The amendment is proposed under Parks and Wildlife Code, §76.301, which authorizes the commission to regulate the taking, possession, purchase and sale of oysters, including prescribing the times, places, conditions, and means and manner of taking oysters.

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

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

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

(c) Area Closures.

(1) (No change.)

(2) No person may take or attempt to take oysters within an area described in this paragraph. The provisions of subparagraphs (A)(i)-(ii) cease effect on November 1, 2025. The provisions of subparagraph (A)(iii) and (B) of this paragraph cease on November 1, 2024.[~~The provisions of subparagraphs (A)(i)-(vi) and (B) of this paragraph cease effect on November 1, 2023. The provisions of subparagraph (A) (vii) and (B) cease on November 1, 2024.~~]

(A) Galveston Bay.

(i) East Redfish Reef. The area within the boundaries of a line beginning at 29° 30' 10.95"N, 94° 49' 29.21"W (29.503043, -94.824781, corner marker buoy A); thence to 29° 30' 16.31"N, 94° 49' 15.68"W (29.50453, -94.821024, corner marker buoy B); thence to 29° 30' 03.79"N, 94º 49' 08.97"W (29.501053, -94.819161, corner marker buoy C); thence to 29º 29' 58.12"N, 94º 49' 22.24"W (29.49948, -94.822844, corner marker buoy D); thence back to corner marker buoy A.

(ii) North Dollar Reef. The area within the boundaries of a line beginning at 29º 27' 36.09"N, 94º 54' 24.97"W (29.460025, -94.873606, corner marker buoy A); thence to 29º 27' 43.72"N, 94º 52' 09.05"W (29.462146, -94.86918, corner marker buoy B); thence to 29º 27' 38.66"N, 94º 52' 05.80"W (29.460738, -94.868278, corner marker buoy C); thence to 29º 27' 30.93"N, 94º 52' 21.71"W (29.458593, -94.872699, corner marker buoy D); and thence back to corner marker buoy A.

~~(i)~~ ~~Trinity Sanctuary Reef. The area within the boundaries of a line beginning at 29° 38' 26.2"N, 94° 51' 53.1"W (29.640616°N, -94.864753°W; corner marker buoy A); thence, to 29° 38' 22.9"N, 94° 51' 48.7"W (29.639701°N, -94.863539°W; corner marker buoy B); thence to 29° 38' 17.9"N, 94° 51' 49.8"W (29.638304°N, -94.863857°W; corner marker buoy C); thence to 29° 38' 13.2"N, 94° 51' 50.1"W (29.636994°N, -94.863926°W; corner marker buoy D); thence to 29° 38' 10.1"N, 94° 51' 53.2"W (29.636131°N, -94.864777°W; corner marker buoy E); thence to 29° 38' 17.1"N, 94° 52' 01.3"W (29.638092°N, -94.867041°W; corner marker buoy F); and thence back to corner marker buoy A.~~]

~~(ii)~~ ~~Trinity Harvestable Reef 1. The area within the boundaries of a line beginning at 29° 38' 56.2"N, 94° 51' 34.4"W (29.648936°N, -94.859552°W; corner marker buoy A); thence, to 29° 38' 58.8"N, 94° 51' 29.5"W (29.649673°N, -94.858202°W; corner marker buoy B); thence to 29° 38' 55.4"N, 94° 51' 27.1"W (29.648733°N, -94.857531°W; corner marker buoy C); thence to 29° 38' 56.7"N, 94° 51' 24.8"W (29.649075°N, -94.856906°W; corner marker buoy D); thence to 29° 38' 50.5"N, 94° 51' 20.5"W (29.647369°N, -94.855690°W; corner marker buoy E); thence to 29°~~

~~38' 46.8"N, 94° 51' 27.7"W (29.646345°N, -94.857704°W; corner marker buoy F); and thence back to corner marker buoy A.]~~

~~*[(iii)* Trinity Harvestable Reef 2. The area within the boundaries of a line beginning at 29° 36' 47.0"N, 94° 52' 23.7"W (29.613063°N, -94.873269°W; corner marker buoy A); thence, to 29° 36' 37.2"N, 94° 52' 22.9"W (29.610327°N, -94.873046°W; corner marker buoy B); thence to 29° 36' 36.7"N, 94° 52' 31.1"W (29.610187°N, -94.875306°W; corner marker buoy C); thence to 29° 36' 46.5"N, 94° 52' 31.9"W (29.612924°N, -94.875529°W; corner marker buoy D); and thence back to corner marker buoy A.]~~

~~*[(iv)* Dollar Reef. The area within the boundaries of a line beginning at 29° 27' 30.44"N, 94° 52' 03.23"W (29.458456°N, -94.867565°W, corner marker buoy A); thence, to 29° 27' 32.83"N, 94° 51' 59.91"W (29.459121°N, -94.866643°W, corner marker buoy B); thence, to 29° 27' 29.13"N, 94° 51' 52.67"W (29.458094°N, -94.864632°W, corner marker buoy C); thence, to 29° 27' 15.67"N, 94° 51' 53.44"W (29.454535°N, -94.864846°W, corner marker buoy D); thence, to 29° 27' 04.04"N, 94° 52' 08.47"W (29.451124°N, -94.869021°W, corner marker buoy E) ; and thence back to corner marker buoy A.]~~

~~*[(v)* North Todd's Dump Reef. The area within the boundaries of a line beginning at 29° 30' 33.76"N, 94° 53' 17.07"W (29.509379°N, -94.888077°W, corner marker buoy A); thence, to 29° 30' 27.89"N, 94° 53' 44.39"W (29.507749°N, -94.895666°W, corner marker buoy B); thence, to 29° 30' 17.10"N, 94° 53' 41.73"W (29.504752°N, -94.894926°W, corner marker buoy C); thence, to 29° 30' 23.60"N, 94° 53' 12.46"W (29.506556°N, -94.886797°W, corner marker buoy D); and thence back to corner marker buoy A.]~~

~~*[(vi)* Pepper Grove Reef - Middle Site. The area within the boundaries of a line beginning at 29° 29' 15.83"N, 94° 40' 01.01"W (29.487733°N, -94.666948°W, corner marker buoy A); thence, to 29° 29' 15.93"N, 94° 39' 52.30"W (29.487760°N, -94.66453°W, corner marker buoy B); thence, to 29° 29' 14.81"N, 94° 39' 52.28"W (29.487450°N, -94.664525°W, corner marker buoy C); thence, to 29° 29' 14.71"N, 94° 40' 00.99"W (29.487422°N, -94.666944°W, corner marker buoy D) ; and thence back to corner marker buoy A.]~~

(iii) [~~(vii)~~] Dollar Reef HSE Mitigation Site. The area within the boundaries of a line beginning at 29° 27' 22.92"N, 94° 53' 46.44"W (29.456367°N, -94.896233°W, corner marker buoy A); thence to, 29° 27' 13.62"N, 94° 53' 23.80"W (29.453784°N, -94.889944°W, corner marker buoy B); thence to, 29° 26' 51.77"N, 94° 53' 40.51"W (29.447713°N, -94.894587°W, corner marker buoy C); thence to, 29° 27' 18.96"N, 94° 53' 49.96"W (29.455265°N, -94.897211°W, corner marker buoy D); and thence back to corner marker buoy A.

~~[(B) Matagorda Bay System - Keller Bay Reefs. The area within the boundaries of a line beginning at 28° 36' 16.7"N, 96° 28' 29.042"W (28.604656°N, -96.474734°W, corner marker buoy A); thence, from 28° 26' 16.7"N, 96° 28' 40.933"W (28.604659°N, -96.478037°W, corner marker buoy B); thence, from 28° 36' 5.31"N, 96° 28' 48.95"W (28.601476°N, -96.480265°W, corner marker buoy C); thence, from 28° 35' 56.2"N, 96° 28', 39.94"W (28.598953°N, -96.477761°W, corner marker buoy D); thence, from 28° 35' 55.9"N, 96° 28' 21.9"W (28.598886°N, -96.47275°W, corner marker buoy E); and thence back to corner marker buoy A.]~~

(B) [~~(C)~~] Espiritu Santo Bay- Josephine's Reef. The area within the boundaries of a line beginning at 28° 18' 42.6"N, 96° 35' 48.9"W (28.311833°N, -96.596916°W; corner marker buoy A); thence, to 28° 18' 34.7"N, 96° 35' 42.0"W (28.309651°N, -96.594988°W; corner marker buoy B); thence to 28° 18' 22.1"N, 96° 36' 00.3"W (28.306142°N, -96.600075°W; corner marker buoy C); thence to 28° 18' 30.0"N, 96° 36' 07.2"W (28.308324°N, -96.602004°W; corner marker buoy D); and thence back to corner marker buoy A.

(C) [~~(D)~~] Christmas Bay, Brazoria County.

(D) [~~(E)~~] Carancahua Bay, Calhoun and Matagorda County.

(E) [~~(F)~~] Powderhorn Lake, Calhoun County.

(F) [~~(G)~~] Hynes Bay, Refugio County.

(G) [~~(H)~~] St. Charles Bay, Aransas County.

(H) [~~(I)~~] South Bay, Cameron County.

(I) [~~(J)~~] Mesquite Bay, Aransas and Calhoun counties.

(J) [~~(K)~~] Carlos Bay, Aransas County. The area within the boundaries of Carlos Bay from the border of Mesquite Bay to a line beginning at 28° 06' 52.19"N, 96° 55' 32.52"W (28.11450°N, -96.92570°W) and ending at 28° 06' 38.19"N, 96° 53' 17.41"W (28.11061°N, -96.88817°W).

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

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

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

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James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: October 29, 2023
For further information, please call: (512) 389-4775

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CHAPTER 65. WILDLIFE

The Texas Parks and Wildlife Department proposes amendments to 31 TAC §§65.88, 65.91, 65.92, 65.95, 65.97, and 65.98, concerning Disease Detection and Response, and 65.605, 65.608, and 65.611, concerning Deer Breeder Permits.

The proposed amendments would function collectively to refine surveillance efforts as part of the agency's effort to manage chronic wasting disease (CWD).

CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (referred to collectively as susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Much remains unknown about CWD, although robust efforts to increase knowledge are underway in many states and countries. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. Currently, scientific evidence suggests that CWD has zoonotic potential; however, no confirmed cases of CWD have been found in humans. Consequently, both the Centers for Disease Control and Prevention and the World Health Organization strongly recommend testing animals taken in areas where CWD exists, and if positive, recommend not consuming the meat. What is known is that CWD is invariably fatal to certain species of cervids and is transmitted both directly (through animal-to-animal contact) and indirectly (through environmental contamination). If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion-dollar ranching, hunting, wildlife management, and real estate economies could be significant.

The department has engaged in several rulemakings over the years to address the threat posed by CWD, including rules to designate a system of zones in areas where CWD has been confirmed. The purpose of those CWD zones is to determine the geographic extent and prevalence of the disease while containing it by limiting the unnatural movement of live CWD-susceptible species as well as the movement of carcass parts.

The department's response to the emergence of CWD in captive and free-ranging populations is guided by the department's CWD Management Plan (Plan) https://tpwd.texas.gov/huntwild/wild/diseases/cwd/plan.phtml. Developed in 2012 in consultation with the Texas Animal Health Commission (TAHC), other governmental entities and conservation organizations, and various advisory groups consisting of landowners, hunters, deer managers, veterinarians, and epidemiologists, the Plan sets forth the department's CWD management strategies and informs regulatory responses to the detection of the disease in captive and free-ranging cervid populations in the state of Texas. The Plan is intended to be dynamic; in fact, it must be so in order to accommodate the growing understanding of the etiology, pathology, and epidemiology of the disease and the potential management pathways that emerge as it becomes better understood through time. The Plan proceeds from the premise that disease surveillance and active management of CWD once it is detected are critical to containing it on the landscape.

As noted previously in this preamble, the department has been engaged in a long-term effort to stem the spread of CWD; however, by 2021 it was apparent that more robust measures were warranted because CWD was still being detected in additional deer breeding facilities, as well as on multiple release sites associated with CWD-positive deer breeding facilities. The commission adopted those rules, which require higher rates of testing, ante-mortem (live-animal) testing of breeder deer prior to release, and enhanced recordkeeping and reporting measures, in December of 2021 (46 TexReg 8724). This year is the first full year of the applicability of those measures.

In the last six months the department has encountered an unprecedented increase in CWD detections, which is directly attributable to the regulatory actions taken in December 2021 to tighten the agency's CWD surveillance measures. Since that time, CWD has been detected in an additional 13 deer breeding facilities, two release sites associated with CWD-positive deer breeding facilities, and one free-ranging deer in a new area where CWD had not been previously detected. Department records indicate that within the last five years those breeding facilities transferred over 9,700 deer to other breeding facilities, release sites, and Deer Management Permit (DMP) sites. All those locations are therefore directly connected to the CWD-positive facilities and are subsequently of epidemiological concern. Additionally, 583 deer breeding facilities received deer from one or more of the directly connected breeding facilities, which means those facilities (referred to as "Tier 1" facilities) are indirectly connected to the positive facilities and are also of epidemiological concern because they have received exposed deer that were in a trace-out breeding facility.

In response to the magnitude and potential severity of this situation, the department on July 24, 2023, filed emergency rules to require the ante-mortem testing of test-eligible deer prior to transfer from a breeding facility to another breeding facility and to prohibit the removal of required permanent identification for any reason other than provided by statute. Those measures are included in this proposed rulemaking.

The proposed amendment to §65.88, concerning Deer Carcass Movement Restrictions, would streamline and simplify regulations governing the post-harvest transportation of deer taken by hunters in CWD management zones. Because CWD prions (the infectious agents that causes CWD) are known to be present in tissues of infected animals, especially brain, spinal cord and viscera, the department believes that care should be taken with respect to the treatment of carcasses of animals taken within a CWD management zone. Under current rule, a deer taken in a CWD management zone cannot be transported from the zone unless it has been processed as required by the section. The department has determined that the current rules can be modified to allow the movement of unprocessed carcasses from management zones to a final destination (the possessor's permanent residence or cold storage/processing facility) or taxidermist, provided it has been first presented at a department check station for tissue sample removal, which will allow the department to conduct disease surveillance and provide a method for notifying hunters in the event that an animal tests positive for CWD. The proposed amendment would also impose statewide carcass disposal measures, to consist of disposal of all deer parts not retained for cooking, storage, or taxidermy purposes to be disposed of (directly or indirectly) at a landfill permitted by the Texas Commission on Environmental Quality to receive such wastes, by interment at a depth of no less than three feet below the natural surface of the ground and covered with at least three feet of earthen material, or by being returned to the property where the animal was harvested. The department has determined that in light of the recent spate of CWD detections in deer breeding facilities (which are extensively epidemiologically interconnected and the source of deer released at hundreds of locations across the state), a statewide carcass disposal rule will be beneficial by limiting and ideally eliminating the careless, haphazard, or inadequate disposal of potentially infectious tissues, thus mitigating the potential spread of CWD.

The proposed amendment to §65.91, concerning General Provisions, would eliminate an exception in that provision for nursery facilities. As noted in the discussion of the proposed amendment to §65.95, concerning Movement of Breeder Deer, the department is proposing to eliminate the practice of moving breeder deer from deer breeding facilities to external facilities for nursing purposes.

The proposed amendment to §65.92, concerning CWD Testing, would conform an internal citation in subsection (b) of that section to comport it with proposed changes to other sections effected by this rulemaking.

The proposed amendment to §65.95, concerning Movement of Breeder Deer, would alter the section to provide an internal reference, remove current provisions applicable to nursery facilities, implement new provisions regarding the testing of breeder deer being transferred between breeding facilities, impose a residency requirement on breeder deer as a condition of transfer to another breeding facility or to a release site, remove an internal three-year limitation on the effectiveness of provisions governing the release of breeder deer, strengthen provisions governing the obligations of release-site owners in the event that a release site is epidemiologically linked by trace-out to a positive breeding facility, prohibit the release of breeder deer prior to April 1 of the year following birth, and provide for the suspension of participation in Managed Lands Deer Program activities for landowners who fail to comply with provisions applicable to trace-out release sites.

Current rules require a breeder deer to be the subject of an ante-mortem test (a live-animal test) before it can be transferred elsewhere for purposes of release. The proposed amendment would expand this requirement to apply to transfers between deer breeding facilities. The department has determined that in light of the spate of recent detections of CWD in multiple deer breeding facilities, it is not only prudent, but imperative to test all breeder deer before they are moved between deer breeding facilities, which is intended to impose a testing protocol capable of providing an acceptable probability of detecting CWD if it exists in any given breeding facility.

For similar reasons, the proposed amendment would eliminate the practice of transferring fawn deer from deer breeding facilities to external facilities for nursing purposes. The practice was considered to be an acceptable risk prior to the emergence of CWD; however, given the steady and increasing discoveries of CWD in deer breeding facilities across the state, the department has determined that the practice should be stopped.

The proposed amendment would impose a residency requirement for deer within deer breeding facilities in order to provide a minimum period of exposure to other deer within the facility, which will facilitate the department's ability to more accurately assess whether CWD exists in a facility, as well as to reduce the probability of transmission of the disease to additional facilities by transfer of deer that have recently been infected but have yet to reach the stage of disease progression that allows the disease to be detectible through approved disease testing methodologies.

The proposed amendment would impose new requirements for release sites that are epidemiologically connected to deer breeding facilities where CWD has been detected. Under current rule, the landowner of a release site that is epidemiologically connected to a positive deer breeding facility is required to test either 100 percent of all hunter-harvested deer at the release site property or one hunter-harvested deer per released deer (if authorized by a herd plan), whichever value is greater. Release site owners are also required by rule to maintain a harvest log. The department has determined that regulatory compliance at release sites has been problematic, as some release site owners have failed to conduct the required testing or maintain harvest logs as required. Although the department prohibits additional releases of deer at such sites unless approved by a herd plan, the epidemiological value of the animals at a trace-out release site is significant. The recent detections mark a dramatic increase in number and distribution of CWD-positive facilities across the state since 2020. Records indicate 367 trace release sites have received deer from these positive facilities and are of epidemiological concern. Although the owners of trace release sites are offered herd plans and placed under a hold order, herd plans do not require harvest on that property, only that if a deer is harvested a CWD sample must be collected and tested. The lack of harvest leaves the department in a precarious situation to mitigate potential spread of CWD to naïve areas. Timely removal of trace animals is critically important for CWD management. Therefore, the department has determined that it is necessary to require all trace deer at trace-out release sites to be removed and tested within 60 days of notification by the department that the site has been confirmed as a trace-out release site. In addition, the proposed amendment would eliminate the current provision allowing an alternative to 100 percent testing of hunter-harvested deer on trace-out release sites and require testing of all hunter-harvested deer until a sufficient number and distribution of samples has been achieved that would provide statistical confidence that if CWD were present at a certain prevalence on the release site, it would be detected. The proposed amendments would enhance the department's ability to more quickly assess whether exposed deer transferred from CWD-positive deer breeding facilities have spread CWD to trace-out release sites.

The proposed amendment also would eliminate current subsection (c)(6)(E), which imposed a three-year period of effectiveness for the provisions of paragraph (6). In a rulemaking in 2021 (46 TexReg 8724), the commission imposed a three-year period of effectiveness for ante-mortem testing of breeder deer prior to release, with the understanding that should continuation of the requirement be determined to be necessary, that decision would be made as needed in the future. As noted previously in this preamble, there has been an unprecedented significant increase in the detection of CWD within deer breeding facilities and some release sites associated with deer breeding facilities recently, which not only necessitates the continuation of the provisions of paragraph (6), but to do so indefinitely.

The proposed amendment also would provide that the owner of a release site that is not in compliance with the applicable provisions of Chapter 65, Subchapter B, Division 2 is ineligible for enrollment or continued participation in the Managed Lands Deer Program (MLDP) under Chapter 65, Subchapter A. The MLDP is a conservation program that offers special privileges to participants in exchange for conducting beneficial management actions. The department reasons that an owner of a trace-out release site who is unwilling to comply with CWD management provisions should not be afforded the privilege of participation in the program.

Finally, the proposed amendment would prohibit the release of breeder deer prior to April 1 of the year following the year in which the breeder deer is born, which is necessary to ensure that only breeder deer bearing permanent identification are released at release sites, which is necessary to facilitate expedited removal and testing in epidemiological investigations.

The proposed amendment to §65.97, concerning Testing and Movement of Deer Pursuant to a Triple T or TTP Permit, would require tissue samples collected for the issuance of a TTP (Trap, Transfer, and Process) permit to be submitted within seven days of collection. One of the recent detections of CWD occurred in a

deer that was trapped in Bexar County under the provisions of a TTP permit. The TTP permit is used to remove surplus deer in situations in which hunting is impractical or unfeasible, such as in urban areas where discharge of firearms is prohibited. Typically, a TTP permit allows trapping activities between October 1 and March 31, and current rules require CWD test results to be submitted by May 1 following completion of permitted activities.; however, there are no requirements on how quickly those CWD samples must be submitted to the lab for testing. The department has determined that in light of the detection of CWD in TTP deer, it is necessary to require tissue samples to be submitted within seven days of collection, which will provide for quicker department response in the event of detection.

[NOTE: The commission on August 24, 2023, adopted a proposed amendment to §65.99, concerning Breeding Facilities Epidemiologically Connected to Deer Infected with CWD; Positive Breeding Facilities. The previous day, the Work Session of the commission authorized publication in the *Texas Register* of an additional proposed amendment to that section, to be deliberated for adoption at the November 2, 2023, meeting of the commission. The rules of the Secretary of State (which operates the *Texas Register* and maintains the Texas Administrative Code) require a proposed rule to either be withdrawn or adopted and have taken effect before the same rule can be proposed for subsequent amendment. Following the August 24, 2023, commission meeting, the department filed a notice of adoption for §65.99 (August 30, 2023). That adoption will take effect September 19, 2023, one day later than the submission deadline for publication in the September 29, 2023, issue of the *Texas Register,* which is the last issue of the *Texas Register* that the proposed amendment to §65.99 can appear in and still be considered for adoption at the November 2, 2023, commission meeting. Because of the seriousness of the threat posed by CWD, the department believes it is imperative not to defer this rulemaking; therefore, this proposal has repackaged the proposed amendment to §65.99 as an amendment to §65.98, concerning Transition Provisions (and retitling the section accordingly), in order to provide the statutorily required 30-day public comment period necessary to allow deliberation by the commission for adoption in November, 2023. If adopted by the commission, these provisions will be comported with §65.99 at a later time.]

The proposed amendment to §65.98, concerning Transition Provisions, would alter the timeframes for tissue sample collection at deer breeding facilities designated by the department as Category B facilities (facilities in which not all deer of epidemiological concern are available). Those rules are currently contained in §65.99(e), concerning. Effective epidemiological investigations depend on specificity of time and place. Trace herds need to be evaluated in a timely fashion, and, historically, whole-herd testing requirements have been inconsistent with the timeliness of testing. Furthermore, some breeding facilities in which the date of last known exposure occurred within the 18 months prior to epidemiological connection have either not conducted or not submitted tests. The proposed amendment would create a more efficacious timeline for compliance with collection and submission of required ante-mortem testing samples for Category B breeding facilities, which is necessary to clear epidemiologically linked herds in a timelier fashion. In addition, the proposed amendment would remove the provisions of §65.99(i), regarding nursing facilities, for reasons discussed elsewhere in this preamble.

The proposed amendments to §65.605, concerning Holding Facility Standards and Care of Deer, and §65.608, concerning Annual Reports and Records, would remove references to nursing facilities for reasons discussed elsewhere in this preamble.

The proposed amendment to §65.611, concerning Prohibited Acts, would prohibit the removal of identification tags on breeder deer except as specifically authorized by statute. Parks and Wildlife Code, §43.3561 stipulates that not later than March 31 of the year following the year in which a breeder deer is born, the breeder deer must be identified by placing a tag in one ear. Section 43.3561 also requires deer breeders to immediately replace an identification tag that has been dislodged, damaged, or removed by means other than human agency and allows the removal of a tag only for the purpose of immediately replacing the tag with a tag that meets the requirements of Parks and Wildlife Code, §43.3561. Faithfulness to the statute will increase the ability of the department and release site owners to quickly identify and remove specific deer from release sites for testing and therefore will expedite epidemiological investigations. In addition, the proposed amendments would remove provisions applicable to nursing facilities for reasons discussed elsewhere in this preamble and correct an error in citation style in current subsection (j).

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rules as proposed, as department personnel currently allocated to the administration and enforcement of disease management activities will administer and enforce the rules as part of their current job duties and resources.

Mr. Macdonald also has determined that for each of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be a reduction of the probability of CWD being spread from locations where it might exist and an increase in the probability of detecting CWD if it does exist, thus ensuring the public of continued enjoyment of the resource and also ensuring the continued beneficial economic impacts of hunting in Texas.

There will be adverse economic impact on persons required to comply with the rules as proposed.

The proposed amendment to §65.88 would impose carcass disposal restrictions on every person who harvests or possesses deer after harvest anywhere in the state; however, those costs should be minimal. For persons who process deer at the location where the harvest occurred, there is no cost of compliance, as the rules would allow parts of the deer not retained for cooking, storage, or taxidermy purposes to be left at the harvest location. Similarly, there would be no cost of compliance for persons who transport carcasses to a cold storage/processing facility or taxidermist, as disposal of remains following such activities is a normal process for such entities and the department assumes is reflected in the price charged to the consumer for services rendered. For persons who transport carcasses to the possessor's final residence, there will be no additional cost of compliance if the remains following processing are disposed of indirectly via a solid waste disposal service that transports the wastes to a permitted landfill. The remaining three options under the amendment as proposed (return of remains to the harvest location, interment at the cost of the possessor, and direct transport to a landfill) could result in an adverse economic impact as a result of compliance. The cost of returning unwanted deer parts to the location of harvest would consist of the cost of

fuel, which could vary, depending on the distance travelled but, in most cases would be less than $200. The cost of interment could vary as well. For a person who manually excavates a site meeting the requirements of the proposed amendment or has access to mechanized excavation equipment, there would be no cost of compliance; thus, any costs associated with this option would be associated with rental or leasing fees for mechanized excavation equipment, which the department estimates at approximately $50 per hour. For deer parts transported directly to a landfill, the cost of compliance would be the fee charged by the landfill for carcass disposal, which also varies from facility to facility; however, the department estimates the probable cost per animal carcass to be $20 to $100. The department notes that most if not all hunters will either process their deer at the harvest location or transport the deer to a final destination where the remains will be collected and transported to a landfill by a contracted waste disposal service or municipal utility; therefore, there are no-cost options available to virtually every person required to comply.

There will be a cost of compliance to persons affected by the proposed amendment to §65.95, which would require the owner of a release site confirmed to be epidemiologically connected to a CWD-positive deer breeding facility to remove all trace deer and subject them to post-mortem CWD testing. Legally there can be no cost for removing deer from a release site (hunting for hire, i.e., paying hunters to remove deer, is unlawful under Parks and Wildlife Code, §62.006) other than for the ammunition used to dispatch the animal; thus, landowners must either rely upon hunters to remove released breeder deer or do it themselves; therefore, the cost of compliance with the amendment as proposed would be the cost of post-mortem CWD testing. The cost of CWD testing administered by the Texas A&M Veterinary Medicine Diagnostic Lab (TVMDL is a minimum of $27, to which is added an $8 accession fee (which may cover multiple samples submitted at the same time). If a whole head is submitted to TVDML there is an additional $20 sample collection fee, plus a $20 disposal fee. Thus, the fee for testing would be $35, plus any veterinary cost (which the department cannot quantify, because practice models vary widely across the state). The fee for submitting an entire head for testing would be $75.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, and rural communities. As required by Government Code, §2006.002(g), in April 2008, the Office of the Attorney General issued guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. These guidelines state that "[g]enerally, there is no need to examine the indirect effects of a proposed rule on entities outside of an agency's regulatory jurisdiction." The 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. The guidelines also list examples of the types of costs that may result in a "direct economic impact." Such costs may include costs associated with additional recordkeeping or reporting requirements; new taxes or fees; lost sales or profits; changes in market competition; or the need to purchase or modify equipment or services. For the purposes of this analysis, the department considers all deer breeders to be small or microbusinesses, which ensures that the analysis captures all deer breeders possibly affected by the proposed rulemaking.

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 769 permitted deer breeders in Texas as of the preparation of this analysis. Although the department does not require deer breeders to file financial information with the department, the department believes that most if not all deer breeders would qualify as a small or micro-business. Since the rules as proposed would require deer breeders to subject all deer to ante-mortem testing prior to transfer to another deer breeder, there will be an adverse impact on deer breeders. For all permittees, the adverse economic impact of the proposed rules would consist of testing costs. The number of transfers conducted between individual deer breeders can vary greatly. Some deer breeders do not engage in the practice. Other deer breeders transfer many hundreds of deer per year. Department data indicate that on average, most transfers involve 50 or fewer deer.

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 deer. 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.

Cold storage/processing facilities and taxidermists affected by the carcass disposal requirements of the proposed amendments may also qualify as small or micro-businesses. Because all such entities are not regulated (by the department) there is no way to accurately assess how many of them there might be, but the department assumes there are many hundreds if not thousands. The department has determined that the adverse economic impacts of compliance with the rules as proposed would be identical to the cost of compliance for individuals affected by the proposed rules, discussed in an analysis earlier in this preamble.

Nursing facilities not located within a deer breeding facility may also qualify as small or micro-businesses. The department has determined that the adverse economic impacts of compliance with the rules as proposed would be the loss in revenue of such nursing facilities that charge a fee to deer breeders for seasonal nursing of fawns. Because the department does not require nursing facilities to report the fees charged for providing seasonal nursing services it is impossible for the department to accurately quantify the adverse economic impact; however, based on anecdotal information, the department estimates nursing facilities charge deer breeders no more than a few hundred dollars per fawn per season for providing nursing services.

Several alternatives were considered to achieve the goals of the proposed rules while reducing potential adverse impacts on small and micro-businesses and persons required to comply.

One alternative was to do nothing. This alternative was rejected because the presence of CWD in breeding facilities and

free-ranging populations presents an actual, direct threat to free-ranging and captive cervid populations and the economies that depend upon them. The repeated additional discoveries of CWD in captive and free-range populations indicates that additional measures are necessary to prevent the spread of CWD from locations where it may exist. Therefore, because the department has a statutory duty to protect and conserve the wildlife resources of the state and current rules do not achieve the necessary level of vigilance needed to detect the presence and/or spread of CWD between breeding facilities, this alternative was rejected.

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 prohibited from transferring deer, which would, in turn, result in the total loss of sales opportunity. The department also believes that enhanced testing measures are necessary to provide assurance to the hunting public, private landowners, and the regulated community that healthy wildlife resources are available for the use and enjoyment of present and future generations.

The department has determined that the proposed rules will not affect rural communities because the rules do not directly regulate any rural community.

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

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

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules. Any impacts resulting from the discovery of CWD in or near private real property would be the result of the discovery of CWD and not the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will: neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; create a new regulation (by imposing statewide carcass disposal restrictions, prohibiting the release of breeder deer prior to the April 1 of the year following birth, and conditioning participation in the MLDP program on compliance with release-site testing and recordkeeping requirements); expand an existing regulation (by requiring breeder to be tested prior to transfer to other breeding facilities and imposing minimum residency requirements for breeder deer), but will otherwise not limit or repeal an existing regulation; not increase the number of individuals subject to regulation, but will decrease the number of individuals subject to regulation by prohibiting the transfer of fawn deer from deer breeding facilities to external facilities for nursing purposes; and not positively or adversely affect the state's economy.

Comments on the proposed rules may be submitted to Dr. Hunter Reed, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (830) 890-1230 (e-mail: jhunter.reed@tpwd.texas.gov); or via the department's website at www.tpwd.texas.gov.

SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 1. CHRONIC WASTING DISEASE (CWD)

31 TAC §65.88

The amendment is proposed under the authority of Parks and Wildlife Code, §42.0177, 42.0177, which authorizes the commission to modify or eliminate the tagging, carcass, final destination, or final processing requirements or provisions of §§42.001, 42.018, 42.0185, 42.019, or 42.020, or other similar requirements or provisions in Chapter 42; Chapter 43, Subchapter C, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation; Subchapter E, which requires the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds, urban white-tailed deer removal, and trapping and transporting surplus white-tailed deer; Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; Subchapters R and R-1, which authorize the commission to establish the conditions of a deer management permit for white-tailed and mule deer, respectively; 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 amendment affects Parks and Wildlife Code, Chapter 42, Chapter 43, Subchapters C, E, L, R, R-1, and Chapter 61.

§65.88. Deer Carcass Movement and Disposal Restrictions.

(a) Except as provided in this section, no person may transport into this state or possess any part of a susceptible species from a state, Canadian province, or other place outside of Texas where CWD has been detected in free-ranging or captive herds. [:]

[(1) transport into this state or possess any part of a susceptible species from a state, Canadian province, or other place outside of Texas where CWD has been detected in free-ranging or captive herds; or]

[(2) transport or cause the transport of any part of a susceptible species from a property within a CZ or SZ.]

(b) Subsection (a) of this section does not apply to susceptible species processed in accordance with this subsection, provided the ap-

plicable requirements of subsections (d) - (f) [~~(c) - (e)~~] of this section have been met:

(1) - (7) (No change.)

(c) Except as may be otherwise prohibited by this subchapter or a quarantine, hold order, or herd plan issued by TAHC, the carcass of a susceptible species or part of a susceptible species killed in this state may be transported from the location where the animal was killed to a final destination. Following final processing at a final destination, the parts of the animal not retained for cooking, storage or taxidermy purposes shall be disposed of only as follows:

(1) by transport, directly or indirectly, to a landfill permitted by the Texas Commission of Environmental Quality to receive such wastes;

(2) interment at a depth of no less than three feet below the natural surface of the ground and covered with at least three feet of earthen material; or

(3) returned to the property where the animal was harvested for disposal.

[~~(c) For susceptible species harvested in a CZ or SZ, the provisions of subsection (b) of this section are applicable only if the susceptible species is processed within the CZ or SZ where the susceptible species was harvested, except for the transport of an intact head to a designated check station. The head of a susceptible species transported to a designated check station under the provisions of this subsection that is not taken to a taxidermist under the provisions of subsection (f) of this section must be:~~]

[~~(1) returned to the property where it was harvested for disposal; or~~]

[~~(2) disposed of in a landfill permitted by Texas Commission on Environmental Quality (TCEQ).~~]

(d) No person may transport a susceptible species harvested in a CZ or SZ from the CZ or SZ to any destination unless it is first presented at the nearest department-designated check station. At the check station, a check-station receipt shall be obtained, which shall remain with the animal until it reaches a final destination.

[~~(d) A susceptible species harvested in a CZ or SZ and processed in accordance with the provisions of subsections (b) and (c) of this section may be transported from the CZ or SZ, provided it is accompanied by a department-issued check-station receipt, which shall remain with the susceptible species until it reaches a final destination.~~]

(e) It is an offense for any person to dispose of those parts of an animal that the possessor does not retain for cooking, storage, or taxidermy purposes except as follows:

(1) by transport, directly or indirectly, to a landfill permitted by the Texas Commission of Environmental Quality to receive such wastes; or

(2) interment at a depth of no less than three feet below the natural surface of ground and covered with at least three feet of earthen material; or

(3) returned to the property where the animal was harvested.

[~~(e) If a person takes a susceptible species in a SZ within which the department has not designated a mandatory check station, the person shall transport the head of the susceptible species from the SZ solely for the purpose of presentation at the nearest check station established by the department for the SZ in which the susceptible species was taken, provided such transport occurs immediately upon leaving the SZ where the animal was taken and occurs via the most direct route available. The head of a susceptible species transported to a check station under the provisions of this subsection and not taken to a taxidermist under the provisions of subsection (f) of this section must be:~~]

[~~(1) returned to the property where it was harvested for disposal; or~~]

[~~(2) disposed of in a landfill permitted by TCEQ.~~]

(f) The skinned or unskinned head of a susceptible species from a CZ or SZ, [~~other~~] state, Canadian province, or other place outside of Texas where CWD has been detected in free-ranging or captive herds may be transported to a taxidermist for taxidermy purposes, provided all brain material, soft tissue, spinal column and any unused portions of the head are disposed of prior to being transported to Texas, or disposed of in a landfill in Texas permitted by TCEQ to receive such wastes.

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

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Assistant General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: October 29, 2023
For further information, please call: (512) 389-4775

DIVISION 2. CHRONIC WASTING DISEASE - COMPREHENSIVE RULES

31 TAC §§65.91, 65.92, 65.95, 65.97, 65.98

The amendments are proposed under the authority of Parks and Wildlife Code, §42.0177, 42.0177, which authorizes the commission to modify or eliminate the tagging, carcass, final destination, or final processing requirements or provisions of §§42.001, 42.018, 42.0185, 42.019, or 42.020, or other similar requirements or provisions in Chapter 42; Chapter 43, Subchapter C, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation; Subchapter E, which requires the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds, urban white-tailed deer removal, and trapping and transporting surplus white-tailed deer; Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; Subchapters R and R-1, which authorize the commission to establish the conditions of a deer management permit for white-tailed and mule deer, respectively; and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

The proposed amendments affect Parks and Wildlife Code, Chapter 42, Chapter 43, Subchapters C, E, L, R, R-1, and Chapter 61.

§65.91. General Provisions.

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

(e) No [Except as provided in §65.99(i) of this title (relating to Breeding Facilities Epidemiologically Connected to Deer Infected with CWD), no] person may transfer 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.

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

§65.92. CWD Testing.

(a) (No change.)

(b) Except as provided in §65.95(c)(6) [§65.95(b)(6)] of this title (relating to Movement of Breeder Deer) or subsection (d) of this section, 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 lymphoid follicles collected within eight 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) - (2) (No change.)

(c) - (k) (No change.)

§65.95. Movement of Breeder Deer.

(a) General. Except as otherwise provided in this division, a breeding facility may transfer breeder deer under a transfer permit that has been activated and approved by the department to:

(1) another breeding facility as provided in subsection (b) of this section;

(2) an approved release site as provided in subsection (c) [(b)] of this section; or

(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].

(b) Transfer From Breeding Facility to Breeding Facility.

(1) A breeder deer may be transferred from one breeding facility to another breeding facility only if:

(A) an ante-mortem test on rectal or tonsil tissue collected from the deer within the eight months immediately preceding the transfer has been returned with test results of "not detected";

(B) the deer is at least six months of age at the time the test sample required by this subsection is collected; and

(C) the deer has been in the facility for at least six continuous months prior to being tested under this subsection.

(2) An ante-mortem test result of "not detected" submitted to satisfy the requirements of §65.92(d) of this title (relating to CWD Testing) may be utilized a second time to satisfy the requirements of this subsection, provided the test sample was collected as provided in paragraph (1) of this subsection.

(3) A facility from which deer are transferred in violation of this subsection is automatically NMQ and any further transfers are prohibited until the permittee and the owner of the destination facility have complied with the testing requirements of the department, based on an epidemiological assessment as specified in writing.

(c) [(b)] Release Sites; Release of Breeder Deer.

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

(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) (No change.)

(B) the deer is at least six months of age at the time the test sample required by this paragraph is collected; and

(C) the deer has been in the facility for at least six continuous months prior to being tested under subparagraph (A) of this paragraph.

(D) [(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, provided the test sample was collected as provided in subparagraph (A) of this paragraph.

(E) [(D)] A facility from which deer are transferred in violation of this paragraph becomes automatically NMQ and any further transfers are prohibited until the permittee and the owner of the release site have complied with the testing requirements of the department, based on an epidemiological assessment as specified in writing.

[(E) The provisions of this paragraph cease effect three years from the effective date of this section].

(d) [(c)] Trace-out Release Site.

(1) (No change.)

(2) The landowner of a trace-out release site must: [submit post-mortem CWD test results for one of the following values, whichever represents the greatest number of deer tested:]

(A) within 60 days of notification by the department that trace-out release status has been confirmed, remove every trace deer at the release site, either by lawful hunting or as specifically authorized in writing by the department (or both), and submit post-mortem CWD samples for each deer within one day of mortality; and

[(A) 100 percent of all hunter-harvested deer; or]

(B) submit post-mortem CWD test results for 100 percent of all hunter-harvested deer until the department is confident that CWD is not present at the release site or as prescribed in a herd plan.

[(B) 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 herd plan.]

(3) (No change.)

(f) The release of breeder deer prior to April 1 of the year following the year in which the breeder deer is born is prohibited.

(g) The owner of a release site that is not in compliance with applicable provisions of this division is ineligible for enrollment or continued participation in the Managed Lands Deer Program under Subchapter A of this chapter.

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

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

(c) Testing Requirements for TTP Permit.

(1) (No change.)

(2) Sample tissues required by this subsection must be submitted within seven days of collection.

~~[(2) The landowner of a trace-out 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) (No change.)

§65.98. Transition Provisions; Provisions Necessary to Accommodate Problematic Rulemaking Timelines.

(a) A release site that was not in compliance with the applicable testing requirements of this division in effect between August 15, 2016 and the effective date of this section shall be:

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

(b) To the extent that any provision of this subsection conflicts with the provisions of §65.99(e) of this title (relating to Breeding Facilities Epidemiologically Connected to Deer Infected with CWD; Positive Breeding Facilities, this section controls.

(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, within 60 days of notification by the department of Category B status:

(I) submit rectal or tonsil biopsy samples; 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: within 60 days of notification by the department of Category B status, submit tonsil biopsy samples collected 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: within 60 days of notification by the department of Category B status, 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 (E) of this subsection, a permittee may request the development of a custom testing plan as provided in 65.99(h) of this title; provided, however, the permittee must comply with paragraph (2)(B) - (D) of this subsection.

(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, or other date as determined by the department.

(5) The department in consultation with TAHC may decline to authorize a custom testing plan under §65.99(h) of this title 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.

(c) As of the effective date of this subsection, the provisions of §65.99(i) of this title cease effect.

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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Todd S. George
Assistant General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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SUBCHAPTER T. DEER BREEDER PERMITS

31 TAC §§65.605, 65.608, 65.611

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter.

The proposed amendments affect Parks and Wildlife Code, Chapter 43, Subchapter L.

§65.605. Holding Facility Standards and Care of Deer.

(a) The entire perimeter fence of a facility containing breeder deer, including [~~nursing and~~] medical facilities, shall be no less than seven feet in height, and shall be constructed of department-approved net mesh, chain link or welded wire that will retain breeder deer. An

indoor facility is acceptable if it meets the standards described in this section and provides permanent access to an outdoor environment that is sufficient for keeping the breeder deer in captivity.

(b) - (d) (No change.)

§65.608. Annual Reports and Records.

(a) (No change.)

(b) A person other than a deer breeder holding breeder deer for [~~nursing,~~] breeding, or health care purposes shall maintain and, upon request, provide copies of transfer permits indicating the source of all breeder deer in the possession of that person.

§65.611. Prohibited Acts.

(a) - (c) (No change.)

[~~(d) Except as expressly authorized in writing by the department, no person may possess a breeder deer in a nursing facility beyond 120 days following the deer's birth.~~]

(d) [~~(e)~~] No person may hold more than one cervid species at any time in a deer breeding facility except as provided by §65.602(e) of this title (relating to Application and Permit Issuance), or cause or allow the interbreeding by any means of white-tailed deer and mule deer.

(e) [~~(f)~~] Possession of a deer breeder's permit is not a defense to prosecution under any statute prohibiting abuse of animals.

(f) [~~(g)~~] No deer breeder shall exceed the number of breeder deer allowable for the permitted facility, as specified by the department on the deer breeder's permit.

(g) [~~(h)~~] This subsection does not apply to breeder deer lawfully obtained prior to June 21, 2005. Except as provided in this subsection, no person may:

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

(h) [~~(i)~~] It is an offense for any person the department has authorized as a facility inspector to submit the checklist or letter of endorsement required by §65.603(a)(2) of this title (relating to Application and Permit Issuance) if the person has not personally conducted an onsite inspection at the facility.

(i) [~~(j)~~] It is an offense for any person to violate or fail to comply with the provisions a disease-testing plan created under the provisions of §65.605(d) of this title (relating to Holding Facility Standards and Care of Deer) [~~subsection~~].

(j) [~~(k)~~] No person may clone or authorize or participate in the cloning of a white-tailed deer or mule deer unless specifically authorized to do so by a permit issued by the department under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter C. For the purposes of this subsection, cloning is the creation or attempted creation of a white-tailed or mule deer from a single progenitor cell.

(k) [~~(l)~~] Except as provided under §65.602(e) of this title, no person may possess deer, livestock, exotic livestock, or similar animals in a deer breeding facility, or allow deer, livestock, exotic livestock, or similar animals to access a deer breeding facility other than:

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

(l) Except as provided by subsection (m) of this section, it is an offense for any person at any time for any reason to remove an identification tag prescribed by Parks and Wildlife Code, §43.3561, from a breeder deer except to immediately replace it with an identification tag meeting the requirements of Parks and Wildlife Code, §43.3561(c) or (h).

(m) A breeder deer that has been released is no longer a breeder deer; however, it is an offense for any person to remove the identification tag required by Parks and Wildlife Code, §43.3561, from such deer except as a consequence of reducing the deer to possession following lawful take under a hunting 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.

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Texas Parks and Wildlife Department
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PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 358. STATE WATER PLANNING GUIDELINES

SUBCHAPTER B. DATA COLLECTION

31 TAC §358.6

The Texas Water Development Board (TWDB) proposes an amendment to 31 Texas Administrative Code (TAC) §358.6 to provide technical assistance in water loss control for qualifying retail public utilities that submit water loss audits and related data to the TWDB.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

This proposed rulemaking is to implement Senate Bill Number 28 (S.B. 28), Section 8, passed by the 88th Texas Legislature, effective September 1, 2023. S.B. 28 directs the TWDB to establish a program providing technical assistance to retail public utilities conducting water loss audits required by Chapter 16 of the Texas Water Code. The TWDB is required to prioritize technical assistance to retail public utilities required to submit water loss audits to the TWDB based on submitted water loss audits, the population served by the utility, and the integrity of the utility's system. S.B. 28 also requires the TWDB to publish certain water loss data submitted to the TWDB on its official website in addition to information related to entities receiving technical assistance established by these proposed rules.

The TWDB proposes providing technical assistance by amending §358.6 and adding new Sections 358.6(g), (h), and (i).

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

In 31 TAC §358.6, new §358.6(g) is proposed to provide technical assistance in water loss control and outlining the circumstances of the technical assistance offered by the TWDB.

In 31 TAC §358.6, new §358.6(h) is proposed to describe how the agency will prioritize the technical assistance offered by the

TWDB to retail public utilities based on water loss audits submitted, the population served by the retail public utility, and the system integrity of the retail public utility.

In 31 TAC §358.6, new §358.6(i) is proposed to establish how the TWDB will publish on its official website certain information related to the retail public utilities receiving technical assistance in addition to other information and data related to water loss audits that the TWDB currently collects.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Rebecca Trevino, Chief Financial Officer, has determined that there will be a fiscal impact to state government; however, there are no anticipated additional estimated costs or foreseeable implications (including administrative costs) relating to a local governments' costs or revenue resulting from these rules for local governments.

For the first five years these rules are in effect for state government, the TWDB anticipates implementation of these rules will be an increase in cost because the rules require an expansion of TWDB's current practices related to reviewing and compiling statewide water loss data to comply with the requirements of S.B. 28. To administer the proposed rules, the TWDB intends to increase its staff by three professional positions funded from existing operational funds. In addition, professional consultant services will be required to develop program materials and the information technology system used to track program information. Program costs are estimated to be paid from existing operational funds and to be $690,000 in the first year and $660,000 each year thereafter.

Though these proposed rules impose a cost on state government that will be provided for as previously described, these rules will not impose a cost on regulated persons, which includes another state agency, a special district, or a local government. Therefore, the requirement in Texas Government Code, §2001.0045 for the TWDB to repeal a rule does not apply. Notwithstanding the foregoing, an exception to the requirement in §2001.0045 to repeal a rule applies to these proposed rules because these rules are necessary to implement legislation enacted by S.B. 28 and to protect water resources of this state as authorized by the Texas Water Code with an effective program designed to aid the state in the collection and monitoring of statewide water loss data.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking. This proposed rulemaking is expressly designed to establish a program to provide technical assistance to qualifying retail public utilities in that are otherwise required by law to conduct and submit water loss audits to the TWDB. In addition, the proposed rules will assist those qualifying retail public utilities to apply for financial assistance from the TWDB to mitigate the utility system's water loss. Ms. Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as the TWDB will be providing the proposed technical assistance to the retail public utilities.

ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002); REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. There is also no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is establish a program to provide technical assistance to retail public water utilities in conducting required water loss audits and in applying for financial assistance from the TWDB to mitigate the utility system's water loss.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency. This rule is proposed under the authority of Texas Water Code §16.0121, as amended by S.B. 28, 88th Texas Legislative Session. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to

the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to establish a program to provide technical assistance to retail public water utilities in conducting required water loss audits and in applying for financial assistance from the board to mitigate the utility system's water loss as well as to prioritize the technical assistance based on three factors. The proposed rule also directs the TWDB to publish certain information related to its collection of water loss data and the use of this program on its official website. The proposed rule would substantially advance this stated purpose by codifying and expanding TWDB's water loss program to better assist retail public utilities in mitigating their water loss.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action, including an action of a political subdivision, that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that requires retail public utilities to conduct and submit water loss audits.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, the specific purpose of this rule is to implement Section 8 of S.B. 28 and expand the TWDB's water loss program to better assist retail public utilities in mitigating their water loss. The creation of this program as proposed and collection of better water loss data by the TWDB is not a statutory or constitutional taking of private real property. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule (1) creates a government program; and (2) requires the creation of new employee positions. The TWDB intends to use existing operational funds to increase its staff by three professional positions. In addition, professional consultant services will be required to develop program materials and the information technology system used to track program information. Program costs are estimated to be $690,000 in the first year and $660,000 each year thereafter.

SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication the *Texas Register.* Include "Chapter Number 358" and "Technical Assistance in Water Loss Control" in the subject line of any comments submitted.

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and under the authority of Texas Water Code Section16.0121(k) and Section 16.0121(l), as enacted by S.B. 28, passed during the 88th Texas Legislative Session, effective September 1, 2023.

This rulemaking affects Water Code, Chapter 16, Subchapter B. §358.6 Water Loss Audits.

§358.6. Water Loss Audits.

(a) Definitions. Unless otherwise indicated, in this section the following terms shall have the meanings assigned.

(1) Allowed apparent loss--A unique number for allowable apparent loss calculated for each utility.

(2) Annual real loss--A unique number calculated for each utility based on the utility's real loss on an annualized basis.

(3) Apparent loss--Unauthorized consumption, meter inaccuracy, billing adjustments, and waivers.

(4) Average system operating pressure--System operating pressure in pounds per square inch calculated using a weighted average approach as identified in the American Water Works Association M36 Manual.

(5) Validation - The process of examining water loss audit inputs to identify and correct inaccuracies in water loss audit data and the application of methodology to evaluate and communicate the uncertainty inherent in water loss audit data.

(6) Executive Administrator--The executive administrator of the Board.

(7) Mitigation--An action or actions taken by a retail public utility to reduce the amount of total water loss in a system. Mitigation may include a detailed water loss assessment, pipe or meter replacement, or addition or improvement of monitoring devices to detect water loss.

(8) Real loss--Loss from main breaks and leaks, storage tank overflows, customer service line breaks, and line leaks.

(9) Retail public utility or utility--A retail public utility as defined by Texas Water Code §13.002.

(10) Service connection density--The number of a retail public utility's connections on a per mile basis.

(11) Total water loss--The sum of a utility's real loss and apparent loss.

(b) A retail public utility that provides potable water shall perform a water loss audit and file with the executive administrator a water loss audit computing the utility's system water loss during the preceding calendar year, unless a different 12-month period is allowed by the executive administrator. The water loss audit may be submitted electronically.

(1) Audit required annually. The utility must file the water loss audit with the executive administrator annually by May 1st if the utility:

(A) has more than 3,300 connections; or

(B) is receiving financial assistance from the board, regardless of the number of connections. A retail public utility is receiving financial assistance from the board if it has an outstanding loan, loan forgiveness agreement, or grant agreement from the board.

(2) Audit required every five years. The utility must file the water loss audit with the executive administrator by May 1, 2016, and every five years thereafter by May 1st if the utility has 3,300 or fewer connections and is not receiving financial assistance from the board.

(3) The water loss audit must be performed in accordance with methodologies developed by the executive administrator based on the population served by the utility and taking into consideration the financial feasibility of performing the water loss audit, population density in the service area, the retail public utility's source of water supply, the mean income of the service population, and any other factors determined by the executive administrator. The executive administrator will provide the necessary forms and methodologies to the retail public utility.

(4) A water loss audit must be performed by a person who has completed water loss audit training developed by the executive administrator. The executive administrator will make such training available without charge on the agency website and may also provide such training in person or by video.

(5) Effective January 1, 2025, a utility required to submit a water loss audit annually as described in paragraph (1)(B) of this subsection or that is applying for financial assistance will be required to have its most current water loss audit validated within three months of submittal or prior to consideration of a request for financial assistance from the board. The executive administrator will validate the submitted water loss audit in conference with the retail public utility. Alternatively, the utility may elect to have the water loss audit validated by a person other than the executive administrator. Should a water loss audit be validated by a person other than the executive administrator's staff, validation must follow TWDB's validation guidelines and be performed by a person other than the person submitting the water loss audit, who has completed water loss audit validation training and is certified to conduct such validation.

(c) The executive administrator shall determine if the water loss audit is administratively complete. A water loss audit is administratively complete if all required responses are provided, the audit is completed by a person who has been trained to conduct water loss auditing as described in subsection (b)(4) of this section, and the audit has been validated as described in subsection (b)(5) of this section. In the event the executive administrator determines that a retail public utility's water loss audit is incomplete, the executive administrator shall notify the utility.

(d) A retail public utility that provides potable water that fails to submit a water loss audit or that fails to correct a water loss audit that is not administratively complete within the timeframe provided by the executive administrator is ineligible for financial assistance for water supply projects under Texas Water Code, Chapter 15, Subchapters C, D, E, F, G, H, J, O, Q, and R; Chapter 16, Subchapters E and F; and Chapter 17, Subchapters D, I, K, and L. The retail public utility will remain ineligible for financial assistance until a complete water loss audit has been filed with and accepted by the executive administrator.

(e) The following thresholds shall apply to certain retail public utilities:

(1) For a retail public utility with a service connection density more than or equal to 32 connections per mile:

(A) Apparent loss expressed as gallons per connection per day must be less than the utility's allowed apparent loss.

(B) Real loss expressed as gallons per connection per day must be less than 30 gallons per connection per day.

(2) For a retail public utility with a service connection density less than 32 connections per mile:

(A) Apparent loss expressed as gallons per connection per day must be less than the utility's allowed apparent loss.

(B) Real loss expressed as gallons per connection per day must be less than 57 gallons per connection per day.

(3) For a utility that has a volume of wholesale water sales that flow through the retail water distribution system:

(A) Apparent loss expressed as gallons per connection per day must be less than the utility's allowed apparent loss.

(B) Real loss, expressed as gallons per connection per day and including a wholesale factor that takes into account the wholesale water volume, must be less than the applicable real loss threshold described in subsections (e)(1)(B) or (e)(2)(B) of this section.

(f) If a retail public utility's total water loss meets or exceeds the threshold for that utility, the retail public utility must use a portion of any financial assistance received from the board for a water supply project to mitigate the utility's water loss. Mitigation will be in a manner determined by the retail public utility and the executive administrator in conjunction with the project proposed by the utility and funded by the board. On the request of a retail public utility, the board may waive the requirements of this subsection if the board finds that the utility is satisfactorily mitigating the utility's system water loss. The request for waiver should be addressed to the executive administrator and include information about the utility's current or planned activities to mitigate their water loss and their source of funding for that mitigation.

(g) The Board will provide technical assistance to retail public utilities to conduct water loss audits required to be submitted to the Board and to apply for financial assistance from the Board to mitigate a retail public utility's water loss.

(1) A retail public utility required to conduct and submit to the executive administrator a water loss audit in accordance with the provisions of this subchapter may request from the Board assistance to:

(A) conduct a water loss audit as required by this subchapter; or

(B) apply for financial assistance from the Board to mitigate a retail public utility system's total water loss, as determined by a recent water loss audit.

(2) In complying with the requirements in paragraph (1) of this subsection, the Board may contract with or partner with other entities as permitted by law to conduct the water loss audit of a retail public utility or contract with or partner with other entities to assist with an eligible retail public water utility's application to the Board for financial assistance to mitigate a system's total water loss, as determined by a recent water loss audit.

(h) The executive administrator shall prioritize technical assistance offered by the Board according to the criteria identified in Texas Water Code §16.0121(k) including:

(1) the water loss audits submitted to the Board;

(2) the population served by the retail public utility;

(3) the system integrity of the retail public utility as evidenced by the quality of data submitted in its water loss audit; and

(4) other relevant factors as determined by the Executive Administrator.

(i) The executive administrator shall publicly post on the Board's official website a summary of:

(1) the information included in the water audits required by Texas Water Code §16.0121(b) and §16.0121(b-1) according to category of retail public utility and according to regional water planning area;

(2) the measures taken by retail public utilities to reduce water loss; and

(3) a list of those retail public utilities receiving technical assistance as established under subsection (g) of this section, including details related to use of the Board's financial assistance to mitigate a retail public utility's total water loss.

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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Ashley Harden
General Counsel
Texas Water Development Board
Earliest possible date of adoption: October 29, 2023
For further information, please call: (512) 463-7686

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER O. TEXAS JOBS, ENERGY, TECHNOLOGY AND INNOVATION PROGRAM

34 TAC §§9.5000 - 9.5012

The Comptroller of Public Accounts proposes new §9.5000, concerning definitions, §9.5001, concerning applicant eligibility requirements, §9.5002, concerning application requirements, §9.5003, concerning economic benefit statement criteria, §9.5004, concerning application process, §9.5005, concerning agreement for limitation on taxable value of eligible property, §9.5006, concerning agreement process, §9.5007, concerning amendment process, §9.5008, concerning job and wage requirements; penalty for failure to comply with job or wage requirement, §9.5009, concerning biennial compliance report, §9.5010, concerning biennial report to legislature, §9.5011, concerning conflicts and §9.5012, concerning electronic submissions; notices. These new sections implement the Texas Jobs, Energy, Technology and Innovation Act to comply with Government Code, Subchapter T, Chapter 403, which was enacted by House Bill 5, 88th Legislature, R.S., 2023. The new sections will be located in Chapter 9 (Property Tax Administration), new Subchapter O (Texas Jobs, Energy, Technology and Innovation Program).

Section 9.5000 provides definitions.

Section 9.5001 describes applicant eligibility requirements.

Section 9.5002 establishes the application requirements.

Section 9.5003 establishes the economic benefit statement criteria and methodology.

Section 9.5004 describes the application process including the comptroller review and recommendation.

Section 9.5005 describes the requirements for an agreement for limitation on taxable value of eligible property.

Section 9.5006 describes the agreement process.

Section 9.5007 describes the amendment process.

Section 9.5008 establishes the job and wage requirements as well as the penalty for failing to comply with the job or wage requirement.

Section 9.5009 describes the biennial compliance report submitted by a business entity subject to an agreement under Government Code, Chapter 403.

Section 9.5010 describes the biennial report to the legislature.

Section 9.5011 addresses compliance with conflict-of-interest laws.

Section 9.5012 provides that the comptroller may require electronic submission of documents under the Texas Jobs, Energy, Technology and Innovation Act.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed new rules are in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed new rules would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed new rules would benefit the public by implementing the current statute. There would be no significant anticipated economic cost to the public. The proposed new rules would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to John Villarreal, Manager, Economic Development & Local Government at John.Villarreal@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711-3528. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The new sections are proposed under Government Code, §403.623, which permits the comptroller to adopt rules regarding the Texas Jobs, Energy, Technology and Innovation Act as necessary to implement that chapter.

The new sections implement Government Code, Subchapter T, Chapter 403.

§9.5000. Definitions.

As used in this subchapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

(1) Agreement holder--A business entity that is subject to an executed agreement under Government Code, §403.612.

(2) Construction job--A job that is temporary in nature, typically performed on a full-time basis and takes place before the commencement of the eligible project's incentive period. The purpose of the job is to perform construction, maintenance, remodeling or repair work for an applicant's project.

(3) Eligible project--The construction of a project, or the expansion of an existing facility that is:

(A) a manufacturing facility, classified in NAICS 31-33;

(B) a facility related to the provision of utility services, including an electric generation facility that is considered to be dispatchable because the facility's output can be controlled primarily by forces under human control, classified in NAICS 2211;

(C) a facility related to the development of natural resources, defined as the following Goods-Producing Industries subsector groups as identified by the U.S. Bureau of Labor Statistics:

(i) Agriculture, Forestry, Fishing and Hunting, classified in NAICS 11; and

(ii) Mining, Quarrying, and Oil and Gas Extraction, classified in NAICS 21;

(D) a facility engaged in research and development, classified in NAICS 5417, or manufacture of high-tech equipment or technology; or

(E) related to critical infrastructure such as:

(i) a water intake structure, water treatment facility, wastewater treatment plant, or pump station, classified in NAICS 2213;

(ii) a liquid natural gas terminal or storage facility, classified in NAICS 424710;

(iii) pipelines and pipeline appurtenances or facilities, including pipes, valves, meters, pumps, compressors, treating and processing facilities, cathodic protection facilities, and any other equipment, facilities, devices, structures, and buildings used or intended for use in the gathering, transportation, treating, storage, or processing of CO2, oil, gas, or other minerals, and the liquefied or gaseous substances, constituents, products, or mixtures derived from those minerals through refining, processing, or other methods, classified in NAICS 486; and

(iv) utility-scale water or wastewater storage, treatment, or transmission facilities, classified in NAICS 2213.

(4) Eligible property--Property that is used in connection with an eligible project and is either wholly owned by an applicant or leased by an applicant through a capitalized lease. To be eligible, the property must be:

(A) a new building or expansion of an existing building, including a permanent and nonremovable part of a building that is:

(i) constructed after the execution of the agreement; and

(ii) located in an area that is, at the time the agreement is executed, designated as a contiguous reinvestment zone under Tax Code, Chapter 311 or 312, or as an enterprise zone under Government Code, Chapter 2303; or

(B) tangible personal property, excluding inventory, that is initially placed in a zone described in subparagraph (A)(ii) of this paragraph after the agreement execution.

(5) Full-time job--A permanent position of employment, other than a construction job, requiring a minimum of 1,600 hours of work per year in connection with an eligible project.

(6) Investment--Capital that is expended on the construction or acquisition of eligible property for an eligible project with the exclusion of expenses related to land and inventory for the project.

(7) NAICS--North American Industry Classification System, developed by the U.S. Office of Management and Budget as the standard for use in classifying business establishments.

(8) Performance bond--A surety bond with an amount determined by the comptroller.

(9) Required job--A job, other than construction jobs, that an applicant commits to create or demonstrate for an eligible project that meets the following requirements:

(A) must be a new full-time job in this state;

(B) must be performed at the site of the project by an employee hired by the applicant (including a Texans Work Program trainee under Labor Code, Chapter 308), or by an independent contractor or independent contractor's employee;

(C) must require at least 1,600 hours of work a year;

(D) may not be transferred by the applicant from an existing facility or location in this state unless the applicant fills the vacancy caused by the transfer;

(E) may not create a job to replace an existing job, unless the applicant fills the vacancy caused by the replacement;

(F) must offer and contribute to a group health benefit plan for each full-time employee of the applicant; and

(G) must meet the wage requirement.

(10) Trainee--An individual enrolled in the Texans Work Program who fulfills the following eligibility criteria:

(A) receives a minimum monthly payment of $300;

(B) is engaged for a duration of at least 6 months but not exceeding one year;

(C) contributes at least 30 hours weekly; and

(D) constitutes no more than 20% of the employer's total workforce.

(11) Wage Requirement--A wage that exceeds 110% of the statewide average annual wage for all jobs in the applicable industry sector as computed by the Texas Workforce Commission in the Quarterly Census of Employment and Wages publication and as described in the executed agreement under Government Code, §403.612. The term does not include the wages for trainees in the Texans Work Program.

§9.5001. Applicant Eligibility Requirements.

(a) An applicant that is listed as ineligible to receive a state contract or investment or is otherwise ineligible to contract with a state governmental entity under Government Code, Chapters 808, 809, 2270, 2271, or 2274, is ineligible to apply for an agreement for limitation on taxable value of eligible property under Government Code, Chapter 403.

(b) The comptroller may reject an application based on an applicant's ineligibility under subsection (a) of this section.

(c) The comptroller shall send notice of the rejection described in subsection (b) of this section to the applicant.

(d) An applicant may not submit an administrative appeal to the comptroller for reconsideration of an application that has been rejected under subsection (b) of this section.

§9.5002. Application Requirements.

(a) Each application shall include:

(1) a completed application form;

(2) proof of a $30,000 payment as a nonrefundable application fee, payable to the applicable school district;

(3) a sworn affidavit by an agent authorized to bind an applicant attesting that the applicant is not ineligible under Government Code, §403.606;

(4) a map of the proposed project site;

(5) an economic benefit statement for the proposed project as described in Government Code, §403.608; and

(6) any additional information requested by the comptroller to complete its evaluation of the application.

(b) Applicants must segregate confidential information described by Government Code, §403.621, or information that is confidential as a matter of law from other information in their application, amended application or supplement to an application. A cover sheet marked "Confidential" with the legal justification for confidential treatment must accompany all information that is considered confidential.

(c) If an applicant proposes to place an eligible property in a qualified opportunity zone, the entire project including its boundaries must fall within that qualified opportunity zone in order to be subject to the taxable value prescribed in Government Code, §403.605(a)(2).

§9.5003. Economic Benefit Statement Criteria.

(a) The economic benefit statement must include the information described in Government Code, §403.608(b), including the sources relied upon.

(b) The comptroller may require an applicant to supplement or modify the economic benefit statement to provide further clarity or if there are changes to project-related information.

(c) Information provided as an estimate of the associated economic benefits that may be reasonably attributed to the project may be generated from standard economic estimation techniques and multipliers. This information shall be used to obtain a generalized estimation of the economic benefits to be associated with the proposed project. Any economic estimation modeling software used and all modifiers that were incorporated in the calculations must be disclosed.

(d) The economic benefit statement must include the project's associated economic benefits that, at minimum, consist of the following:

(1) the impact on the gross revenues and employment levels of local businesses that provide goods or services in connection with the project or to an applicant's employees;

(2) the amount of state and local taxes that will be generated as a result of the indirect economic impact of the project;

(3) the development of complementary businesses or industries that locate in this state as a direct consequence of the project;

(4) the total impact of the project on the gross domestic product of this state;

(5) the total impact of the project on personal income in this state; and

(6) the total impact of the project on state and local taxes.

(e) The comptroller may reject an economic benefit statement that is determined to be unreasonable or relies on unrealistic assumptions of economic conditions.

(f) If the economic benefit statement is rejected, then the comptroller may recommend not to approve the application.

§9.5004. Application Process.

(a) An applicant must submit an application for a limitation on taxable value of eligible property in the form and manner prescribed by the comptroller. The comptroller may require applications to be submitted electronically.

(b) After the eligibility of the applicant is assessed in §9.5001 of this chapter, the comptroller shall review an application to determine if it is administratively complete. An application is considered administratively complete when it includes all the information requested by the comptroller.

(c) The comptroller shall provide notice of an administratively complete application to the applicant, the governor and the applicable school district. The comptroller may provide notice electronically.

(d) If an application is not administratively complete, the comptroller may require an applicant to submit the necessary information by a deadline.

(e) The comptroller shall publish on its website information from each application including maps, economic benefit statement and any amendments within 10 business days of receiving an administratively complete application.

(f) To assess whether a project proposed in an application is an eligible project, the comptroller must find that:

(1) an applicant satisfies the application requirements;

(2) the proposed project meets the definition of eligible project in §9.5000 of this title and Government Code, §403.602(8); and

(3) The applicant is willing to agree and accept the terms described in Government Code, §403.604, and the agreement terms.

(g) To assess whether an agreement is a compelling factor and whether the applicant would make the proposed investment in the absence of the agreement under Government Code, §403.609(b)(3), the comptroller may consider:

(1) any public documents and statements relating to the applicant, the proposed project or the proposed eligible property that is subject to the application;

(2) official statements by the applicant, government officials or industry officials concerning the proposed project;

(3) alternative sites and prospects explored including any specific incentive information;

(4) any information concerning the proposed project's impact on the Texas economy;

(5) previous applications for and subsequent granting of economic development incentives;

(6) documents pertaining to the proposed project's financials, real estate transactions, utilities, infrastructure, transportation, regulatory environment, permits, workforce, marketing, existing facilities, nature of market conditions, and raw materials that demonstrate whether the incentive is a compelling factor in a competitive site selection process to locate the proposed project in Texas; and

(7) any other information that may aid the comptroller in its determination.

(h) Upon request, the comptroller may require that an applicant provides additional documents to demonstrate a compelling factor in a competitive site selection process to locate the proposed project in Texas. Failure to provide these documents may result in the comptroller being unable to make a recommendation under Government Code, §403.609.

(i) Within 60 days of an application being deemed complete, the comptroller shall examine and determine whether the application should be recommended or not recommended for approval based on the criteria in Government Code, §403.609(b).

(j) The comptroller shall provide written notice of action under Government Code, §403.609(a), to the applicant, the governor and the applicable school district.

(1) The notice shall indicate the comptroller's recommendation either for approval or non-approval of the application along with a copy of the application, and all documents or information relied upon to make the findings prescribed by Government Code, §403.609(b).

(2) A recommendation for approval shall specify a performance bond amount that is at minimum 20% of the required investment prescribed by Government Code, §403.604.

(k) An applicant may submit an amended or supplemental application to the comptroller at any time after the submission of the original application. If an applicant modifies an application recommended by the comptroller prior to the execution of the agreement, the applicant must submit said modifications to the comptroller to make a recommendation pursuant to Government Code, §403.609, before the agreement can be executed.

§9.5005. Agreement for Limitation on Taxable Value of Eligible Property.

(a) An applicant, the governor and the governing body of the applicable school district must mutually agree to enter into an agreement for limitation on taxable value of eligible property that includes the requisite terms in Government Code, §403.604 and §403.612.

(b) An applicant must satisfy the criteria required to enter in a contract with the state of Texas.

(c) The agreement must be based on information from an application that was recommended for approval by the comptroller.

(d) The agreement must comply with all applicable rules, regulations and statutes.

§9.5006. Agreement Process.

(a) Both the governor and the governing body of the applicable school district must decide under Government Code, §403.610(a) and §403.611(a), that they are agreeable to entering into an agreement with the applicant for a limitation on taxable value of eligible property.

(b) The governor and the governing body of the applicable school district must provide written notice of their determination in compliance with Government Code, §403.610(b) and §403.611(d).

(c) The agreement must be written in the manner and form prescribed by the governor.

§9.5007. Amendment Process.

(a) An agreement holder may propose to modify the beginning and ending dates of the incentive period. Notice of the proposed modification must be provided to the comptroller, the governor, and the applicable school district not later than the 90th day before the first day of the incentive period specified in Government Code, §403.612(b)(3), or not later than the 90th day before the first day of the proposed incentive period, whichever is earlier.

(b) Failure to provide notice of a proposed modification in a timely manner could lead to a denial of the modification request.

(c) To change the beginning and ending dates of the incentive period, the agreement holder must update the most recent schedules and economic benefit statement as necessary to reflect the proposed change to the incentive period. The agreement holder must include the revised schedules and economic benefit statement with the notice provided to the comptroller, the governor, and the applicable school district under this section.

(d) The comptroller shall make the finding required by Government Code, §403.609(b)(2), regarding the project as proposed to be modified or determine that the finding cannot be made.

(e) The comptroller shall notify the agreement holder, the governor and the applicable school district of the comptroller's finding not later than the 60th day after the date the comptroller receives the notice and revised economic benefit statement from the agreement holder of the proposed modification.

(f) The incentive period for the project may not be modified if the comptroller determines that the finding required by Government Code, §403.609(b)(2), regarding the project as proposed to be modified cannot be made or if the governor or the applicable school district objects to the proposed modification.

§9.5008. Job and Wage Requirements; Penalty for Failing to Comply with Job or Wage Requirement.

(a) Except as otherwise provided in Government Code, §403.604(a), the number of required jobs may not be waived.

(b) The wage requirement applies to required jobs and additional jobs, as the terms are defined in §9.5000 of this title and Government Code, §403.602. The wage requirement may not be waived.

(c) The comptroller shall conduct a biennial review of the periods covered by two consecutive reports submitted by an agreement holder to determine whether the agreement holder has created the number of required jobs and has met the wage requirement under Government Code, Chapter 403.

(d) To make the determination, the comptroller may:

(1) review the Biennial Compliance Report submitted by the agreement holder;

(2) request additional information from the agreement holder to substantiate the number of required jobs and the wage requirement and/or inspect the eligible property with a 3-day advance notice to the agreement holder in order to perform the inspection at a mutually agreeable time during regular business hours; or

(3) consider any other information that is available to the comptroller.

(e) The comptroller may issue a determination that a job created by the agreement holder is not a required job if the job as identified by the agreement holder:

(1) does not provide 1,600 hours or more of work for that year;

(2) is not a new job but rather a position that was transferred from a facility of the agreement holder from one area of the state to the project covered by the agreement, unless the agreement holder fills the vacancy caused by the transfer;

(3) is not a new job but rather a position that replaced an existing job of the agreement holder, unless the agreement holder filled the vacancy caused by the replacement;

(4) is not covered by a group health benefit plan for which the agreement holder contributes; or

(5) does not meet the wage requirement.

(f) If the comptroller makes a determination that the agreement holder did not create the required number of jobs or meet the wage requirement, the comptroller shall provide notice to the agreement holder, which shall include an explanation for the adverse determination.

(g) If the comptroller finds that an agreement holder received two consecutive adverse determinations for failing to meet the wage requirement prescribed by the agreement, the comptroller shall impose a penalty on the agreement holder in an amount equal to two times the difference between:

(1) the product of:

(A) the actual average annual wage paid to all persons employed by the agreement holder in connection with the project that is the subject of the agreement as computed under Government Code, §403.612(b)(6); and

(B) the number of required jobs prescribed by the agreement; and

(2) the product of:

(A) the average annual wage prescribed by the agreement; and

(B) the number of required jobs prescribed by the agreement.

(h) If the comptroller finds that an agreement holder received two consecutive adverse determinations for failing to maintain at least the number of required jobs prescribed by the agreement, the comptroller shall impose a penalty on the agreement holder in an amount equal to two times the difference between:

(1) the product of:

(A) the number of required jobs prescribed by the agreement; and

(B) the number of required jobs actually created as stated in the most recent report submitted by the agreement holder under Government Code, §403.616; and

(2) the average annual wage prescribed by the agreement during the most recent four quarters for which data is available, as computed by the Texas Workforce Commission.

(i) A determination by the comptroller under subsection (f) of this section is a deficiency determination under Tax Code, §111.008. A penalty imposed under this section is an amount the comptroller is required to collect, receive, administer, or enforce and is subject to the payment and redetermination requirements of Tax Code, §111.0081 and §111.009. A redetermination under Tax Code, §111.009, of a determination under this section is a contested case as defined by Government Code, §2001.003.

(j) In no event shall a penalty imposed under this section exceed the amount of the ad valorem tax benefit received by the agreement holder under the agreement.

(k) The comptroller shall deposit a penalty collected under this section and any interest on the penalty to the credit of the foundation school fund.

§9.5009. Biennial Compliance Report.

(a) Each agreement holder must submit a biennial compliance report with the supportive documents required by Government Code, §403.616 in the manner and form prescribed by the comptroller. The comptroller may require the report to be submitted electronically.

(b) The report must be submitted by June 1 of every even numbered year from the start to the conclusion of the incentive period.

(c) The report must include the minimum number of required jobs described in Government Code, §403.604(b) for every tax year throughout the duration of the incentive period.

(d) The report must include the signature of agreement holder's authorized representative(s) by which the representative confirms and attests to the truth and accuracy of the information submitted in the form to the best knowledge and belief of the agreement holder and its representative(s).

(e) Agreement holders must segregate confidential information described by Government Code, §403.621(b) or information that is confidential as a matter of law from other information within the biennial report. A cover sheet marked "Confidential" with the legal justification for confidential treatment must accompany all information that is considered confidential.

(f) For trainees identified in the report, the agreement holder must also submit documentation confirming its approval to take part in the Texans Work Program as set forth in Labor Code, §308.003, along with proof of the trainee's participation in the program including the beginning and ending dates of the trainee's participation.

§9.5010. Biennial Report to Legislature.

(a) Each agreement holder must submit information for the report described in Government Code, §403.617(b), in the form and manner prescribed by the comptroller.

(b) Not later than December 1 of each even year, the comptroller may electronically submit the report under Government Code, §403.617(b), to the lieutenant governor, the speaker of the house of representatives, and each other member of the legislature.

§9.5011. Conflicts.

To comply with Government Code, §403.619, both applicant and applicable school district must disclose any potential conflicts of interest related to a submitted application or an agreement, as mandated by state and federal laws, before executing the same agreement.

§9.5012. Electronic Submission; Notices.

Unless otherwise required by law, the comptroller may require forms, notices and other documents to be submitted electronically (including via web 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 18, 2023.

TRD-202303462
Don Neal
General Counsel, Operations and Support Legal Services
Comptroller of Public Accounts
Earliest possible date of adoption: October 29, 2023
For further information, please call: (512) 475-2220

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 385. AGENCY MANAGEMENT AND OPERATIONS

SUBCHAPTER B. INTERACTION WITH THE PUBLIC

37 TAC §§385.8101, 385.8117, 385.8136, 385.8137, 385.8141, 385.8153, 385.8161, 385.8163, 385.8183

As a result of a rule review of Title 37, Texas Administrative Code, Chapter 385, Subchapter B, as published in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4137), the Texas Juvenile Justice Department (TJJD) proposes to repeal §§385.8101, Public Information Requests; 385.8117, Private Real Property Rights Affected by Governmental Action; 385.8136, Notices to Public and Private Schools; 385.8137, Media Access; 385.8141, Confidentiality; 385.8153, Research Projects; 385.8161, Notification of a Facility Opening or Relocating; 385.8163, Decentralization; and 385.8183, Advocacy, Support Group, and Social Services Provider Access.

During the review, TJJD found the reasons for adopting the above rules no longer exist. The repealed rules will be recodified in TJJD policies not contained in the Texas Administrative Code.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that for each year of the first five years the repeals are in effect, there will be no significant fiscal impact for either state or local government as a result of enforcing or administering the repeals.

PUBLIC BENEFIT/COSTS

Cameron Taylor, Senior Strategic Advisor, has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of administering the repeals will be that TJJD will operate more efficiently as a result of maintaining codified rules that more closely align with statutory requirements.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities, and there will be no anticipated economic cost to persons who are required to comply with the repeals as proposed. No private real property rights are affected by the repeal of these sections.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the repealed sections are in effect, the sections will have the following impacts:

(1) The repealed sections do not create or eliminate a government program.

(2) The repealed sections do not require the creation or elimination of employee positions at TJJD.

(3) The repealed sections do not require an increase or decrease in future legislative appropriations to TJJD.

(4) The repealed sections do not impact fees paid to TJJD.

(5) The repealed sections do not create a new regulation.

(6) The repealed sections do not expand, limit, or repeal an existing regulation.

(7) The repealed sections do not increase or decrease the number of individuals subject to the sections' applicability.

(8) The repealed sections will not positively or adversely affect the state's economy.

PUBLIC COMMENTS

Comments on the proposed repeals may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas, 78711, or submitted via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The repeals are proposed under §2001.039, Government Code, which requires TJJD to review its rules every four years and to determine whether the original reasons for adopting reviewed rules continue to exist.

No other statute, code, or article is affected by these proposed repeals.

§385.8101. Public Information Requests.

§385.8117. Private Real Property Rights Affected by Governmental Action.

§385.8136. Notices to Public and Private Schools.

§385.8137. Media Access.

§385.8141. Confidentiality.

§385.8153. Research Projects.

§385.8161. Notification of a Facility Opening or Relocating.

§385.8163. Decentralization.

§385.8183. Advocacy, Support Group, and Social Services Provider Access.

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, 2023.

TRD-202303437
Christian von Wupperfeld
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: October 29, 2023
For further information, please call: (512) 490-7278

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37 TAC §§385.9959, 385.9967, 385.9993

As a result of a rule review of Title 37, Texas Administrative Code, Chapter 385, Subchapter C, as published in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4137), the Texas Juvenile Justice Department (TJJD) proposes to repeal §§385.9959, Transportation of Youth; 385.9967, Court-Ordered Child Support; and 385.9993, Canteen Operations.

During the review, TJJD found the reasons for adopting the above rules no longer exist. The repealed rules will be recodified in TJJD policies not contained in the Texas Administrative Code.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that for each year of the first five years the repeals are in effect, there will be no significant fiscal impact for either state or local government as a result of enforcing or administering the repeals.

PUBLIC BENEFIT/COSTS

Cameron Taylor, Senior Strategic Advisor, has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of administering the repeals will be that TJJD will operate more efficiently as a result of maintaining codified rules that more closely align with statutory requirements.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities, and there will be no anticipated economic cost to persons who are required to comply with the repeals as proposed. No private real property rights are affected by the repeal of these sections.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the repealed sections are in effect, the sections will have the following impacts:

(1) The repealed sections do not create or eliminate a government program.

(2) The repealed sections do not require the creation or elimination of employee positions at TJJD.

(3) The repealed sections do not require an increase or decrease in future legislative appropriations to TJJD.

(4) The repealed sections do not impact fees paid to TJJD.

(5) The repealed sections do not create a new regulation.

(6) The repealed sections do not expand, limit, or repeal an existing regulation.

(7) The repealed sections do not increase or decrease the number of individuals subject to the sections' applicability.

(8) The repealed sections will not positively or adversely affect the state's economy.

PUBLIC COMMENTS

Comments on the proposed repeals may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas, 78711, or submitted via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The repeals are proposed under §2001.039, Government Code, which requires TJJD to review its rules every four years and to determine whether the original reasons for adopting reviewed rules continue to exist.

No other statute, code, or article is affected by these proposed repeals.

§385.9959. Transportation of Youth.
§385.9967. Court-Ordered Child Support.
§385.9993. Canteen Operations.

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, 2023.

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Christian von Wupperfeld
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: October 29, 2023
For further information, please call: (512) 490-7278

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 810. LONE STAR WORKFORCE OF THE FUTURE FUND

The Texas Workforce Commission (TWC) proposes new Chapter 810, relating to Lone Star Workforce of the Future Fund, comprising the following subchapters:

Subchapter A. General Provisions Regarding the Lone Star Workforce of the Future Fund, §§810.1 - 810.4

Subchapter B. Advisory Board Composition, Meeting Guidelines, §§810.11 - 810.13

Subchapter C. Program Administration, §§810.21 - 810.28

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of implementing new Chapter 810 rules is to establish the Lone Star Workforce of the Future Fund and set forth TWC's procedures for administrating the new grant program.

The 88th Texas Legislature, Regular Session (2023), passed House Bill (HB)1755, which amended Texas Education Code, Title 3, Subtitle G, by adding Chapter 134A relating to the creation of the Lone Star Workforce of the Future Fund. HB 1755 tasks TWC with the establishment and administration of the Lone Star Workforce of the Future Fund as a dedicated account in the general revenue fund. Furthermore, HB 1755 requires TWC to adopt rules as necessary to administer this chapter.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE LONE STAR WORKFORCE OF THE FUTURE FUND

TWC proposes new Subchapter A, General Provisions Regarding the Lone Star Workforce of the Future Fund, as follows:

§810.1. Purpose and Goal

New §810.1(a) states the Lone Star Workforce of the Future Fund's purpose.

New §810.1(b) states the Lone Star Workforce of the Future Fund's goal.

§810.2. Definitions

New §810.2 sets forth the definitions for the Lone Star Workforce of the Future Fund rules.

§810.3. Uses of the Fund

New §810.3 details what a grant recipient shall use the money for.

§810.4. Waivers

New §810.31 sets forth the Executive Director's waiver authority.

SUBCHAPTER B. ADVISORY BOARD COMPOSITION, MEETING GUIDELINES

TWC proposes new Subchapter B, Advisory Board Composition, Meeting Guidelines, as follows:

§810.11. Advisory Board Purpose and Composition

New §810.11 provides the purpose of the advisory board and the appointing entities.

§810.12. Meeting Requirements

New §810.12 states the advisory board meeting requirements.

§810.13. Advisory Board Responsibilities

New §810.13 outlines the advisory board responsibilities.

SUBCHAPTER C. PROGRAM ADMINISTRATION

TWC proposes new Subchapter C, Program Administration, as follows:

§810.21. Statement of Purpose

New §810.21 explains the Lone Star Workforce of the Future Fund's purpose.

§810.22. Procedure for Requesting Funding

New §810.22 outlines the procedure in which grant applicants may request funding.

§810.23. Procedure for Proposal Evaluation

New §810.23 outlines the evaluation procedure for proposed workforce training projects.

§810.24. Grant Agreement Administration

New §810.24 outlines the administration of the agreement between the grant recipient and TWC.

§810.25. Limitation on Awards

New §810.25 outlines limitations the Commission may impose on awards.

§810.26. Program Objectives

New §810.26 details the Lone Star Workforce of the Future Fund's program objectives.

§810.27. Performance Benchmarks

New §810.27 details performance benchmarks that must be met by grant recipients.

§810.28. Reporting Requirements

New §810.28 details reporting requirements for grant recipients.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking action under Texas Government Code §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to provide the establishment and operational procedures of the Lone Star Workforce of the Future Fund, administered by TWC.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

--will create a government program;

--will not require the creation of employee positions;

--will not require an increase in future legislative appropriations to TWC;

--will not require an increase or decrease in fees paid to TWC;

--will not create a new regulation;

--will not expand, limit, or eliminate an existing regulation;

--will not change the number of individuals subject to the rules; and

--will positively affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Mary York, Director, Outreach and Employer Initiatives, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to increase the skill level of the Texas workforce through Lone Star Workforce of the Future Fund grants to upskill and reskill employees and job seekers. Grants will benefit Texas employers by enhancing productivity, reducing the skills gap, increasing competitiveness, fostering growth, and improving talent retention.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

HB 1755 requires TWC to establish and administer the Lone Star Workforce of the Future Fund and to adopt rules as necessary to administer the fund.

PART V. PUBLIC COMMENTS

Comments on the proposed new rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than October 30, 2023.

SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE LONE STAR WORKFORCE OF THE FUTURE FUND

40 TAC §§810.1 - 810.4

STATUTORY AUTHORITY

The new rules are proposed under the general authority of Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The rules are also proposed under the specific authority of House Bill 1755, 88th Texas Legislature, Regular Session (2023), which enacted Texas Education Code §134A.012, which requires TWC adopt rules necessary for the administration of Texas Education Code Chapter 134A.

§810.1. Purpose and Goal.

(a) Purpose. The purpose of the Lone Star Workforce of the Future Fund is to develop workforce training programs that are administered by public junior colleges, public technical institutes, and nonprofit organizations to increase the supply of qualified workers for entry-level to mid-level jobs in high demand occupations in this state.

(b) Goal. The goal of the Lone Star Workforce of the Future Fund is to ensure that the Texas workforce is capable of filling available and emerging jobs in this state that require less education than a bachelor's degree but more education than a high school diploma.

§810.2. Definitions.

In addition to the definitions contained in §800.2 of this title, the following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Advisory board--the advisory board of education and workforce stakeholders created pursuant to the applicable statute.

(2) Agency--The unit of state government established under Texas Labor Code Chapter 301 that is presided over by the Commission and administered by the Executive Director to operate the integrated workforce development system and administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code, Title 4, Subtitle A, as amended. The definition of "Agency" shall apply to all uses of the term in rules contained in this part, unless otherwise defined, relating to the Texas Workforce Commission.

(3) Commission--The body of governance of the Texas Workforce Commission composed of three members appointed by the governor as established under Texas Labor Code §301.002 that includes one representative of labor, one representative of employers, and one representative of the public. The definition of "Commission" shall apply to all uses of the term in rules contained in this part, unless otherwise defined, relating to the Texas Workforce Commission.

(4) Eligible applicant--an entity identified in Texas Education Code Chapter 134A as eligible to apply for funds:

(A) a public junior college;

(B) a public technical institute; or

(C) a nonprofit organization.

(5) Executive Director--the Executive Director of the Texas Workforce Commission.

(6) Grant recipient--a recipient of the Lone Star Workforce of the Future Fund.

(7) Statute--Texas Education Code, Chapter 134A, Lone Star Workforce of the Future Fund.

(8) Public junior college--any junior college certified by the Texas Higher Education Coordinating Board in accordance with Texas Education Code §61.003.

(9) Public technical institute--the Lamar Institute of Technology or the Texas State Technical College System, in accordance with Texas Education Code §61.003.

(10) Workforce training program--a program that provides performance-based workforce training that:

(A) leads to skill development and experiences required for employment in high demand occupations;

(B) are developed and provided based on consultation with and input from employers that are hiring in high demand occupations;

(C) create pathways to employment for program participants; and

(D) are delivered through classroom-based or online instruction, work-based experiences, internships or apprenticeships, or through a combination of those methods.

§810.3. Uses of the Fund.

An entity may use grant money received under this chapter only for:

(1) curriculum development;

(2) instructor fees and certifications;

(3) training materials;

(4) work-related expenses;

(5) work-based experience stipends;

(6) support services, deemed reasonable and necessary by the Agency, to help ensure training program participants' success; and

(7) administrative costs not to exceed 10 percent of the total amount of grant money received by the entity.

§810.4. Waivers.

The Executive Director, or designee, may suspend or waive a section of this chapter, not statutorily imposed, in whole or in part, upon a showing of good cause and a finding that the public interest would be served by such a suspension or waiver.

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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Les Trobman
General Counsel
Texas Workforce Commission
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For further information, please call: (512) 850-8356

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SUBCHAPTER B. ADVISORY BOARD COMPOSITION, MEETING GUIDELINES

40 TAC §§810.11 - 810.13

The new rules are proposed under the general authority of Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The rules are also proposed under the specific authority of House Bill 1755, 88th Texas Legislature, Regular Session (2023), which enacted Texas Education Code §134A.012, which requires TWC adopt rules necessary for the administration of Texas Education Code Chapter 134A.

§810.11. Advisory Board Purpose and Composition.

(a) The advisory board is created to assist the Agency in administering the Lone Star Workforce of the Future Fund.

(b) The advisory board comprises six members who serve two-year terms, and are appointed as follows:

(1) one member appointed by the Governor;

(2) one member appointed by the Lieutenant Governor;

(3) one member appointed by the Speaker of the House of Representatives;

(4) one member appointed by the Texas Higher Education Coordinating Board;

(5) one member appointed by the Commission; and

(6) the Commission Chair, who serves as the presiding officer.

§810.12. Meeting Requirements.

The advisory board is required to meet at least twice each calendar year, or as needed.

§810.13. Advisory Board Responsibilities.

The advisory board shall provide advice and recommendations to the Commission on awarding grants under this chapter.

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 C. PROGRAM ADMINISTRATION

40 TAC §§810.21 - 810.28

The new rules are proposed under the general authority of Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The rules are also proposed under the specific authority of House Bill 1755, 88th Texas Legislature, Regular Session (2023), which enacted Texas Education Code §134A.012, which requires TWC adopt rules necessary for the administration of Texas Education Code Chapter 134A.

§810.21. Statement of Purpose.

In accordance with the statute, the Commission established the Lone Star Workforce of the Future Fund Grant Program, which shall be administered pursuant to the statute and this subchapter to award grants for the development of workforce training programs to public junior colleges, public technical institutes, and nonprofit organizations that

meet the requirements of Texas Education Code, Chapter 134A, Lone Star Workforce of the Future Fund.

§810.22. Procedure for Requesting Funding.

An eligible applicant shall present to the Executive Director, or designee, an application for funding to acquire grant funds for the provision of workforce training as may be identified by the eligible applicant.

§810.23. Procedure for Proposal Evaluation.

(a) The Executive Director, or designee, shall evaluate each proposal considering the purposes listed in §810.3 of this chapter, the program objectives listed in §810.26 of this subchapter, and the reporting requirements listed in §810.28 of this subchapter, and any other unique factors that the Agency determines are appropriate.

(b) If the Agency determines that a proposal is appropriate for funding through the Lone Star Workforce of the Future Fund, the Executive Director, or designee, shall enter into a contract with the grant recipient on behalf of the Agency.

§810.24. Grant Agreement Administration.

(a) An eligible applicant, as defined by Texas Education Code §134A.007, may apply for the grant program outlined in this section.

(b) The Agency shall attach a list of high-growth career fields identified by the Agency, the Texas Workforce Investment Council, or the Tri-Agency Workforce Initiative established under Texas Government Code Chapter 2308A on the Agency's website and update the list annually.

(c) Grant recipients must enter into an agreement with the Agency to comply with contract requirements that include, but are not limited to:

(1) submitting all required reports, including financial and performance reports, in the format and time frame required by the Agency;

(2) maintaining fiscal data needed for independent verification of expenditures of funds received for the training project;

(3) cooperating and complying with Agency monitoring activities as required by Chapter 802, Subchapter D, of this title (relating to Agency Monitoring Activities); and

(4) submitting contract completion reports:

(A) The final payment of the contract is contingent upon the Executive Director's, or designee's, determination that a project has met the performance benchmarks outlined in §810.27 of this subchapter.

(B) The final payment of the contract will be withheld for 60 days after the completion of training and after receipt by the Agency of verification from the employer that the trainees are employed.

§810.25. Limitations on Awards.

The Commission shall impose a limit per training program participant, not to exceed $15,000 per participant, on the amount of funds awarded under any specific grant.

§810.26. Program Objectives.

The program objectives in administering the Lone Star Workforce of the Future Fund are:

(1) to create and sustain a utilization-driven supply of qualified workers for entry-level to mid-level jobs in high demand occupations in this state;

(2) to address skills needed by workers to obtain and retain employment;

(3) to increase the interest of current and future Texans to fill the available and emerging jobs in this state that require less education than a bachelor's degree but more than a high school diploma; and

(4) strengthen the state's economy by increasing competitiveness of businesses in this state and the recruitment of business of this state.

§810.27. Performance Benchmarks.

(a) A grant recipient under this chapter must facilitate the successful transition of at least 50 percent of the entity's training program participants from low-wage work or unemployment to full-time employment in jobs offering a self-sufficient wage, as determined under Texas Government Code §2308A.012, and the opportunity for career mobility, as determined by the Agency, within six months of training program completion.

(b) Should a grant recipient fail to meet the requirements of this section, the grant recipient shall reimburse the Agency on a pro rata basis based on the number of individuals successfully trained and placed.

(c) A grant recipient is not required to comply with a performance benchmark required by this section if the Executive Director determines that the entity's compliance is not possible because of an act of God, force majeure, or a similar cause not reasonably within the entity's control.

§810.28. Reporting Requirements.

(a) A grant recipient must comply with all of the contract's reporting requirements in the frequency and format determined by the Agency in order to maintain eligibility for grant payments. Failure to comply with the reporting requirements may result in termination of the grant award and the grant recipient's ineligibility for future grants under this chapter.

(b) A grant recipient must submit a progress report to the Agency at least twice annually that includes:

(1) the number of participants;

(2) an update on its progress toward reaching its performance benchmarks;

(3) a description of any key accomplishments achieved, lessons learned, or setbacks or risks incurred in administering the training program;

(4) an explanation of any material changes to the training program's work plan, team, or budget; and

(5) the amount of grant money spent during the reporting period.

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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