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

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

TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.6

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

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

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

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

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

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

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

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

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

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

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

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

§217.6. Failure to Renew License.

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

(j) Military Spouse.

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

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

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

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

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

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

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

SUBCHAPTER L. AQUATIC VEGETATION MANAGEMENT

31 TAC §57.930, §57.932

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§57.930. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§57.932. State Aquatic Vegetation Plan.

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

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

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

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

(b) (No change.)

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

Filed with the Office of the Secretary of State on February 7, 2022.

TRD-202200383

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

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SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DIVISION 1. GENERAL PROVISIONS

31 TAC §57.973, §57.974

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

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

§57.973. Devices, Means and Methods.

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

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

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

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

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

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

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

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

§57.974. Reservoir Boundaries.

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

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

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

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

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

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

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

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

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TRD-202200384
James Murphy
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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DIVISION 2. STATEWIDE RECREATIONAL FISHING PROCLAMATION

31 TAC §57.981

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

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

§57.981. Bag, Possession, and Length Limits.

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

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

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

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

(A) (No change.)

(B) Bass:

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

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

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

(v) (No change.)

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

(I) Gar, alligator.

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

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

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

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

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

(1) Freshwater species.

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

(C) Bass: largemouth

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

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

(I) (No change.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(K) Gar, alligator.

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

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

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

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

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

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

(2) (No change.)

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

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

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DIVISION 3. STATEWIDE COMMERCIAL FISHING PROCLAMATION

31 TAC §57.992

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

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

§57.992. Bag, Possession, and Length Limits.

(a) (No change.)

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

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

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

(A) (No change.)

(B) Catfish.

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

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

(IV) Exceptions.

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

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

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

(ii) (No change.)

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

(F) Gar, alligator.

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

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

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

(G) - (N) (No change.)

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

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

31 TAC §57.1000

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

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

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

§57.1000. Prohibited Transport of Live Nongame Fish.

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

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

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

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

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CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

SUBCHAPTER A. STATEWIDE OYSTER FISHERY PROCLAMATION

31 TAC §58.21

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

There will be no adverse economic impacts to rural communities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Area Closures.

(1) (No change.)

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

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

(J) Mesquite Bay, Aransas and Calhoun counties.

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

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

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

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

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

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CHAPTER 65. WILDLIFE
SUBCHAPTER A. STATEWIDE HUNTING PROCLAMATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DIVISION 1. GENERAL PROVISIONS

31 TAC §§65.3, 65.10, 65.11

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

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

§65.3. Definitions.

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

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

(6) Antlerless deer--

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

(B) a deer that has no antlers.

(7) - (10) No change.)

(11) Buck deer--

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

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

(12) (No change.)

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

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

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

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

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

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

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

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

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

(A) the permanent residence of the hunter;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§65.10. Possession of Wildlife Resources.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Proof of sex for deer consists of:

(A) buck:

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

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

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

(B) antlerless:

(i) the head; or

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

[(B) antlerless: the head.]

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

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

§65.11. Lawful Means.

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

(1) (No change.)

(2) Archery.

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

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

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

(3) Crossbow--Special Provisions.

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

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

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

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

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

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

(4) - (9) (No change.)

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

Filed with the Office of the Secretary of State on February 7, 2022.

TRD-202200393
James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 20, 2022
For further information, please call: (512) 389-4775

♦ ♦ ♦

31 TAC §65.4

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

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

§65.4. Proof of Sex for Deer.

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

Filed with the Office of the Secretary of State on February 7, 2022.

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

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DIVISION 2. OPEN SEASONS AND BAG LIMITS

31 TAC §65.42, §65.64

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

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

§65.42. Deer.

(a) General.

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

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

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

(1) (No change.)

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

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

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

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

(iv) Special provisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) (No change.)

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

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

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

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

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

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

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

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

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

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

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

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

(B) (No change.)

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

§65.64. Turkey.

(a) (No change.)

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

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

(3) Spring season and bag limits.

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

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

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

(4) (No change.)

(c) - (d) (No change.)

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

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

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SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 2. CHRONIC WASTING DISEASE - COMPREHENSIVE RULES

31 TAC §65.97

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) General.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Testing Requirements for Triple T Permit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) (No change.)

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

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

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SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §§65.314 - 65.320

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) (No change.)

(b) Seasons; Daily Bag Limits.

(1) North Zone.

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

(B) (No change.)

(2) Central Zone.

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

(B) (No change.)

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

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

(B) Daily bag limit:

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

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

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

(a) (No change.)

(b) Season dates and bag limits.

(1) HPMMU.

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

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

(2) North Zone.

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

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

(3) South Zone.

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

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

(4) September teal-only season.

(A) (No change.)

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

(c) Bag limits.

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

(2) (No change.)

§65.316. Geese.

(a) (No change.)

(b) Season dates and bag limits.

(1) Western Zone.

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

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

(2) Eastern Zone.

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

(B) Dark geese:

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

(ii) (No change.)

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

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

(2) (No change.)

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

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

(4) Season dates.

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

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

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

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

(1) HPMMU:

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

(B) (No change.)

(2) North Duck Zone:

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

(B) (No change.)

(3) South Duck Zone:

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

(B) (No change.)

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

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

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

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

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

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

(3) Season Dates and Bag Limits.

(A) HPMMU:

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

(ii) daily bag limits:

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

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

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

(B) North Duck Zone:

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

(ii) daily bag limits:

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

(II) geese:

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

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

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

(C) South Duck Zone:

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

(ii) daily bag limits:

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

(II) geese:

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

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

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

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

§65.318. Sandhill Crane.

(a) (No change.)

(b) Season dates and bag limits.

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

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

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

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

§65.319. Gallinules, Rails, Snipe, Woodcock.

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

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

(2) (No change.)

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

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

(2) (No change.)

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

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

(2) (No change.)

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

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

(2) (No change.)

§65.320. Extended Falconry Seasons.

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

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

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

(3) - (4) (No change.)

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

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James Murphy
General Counsel
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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.589

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amendment is in effect, the amendment: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. This proposal amends a current rule.

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

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

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

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

§3.589. Margin: Compensation.

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

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

(1) Client--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) Wages and cash compensation--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) employees' health savings accounts;

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

(C) retirement; and

(D) workers' compensation.

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

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

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

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

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

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

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

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

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

(A) wages and cash compensation;

(B) payroll taxes;

(C) employee benefits including workers' compensation; and

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

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

(A) wages and cash compensation; and

(B) benefits.

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

(A) an administrative fee;

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

(C) other costs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Special Counsel for Tax Administration
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER D. CLAIMS PROCESSING--PAYROLL

34 TAC §5.47

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

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

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

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

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

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

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

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

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

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

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

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

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

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amendments would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by improving the clarity and implementation of the section. There would be no significant anticipated economic cost to the public. The proposed rule would have no fiscal impact on small businesses or rural communities.

Comments on the proposal may be submitted to Rob Coleman, Director, Fiscal Management Division, at rob.coleman@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments are proposed under Government Code, §659.110, which authorizes the comptroller to establish procedures and adopt rules to administer the credit union program authorized by Government Code, Chapter 659, Subchapter G.

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

§5.47. Deductions for Payments to Credit Unions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) encouraging thrift among its members;

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

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

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

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

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

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

(b) Deductions or changes in deductions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) the electronic authorization is submitted through CAPPS.

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

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

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

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

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

(d) Return of authorization forms.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Requirements for certifying and decertifying credit unions.

(1) Request for certification. The comptroller may not certify a credit union unless the comptroller receives a written request for certification from an individual who is authorized by the credit union to make the request.

(2) Requirements for requests for certification. The comptroller may not certify a credit union unless its request for certification includes:

(A) the credit union's complete name;

(B) the street address of the credit union's main branch;

(C) the mailing address of the credit union's main branch, if different from the street address;

(D) the full name, title, telephone number, email address [facsimile telephone number], and mailing address of the credit union's primary contact;

(E) the credit union's Internal Revenue Service employer [payee] identification number; and

(F) the other information that the comptroller deems necessary.

(3) Electronic funds transfers. The comptroller may not certify a credit union unless the credit union:

(A) [it] submits to the comptroller a request for deducted amounts to be paid by the comptroller through electronic funds transfers under rules and procedures adopted by the comptroller;

(B) [it] submits to each institution of higher education that will be paying deducted amounts directly to the credit union a request for those amounts to be paid through electronic funds transfers; and

(C) all those requests are approved.

(4) Notifications.

(A) The comptroller shall notify [mail a notice to] a credit union in writing about the comptroller's approval or disapproval of the credit union's request for certification[. The notice must be

~~mailed~~] not later than the 30th calendar day after the comptroller receives the request if the request is complete in all respects. If the 30th calendar day is not a workday, [~~then~~] the first workday following the 30th calendar day is the deadline.

(B) The comptroller shall maintain a list of participating credit unions. The comptroller shall periodically circulate the list to all state agencies and furnish a copy of the list to a state agency upon request.

(5) Effective date of certification. The first deduction to a participating credit union may be made from salary or wages paid on the first workday of the second month following the month in which the comptroller certifies the credit union.

(6) Termination of certification.

(A) A participating credit union may terminate its participation in the deduction program authorized by this section only by terminating its certification.

(B) A participating credit union may terminate its certification by providing written notice of termination to the comptroller. However, the credit union may not provide that notice before the credit union has provided written notice of termination to each state employee from whose salary or wages a deduction to the credit union is occurring.

(C) A participating credit union's termination of its certification is effective beginning with the salary or wages paid on the first workday of the third month following the month in which the comptroller receives the credit union's proper notice of termination.

(g) Payments of deducted amounts.

(1) Payments by the comptroller through electronic funds transfers.

(A) If feasible, the comptroller shall pay deducted amounts to a participating credit union by electronic funds transfer.

(B) If the comptroller pays deducted amounts to a participating credit union by electronic funds transfer, [~~then~~] the comptroller may:

(i) make one transfer to the credit union and require it to distribute the transferred funds to state employees' accounts according to subsection (h) of this section; or

(ii) make one transfer to the credit union account of each state employee.

(2) Payments through warrants issued by the comptroller.

(A) If it is infeasible for the comptroller to pay deducted amounts to a participating credit union by electronic funds transfer, [~~then~~] the comptroller shall:

(i) pay the amounts by warrant;

(ii) make the warrant payable to the credit union;

(iii) require the credit union to distribute the deducted amounts to state employees' accounts according to subsection (h) of this section; and

(iv) make the warrant available for pick up by the employer [~~state agency~~] whose employees' deducted amounts are being paid by the warrant.

(B) An employer [~~A state agency~~] shall hand-deliver [~~hand deliver~~] or use an overnight delivery service to deliver a warrant picked up under subparagraph (A) of this paragraph to the payee of the warrant.

(i) If the warrant relates to salary or wages that are paid on the first workday of a month, [~~then~~] the employer [~~agency~~] shall:

(I) release the warrant to an overnight delivery service not later than the second workday of the month for delivery to the payee of the warrant; or

(II) hand-deliver [~~hand deliver~~] the warrant to the payee of the warrant not later than the third workday of the month.

(ii) If the warrant relates to salary or wages that are paid on a day other than the first workday of a month, [~~then~~] the employer [~~agency~~] shall:

(I) release the warrant to an overnight delivery service not later than the second workday after the employer [~~agency~~] receives the warrant for delivery to the payee of the warrant; or

(II) hand-deliver [~~hand deliver~~] the warrant to the payee of the warrant not later than the third workday after the employer [~~agency~~] receives the warrant.

(3) Payments by institutions of higher education.

(A) This paragraph applies only to deductions from salaries or wages that the comptroller does not pay directly to state employees of institutions of higher education.

(B) If feasible, an institution of higher education shall pay deducted amounts to a participating credit union by electronic funds transfer.

(C) If an institution of higher education pays deducted amounts to a participating credit union by electronic funds transfer, [~~then~~] the institution may:

(i) make one transfer to the credit union and require it to distribute the transferred funds to state employees' accounts according to subsection (h) of this section; or

(ii) make one transfer to the credit union account of each state employee.

(D) If it is infeasible for an institution of higher education to pay deducted amounts to a participating credit union by electronic funds transfer, [~~then~~] the institution shall:

(i) pay the amounts by check;

(ii) make the check payable to the credit union; and

(iii) require the credit union to distribute the deducted amounts to state employees' accounts according to subsection (h) of this section.

(E) An institution of higher education shall hand-deliver [~~hand deliver~~] or use an overnight delivery service to deliver a check issued under subparagraph (D) of this paragraph to the payee of the check.

(i) If the check relates to salary or wages that are paid on the first workday of a month, [~~then~~]the institution shall:

(I) release the check to an overnight delivery service not later than the second workday of the month for delivery to the payee of the check; or

(II) hand-deliver [~~hand deliver~~] the check to the payee of the check not later than the third workday of the month.

(ii) If the check relates to salary or wages that are paid on a day other than the first workday of a month, [~~then~~] the institution shall:

(I) release the check to an overnight delivery service not later than the second workday after the date printed on the check for delivery to the payee of the check; or

(II) hand-deliver [~~hand deliver~~] the check to the payee of the check not later than the third workday after the date printed on the check.

(h) Distributions of deducted amounts.

(1) Applicability of this subsection. This subsection applies to deducted amounts only if they are paid to a participating credit union under subsection (g)(1)(B)(i), (g)(2), (g)(3)(C)(i), or (g)(3)(D) of this section.

(2) Requirement. A participating credit union shall distribute the amount deducted from a state employee's salary or wages to the proper account of the employee at the credit union.

(3) Deadline for distributions.

(A) This subparagraph applies only if a participating credit union receives a payment of deducted amounts through an electronic funds transfer. The credit union shall distribute them according to paragraph (2) of this subsection not later than the first workday after the credit union receives the detail report for the deducted amounts.

(B) This subparagraph applies only if a participating credit union receives a payment of deducted amounts through a warrant or check. The credit union shall distribute them according to paragraph (2) of this subsection not later than the first workday after the credit union receives the warrant or check.

(4) Distribution of interest earned. This paragraph applies only to the interest that accrues while an employee's deducted amounts are in a credit union account awaiting distribution to the employee's account at the credit union. The interest shall be paid to the employee's account unless the credit union determines the payment would violate federal or state law or an agreement between the credit union and the employee.

(i) Charging administrative fees to cover costs incurred to make deductions.

(1) Requirement.

(A) This subparagraph applies to a state employee whose salary or wages are paid through a warrant issued or an electronic funds transfer initiated by the comptroller. The comptroller may not charge the employee an administrative fee to cover the cost of making the deduction.

(B) If a state employee's salary or wages are paid through a check issued or an electronic funds transfer initiated by an institution of higher education and the institution's payroll costs are reimbursed from the state treasury, [~~then~~] the institution may determine whether the employee must pay an administrative fee to cover the cost of making the deduction. The fee, if charged, shall be paid through payroll deduction.

(2) Determination by an institution of higher education of the amount of the fee.

(A) An institution of higher education shall determine the amount of the administrative fee, if any, to be paid by a state employee covered by paragraph (1)(B) of this subsection.

(B) The institution shall periodically recalculate the fee to ensure that the amount of the fee equals the cost of making the deduction. Except as otherwise provided in this subparagraph, the institution shall notify each participating credit union and employee of the institution in writing whenever the institution calculates or recalculates the fee. The institution is not required to notify an employee who has not authorized a deduction or a participating credit union to which no employee of the institution has authorized a currently-effective deduction.

(3) Payment of the administrative fees. The total amount of administrative fees that an institution of higher education deducts from its state employees' salary and wages shall be paid to the institution.

(j) Canceled payments of salary or wages; refunding deducted amounts to employers.

(1) Canceled payments of salary or wages.

(A) An employer [~~A state agency~~] shall notify a participating credit union in writing about the employer's [~~agency's~~] cancellation of a payment of salary or wages to a state employee[~~. The notification must be by facsimile and must be provided~~] not later than the day the employer [~~agency~~] processes the cancellation. This subparagraph applies only if:

(i) the payment is canceled after the employer [~~agency~~] has hand-delivered [~~hand delivered~~] to the credit union or released to an overnight delivery service a monthly or an additional detail report; and

(ii) the deductions covered by the report include deductions from the canceled payment of salary or wages.

(B) If an employer [~~a state agency~~] notifies a credit union that the employer [~~agency~~] has canceled a payment of salary or wages to a state employee and if the credit union receives the notice before it distributes deducted amounts to the employee's account, [~~then~~] the credit union may not make the distribution.

(C) If a credit union's distribution of deducted amounts is prohibited by subparagraph (B) of this paragraph, [~~then~~] the employer [~~state agency~~] that paid them to the credit union shall obtain a refund of them according to paragraph (3)(A) or (B) of this subsection.

(D) If an employer [~~a state agency~~] notifies a credit union that the employer [~~agency~~] has canceled a payment of salary or wages to a state employee and if the credit union receives the notice after it distributes deducted amounts to the employee's account, [~~then~~] the credit union shall withdraw the amounts from the account unless:

(i) the credit union determines the withdrawal would violate federal or state law; or

(ii) the amount of funds in the account is insufficient for withdrawal of the full amount.

(E) A credit union that receives notification under subparagraph (A) of this paragraph that an employer [~~a state agency~~] has canceled a payment of salary or wages to a state employee shall promptly notify the employer in writing [~~agency~~] about whether the employee's deducted amounts have been distributed to the employee's account. If the distribution has occurred, the credit union shall also notify the employer [~~agency~~] about whether the amounts have been withdrawn from the employee's account under subparagraph (D) of this paragraph. The credit union's notification to the employer [~~agency~~] must be made in writing [~~by facsimile~~].

(2) Authorization of refunds. The payment of a state employee's deducted amounts to a participating credit union shall be refunded to the [~~employee's~~] employer only if:

(A) they exceed the amount that should have been paid to the credit union, and they have not been distributed to the employee's account at the credit union; or

(B) they have been withdrawn from the employee's account at the credit union according to paragraph (1)(D) of this subsection.

(3) Method for accomplishing refunds. If a refund from a participating credit union is required by paragraph (1)(C) or (2) of this subsection, [~~then~~] the refund shall be accomplished by:

(A) the employer of the state employee whose deducted amounts are being refunded subtracting the amount of the refund from a subsequent payment of deducted amounts to the credit union; or

(B) the credit union issuing a check to the employer in the amount of the refund, if authorized by paragraph (4) of this subsection.

(4) Paying refunds by check. A participating credit union may issue a check to an employer only if it submits to the credit union a written request for the refund to be made by check.

(5) Deadline for paying refunds by check. If a participating credit union is authorized by paragraph (4) of this subsection to make a refund to an employer by check, [~~then~~] the credit union shall ensure that the employer receives the check not later than the 30th calendar day after the date on which the credit union receives the employer's [~~agency's~~] written request for the refund. If the 30th calendar day is not a workday, [~~then~~] the first workday following the 30th calendar day is the deadline.

(k) Responsibilities of participating credit unions.

(1) Notification to the comptroller. A participating credit union shall notify the comptroller in writing immediately after a change occurs to:

(A) the credit union's name;

(B) the street address of the credit union's main branch;

(C) the mailing address of the credit union's main branch, if different from the street address;

(D) the full name, title, telephone number, email address [~~facsimile telephone number~~], or mailing address of the credit union's primary contact; or

(E) the credit union's routing number or bank account number.

(2) Primary contact. The individual that a credit union designates as its primary contact must represent the credit union for the purposes of:

(A) communicating with the comptroller, including receiving and responding to correspondence from the comptroller;

(B) disseminating information, including information about the requirements of this section, to representatives of the credit union; and

(C) communicating with employers [~~state agencies~~] about payment reconciliation and refunds.

(3) Payment reconciliation and discrepancies.

(A) A participating credit union shall reconcile the detail report provided by an employer [~~a state agency~~] under subsection (l) of this section with the deducted amounts paid to the credit union [~~on behalf of or~~] by the employer [~~agency~~] under subsection (g) of this section.

(B) A participating credit union shall report all discrepancies between a detail report provided by an employer [~~a state agency~~] and the actual amount of deductions received from [~~or on behalf of~~] the employer [~~agency~~]. The credit union shall provide in a secure manner its report to the employer [~~state agency~~] that submitted [~~or on whose behalf the comptroller submitted~~] the detail report. The credit union must ensure that its report is received not later than the 60th calendar day after the day on which the detail report was mailed, hand-delivered [~~hand delivered~~], or released, whichever applies. If the 60th calendar day is not a workday, [~~then~~] the first workday following the 60th calendar day is the deadline.

[~~(4) Return of magnetic tapes and cartridges. A participating credit union shall return a magnetic tape or cartridge to a state agency not later than the 30th calendar day after the credit union received the tape or cartridge from the agency. If the 30th calendar day is not a workday, then the first workday following the 30th calendar day is the deadline.~~]

(4) [~~(5)~~] Submission of detail reports. A participating credit union that wants a monthly or additional detail report to be submitted to an entity other than the credit union must notify the comptroller in writing. An employer [~~A state agency~~] is not required to submit the report to the entity before the employer [~~agency~~] has received notification from the comptroller that the report must be submitted to the entity.

(l) Responsibilities of employers [~~state agencies~~].

(1) Authorization forms. An employer [~~A state agency~~]:

(A) may accept an authorization form only if it complies with this section; and

(B) is not required to accept an authorization form that contains an obvious alteration without the state employee's written consent to the alteration.

(2) Monthly detail reports to participating credit unions.

(A) An employer [~~A state agency~~] shall submit in a secure manner a monthly detail report to each participating credit union that received or should have received a payment of amounts deducted from the salary or wages of at least one of the employer's [~~agency's~~] state employees. If the participating credit union has notified the comptroller in writing that the monthly detail reports should be submitted to an entity other than the credit union, [~~then~~]the reports shall be submitted to that entity.

[~~(B) If a state agency uses USPS and submits its monthly detail reports electronically, then the comptroller shall submit those reports on behalf of the agency. The requirements of this subsection that apply to the submission of those reports by state agencies also apply to the comptroller's submission of the reports.~~]

(B) [~~(C)~~] A monthly detail report may cover only the deductions from salary or wages that are paid on the first workday of the month. Deducted amounts that were paid by electronic funds transfer directly to the credit union accounts of state employees may not be included in the report.

(C) [~~(D)~~] An employer [~~A state agency~~] shall ensure that [~~submit~~] a monthly detail report is received by the participating credit union or other entity under subparagraph (A) of this paragraph not later than the third workday of the month [~~by facsimile, by hand delivery, or through an overnight delivery service~~].

[~~*(i)* If the agency submits the report by facsimile, then the agency shall ensure that the report is received not later than the third workday of the month.~~]

[~~*(ii)* If the agency hand delivers the report, then the agency shall ensure that the report is received not later than the third workday of the month.~~]

[(iii) If the agency uses an overnight delivery service, then the agency shall release the report to the service not later than the second workday of the month.]

(D) [(E)] A monthly detail report to a participating credit union for a particular month must include:

(i) the name and social security number of each state employee from whose salary or wages deducted amounts were paid to the credit union for the month; and

(ii) the amount of deductions from each state employee's salary or wages that were paid to the credit union for the month.

(E) [(F)] An employer [A state agency] shall submit its monthly detail reports in the format required by the comptroller.

(3) Additional detail reports to participating credit unions.

(A) An employer [A state agency] shall submit in a secure manner an additional detail report to each participating credit union that received or should have received a payment of amounts deducted from the salary or wages of at least one of the employer's [agency's] state employees. If the participating credit union has notified the comptroller in writing that the additional detail reports should be submitted to an entity other than the credit union, [then]the reports shall be submitted to that entity.

[(B) If a state agency uses USPS and submits its additional detail reports electronically, then the comptroller shall submit those reports on behalf of the agency. The requirements of this subsection that apply to the submission of those reports by state agencies also apply to the comptroller's submission of the reports.]

(B) [(C)] An additional detail report may cover only the deductions from salary or wages that are paid on a day other than the first workday of the month. Deducted amounts that were paid by electronic funds transfer directly to the credit union accounts of state employees may not be included in the report.

(C) [(D)] This subparagraph applies only to an additional detail report that covers deducted amounts which are paid by electronic funds transfer to a participating credit union. An employer [A state agency] shall ensure that [submit] an additional detail report is received by the participating credit union or other entity under subparagraph (A) of this paragraph not later than the third workday of the month after the deducted amounts are paid to the credit union [by facsimile, by hand delivery, or through an overnight delivery service].

[(i) If an agency submits the report by facsimile, then the agency shall ensure that the report is received not later than the third workday after the deducted amounts are paid to the credit union.]

[(ii) If the agency hand delivers the report, then the agency shall ensure that the report is received not later than the third workday after the deducted amounts are paid to the credit union.]

[(iii) If the agency uses an overnight delivery service, then the agency shall release the report to the service not later than the second workday after the deducted amounts are paid to the credit union.]

(D) [(E)] This subparagraph applies only to an additional detail report that covers deducted amounts which are paid by warrant or check to a participating credit union. The report shall accompany the warrant or check when it is mailed or otherwise delivered to the credit union.

(E) [(F)] An additional detail report to a participating credit union for a particular month must include:

(i) the name and social security number of each state employee from whose salary or wages deducted amounts were paid to the credit union for the month; and

(ii) the amount of deductions from each state employee's salary or wages that were paid to the credit union for the month.

(F) [(G)] An employer [A state agency] shall submit its additional detail reports in the format required by the comptroller.

(4) Payment discrepancies. An employer [A state agency] that receives a report of discrepancies from a participating credit union shall investigate them and notify the credit union in writing of the action to be taken to eliminate them. The employer [agency] shall provide the notification not later than the 30th calendar day after the employer [agency] receives the report. If the 30th calendar day is not a workday, [then]the first workday following the 30th calendar day is the deadline.

(m) Responsibilities of the comptroller. The comptroller shall notify all state agencies in writing whenever the comptroller receives written notification from a participating credit union that monthly or additional detail reports should be submitted to an entity other than the credit union.

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

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Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
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CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER C. APPRAISAL DISTRICT ADMINISTRATION

34 TAC §9.419

The Comptroller of Public Accounts proposes amendments to §9.419, concerning property tax exemption for certain leased motor vehicles. The proposed amendments implement statutory requirements as amended by House Bill 988, Section 6, 87th Legislature, 2021.

The proposed amendment to subsection (a)(4) allows the lessee's affidavit to be certified under oath or by a written, unsworn declaration.

In subsection (b)(1)(a) the comptroller proposes to adopt by reference an amended version of the Lessee's Affidavit Motor Vehicle Use Other than Production of Income (Form 50-285) to make updates and clarifications related to the lessee's address, statutory language and the legislative change from House Bill 988, Section 6. The proposed amended form may be viewed at comptroller.texas.gov/taxes/property-tax/rules.

In subsection (c), the comptroller proposes to amend the name of Form 50-285 to its current title.

In subsection (g), the comptroller proposes to amend the text to add a missing parenthesis.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amendments are in effect, the amendments: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. This proposal amends current rules.

Mr. Reynolds also has determined that the proposed amendments would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amendments would benefit the public by conforming the rule to current statute. There would be no anticipated significant economic cost to the public. The proposed amendments would have no significant fiscal impact on small businesses or rural communities.

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

These amendments are proposed under Tax Code, §11.252 (Motor Vehicles Leased for Use Other than Production of Income), which requires the comptroller to, by rule, establish exemption application requirements and appropriate procedures to determine whether a motor vehicle subject to a lease qualifies for an exemption under this section and to adopt a form to be completed by the lessee of a motor vehicle for which the owner of the vehicle may apply for an exemption under this section.

The comptroller further proposes the amendments under Tax Code, §22.24 (Rendition and Report Forms) which authorizes the comptroller to prescribe and approve forms for the rendition and reporting of property.

This rule implements Tax Code, §11.252 (Motor Vehicles Leased for Use Other than Production of Income).

§9.419. Property Tax Exemption for Certain Leased Motor Vehicles.

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

(1) Lease--An agreement, other than a rental as defined by Tax Code, §152.001(5), whereby an owner of a motor vehicle gives exclusive use of the motor vehicle to another for consideration, for a period that is longer than 180 days.

(2) Lessee--A person who enters into a lease for a specific motor vehicle.

(3) Lessor-- The owner of a motor vehicle that is subject to a lease.

(4) Lessee's Affidavit or Affidavit--A [~~properly notarized sworn~~] statement, either under oath or by written, unsworn declaration, that a lessee or authorized representative of the lessee if the lessee is an entity described by Tax Code, §11.252(b) executes to attest that the lessee does not hold the leased motor vehicle for the production of income and the leased motor vehicle is used primarily for activities that do not involve the production of income.

(5) Motor vehicle--A passenger car or truck with a shipping weight of 9,000 pounds or less.

(6) Reasonable date and/or time--A time that is after 10:00 a.m. and before 5:00 p.m., Monday through Friday, excluding holidays, unless the appraisal district and the lessor agree otherwise.

(b) The comptroller will make available forms that are adopted by reference in paragraph (1) of this subsection. Copies of the forms can be obtained from the Comptroller of Public Accounts' Property Tax Assistance Division.

(1) The comptroller adopts by reference the following forms:

(A) Lessee's Affidavit Motor Vehicle Use Other than Production of Income (Form 50-285); and

(B) Lessor's Rendition or Property Report Leased Automobiles (Form 50-288).

(2) A chief appraiser, lessee and lessor must use the comptroller's forms adopted by reference in paragraph (1) of this subsection, available from the Comptroller of Public Accounts Property Tax Assistance Division unless the form:

(A) substantially complies with the corresponding comptroller form by using the same language in the same sequence as the comptroller form;

(B) is an electronic version of a comptroller form and preserves the same language in the same sequence as the comptroller form; or

(C) is a rendition form approved by the comptroller in writing before the form is used.

(3) A lessor shall maintain the affidavit, an electronic image of the affidavit, or a certified copy of the affidavit and must produce the affidavit, electronic image of the affidavit, or certified copy of the affidavit to the chief appraiser for inspection or copying when requested, subject to the conditions of subsection (f)(1) of this section.

(4) No provision in this section should be construed as limiting the chief appraiser's authority to enter into an agreement for electronic exchange of information under Tax Code, §1.085.

(5) No provision in this section should be construed as limiting the ability to electronically execute a document according to the laws of the State of Texas.

(c) The Lessee's Affidavit [~~for~~] Motor Vehicle Use Other than Production of Income (Form 50-285) should be completed by lessees and the affidavit, electronic image of the lessee's affidavit, or certified copy of the lessee's affidavit should be maintained by lessors in connection with applying for the exemption available under Tax Code, §11.252.

(1) For lessor to qualify for the exemption, the Lessee must not hold the motor vehicle for the production of income and the motor vehicle must be used primarily for activities that do not include the production of income.

(2) A motor vehicle is presumed to be used primarily for activities that do not involve the production of income if:

(A) 50% or more of the miles the motor vehicle is driven in a year are for non-income producing purposes;

(B) the motor vehicle is leased to the State of Texas or a political subdivision of the State of Texas; or

(C) the motor vehicle:

(i) is leased to an organization that is exempt from federal income taxation under Internal Revenue Code, §501(a), as an organization described by Internal Revenue Code, §501(c)(3); and

(ii) would be exempt from taxation if the vehicle were owned by the organization.

(d) The Lessor's Rendition or Property Report Leased Automobiles (Form 50-288) shall be used as the property report form required by Tax Code, §11.252(i).

(1) To meet the reporting requirements of Tax Code, §11.252(i), the lessor shall list each leased vehicle the lessor owns on January 1, regardless of whether the leased vehicle qualifies for an exemption under Tax Code, §11.252, and provide the following:

(A) the year, make, model, and vehicle identification number for each leased vehicle;

(B) the name of the lessee and address at which the leased vehicle is kept;

(C) whether the lessee has designated the leased vehicle as not held for the production of income and used primarily for activities that do not involve the production of income; and

(D) whether the lessor maintains a lessee's affidavit, electronic image of the lessee's affidavit, or a certified copy of the lessee's affidavit for the leased vehicle.

(2) To meet the reporting requirements of Tax Code, §11.252(j), the Lessor shall provide the form to the chief appraiser in the manner provided by Subchapter B, Chapter 22, Tax Code.

(e) To apply for the exemption allowed under Tax Code, §11.252(a), the lessor shall submit a fully completed and properly executed Lessor's Exemption Application Motor Vehicles Leased for Use Other than Production of Income (Form 50-286) to the chief appraiser pursuant to Tax Code, §11.43 and §11.45, and indicate at the appropriate space on the form that the lessor is applying for the exemption allowed under Tax Code, §11.252(a) for each qualifying leased vehicle.

(f) A chief appraiser may inspect and/or obtain copies of lessees' affidavits, electronic images of the affidavits, or certified copies of the affidavits that the lessor maintains. Unless agreed to otherwise, a lessor and a chief appraiser shall use the following procedures when the chief appraiser proposes to inspect and/or copy lessees' affidavits, electronic images of the affidavits, or certified copies of the affidavits on leased motor vehicles for which the lessor seeks an exemption.

(1) No less than 10 days prior to the inspection, the chief appraiser shall provide the lessor with notice of the chief appraiser's intention to inspect and/or copy the lessees' affidavits, electronic images of the affidavits, or certified copies of the affidavits in the lessor's possession or control. The notice must state a reasonable time when the chief appraiser proposes to inspect and/or copy the lessees' affidavits, electronic images of the affidavits, or certified copies of the affidavits and shall identify the affidavits, electronic images of the affidavits, or certified copies of the affidavits that will be subject to inspection and/or copy.

(2) If the proposed date or time is not convenient, then the lessor may propose an alternate reasonable date or time by notifying the chief appraiser in writing.

(3) The lessor shall provide the chief appraiser with reasonable accommodations to inspect and/or copy any of the lessees' affidavits, electronic images of the affidavits, or certified copies of the affidavits or shall permit the chief appraiser to take the affidavits, electronic images of the affidavits, or certified copies of the affidavits off premises for a period of no less than 48 hours to inspect and/or copy.

(4) If the lessor is located more than 150 miles from the appraisal district's office, then the chief appraiser may submit a written request that the lessor deliver the identified lessees' affidavits, electronic images of the affidavits, or certified copies of the affidavits to the chief appraiser for at least 14 days for inspection and copying. The chief appraiser and the lessor may determine who should bear the costs of delivery and copying if any.

(g) The comptroller-prescribed exemption application form (Lessor's Exemption Application Motor Vehicles Leased for Use Other than Production of Income (Form 50-286)) is not adopted by reference herein and may be revised at the discretion of the comptroller. Current forms can be obtained from the Comptroller of Public Accounts' Property Tax Assistance Division.

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

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