TEXAS REGISTER

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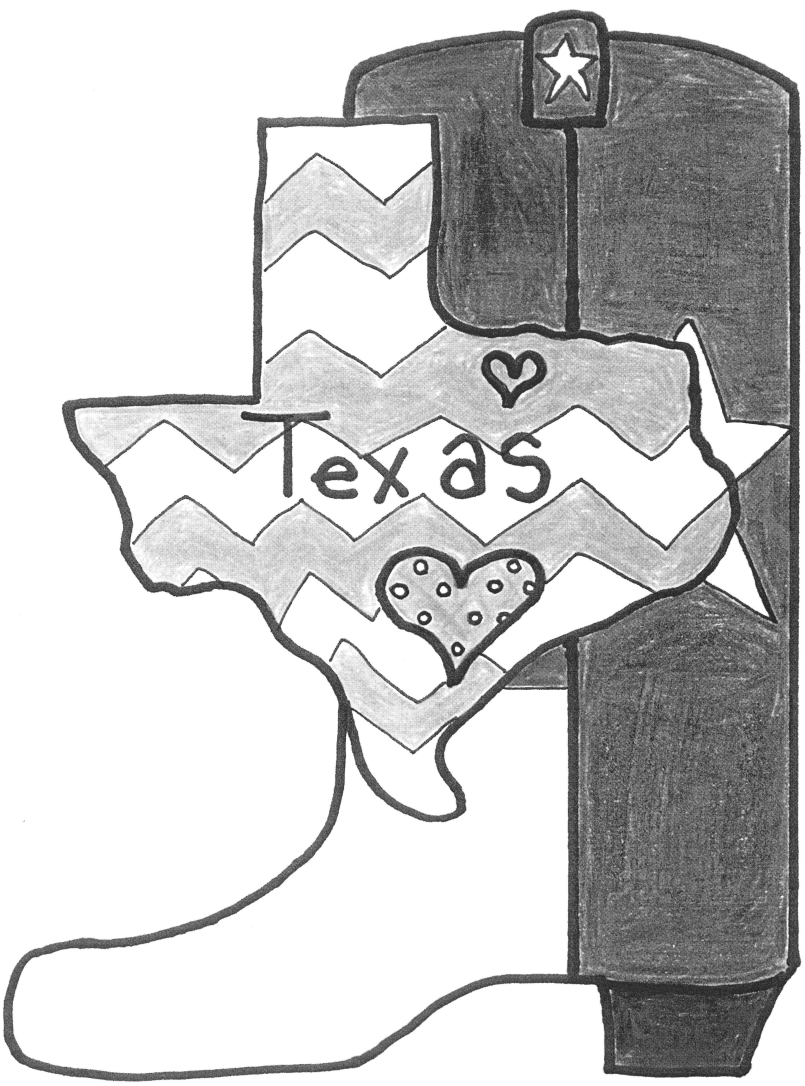
In This Issue

WITHDRAWN RULES

ADOPTED RULES


Texas

THE GOVERNOR

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

Appointments

Appointments for August 20, 2020

Appointed to the Texas Board of Respiratory Care for a term to expire February 1, 2025, Samuel L. Brown, Jr. of Marshall, Texas (replacing Joe Ann Clack of Missouri City, whose term expired).

Appointed to the Texas Board of Respiratory Care for a term to expire February 1, 2025, Debra E. Patrick of McKinney, Texas (Ms. Patrick is being reappointed).

Appointed to the Texas Board of Respiratory Care for a term to expire February 1, 2025, Hammad Nasir Qureshi, M.D. of Tomball, Texas (replacing James M. "Jim" Stocks of Tyler, whose term expired).

Designated as presiding officer of the Texas Board of Respiratory Care, for a term to expire at the pleasure of the Governor, Latana T. Jackson-Woods of Cedar Hill (Ms. Jackson-Woods is replacing Joe Ann Clack of Missouri City).

Greg Abbott, Governor

TRD-202003547

♦ ♦ ♦

Proclamation 41-3757

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of the State of Texas, certified on July 21, 2020, that exceptional drought conditions posed a threat of imminent disaster in Andrews, Bailey, Briscoe, Carson, Castro, Dallam, Deaf Smith, Floyd, Gaines, Gray, Hale, Hansford, Hartley, Hutchinson, Lamb, Motley, Oldham, Ochiltree, Parmer, Randall, Roberts, Swisher, Terry, Wheeler, and Yoakum counties, I hereby certify that exceptional drought conditions continue to pose a threat of imminent disaster in Andrews, Briscoe, Castro, Deaf Smith, Floyd, Gaines, Gray, Hale, Lamb, Motley, Parmer, Randall, Roberts, Swisher, Terry, Wheeler, and Yoakum counties, and that the conditions also now threaten Brewster, Collingsworth, Crockett, Culberson, Dimmit, Hall, Jeff Davis, Kinney, Loving, Maverick, Presidio, Reeves, Uvalde, Val Verde, and Zavala counties.

WHEREAS, significantly low rainfall and prolonged dry conditions continue to increase the threat of wildfire across these portions of the state; and

WHEREAS, these drought conditions pose an imminent threat to public health, property, and the economy;

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in Andrews, Brewster, Briscoe, Castro, Collingsworth, Crockett, Culberson, Dimmit, Deaf Smith, Floyd, Gaines, Gray, Hale, Hall, Jeff Davis, Kinney, Lamb, Loving, Maverick, Motley, Parmer, Presidio, Randall, Reeves, Roberts, Swisher, Terry, Uvalde, Val Verde, Wheeler, Yoakum, and Zavala counties based on the existence of such threat.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 20th day of August, 2020.

Greg Abbott, Governor

TRD-202003467

♦ ♦ ♦

Proclamation 41-3758

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the resignation of the Honorable Pat Fallon, and its acceptance, has caused a vacancy to exist in Texas State Senate District No. 30, which consists of Archer, Clay, Cooke, Erath, Grayson, Jack, Montague, Palo Pinto, Parker, Wichita, Wise, and Young counties and parts of Collin and Denton counties; and

WHEREAS, Article III, Section 13 of the Texas Constitution and Section 203.002 of the Texas Election Code require that a special election be ordered upon such a vacancy, and Section 3.003 of the Texas Election Code requires the special election to be ordered by proclamation of the Governor; and

WHEREAS, the vacancy occurred on August 23, 2020, and Section 203.004(a) of the Texas Election Code provides that the special election must be held on the first uniform date occurring on or after the 36th day after the date the election is ordered, unless the election is to be held as an emergency election; and

WHEREAS, pursuant to Section 41.001 of the Texas Election Code, the only uniform election date remaining in 2020 is November 3; and

WHEREAS, should a runoff be necessary for a special election held on November 3, 2020, the earliest possible date for that runoff election under the Texas Election Code would be late January 2021, which would leave the people in Texas State Senate District No. 30 without representation in the Texas Senate when the 87th Texas Legislature convenes its regular session; and

WHEREAS, it is imperative to ensure that Texas State Senate District No. 30 is fully represented and has an effective voice in the Texas Senate when the 87th Legislature convenes its regular session, particularly in light of the declared disaster that continues to exist for all counties contained within Texas State Senate District No. 30 as a result of the novel coronavirus (COVID-19); and

WHEREAS, Section 41.0011 of the Texas Election Code provides that the Governor may order an emergency special election before the appropriate uniform election date; and

WHEREAS, Section 203.004(b) of the Texas Election Code provides that an emergency special election must be held on a Tuesday or Saturday on or after the 36th day and before the 50th day after the election is ordered;

NOW, THEREFORE, I, GREG ABBOTT, Governor of Texas, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order an emergency special election to be held in Texas State Senate District No. 30 on Tuesday, September 29, 2020, for the purpose of electing a state senator to serve out the unexpired term of the Honorable Pat Fallon.

Candidates who wish to have their names placed on the special election ballot must file their applications with the Secretary of State no later than 5:00 p.m. on Friday, August 28, 2020.

Early voting by personal appearance shall begin on Monday, September 14, 2020, in accordance with Sections 85.001(a) and (c) of the Texas Election Code.

A copy of this order shall be mailed immediately to the County Judges of all counties contained within Texas State Senate District No. 30, and all appropriate writs shall be issued and all proper proceedings shall be followed to the end that said election may be held to fill the vacancy in Texas State Senate District No. 30 and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 23rd day of August, 2020.

Greg Abbott, Governor

TRD-202003463

♦ ♦ ♦

Proclamation 41-3759

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that Hurricane Marco and Tropical Storm Laura pose a threat of imminent disaster, including widespread and severe property damage, injury, and loss of life due to widespread flooding, storm surge, and damaging winds, in Aransas, Bexar, Brazoria, Calhoun, Cameron, Chambers, Galveston, Hardin, Harris, Jackson, Jasper, Jefferson, Kenedy, Kleberg, Liberty, Matagorda, Newton, Nueces, Orange, Refugio, San Patricio, Victoria, and Willacy counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the previously listed counties based on the existence of such threat.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 23rd day of August, 2020.

Greg Abbott, Governor

TRD-202003466

♦ ♦ ♦

Proclamation 41-3760

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on July 25, 2020, certifying that Hurricane Hanna posed a threat of imminent disaster, including property damage and loss of life, due to widespread flooding, storm surge, and hurricane force winds, in Aransas, Bee, Bexar, Brazoria, Brooks, Calhoun, Cameron, Dimmit, Duval, Fort Bend, Galveston, Goliad, Harris, Hidalgo, Jackson, Jim Hogg, Jim Wells, Kenedy, Kleberg, La Salle, Live Oak, Matagorda, McMullen, Nueces, Refugio, San Patricio, Starr, Victoria, Webb, Wharton, Willacy, and Zapata counties; and

WHEREAS, due to the widespread damage caused by Hurricane Hanna, a state of disaster continues to exist in those same counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for the 32 counties listed above.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 24th day of August, 2020.

Greg Abbott, Governor

TRD-202003549

♦ ♦ ♦

Proclamation 41-3761

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on Sunday, August 23, 2020, certifying that Hurricane Marco and then-Tropical Storm Laura posed a threat of imminent disaster, including widespread and severe property damage, injury, and loss of life due to widespread flooding, storm surge, and damaging winds, in Aransas, Bexar, Brazoria, Calhoun, Cameron, Chambers, Galveston, Hardin, Harris, Jackson, Jasper, Jefferson, Kenedy, Kleberg, Liberty, Matagorda, Newton, Nueces, Orange, Refugio, San Patricio, Victoria, and Wilson counties. As now-Hurricane Laura continues to approach, I hereby certify that those same conditions continue to exist in these counties and now also pose a threat of imminent disaster in other counties in Texas;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend the aforementioned proclamation and declare a state of disaster in these additional counties: Anderson, Angelina, Bowie, Cass, Cherokee, Dallas, Fort Bend, Franklin, Gregg, Grimes, Harrison, Houston, Leon, Madison, Marion, Montgomery, Morris, Nacogdoches, Panola, Polk, Red River, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Titus, Travis, Trinity, Tyler, Upshur, Walker, Waller, Wharton, and Wood counties.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 25th day of August, 2020.

Greg Abbott, Governor

TRD-202003546

♦ ♦ ♦

Proclamation 41-3762

TO ALL TO WHOM THESE PRESENTS SHALL COME:

BE IT KNOWN THAT I, GREG ABBOTT, GOVERNOR OF THE STATE OF TEXAS, DO HEREBY ORDER A GENERAL ELECTION to be held throughout the State of Texas on the first TUESDAY NEXT AFTER THE FIRST MONDAY IN NOVEMBER, 2020, being the 3rd day of NOVEMBER, 2020; and

NOTICE THEREOF IS HEREBY GIVEN to the people of Texas and to the COUNTY JUDGE of each county who is directed to cause said election to be held at each precinct in the county on such date for the purpose of electing state and district officers, members of the Texas Legislature, members of the United States Congress, and electors for president and vice-president of the United States, as required by Section 3.003 of the Texas Election Code.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 26th day of August, 2020.

Greg Abbott, Governor

TRD-202003561

♦ ♦ ♦

Proclamation 41-3763

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, previously issued proclamations certifying that then-Tropical Storm and now-Hurricane Laura posed a threat of imminent disaster, including widespread and severe property damage, injury, and loss of life due to widespread flooding, storm surge, and damaging winds, in Anderson, Angelina, Aransas, Bexar, Bowie, Brazoria, Calhoun, Cameron, Cass, Chambers, Cherokee, Dallas, Fort Bend, Franklin, Galveston, Gregg, Grimes, Hardin, Harris, Harrison, Houston, Jackson, Jasper, Jefferson, Kenedy, Kleberg, Liberty, Leon, Madison, Marion, Matagorda, Montgomery, Morris, Nacogdoches, Newton, Nueces, Orange, Panola, Polk, Red River, Refugio, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Titus, Travis, Trinity, Tyler, Upshur, Victoria, Walker, Waller, Wharton, Willacy, and Wood counties; and

WHEREAS, Hurricane Laura continues to threaten Texas, and I hereby certify that those same conditions continue to exist in these counties and now also pose a threat of imminent disaster in additional counties in Texas;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend the aforementioned proclamations of August 23 and August 25, 2020, and declare a state of disaster in Camp, Ellis, and Tarrant counties.

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

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

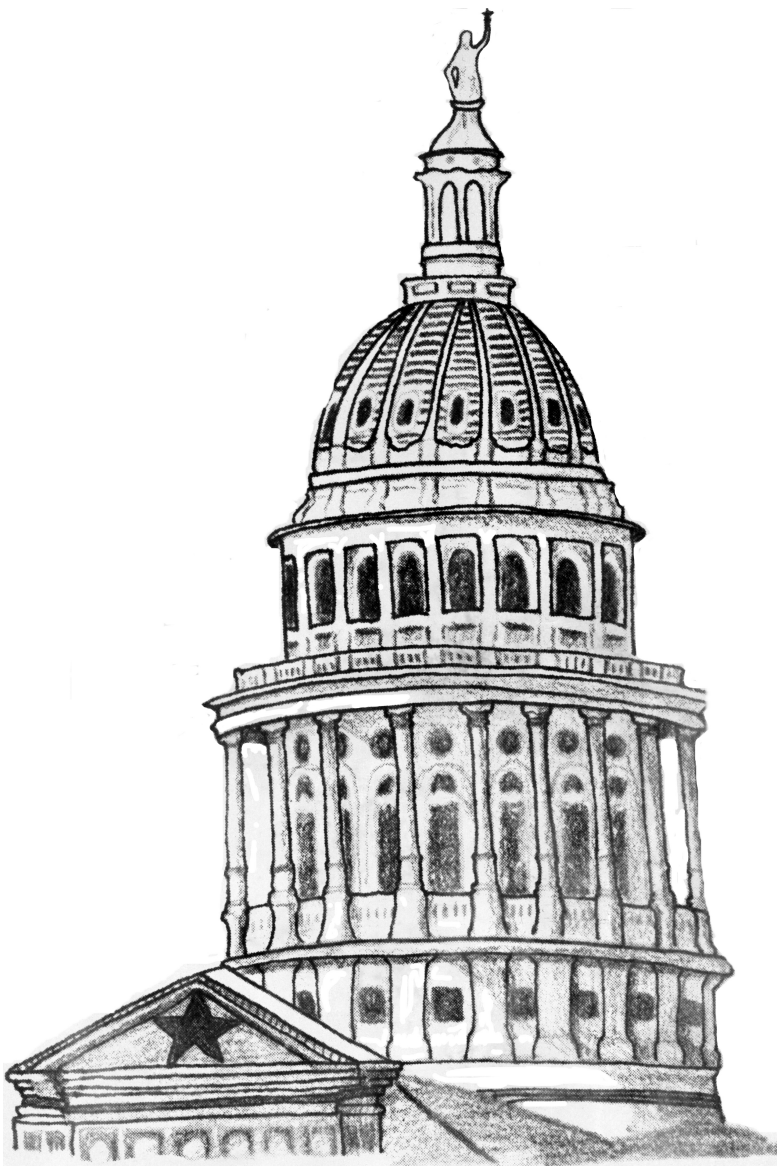
In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 26th day of August, 2020.

Greg Abbott, Governor

TRD-202003562

♦ ♦ ♦



THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-0374-KP

Requestor:

The Honorable Bob Wortham

Jefferson County Criminal District Attorney

1085 Pearl Street, 3rd Floor

Beaumont, Texas 77701

Re: Whether a conflict of interest exists under chapter 171 of the Local Government Code when a city council member votes to waive penalties and interest for delinquent property taxes accrued by an unrelated person and the Tax Assessor-Collector who requested the waiver is the city council member's spouse (RQ-0374-KP)

Briefs requested by September 18, 2020

RQ-0375-KP

Requestor:

The Honorable Charles Perry

Chair, Committee on Water & Rural Affairs

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Boundary line between the High Plains Underground Water District and the Panhandle Groundwater Conservation District (RQ-0375-KP)

Briefs requested by September 21, 2020

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

TRD-202003514
Lesley French
General Counsel
Office of the Attorney General
Filed: August 25, 2020

♦ ♦ ♦

Opinions

Opinion No. KP-0328

The Honorable John Whitmire

Chair, Committee on Criminal Justice

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Authority of the Teacher Retirement System with respect to investments in or ownership of real property (RQ-0334-KP)

S U M M A R Y

Article XVI, subsection 67(a)(3) of the Texas Constitution and section 825.301 of the Government Code specify the authority of the Teacher Retirement System to invest its funds, which is limited to items qualifying as "securities" under subsection 825.301(a). To the extent any real estate investment of the System does not qualify as a "security" pursuant to subsection 825.301(a), it is unconstitutional.

Opinion No. KP-0329

The Honorable Charlie Geren

Chair, Committeen House Administration

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether an employee of an appraisal district may serve as a trustee of an independent school district that is a participating taxing unit of the appraisal district under section 6.054 of the Tax Code (RQ-0335-KP)

S U M M A R Y

Section 6.054 of the Tax Code prohibits an individual who is an officer of a taxing unit that participates in an appraisal district from being employed by the appraisal district. The position of school board trustee is an office within the scope of section 6.054. Thus, an employee of an appraisal district may not serve as a trustee of an independent school district that is a participating taxing entity in the appraisal district.

Opinion No. KP-0330

The Honorable Wiley B. McAfee

33rd & 424th Judicial District Attorney

Post Office Box 725

Llano, Texas 78643

Re: Method for calculating the percentage of judicial functions a county judge performs for purposes of determining entitlement to a salary supplement under section 26.006 of the Government Code (RQ-0336-KP)

S U M M A R Y

Subsection 26.006(a) of the Government Code authorizes a county judge to obtain an annual salary supplement if at least forty percent of the functions that the judge performs are judicial functions. The Legislature did not specify a method for how to calculate the percentage of judicial functions performed by the county judge. Therefore, we cannot conclude as a matter of law that the salary supplement is available only to those judges who spend at least forty percent of their time on judicial functions, nor can we conclude that it is only available when the number of judicial functions performed as a percentage of the total number of functions performed is equal to or greater than forty percent. Given the broad nature of subsection 26.006(a), a court could conclude that either method of calculation is appropriate.

The Legislature authorized the State Auditor, upon legislative directive, to audit or investigate any entity receiving funds from the State. The State Auditor may therefore investigate an allegation that an affidavit submitted by a county judge incorrectly claims that forty percent of his or her functions are judicial.

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

TRD-202003515
Lesley French
General Counsel
Office of the Attorney General
Filed: August 25, 2020

♦ ♦ ♦

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

TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING

SUBCHAPTER A. APPLICATION PROCEDURES

16 TAC §33.5

The Texas Alcoholic Beverage Commission (TABC) adopts on an emergency basis amended §33.5 in response to COVID-19. As authorized by Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency adoption is to support the Governor's proclamation, originally issued on March 13, 2020 and extended on July 10, 2020, certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In the proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Emergency Rule modifying the qualifications for a Food and Beverage Certificate.

The emergency amendments to §33.5 would enable retailers who sell alcoholic beverages for on-premises consumption to more easily qualify for a food and beverage certificate. The amendments remove some of the more difficult and costly requirements for qualification for the food and beverage certificate so that these businesses can qualify without making major changes to their business models or investing in expensive equipment. Making the food and beverage certificate available to more businesses encourages them to operate in a manner more akin to a restaurant, serving food as well as beverages.

Many establishments that would have otherwise remained shuttered will be able to reopen and operate in a safe manner due to these amendments. This result will not only help mitigate the economic crisis in the State of Texas resulting from the COVID-19 disaster, it will also protect the welfare of thousands of members of the regulated industry and their employees who rely upon the income from these establishments to support themselves and their families. Without the option offered by this rule amendment, many of these establishments will be forced to close permanently within the next 30 days. Thus, the commission finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice.

STATUTORY AUTHORITY

The emergency rule is adopted under Government Code §2001.034 and Alcoholic Beverage Code §5.31. Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Alcoholic Beverage Code §5.31 authorizes the Alcoholic Beverage Commission to prescribe and publish rules necessary to carry out the provisions of the Code.

This emergency rulemaking does not affect any other rules or statutes.

§33.5. Food and Beverage Certificates.

(a) This rule relates to §§25.13, 28.18, 32.23 and 69.16 of the Texas Alcoholic Beverage Code.

(b) Each applicant for an original or renewal food and beverage certificate shall include all information required by the commission to ensure [~~insure~~] compliance with all applicable statutes and rules. Further, each applicant for an original or renewal food and beverage certificate shall comply with all applicable executive orders of the Governor and all minimum standard health protocols in the Governor's Open Texas Checklist for restaurants.

(c) Application for the certificate shall be upon forms prescribed by the commission.

(d) The biennial certificate fee for each location is $200.00 and must be submitted in the form of a cashier's check, U.S. postal money order, or company check made payable to the Texas Alcoholic Beverage Commission. A certificate expires upon expiration or cancellation of the primary permit or license. No prorated certificate fees will be given and no refunds made for issuance of the food and beverage certificate for less than two years.

(e) The following words and terms, when used in this section, shall have the following meaning unless the context clearly indicates otherwise:

(1) Food service--the cooking, preparing, serving, or assembling of food on the location. [~~primarily for consumption at the location.~~] Commercially pre-packaged items purchased off of the location [~~which require no cooking or assembly~~] do [~~not~~] constitute food service under this section.

(2) Entree--main dish or course of a meal.

(3) Food service facilities--a designated permanent portion of the licensed location [, ~~including commercial cooking equipment,~~] where food is stored and/or prepared [~~primarily~~] for consumption at the location.

(4) Premise--the designated area at a location that is licensed by the commission for the sale, service or delivery of alcoholic beverages.

(5) Location--the designated physical address of a premise, but also including all areas at that address where the permit or license holder may sell, serve or deliver alcoholic beverages for immediate consumption at the address, regardless of whether some of those areas are occupied by other businesses, as long as those businesses are contiguous.

(f) An applicant is qualified for a food and beverage certificate if the following conditions, in addition to other requirements, are satisfied:

(1) multiple entrees are available to customers; and

(2) permanent food service facilities are maintained at the location.

(g) The hours of operation for sale and service of food and of alcoholic beverages are the same except that food may be sold or served before or after the legal hours for sale of alcoholic beverages.

(h) If the applicant is a hotel that maintains separate area restaurants, lounges or bars, food service facilities must exist for each of the designated licensed premises.

(i) An applicant for an original food and beverage certificate shall furnish the following, as well as any other information requested by the commission to ensure compliance:

(1) the menu or, if no menu is available, a listing of the food and beverage items;

(2) hours of operation of food service and hours of operation for sale or service of alcoholic beverages;

(3) sales data (including complimentary drinks, as recorded pursuant to subsection (n)(3)) or, if not available, a projection of sales. The sales data or projection of sales should include sufficient breakdown of revenues of food, alcoholic beverages and all other [~~major~~] sales categories *(e.g.* tickets, merchandise, retail goods, etc.) at the location; and

~~[(4) listing of commercial cooking equipment used in the preparation and service of food; and]~~

(4) [~~(5)~~] copies of floor plans of the location indicating the licensed premise and permanent areas devoted [~~primarily~~] to food service [~~the preparation and service of food~~].

(j) Applicants for renewal of food and beverage certificates shall submit sales data described in subsection (n). The commission may request additional information or documentation to indicate that the licensed location has permanent food service facilities for the preparation and service of multiple entrees.

(k) The commission may review the operation at the location to determine that food service with food service facilities for the preparation and service of multiple entrees is maintained. In doing so the commission may review such items as required in the original or renewal application as well as advertising, promotional items, changes in operations or hours, changes in floor plans, [~~prominence of food items on the menu as compared to alcoholic beverages,~~] name of the business at the location, [~~number of transactions with food components,~~] copies of city or county permits or certificates relating to the type of business operation, and any other item deemed necessary or applicable.

(l) Failure to provide documentation requested or accurately maintain required records is prima facie evidence of non-compliance.

(m) In verifying that food service is being maintained at the location, the commission may examine all books, papers, records, documents, supplies and equipment of the certificate holder.

(n) The following recordkeeping requirements apply to certificate holders:

(1) records must be maintained to reflect separate totals for alcoholic beverage sales or service, food sales, and all other [~~major~~] sales categories at the location;

(2) purchase invoices must be maintained to reflect the total purchases of alcoholic beverages, food and other major purchase categories at the location;

(3) complimentary alcoholic beverages must be recorded and included in the total alcoholic beverage sales as if they were sold and clearly marked as being complimentary; and

(4) all records must be maintained for four years and made available to authorized representatives of the commission upon reasonable request.

(o) In considering alcoholic beverage sales, the dollar value of complimentary drinks shall be added to total sales or service of alcoholic beverages in determining the percentage of alcoholic beverage sales or service on the licensed premises.

(p) In determining the permanent food service facilities requirement under subsection (f)(2), the gross receipts of all business entities sharing the location [~~(as identified in the original or a supplemental application)~~] will be considered. For audit purposes, it shall be the responsibility of the food and beverage certificate holder to provide financial and accounting records related to food, alcohol, and other [~~major~~] sales categories of all business entities sharing the location. For audit purposes, if such information that is provided is deemed insufficient to determine if a permit or license holder qualifies for issuance of a food and beverage certificate at the location, the computation and determination of the percentage of alcohol sales or service fees to total gross receipts at the licensed location may be based upon any available records of information.

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

Filed with the Office of the Secretary of State on August 25, 2020.

TRD-202003511
Shana Horton
Rules Attorney
Texas Alcoholic Beverage Commission
Effective date: August 25, 2020
Expiration date: December 22, 2020
For further information, please call: (512) 206-3451

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §1.15

The Texas Higher Education Coordinating Board (Board) adopts on an emergency basis in Title 19 Texas Administrative Code, Part 1, Chapter 1 Agency Administration, new subsection §1.15(b) to authorize the Commissioner of Higher Education to make adjustments to reporting requirements pertaining to formula funding as necessary to assist institutions of higher education (IHEs) in responding to the COVID-19 pandemic or other disasters. As authorized by Texas Government Code §2001.034, the Board may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation, and subsequent proclamations, certifying that COVID-19 poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses continue providing essential services. During this unprecedented and continually evolving global pandemic and public health crisis, the Board has had to made numerous adjustments to the regulation, reporting, and permissible operational conditions for IHEs in order to allow them best meet the needs of students and ensure continued access to quality education. During this crisis, IHEs began providing mostly or wholly online education essentially overnight in an attempt to limit the spread of COVID-19 while continuing to educate students. As IHEs look toward the upcoming the academic school year, it is imperative that IHEs have the maximum amount of flexibility in the delivery of instruction through various modalities and through needed modifications to their operations to ensure instruction can safely continue for students, staff, and faculty. Amending Rule 1.15 to add a new subsection (b) authorizing the Commissioner of Higher Education to make exceptions or modifications to certain reporting requirements pertaining to formula funding, otherwise consistent with statutory limitations, will ensure IHEs can continue delivering education in the safest method possible without jeopardizing funding that they would otherwise receive if they were providing in person instruction. This rule will allow the Commissioner of Higher Education to provide greater flexibility in applying the Board's rules which might otherwise penalize an institution for moving to online instruction. Such revisions will be reflected in the reporting instructions that the Board provides to each IHE. The rule provides that the Commissioner will report any exceptions or modifications to the Board at its next meeting. This rule is adopted on an emergency basis because the IHEs need this flexibility immediately as they report students in attendance in the summer session and modify or finalize fall planning for student instruction even as the conditions of the pandemic evolve daily. Texas IHEs have suffered devastating financial losses due to the pandemic and this rule will allow them to make sound fiscal and health planning decisions for the upcoming school year.

The emergency rulemaking is adopted under Texas Government Code §2001.034 and Texas Education Code §§61.028(a), 61.059. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Education Code §61.028(a) authorizes the Board to delegate to the Commissioner of Higher Education duties specified by the Board. Education Code §61.059 provides for a system of formula funding and provides requirements and limitations on that funding.

§1.15. Authority of the Commissioner to Propose Board Rules and Grant Certain Emergency Exceptions.

(a) The Board authorizes the Commissioner to approve proposed Board rules for publication in the *Texas Register*. The Commissioner may refer proposed rules for consideration by Coordinating Board committees established pursuant to §1.5 of this title (relating to Coordinating Board Committees) or for consideration by the Board.

(b) During a period for which the Governor has declared a disaster pursuant to Ch. 418 of the Government Code, the Commissioner may grant exceptions, or otherwise modify, the formula funding reporting provisions set out in rule for institutions of higher education within the declared disaster area as necessary to mitigate the impact of the disaster. The Commissioner shall report to the Board any exceptions or modifications made pursuant to this rule at the next meeting of the Board.

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

Filed with the Office of the Secretary of State on August 26, 2020.

TRD-202003560
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 26, 2020
Expiration date: December 23, 2020
For further information, please call: (512) 427-6548

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 108. PROFESSIONAL CONDUCT
SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.7

The State Board of Dental Examiners (Board) adopts on an emergency basis an amendment to 22 TAC §108.7, in response to the COVID-19 disaster declaration. The amendment is being made pursuant to Executive Order GA 19, and dictates the minimum standards for safe practice during the COVID-19 disaster.

This rule is adopted on an emergency basis due to the imminent peril to the public health, safety and welfare caused by failure to adhere to the minimum standards for safe practice during the COVID-19 pandemic.

The amended definitions are applicable only for purposes of the COVID-19 disaster declaration and shall only remain effective until the COVID-19 disaster declaration is terminated.

The emergency rule amendment is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

In addition, the emergency rule amendment is adopted on an emergency basis pursuant to Texas Government Code §2001.034, which authorizes the adoption of a rule on an emergency basis without prior notice and comment based upon a determination of imminent peril to the public health, safety or welfare.

The statutes affected by this rule: Dental Practice Act, Chapters 251 and 263, Texas Occupations Code.

§108.7. Minimum Standard of Care, General.

Each dentist shall:

(1) conduct his/her practice in a manner consistent with that of a reasonable and prudent dentist under the same or similar circumstances;

(2) maintain patient records that meet the requirements set forth in §108.8 of this title (relating to Records of the Dentist);

(3) maintain and review an initial medical history and perform a limited physical evaluation for all dental patients;

(A) The medical history shall include, but shall not necessarily be limited to, known allergies to drugs, serious illness, current medications, previous hospitalizations and significant surgery, and a review of the physiologic systems obtained by patient history. A "check list," for consistency, may be utilized in obtaining initial information. The dentist shall review the medical history with the patient at any time a reasonable and prudent dentist would do so under the same or similar circumstances.

(B) The limited physical examination shall include, but shall not necessarily be limited to, measurement of blood pressure and pulse/heart rate. Blood pressure and pulse/heart rate measurements are not required to be taken on any patient twelve (12) years of age or younger, unless the patient's medical condition or history indicate such a need.

(4) obtain and review an updated medical history and limited physical evaluation when a reasonable and prudent dentist would do so under the same or similar circumstances. At a minimum, a medical history and limited physical evaluation should be obtained and reviewed at the initial appointment and updated annually;

(5) for office emergencies:

(A) maintain a positive pressure breathing apparatus including oxygen which shall be in working order;

(B) maintain other emergency equipment and/or currently dated drugs as a reasonable and prudent dentist with the same or similar training and experience under the same or similar circumstances would maintain;

(C) provide training to dental office personnel in emergency procedures which shall include, but not necessarily be limited to, basic cardiac life support, inspection and utilization of emergency equipment in the dental office, and office procedures to be followed in the event of an emergency as determined by a reasonable and prudent dentist under the same or similar circumstances; and

(D) shall adhere to generally accepted protocols and/or standards of care for management of complications and emergencies;

(6) successfully complete a current course in basic cardiopulmonary resuscitation given or approved by either the American Heart Association or the American Red Cross;

(7) maintain a written informed consent signed by the patient, or a parent or legal guardian of the patient, if the patient is a minor, or the patient has been adjudicated incompetent to manage the patient's personal affairs. A signed, written informed consent is required for all treatment plans and procedures where a reasonable possibility of complications from the treatment planned or a procedure exists, or the treatment plans and procedures involve risks or hazards that could influence a reasonable person in making a decision to give or withhold consent. Such consents must disclose any and all complications, risks and hazards;

(8) safeguard patients against avoidable infections as required by this chapter;

(9) not be negligent in the provision of dental services;

(10) use proper diligence in the dentist's practice;

(11) maintain a centralized inventory of drugs;

(12) report patient death or hospitalization as required by this chapter;

(13) abide by sanitation requirements as required by this chapter;

(14) abide by patient abandonment requirements as required by this chapter;

(15) abide by requirements concerning notification of discontinuance of practice as required by this chapter; and

(16) conduct his/her practice according to the minimum standards for safe practice during the COVID-19 disaster pursuant to the Centers for Disease Control Guidelines and the following guidelines:

(A) Before dental treatment begins:

(i) each dental office shall create COVID-19 procedures and provide dental health care personnel (DHCP) training regarding the COVID-19 office procedures. These procedures must include the pre-schedule screening protocol, in office screening protocol for patients and DHCP, office's transmission-based infection control precautions, as well as protocol to be implemented if DHCP suspects an exposure to COVID-19;

(ii) DHCP experiencing influenza-like-illness (ILI) (fever with either cough or sore throat, muscle aches) should not report to work;

(iii) DHCP who are of older age, have a pre-existing, medically compromised condition, pregnant, etc., are perceived to be at a higher risk of contracting COVID-19 from contact with known or suspected COVID-19 patients. Providers who do not fall into these categories (older age; presence of chronic medical conditions, including immunocompromising conditions; pregnancy) may be prioritized to provide care;

(iv) all DHCP should self-monitor by remaining alert to any respiratory symptoms (e.g., cough, shortness of breath, sore throat) and check their temperature twice a day, regardless of the presence of other symptoms consistent with a COVID-19 infection;

(v) contact your local health department immediately if you suspect a patient has COVID-19, to prevent transmission to DHCP or other patients;

(vi) remove magazines, reading materials, toys and other objects that may be touched by others and which are not easily disinfected;

(vii) place signage in the dental office for instructing staff and patients on standard recommendations for respiratory hygiene/cough etiquette and social distancing;

(viii) develop and utilize an office protocol to screen all patients by phone before scheduling and during patient confirmation prior to appointment;

(ix) schedule appointments apart enough to minimize possible contact with other patients in the waiting room;

(x) notify patients that they may not bring a companion to their appointment, unless the patient requires assistance (e.g., pediatric patients, special needs patients, elderly patients, etc.). Patient companions should also be screened for signs and symptoms of COVID- 19 during patient check-in.

(B) During dental care:

(i) perform in office screening protocol which must include a temperature check, upon patient arrival;

(ii) DHCP shall adhere to standard precautions, which include but are not limited to: hand hygiene, use of personal protective equipment (PPE), respiratory hygiene/etiquette, sharps safety, safe injection practices, sterile instruments and devices, clean and disinfected environmental surfaces;

(iii) DHCP shall implement Transmission-Based Precautions, including N-95 respirator masks, KN-95 masks, or their substantial equivalent for all DHCP who will be within six (6) feet of any and all procedures likely to involve aerosols;

(iv) DHCP shall adhere to the standard sequence of donning and doffing of PPE;

(C) Clinical technique:

(i) Patients should perform a pre-procedure rinse, if medically safe;

(ii) Reduce aerosol production as much as possible, as the transmission of COVID-19 seems to occur via droplets or aerosols, DHCP may prioritize the use of hand instrumentation;

(iii) DHCP should use dental isolation if an aerosol-producing procedure is being performed to help minimize aerosol or spatter.

(D) After dental care is provided:

(i) instruct patients to contact the office if they experience COVID-19 symptoms within 14 days after the dental appointment;

(ii) DHCPs should remove PPE before returning home.

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

Filed with the Office of the Secretary of State on August 24, 2020.

TRD-202003504

Casey Nichols
General Counsel
State Board of Dental Examiners
Effective date: August 25, 2020
Expiration date: December 22, 2020
For further information, please call: (512) 305-9380

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PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

CHAPTER 133. LICENSING
SUBCHAPTER G. EXAMINATIONS

22 TAC §133.67

The Texas Board of Professional Engineers and Land Surveyors (TBPELS) hereby adopts an emergency rule amendment to Texas Administrative Code (TAC) Title 22, Part 6, Chapter 133, Subchapter G, amending §133.67, concerning Examination of the Principles and Practice of Engineering. This emergency rule is implemented as a result of the Governor's declaration of a statewide emergency over the coronavirus (COVID-19). This rule provides a four consecutive year timeframe to successfully pass the examination. The purpose of the emergency rule is to extend the examination deadline by one year for applicants for licensure as a professional engineer in Texas who have been unable to take the Principles and Practice of Engineering examination as a result of examination cancelations due to the COVID-19 pandemic.

The TBPELS finds that the state of emergency presents imminent peril to public health, safety and welfare that requires the adoption of this emergency rule upon less than 30 days' notice. Engineers have a vital role in addressing public health as well as the COVID-19 pandemic from the design of personal protective equipment to the construction of facilities to house COVID-19 patients. By removing a barrier to licensure, extending the deadline for examination may result in more licensed professional engineers who may be able to address the COVID-19 pandemic in Texas.

The emergency rule will have no adverse economic effect on micro-businesses, small businesses or rural communities because the rule only affects exam availability for applicants for licensure as professional engineers in Texas. The emergency rule does not affect operations of any small or micro-business and should not have an impact on rural communities that differs from any other part of the state. The emergency rule does not affect any local economy within the state.

The emergency rule does not impose a cost on regulated persons, including other state agencies, special districts, or local governments because the rule merely extends an examination deadline for applicants for licensure as professional engineers in Texas.

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

The emergency rule is adopted pursuant to Texas Occupations Code §§1001.201and 1001.202, which authorize the Board to

regulate engineering and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. It is also adopted under Texas Occupations Code section 1001.2721, which allows the Board to develop and administer examinations. This emergency rule is adopted without prior notice or hearing pursuant to Texas Government Code §2001.034.

No other statute, articles, or codes are affected by the amended rule.

§133.67. Examination on the Principles and Practice of Engineering.

(a) - (e) (No change.)

(f) Emergency Rule for Extension of Exam Deadline. Applicants approved to take the examination on the principles and practice of engineering as of August 20, 2020, will have a one year extension to the exam deadline as set out in subsections (b)(4) and (5) of this section.

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

Filed with the Office of the Secretary of State on August 20, 2020.

TRD-202003433
Lance Kinney
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Effective date: August 20, 2020
Expiration date: December 17, 2020
For further information, please call: (512) 440-3080

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PART 9. TEXAS MEDICAL BOARD

CHAPTER 174. TELEMEDICINE
SUBCHAPTER A. TELEMEDICINE

22 TAC §174.5

The Texas Medical Board is renewing the effectiveness of emergency amended §174.5 for a 60-day period. The text of the emergency rule was originally published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4598).

Filed with the Office of the Secretary of State on August 24, 2020.

TRD-202003493
Scott Freshour
General Counsel
Texas Medical Board
Original effective date: July 5, 2020
Expiration date: November 1, 2020
For further information, please call: (512) 305-7016

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CHAPTER 190. DISCIPLINARY GUIDELINES
SUBCHAPTER B. VIOLATION GUIDELINES

22 TAC §190.8

The Texas Medical Board is renewing the effectiveness of emergency amended §190.8 for a 60-day period. The text of the emergency rule was originally published in the May 8, 2020, issue of the *Texas Register* (45 TexReg 2945).

Filed with the Office of the Secretary of State on August 27, 2020.

TRD-202003563
Scott Freshour
General Counsel
Texas Medical Board
Original effective date: May 1, 2020
Expiration date: October 27, 2020
For further information, please call: (512) 305-7016

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 500. COVID-19 EMERGENCY HEALTH CARE FACILITY LICENSING
SUBCHAPTER A. HOSPITALS

26 TAC §500.3

The Health and Human Services Commission is renewing the effectiveness of emergency new §500.3 for a 60-day period. The text of the emergency rule was originally published in the May 8, 2020, issue of the *Texas Register* (45 TexReg 2949).

Filed with the Office of the Secretary of State on August 20, 2020.

TRD-202003426
Karen Ray
Chief Counsel
Health and Human Services Commission
Original effective date: April 23, 2020
Expiration date: October 19, 2020
For further information, please call: (512) 834-4591

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SUBCHAPTER D. CHEMICAL DEPENDENCY TREATMENT FACILITIES

26 TAC §500.43, §500.44

The Health and Human Services Commission is renewing the effectiveness of emergency new §500.43 and §500.44 for a 60-day period. The text of the emergency rule was originally published in the May 8, 2020, issue of the *Texas Register* (45 TexReg 2949).

Filed with the Office of the Secretary of State on August 26, 2020.

TRD-202003550
Karen Ray
Chief Counsel
Health and Human Services Commission
Original effective date: April 29, 2020
Expiration date: October 25, 2020
For further information, please call: (512) 834-4591

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SUBCHAPTER E. LICENSED CHEMICAL DEPENDENCY COUNSELORS

26 TAC §500.51

The Health and Human Services Commission is renewing the effectiveness of emergency new §500.51 for a 60-day period. The text of the emergency rule was originally published in the May 8, 2020, issue of the *Texas Register* (45 TexReg 2950).

Filed with the Office of the Secretary of State on August 26, 2020.

TRD-202003551
Karen Ray
Chief Counsel
Health and Human Services Commission
Original effective date: April 29, 2020
Expiration date: October 25, 2020
For further information, please call: (512) 834-4591

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 9. INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

SUBCHAPTER D. HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

40 TAC §9.199, §9.299

The Executive Commissioner of the Health and Human Services Commission (HHSC or Commission) adopts on an emergency basis in Title 40, Part 1, Texas Administrative Code, Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities, new §9.199 and §9.299, concerning emergency rules in response to COVID-19. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of these Emergency Rules for Program Provider Response to COVID-19 and HCS Provider Response to COVID-19 -- Limited Visitation for a Level 1 Residence Provider.

To protect individuals receiving Home and Community-based Services (HCS) and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting emergency rules to reduce the risk of spreading COVID-19 to individuals in the HCS program. These new rules describe the requirements HCS program providers must immediately put into place and the requirements they must follow for visitation and day habilitation. The rules also identify changes to HHSC survey procedures in response to the COVID-19 pandemic.

STATUTORY AUTHORITY

The emergency rules are adopted under Texas Government Code §§2001.034, 531.0055 and 531.021 and Human Resources Code §32.021. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by HHSC. Texas Government Code §531.021 provides HHSC with the authority to administer federal Medicaid funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program. Texas Human Resources Code §32.021 provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new sections implement Texas Government Code §531.0055, Texas Government Code §531.021 and Human Resources Code §32.021.

§9.199. Program Provider Response to COVID-19 Emergency Rule.

(a) Based on state law and federal guidance, HHSC finds COVID-19 to be a health and safety risk and requires a program provider to take the following measures. The screening required by this section does not apply to emergency services personnel entering the residence in an emergency situation.

(b) In this section:

(1) Provider of essential services means a person who provides a service that is necessary to ensure the health and safety of an individual and can include a service provider, a physician, an employee or contractor of a local intellectual and developmental disability authority (LIDDA), local mental health authority (LMHA), or hospice organization.

(2) Persons with legal authority to enter include law enforcement officers, representatives of Disability Rights Texas, and government personnel performing their official duties.

(3) Persons providing critical assistance include providers of essential services, persons with legal authority to enter, and family members or friends of individuals providing compassionate care.

(4) Residence means a host home/companion care, three-person, or four-person residence, as defined by the HCS Billing Guidelines, unless otherwise specified.

(5) Probable case of COVID-19 means a case that meets the clinical criteria for epidemiologic evidence as defined and posted by the Council of State and Territorial Epidemiologists.

(c) Screening requirements.

(1) A program provider must implement and document screening of visitors, individuals, and staff and prohibit entry of a person who has:

(A) fever, defined as a temperature of 100.4 Fahrenheit or above, or other signs or symptoms of a respiratory infection, such as cough, shortness of breath, or sore throat;

(B) other signs or symptoms of COVID-19, including chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea;

(C) any other signs and symptoms identified by the Centers for Disease Control and Prevention (CDC) in Symptoms or Coronavirus at cdc.gov;

(D) contact in the last 14 days, unless to provide critical assistance, with someone who has a confirmed diagnosis of COVID-19, is under investigation for COVID-19, or is ill with a respiratory illness; or

(E) engaged in international travel within the last 14 days.

(2) A program provider must not prohibit government personnel performing their official duty from entering the residence unless the person meets the above screening criteria.

(3) A program provider must not prohibit an individual who lives in the residence from entering the residence even if the individual meets any of the screening criteria.

(d) Communication.

(1) Program providers must contact their local health department, or the Department of State Health Services (DSHS) if there is no local health department, if the program provider knows an individual has COVID-19.

(2) Within 24 hours of becoming aware of an individual or staff member with confirmed COVID-19, a program provider must notify HHSC via encrypted or secure email to waiversurvey.certification@hhsc.state.tx.us. If a program provider is not able to send a secure or encrypted email, the program provider should notify HHSC by emailing waiversurvey.certification@hhsc.state.tx.us. A program provider is not required to provide identifying information of a staff member to HHSC when reporting a positive COVID-19 test result, and must comply with applicable law regarding patient privacy. A program provider must comply with any additional HHSC monitoring requests.

(3) A program provider must notify an individual's legally authorized representative (LAR) if the individual is confirmed to have COVID-19 or if the presence of COVID-19 is confirmed in the residence.

(4) A program provider must notify any individual who lives in the residence, and his or her LAR, if the program provider is aware of probable or confirmed cases among program provider staff or individuals living in the same residence.

(5) A program provider must not release personally identifying information regarding confirmed or probable cases.

(e) Infection Control.

(1) A program provider must develop and implement an infection control policy that:

(A) prescribes a cleaning and disinfecting schedule for the residence, including high-touch areas and any equipment used to care for more than one individual;

(B) is updated to reflect current CDC or DSHS guidance; and

(C) is revised if a shortcoming is identified.

(2) A program provider must provide training to service providers on the infection control policy initially and upon updates.

(3) A program provider must educate staff and individuals on infection prevention, including hand hygiene, social distancing, the use of personal protective equipment (PPE) and cloth face coverings, and cough etiquette.

(4) A program provider must encourage social distancing, defined as maintaining six feet of separation between persons and avoiding physical contact.

(5) A program provider must require staff to wear a mask or cloth face covering over both the nose and mouth if not providing care to an individual with COVID-19, or appropriate PPE as defined by CDC if providing care to an individual with COVID-19. For individuals who rely on lip reading or facial cues for communication needs, service providers may use face masks with a clear screen over the mouth or temporarily remove it during communication. Service providers should maintain social distance.

(6) Provider staff who have confirmed or probable COVID-19 may not provide services to individuals, except that:

(A) a host home/companion care provider may provide services to an individual who has also tested positive for COVID-19; or

(B) live-in staff providing supervised living services may provide services to an individual who has also tested positive for COVID-19 in accordance with §9.174(a)(37).

(7) A program provider must monitor the health status of a staff person providing services under paragraph (6) of this subsection to verify that the staff person continues to be able to deliver services. If the staff person's condition worsens, the program provider must activate the service back-up plan to ensure the individual receives services.

(8) A program provider must isolate individuals with confirmed or probable COVID-19 within the residence if possible. If individuals cannot be isolated within the residence, the program provider must convene the service planning team to identify alternative residential arrangements.

(9) A program provider must screen individuals for signs or symptoms of COVID-19 at least twice a day.

(f) A program provider must update the emergency plan developed in accordance with §9.178(d) of this subchapter (relating to Certification Principles: Quality Assurance) to address COVID-19. The updated plan must include:

(1) plans for maintaining infection control procedures and supplies of PPE during evacuation;

(2) a list of locations and alternate locations for evacuation both for individuals with confirmed or probable COVID-19 and for others; and

(3) a list of supplies needed if required to shelter in place, including PPE.

(g) A program provider must develop and implement a staffing policy that addresses how the program provider plans to minimize the movement of staff between health care providers and encourage communication among providers regarding COVID-19 probable and con-

firmed cases. The policy must limit sharing of staff between residences, unless doing so will result in staff shortages.

(h) A program provider may contract with a day habilitation site only if the day habilitation site agrees to comply with the most current guidance from DSHS for day habilitation sites. In addition:

(1) the program provider must facilitate and document an individual's informed decision to return to outside day habilitation, including discussion of:

(A) available options and alternatives;

(B) risks of attending day habilitation; and

(C) PPE, hygiene, and social distancing;

(2) except for individuals in host home and own home/family home settings, the program provider must ensure the availability of PPE required for the individual to safely attend day habilitation; and

(3) the program provider must include in its contract with a day habilitation site a requirement for the day habilitation site to communicate with individuals, program providers, staff, and family when the day habilitation site is aware of a probable or confirmed case of COVID-19 among day habilitation site staff or individuals. The requirement must prohibit a day habilitation site from releasing personally identifying information regarding confirmed or probable cases.

(i) Regarding meals, the program provider must:

(1) plate food and serve it to individuals rather than using communal serving bowls and shared serving utensils;

(2) ensure social distancing of at least six feet;

(3) sanitize the meal preparation and dining areas before and after meals; and

(4) encourage individuals to practice hand hygiene before and after meals.

(j) If a service provider at a host home or a staff member at a respite or CFC PAS/HAB setting has confirmed or probable COVID-19, the service provider or staff member must discontinue providing services until eligible to return to work in accordance with the CDC guidance document, "Criteria for Return to Work for Healthcare Personnel with Suspected or Confirmed COVID-19." The program provider must activate the back-up service plan.

(k) A program provider may conduct the annual inspection required by §9.178(c) of this subchapter by video conference. A program provider must conduct an on-site inspection required by §9.178(c) within 30 days of the expiration or repeal of the public health emergency.

(l) A program provider must develop a safety plan for a four-person residence if the annual fire marshal inspection required by §9.178(e)(3)(A) of this subchapter is expired and document attempts to obtain the fire marshal inspection. The safety plan should require:

(1) verification that fire extinguishers are fully charged;

(2) a schedule for fire watches and plan to increase fire drills if the residence does not have a sprinkler system installed or monitored fire panel;

(3) verification of staff training on the needs of the individual in the event of an emergency; and

(4) verification that emergency plans are updated to reflect needs as listed in paragraph (3) of this subsection.

(m) The program provider must train an individual on the risks of leaving and encourage isolation of the individual to the extent possible upon return. The individual must be screened upon return in accordance with subsection (c) of this section.

(n) Flexibilities in federal requirements granted by the Centers for Medicare and Medicaid services during the COVID-19 pandemic, including waivers under Section 1135 of the Social Security Act, activation of Appendix K amending a 1915(c) home and community-based waiver, and other federal flexibilities or waivers are applied to corresponding state certification principles for HCS. HHSC will identify and describe federal flexibilities and flexibility in corresponding state certification principles in guidance issued through HCS provider letters.

(o) If this emergency rule is more restrictive than any minimum standard relating to the Home and Community-based Services program, this emergency rule will prevail so long as this emergency rule is in effect.

(p) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority, that is more restrictive than any minimum standard relating to the Home and Community-based Services program or this emergency rule, the program provider must comply with the executive order or other direction.

§9.299. HCS Provider Response to COVID-19 -- Limited Visitation for a Level 1 Residence Provider.

(a) Applicability. This rule applies to host home/companion care and a three-person or four-person residence, unless otherwise specified.

(b) Definitions. In this section:

(1) Level 1 Residence means a residence in which no cases of COVID-19 have been confirmed among staff in at least 14 days and no active cases of COVID-19 exist among individuals and which meets the requirements in subsection (c) of this section;

(2) social distancing means maintaining a minimum of six feet between persons, avoiding gathering in groups in accordance with state and local orders, and avoiding unnecessary physical contact; and

(3) visitors means persons entering the residence for a purpose other than those defined in §9.199(b) of this subchapter (relating to Program Provider Response to COVID-19 Emergency Rule).

(c) To operate a Level 1 residence, a program provider must complete and maintain in the residence an HHSC attestation form that HHSC may request for verification, stating that:

(1) The residence meets the definition of a Level 1 residence in paragraph (b)(1) of this section;

(2) The residence has access to sufficient staff and PPE to provide essential care and services to the individuals living in the residence;

(3) The service back-up plan for host home services has been evaluated and determined to be viable at the time of review;

(4) The program provider has a plan to respond to new confirmed or probable cases of COVID-19 in the residence; and

(5) The emergency preparedness plan required by §9.178(d) of this subchapter has been updated to address COVID-19.

(d) If, at any time after the attestation form is completed, the residence no longer meets the definition of a Level 1 residence in paragraph (b)(1) of this section, the attestation is no longer in effect, and the residence must return to the visitation and activities restrictions outlined in PL 20-22. The provider must notify HHSC that the residence

no longer meets Level 1 criteria, and all Level 1 visitation must be suspended until the residence meets the criteria described in paragraph (b)(1) of this section and the provider completes a new HHSC attestation form.

(e) Allowed visit types in a Level 1 residence.

(1) A program provider may allow limited outdoor visits and indoor visits through the use of a plexiglass booth or wall. The program provider must:

(A) ensure social distancing;

(B) require all visitors to wear masks or face coverings over both the nose and mouth throughout the visit and encourage the individual to do so, if tolerated;

(C) remind visitors and individuals about social distancing and face mask or face covering requirements either verbally or with a notice posted visible to visitors or handed to them;

(D) screen all visitors in accordance with subsection §9.199(d) of this subchapter;

(E) sanitize all furniture used during the visit after use;

(F) schedule visits as necessary to allow time for sanitation between visits;

(G) require visitors and encourage individuals to perform hand hygiene before the visit and make hand hygiene supplies available; and

(H) for indoor visitation, designate space for each visit that limits the ability of visitors to interact with other individuals and limits movement through the residence.

(2) A program provider may allow window visits, in which the individual and visitor are separated by a window. If the window is open, the program provider must:

(A) require all visitors to wear masks or face coverings throughout the visit and encourage the individual to do so, if tolerated; and

(B) encourage social distancing.

(3) A program provider may allow vehicle parades, in which personal visitors drive by the residence. During a vehicle parade, the program provider must:

(A) require personal visitors to remain in their vehicles;

(B) ensure a comfortable and safe outdoor area for individuals who participate;

(C) encourage social distancing between individuals;

(D) prohibit individuals from being closer than 10 feet to the vehicles for safety reasons; and

(E) encourage individuals to wear a cloth face covering or mask, if tolerated.

(f) Level 1 visitation does not include in-room visitation.

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

Filed with the Office of the Secretary of State on August 25, 2020.

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Karen Ray
Chief Counsel
Department of Aging and Disability Services
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Expiration date: December 22, 2020
For further information, please call: (512) 438-3161

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SUBCHAPTER N. TEXAS HOME LIVING (TXHML) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

40 TAC §9.597

The Executive Commissioner of the Health and Human Services Commission (HHSC or Commission) adopts on an emergency basis in Title 40, Texas Administrative Code, Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities, new §9.597, concerning an emergency rule in response to COVID-19 in order to reduce the risk of spreading COVID-19 to individuals in the Texas Home Living program. As authorized by Texas Government Code, §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 can be effective for not longer than 120 days and can be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

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

To protect individuals receiving Texas Home Living services and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to reduce the risk of spreading COVID-19 to individuals in the Texas Home Living program. This new rule describes the requirements that Texas Home Living providers must immediately put into place and identifies changes to survey procedures in response to COVID-19.

STATUTORY AUTHORITY

The emergency rule is adopted under Texas Government Code §§2001.034, 531.0055, and 531.021 and Human Resources Code §32.021. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by HHSC. Texas Government Code §531.021 provides HHSC with the authority to administer federal Medicaid

funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program. Texas Human Resources Code §32.021 provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new section implements Texas Government Code §531.0055, Texas Government Code §531.021, and Texas Human Resources Code §32.021.

§9.597. Program Provider Response to COVID-19 Emergency Rule.

(a) Based on state law and federal guidance, HHSC finds COVID-19 to be a health and safety risk and requires a program provider to take the following measures. The screening required by this section does not apply to emergency services personnel in an emergency situation.

(b) In this section:

(1) Providers of essential services include, but are not limited to, contract doctors, contract nurses, hospice workers, and people operating under the authority of a local intellectual and developmental disability authority (LIDDA) or a local mental health authority (LMHA) whose services are necessary to ensure an individual's health and safety.

(2) Persons with legal authority to enter include, but are not limited to, law enforcement officers, representatives of Disability Rights Texas, and government personnel performing their official duties.

(3) Persons providing critical assistance include providers of essential services, persons with legal authority to enter, and family members or friends of individuals at the end of life.

(4) Probable case of COVID-19 meets the clinical criteria and epidemiologic evidence as described and posted by the Council of State and Territorial Epidemiologists.

(c) Screening requirements.

(1) A program provider must inform service providers of Centers for Disease Control and Prevention (CDC) and the Department of State Health Services (DSHS) recommendations regarding screening protocols, and at a minimum use the following screening criteria:

(A) fever, defined as a temperature of 100.4 Fahrenheit and above, or other signs or symptoms of a respiratory infection, such as cough, shortness of breath, or sore throat;

(B) signs or symptoms of COVID-19, including chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea;

(C) additional signs and symptoms as outlined by the CDC in Symptoms of Coronavirus at cdc.gov;

(D) contact in the last 14 days, unless to provide critical assistance, with someone who has a confirmed diagnosis of COVID-19, is under investigation for COVID-19, or is ill with a respiratory illness; and

(E) international travel within the last 14 days.

(2) A program provider must require service providers to notify the program provider of a fever, symptoms, or other criteria listed in paragraph (1) of this subsection prior to the start of the shift. Service providers must not provide services to an individual if they meet any of the criteria in paragraph (1) of this subsection.

(3) Service providers must screen individuals for the criteria identified in paragraph (1) of this subsection before providing services. If the individual fails screening, the service provider must not provide services and must immediately notify the program provider.

(d) Communication.

(1) A program provider must contact the local health department, or DSHS if there is no local health department, if the program provider becomes aware an individual served in the program or a staff member has COVID-19.

(2) Within 24 hours of becoming aware of an individual or staff member with confirmed COVID-19, a program provider must notify HHSC via encrypted or secure email to waiversurvey.certification@hhsc.state.tx.us. If a program provider is not able to send a secure or encrypted email, the program provider should notify HHSC by emailing waiversurvey.certification@hhsc.state.tx.us. A program provider is not required to provide identifying information of a staff member to HHSC when reporting a positive COVID-19 test result, and must comply with applicable law regarding patient privacy. A program provider must comply with any additional HHSC monitoring requests.

(3) Upon becoming aware of an individual or staff member with confirmed or probable COVID-19, a program provider must notify the following of the actual or potential presence of COVID-19, without disclosing personally identifiable information:

(A) the individual; and

(B) the legally authorized representative of the individual.

(e) Infection control.

(1) A program provider must educate staff and individuals on infection prevention, including hand hygiene, social distancing, the use of personal protective equipment (PPE) and cloth face coverings, and cough etiquette.

(2) A program provider must encourage social distancing during service delivery to the extent possible, by maintaining six feet of separation between persons and avoiding physical contact, and encourage the use of masks and gloves if more direct support is needed.

(3) A service provider with a confirmed or probable case of COVID-19 must not provide services until eligible to return to work in accordance with the CDC guidance document, "Criteria for Return to Work for Healthcare Personnel with Suspected or Confirmed COVID-19." The program provider must activate the service backup plan.

(f) Day habilitation. A program provider may contract with a day habilitation site only if the day habilitation site agrees to comply with the most current guidance from DSHS for day habilitation sites. In addition:

(1) The program provider must facilitate and document informed decision making for an individual's decision to return to outside day habilitation, including discussion of:

(A) available options and alternatives;

(B) risks of attending day habilitation; and

(C) PPE, hygiene, and social distancing.

(2) The program provider must include in its contract with a day habilitation site a requirement for the day habilitation site to communicate with individuals, program providers, staff, and family when the day habilitation site is aware of a probable or confirmed case of

COVID-19 among day habilitation site staff or individuals. The requirement must prohibit a day habilitation site from releasing personally identifying information regarding confirmed or probable cases.

(g) If this emergency rule is more restrictive than any certification principle relating to Texas Home Living, this emergency rule will prevail so long as this emergency rule is in effect.

(h) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority, that is more restrictive than this emergency rule or any certification principle relating to Texas Home Living, the Texas Home Living program provider must comply with the executive order or other direction.

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

Filed with the Office of the Secretary of State on August 24, 2020.

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Karen Ray
Chief Counsel
Department of Aging and Disability Services
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Expiration date: December 21, 2020
For further information, please call: (512) 438-3161

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

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

TITLE 1. ADMINISTRATION

PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 155. RULES OF PROCEDURE

The State Office of Administrative Hearings (SOAH) proposes amendments to the following sections of Texas Administrative Code, Title 1, Part 7, Chapter 155, Rules of Procedure: Subchapter A, §155.5 Definitions; Subchapter B, §155.51 Jurisdiction; §155.53 Request to Docket Case; Subchapter C, §155.101 Filing Documents, §155.103 Public and Confidential Information, and §155.105 Service of Documents on Parties; Subchapter E, §155.201 Representation of the Parties and §155.203 Withdrawal of Counsel; Subchapter G, §155.301 Required Form of Pleadings; Subchapter H, §155.351 Mediation; and Subchapter J, §155.501 Default Proceedings and §155.503 Dismissal Proceedings.

Background and Purpose

As part of an ongoing effort to more closely align administrative practice before SOAH with modern legal practices and standards utilized by the Texas judiciary, SOAH previously amended its Rules of Procedure in Chapter 155 to facilitate the use of electronic-filing for pleadings and other documents. As a result, eFile Texas, the state's official electronic court filing platform, was successfully implemented at SOAH on March 3, 2020, for nearly all general docket hearings.

In furtherance of this effort, SOAH now proposes certain additional amendments to the Rules of Procedure. The amendments include new definitions related to electronic filing, confidential information, and ex parte communications. Amendments to SOAH's general docket filing rules are proposed to clarify the electronic filing procedures for agencies, attorneys and unrepresented parties, require the electronic filing of exhibits where possible, and clarify and amend the procedures for the filing of confidential information. Certain other amendments are proposed to remove obsolete references to the use of fax transmissions and SOAH's legacy email service platform. Lastly, SOAH's procedural rules regarding default proceedings and dismissals are amended to provide a uniformly fair default and dismissal practice that promotes greater conformity with the Texas Rules of Civil Procedure.

Explanation of Proposed Rules

The proposed new §155.5(8) relocates the definition of "confidential information" from the current §155.103 to §155.5 and clarifies that confidential information includes information made confidential by order of the presiding judge; this change is necessary to accommodate situations where a protective order is issued making certain information submitted in a case confidential.

The proposed new §155.5(10) adds a definition for the terms "electronic filing" or "filed electronically" as used in the rules to refer to the transmission of documents to SOAH by means of eFile Texas and an electronic filing service provider.

The proposed new §155.5(11) adds a definition for "electronic filing service provider" or "EFSP" as used in the rules to define and explain the type of web portal service used for the electronic filing and service of documents.

The proposed new §155.5(12) relocates the current definition in §155.101 concerning what constitutes an acceptable "electronic signature" to the definitions in §155.5. The definition is also expanded to authorize the use of a "digital signature" consistent with how that term is defined in accordance with the rules of the Department of Information Resources in Title I, Chapter 203.1 of the Texas Administrative Code. This change allows filers to select from three separate options for electronically signing documents filed at SOAH.

The proposed new §155.5(13) adds a new definition for "electronic service" or "served electronically" to refer to when a party or a party's authorized representative serves documents electronically by means of an Electronic Filing Service Provider.

The proposed new §155.5(14) adds a definition to clarify what constitutes an ex parte communication consistent with Texas Government Code §2001.061 in consideration of current jurisprudence. The definition clarifies that certain communications are not prohibited ex parte communications, including those regarding uncontested administrative or procedural matters. The definition also prescribes the types of alternative dispute resolution proceedings in which ex parte consultations are either allowed or prohibited as required by Texas Government Code §2003.0412.

The proposed new §155.5(17) adds a definition for use of the term "filed" to provide that a document submitted by a party is not considered to have been filed at SOAH until it has been both received and accepted for filing by SOAH. This definition is consistent with operation of the eFile Texas system, and it is necessary to clarify that attempted electronic transmission of a document to SOAH does not mean that the document has been filed as part of the record of an administrative proceeding.

The proposed new §155.5(23) relocates the current definition of "personal identifier" from the current §155.103 to §155.5. The definition is also clarified to include use of personal identifiers in combination with a person's name or first initial and last name consistent with SOAH's duty to protect "sensitive personal information" in accordance with Texas Government Code §2054.1125.

The proposed new §155.5(26) adds a definition for the term "redaction" as that term is used in §155.103.

The proposed amendments to §155.51 regarding jurisdiction clarify that SOAH acquires jurisdiction over a matter after both receipt and acceptance for filing of a Request to Docket Case form. This change ensures consistency with the proposed definition of "filed" in §155.5. Language is also added stating that SOAH retains jurisdiction until it has concluded its involvement in a matter. This language is consistent with Texas Government Code, §2003.051 and is added to clarify SOAH's authority to retain continuing jurisdiction for certain post-hearing matters.

The proposed amendments to §155.53 will clarify that the current rule requiring the filing of the Request to Docket Case form with pleadings or other supporting documents describing the agency action giving rise to the case to state that such supporting documentation is required only for matters referred for a contested case hearing. Only the Request to Docket Case form is initially required for the filing of matters referred for alternative dispute resolution. This change is consistent with the proposed new §155.101(e) regarding the filing requirements for matters referred for mediation or mediator evaluation.

The proposed amendments to §155.101 regarding the filing of documents include a variety of clarifications and additions to the current filing rules. The proposed rule amendments will not substantively modify the current filing requirements for unrepresented parties who are unable to electronically file documents other than as to the fax numbers specified in §155.101. None of the proposed rule amendments will modify the current filing requirements for proceedings under the Individuals with Disabilities Education Act.

Section 155.101(a)(1) removes an exception to the filing rules that cross-references §155.103 regarding confidential information. Although there are additional requirements for filing confidential information described in §155.103, confidential documents filed in contested cases are not excepted from the general filing requirements of §155.101.

Subsections in §155.101(b)(1) are renumbered and re-labeled throughout to accommodate amendments and reorganization. This preamble will hereinafter refer to these subsections as they are identified in the proposed rule.

Section 155.101(b) proposes an additional exception from the filing general requirements of subsection (b) for documents related to matters referred to SOAH for mediation. The filing requirements for mediations are further described in the proposed new §155.101(e).

Section 155.101(b)(1) clarifies that electronic filing of documents is required, including for exhibits. Various changes to the formatting and submission requirements are also proposed. To improve the quality of electronic case records, documents filed electronically must be legible and should be in native PDF format rather than scanned "to the extent possible." With the implementation of eFile Texas, it is also now the primary responsibility of the parties to maintain service contact information for cases filed at SOAH within the file Texas system, therefore a requirement is added to clarify that parties must ensure that service contact information for the parties is complete and accurate at the time of filing. Electronically filed documents must also be properly titled within the electronic filing manager.

Cross-references to compliance with other rules pertaining to the submission of confidential information and exhibits are added in subsection (b)(1)(D) to provide notice that filers are also expected to comply with those rules. Subsection (b)(1)(D)(viii) includes language to require confidential information to be filed separately from public documents to the extent possible. This is intended as an information security measure to ensure that confidential information is properly classified within both the eFile Texas and SOAH case management systems, and to prevent the disfavored practice of unnecessarily combining public and confidential information in an effort to designate an entire submission or series of records as confidential when only certain documents or portions of documents are entitled to confidentiality protections. Similar language is included subsection (b)(1)(D)(ix) to clarify that exhibits should generally be filed separately from pleadings; this practice helps SOAH and the parties to create a more organized and useful electronic case record.

Section 155.101(b)(1)(E) is amended to remove the definition of what constitutes an electronic signature; this definition has been relocated to a new definition in §155.5.

Section 155.101(b)(1)(F) regarding the time of filing is amended to restate relevant language of Rule 21(f) of the Texas Rules of Civil Procedure, rather than referring to the requirements of by reference only.

Section 155.101(b)(1)(G) would amend current rules to require the electronic filing of any exhibits introduced at the hearing by the next business day after the hearing, unless otherwise ordered by the judge. This practice is similar to requirements imposed by the district courts in Texas and is proposed to ensure the development of a more complete and uniform electronic case record at SOAH.

Section 155.101(b)(2) pertains to filing by unrepresented parties. Amendments to this section are intended to more clearly present the various filing options available to unrepresented parties. References to the filing by fax are updated to reflect SOAH's current practice of allowing unrepresented parties to fax information directly to the SOAH office responsible for processing their case. §155.101(b)(2)(B) adds new requirements for unrepresented parties to provide their contact information, and clarifies that they must also comply with other rules pertaining to the submission of confidential information and exhibits. §155.101(b)(2)(B) is amended to clarify that the time of filing set forth in that subsection only applies to documents filed by mail, fax, or hand-delivery.

Section 155.101(b)(3) proposes to combine various new and existing requirements pertaining to most filing errors under one uniform subsection. §155.101(b)(3)(A) adds a new requirement for filers to use good faith and proper decorum in their efforts to resolve filing and service errors. §155.101(b)(3)(C) would clarify that SOAH is not responsible for user or system errors related to a filer's use of electronic filing and service. Although SOAH makes reasonable efforts to provide general information and assistance to filers to help facilitate the proper transmittal of documents to SOAH, SOAH does not own, operate, or control the eFile Texas system or any of the various electronic filing service providers available to users. As a result, filers are ultimately responsible for their own use, troubleshooting, and technical support related to electronic filing services. When filing or service errors arise, parties and their representatives should address these issues with the same courtesy required for other aspects of the administrative hearings process.

Section 155.101(b)(4) proposes to clarify that, with good cause shown, a judge may permit a party to file documents in paper

or another format. SOAH anticipates that this new provision will adequately accommodate unique situations for which electronic filing of documents is inappropriate, unduly burdensome, or impossible.

Section 155.101(c) pertaining to the filing and service of documents in Public Utility Commission cases proposes to adopt the current practice to allow service by delivery of electronic or hard copies based upon request or order of the judge.

Section 155.101(d) pertaining to the filing and service of documents in Texas Commission on Environmental Quality cases proposes to formally adopt a common practice authorized by SOAH judges and TCEQ rules, which is to require parties to serve the judge by filing the document at SOAH in accordance with §155.101(b).

Section 155.101(e) proposes new filing requirements relating to mediation to promote consistency in the record of matters referred for mediation, and to ensure that only basic public information regarding the mediation is filed. §155.101(e) states that only certain documents relating to administration of the mediation should be filed. The basic records described in this section are presumptively public, and parties are therefore prohibited from filing any confidential communications or information relating to the subject matter of the dispute. All other documents or communications related to the mediation will be exchanged confidentially among the parties and the mediator or mediation evaluator.

The proposed amendments to §155.103 are intended to update procedures regarding the treatment of confidential information in confidential/closed proceedings versus public/open proceedings, and to modify the rules to accommodate the ability of parties to electronically file confidential information. §155.103(a) is modified to describe that records of proceedings at SOAH are presumed to be open to the public, unless designated as confidential in accordance with the rule. References to the availability of information on SOAH's public website are deleted in anticipation that SOAH's current public case search system will eventually be replaced with another platform where online access to records is determined by user access rights and controls. The definitions of "confidential information" and "personal identifier" in §155.103(a) have been relocated to the definitions in §155.5.

The proposed amendments to §155.103(b) describe the special filing requirements that pertain to confidential/closed proceedings at SOAH. §155.103(b)(1) provides a listing of case-types at SOAH for which all case records are confidential and proceedings are closed to the public based on applicable confidentiality laws. While the confidential treatment of these case-types has long been acknowledged by the parties to these proceedings, SOAH has not previously codified this practice in its procedural rules. §155.103(b)(2) sets forth with particularity the special filing requirements that apply to these confidential case-types in addition to the more general filing requirements of §155.101. The proposed amendments also specify that when a document is identified as confidential, conspicuous markings may be in font that is larger than 12 point.

The proposed amendments to §155.103(c) describe the special requirements that pertain to confidential information in public/open proceedings at SOAH. §155.103(c)(1) amends the current requirement regarding the redaction of confidential information filed in public/open cases to clarify that it requires redaction of both confidential information and personal identifiers. The proposed amendment to §155.103(c)(2) will modify the factors used to determine when a party is permitted to designate an entire document as confidential in a proceeding that is open to the public. The current rule permits a party to designate entire documents as confidential based on their contention that any one of three factors applies, including that redaction would be burdensome. In practice, this rule has led to frequent misapplication of the "confidential under seal" designation without any motion for protection or order of the judge. It has also enabled parties to designate entire documents or portions of the administrative record as confidential in open cases without redaction or careful segregation of confidential information from public information. The amended rule would require that all three conditions be met in order to file unredacted confidential information, and would replace the ability of the parties to allege that redaction is burdensome with a required showing that no less restrictive means of withholding the information will protect the confidentiality interest asserted. This change would make SOAH's standards for the designation of confidential information in open cases more consistent with Rule 76a of the Texas Rules of Civil Procedure.

The proposed §155.103(c)(2)(D) would establish the procedure for a party to seek an order for the protection of confidential information submitted in a public proceeding. Protective orders are already common in many types of public proceedings at SOAH. The proposed rule would adopt uniform requirements for the handling of motions for protective orders and would make SOAH's standards for the issuance of protective orders in open cases more consistent with Rule 76a of the Texas Rules of Civil Procedure.

The proposed §155.103(c)(3) describes the additional filing requirements for confidential information filed in public/open proceedings at SOAH in addition to the requirements of §155.101. Confidential and public documents or exhibits should be separated for filing. Pages should be clearly marked as confidential. Parties required to electronically file documents in compliance with §155.101(b) must file confidential documents electronically; SOAH will no longer accept paper filings of confidential documents from agency parties, attorneys, or their representatives unless the judge has issued an order permitting that party to file documents in paper form or by another method. When filing confidential documents electronically, parties are responsible for properly designating the document as confidential within the electronic filing service provider. Unrepresented parties are permitted to file confidential documents by mail, hand-delivery, or fax, and certain additional requirements for these filings are included. Lastly, the rule clarifies that only documents filed pursuant to a protective order of the judge may be designated as "filed under seal."

The proposed §155.103(f) relates to documents presented for in camera inspection, and states that those document shall not be filed but shall be submitted in the manner specified by the judge.

The proposed §155.103(g) describes the issuance of sanctions against a party for improperly filing or offering documents that contain confidential information and personal identifiers, or for actions that result in the public disclosure of information that is confidential by law. Given the legal obligations and privacy interests associated with the handling of confidential information, parties are expected to make reasonable efforts to comply with SOAH's rules and applicable confidentiality laws. While SOAH realizes that even with reasonable diligence, filing errors or inadvertent disclosures of confidential may occur from time-to-time, sanctions are appropriate for the flagrant, careless, or repeated disregard of the safeguards required for confidential information.

The proposed amendments to §155.105 relating to service restate the methods of service from Rule 21a(a) of the Texas Rules of Civil Procedure, rather than referring to those provisions by reference. §155.105(c) regarding the service of documents through SOAH's legacy email service system is repealed, as that system is now obsolete and has now been replaced with the use of eFile Texas.

The proposed amendments to §155.201 regarding the information required for entering an appearance by an authorized representative will clarify that the filing of a notice of appearance is only required when the authorized representative is not on record as having previously entered an appearance in the matter. The amendments also replace the current requirement for representatives to provide a fax number with a requirement to provide the representative's email address. Most authorized representatives already provide an email address to SOAH in order to participate in SOAH's current email service. With the implementation of eFile Texas, it will no longer be necessary to require the fax numbers of authorized representatives, whereas the email addresses are mandatory for the filing of documents and the receipt of service. Corresponding amendments are also proposed to §155.203, regarding withdrawal of counsel, to require the email address for the substituted attorney, or the email address of the party if the party has no substitute attorney.

The proposed amendments to §155.301, regarding the required form of pleadings, will clarify that pleadings must be filed in accordance with the method and format required by §155.101. This change promotes greater consistency between §155.301, which currently describes formatting of only paper documents, and §155.101, which describes specific formatting requirements for electronically filed documents.

The proposed amendments to §155.351 regarding mediation make two clarifications with regard to communications between SOAH mediators and parties. The current rule describes only confidential, ex parte communications as between the parties and the SOAH mediation evaluator. The amendment will clarify that assigned mediator is also authorized to conduct confidential, ex parte communications with the parties.

The proposed amendments to §155.501 will establish a new practice at SOAH with respect to default proceedings in the event of a party's failure to attend an administrative hearing. The amendments are intended to promote a uniformly fair default practice that takes into consideration analogous default rules of the Texas judiciary. The amendments are also intended to more clearly distinguish a default for failure of a party to appear at the hearing from other types of defaults.

Section 155.501(a) is amended to remove current language stating that only the party with the burden of proof may move for default based on a failure of the opposing party to appear for the hearing. If strictly construed, the current rule would appear to only apply in situations where the referring agency is both the non-defaulting party and the party with the burden of proof. In practice, a potential default situation exists whenever one side of the docket fails to appear for the hearing. Moreover, which party bears the initial burden of proof at a hearing can vary depending on the applicable law. The proposed amendment would permit the non-defaulting party to move for default whenever the opposing party fails to appear without regard to which party bears the burden of proof. The proposed amendments to this section would also clarify that a motion of the non-defaulting party is required in order for the judge to proceed on a default basis.

Certain amendments are proposed to §155.501(a) and (b) in recognition that the matters asserted in a particular case may be contained in either the notice of hearing or other pleadings served on the opposing party. §155.501(b) also sets forth certain modifications to the required showing of proof in support of a motion for default proceedings.

The proposed amendments to §155.501(c) are intended to clarify the procedure for what happens in the absence of a motion for default or adequate proof by the non-defaulting party. Amendments to this subsection would also clarify that continued failure to provide the required notice of a hearing may result in dismissal of a case for want of prosecution.

The proposed amendments to §155.501(d) describe each of the three options in the event of a default. Language referring to "conditional dismissal" and "conditional remand" is eliminated. Motions for either a default proposal for decision or a default decision are amended consistent with other provisions of this section to recognize that the matters proposed to be admitted by default may be contained in either the notice of hearing or other pleadings.

The proposed amendments to §155.501(e) remove references to "conditional dismissal." The current rule was based on a presumption that SOAH loses jurisdiction in a case immediately after a dismissal is ordered; therefore, default dismissals were described as merely "conditional" in order to retain jurisdiction for a certain period of time to allow defaulting parties an opportunity to contest the dismissal. However, this construct is unnecessary based on the language of Texas Government Code §2003.051, which contemplates that SOAH continues its independent control of the case until it has "concluded its involvement in the matter." Under the proposed amendment to this subsection, SOAH's involvement is not concluded until the case is remanded to the referring agency. Remand after a dismissal would not occur until after the passage of at least 15 days from the date of dismissal unless the defaulting party files a motion for reinstatement. The disfavored practice of permitting a dismissal to become final without any further action of the judge is replaced with a more deliberative practice that requires the assigned judge to conclude SOAH's involvement in the matter based on the fact that either no motion for reinstatement of the case was made, or that a motion for reinstatement has been denied. Only after such deliberative action has been taken would remand of a matter to the referring agency occur.

The proposed amendments to §155.501(e) would also remove the ability of the judge to grant a motion to set aside a default based on their determination that reinstatement is "in the interest of justice." Instead, judges would apply the standards required for a motion to set aside a default as outlined in the proposed §155.501(h). Motions for reinstatement would be required to establish by proof or verified motion that the party had no actual notice of the hearing, that the party had no notice of the consequences of a failure to appear, or that failure to appear was due to reasonable mistake or accident. These standards are similar to those applied by the judiciary when considering grounds for reinstatement under Rule 165a of the Texas Rules of Civil Procedure.

The proposed amendment to §155.501(f) would make treatment of default proposals for decision more uniform with how any other proposal for decision or decision is handled by making such decisions subject to the current rule in §155.507. Both parties would have at least 15 days to file any exceptions, the judge would then be required to review the exceptions and determine if changes

or corrections to the proposal for decision are needed. After final issuance or adoption of the proposal for decision, the defaulting party could move for a rehearing.

The proposed amendments to §155.503 regarding dismissals would add new provisions in subsections (a) and (b) to outline the procedures for voluntary dismissal and agreed dismissal. The current rules do not address the proper procedure for these types of dismissals even though they are commonplace at SOAH. The proposed new §155.503(a) and (b) are based on analogous provisions regarding such dismissals under Rule 162 of the Texas Rules of Civil Procedure and Rule 42 of the Texas Rules of Appellate Procedure.

Fiscal Note

Public Benefit. Kristofer S. Monson, Chief Administrative Law Judge for SOAH, has determined for the first five-year period the proposed rule amendments are in effect, there will be a benefit to the general public, state agencies, attorneys, and parties appearing at SOAH because the proposed rule amendments will provide improved efficiency in the filing and service of documents filed at SOAH, improved handling of confidential records, a clearer understanding of ex parte communications, and a more uniform and fair default and dismissal practice.

Probable Economic Costs. Chief Judge Monson, has determined that for the first five-year period the proposed rule amendments are in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of the proposed rules regarding the filing and service of documents in SOAH proceedings. Any costs are also anticipated to be off-set by cost-savings and efficiencies associated with the use of eFile Texas, as costs associated with the production and filing of paper exhibits and confidential documents will be reduced or eliminated. While the proposed rules relating to treatment of confidential information may require some parties to modify their filing practices in an effort to separate or redact confidential information from public filings, these efforts are necessary to balance the presumptive right of public access to administrative case records against the careful application of confidentiality laws. Additionally, Chief Judge Monson has determined that the proposed rule amendments do not have foreseeable implications relating to the costs or revenues of state or local government.

Fiscal Impact on Small Businesses, Micro-Businesses, and Rural Communities. There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule amendments. Because the agency has determined that the proposed rule amendments will have no adverse economic effects on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and Regulatory Analysis, as provided in Government Code §2006.002, is not required.

Local Employment Impact Statement. Chief Judge Monson has determined that the proposed rule amendments will not affect the local economy so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

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

(1) The proposed rule amendments do not create or eliminate a government program.

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

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

(4) The proposed rule amendments do not require an increase or decrease in fees paid to the agency.

(5) The proposed rule amendments do not create a new regulation.

(6) The proposed rule amendments do not expand, limit, or repeal existing regulations.

(7) The proposed rule amendments do not increase the number of individuals subject to the rule's applicability.

(8) The proposed rule amendments do not positively or adversely affect this state's economy.

Takings Impact Assessment. Chief Judge Monson has determined that the proposed rule amendments will not affect private real property interests, therefore SOAH is not required to prepare a takings impact assessment under Government Code §2007.043.

Submission of Comments

Written comments on the proposed rules may be submitted to Angela Pardo, State Office of Administrative Hearings, P.O. Box 13025, Austin, Texas 78711-3025 or by email to: questions@soah.texas.gov with the subject line "E-Filing Rules." The deadline for receipt of comments is 5:00 p.m. on October 4, 2020. All requests for a public hearing on the proposed rules, submitted under the Administrative Procedure Act, must be received by the State Office of Administrative Hearings no more than fifteen (15) days after the notice of proposed rules have been published in the *Texas Register.*

SUBCHAPTER A. GENERAL

1 TAC §155.5

Statutory Authority

The rule amendments are proposed under: (i) Texas Government Code §2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH; (ii) Texas Government Code §2003.0412, which requires the Chief Administrative Law Judge to adopt rules that prescribe the types of alternative dispute resolution procedures in which ex parte consultations are prohibited and the types of alternative dispute resolution procedures in which ex parte consultations are allowed (iii) Texas Government Code §2003.055, which provides that the Chief Administrative Law Judge shall develop and implement the effective use of technological solutions to improve the agency's ability to perform its functions; and (vi) Texas Government Code §2001.004, which requires the adoption of rules of practice setting forth the nature and requirements of formal and informal procedures under the Administrative Procedures Act.

Cross Reference to Statute

The proposed new rule affects Chapters 2001 and 2003 of the Texas Government Code.

§155.5. Definitions.

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

(1) Administrative law judge or judge--An individual appointed to serve as a presiding officer by SOAH's chief judge under Tex. Gov't Code Chapter 2003.

(2) Alternative Dispute Resolution or ADR--Processes used at SOAH to resolve disputes outside or in connection with contested cases, including mediation, mini-trials, early neutral evaluation, and arbitration.

(3) APA--The Administrative Procedure Act, Tex. Gov't Code Chapter 2001.

(4) Arbitration--A form of ADR, governed by an agreement between the parties or special rules or statutes providing for the process in which a third-party neutral issues a decision after a streamlined and simplified hearing. Arbitrations may be binding or non-binding, depending on the agreement, statutes, or rules. See Chapters 156 and 163 of this title for procedural rules specifically governing the arbitration of certain nursing home and assisted living facility enforcement cases referred by the Texas Department of Aging and Disability Services.

(5) Authorized representative--An attorney authorized to practice law in the State of Texas or, if authorized by applicable law, a non-attorney designated by a party to represent the party.

(6) Business day--A weekday on which state offices are open.

(7) Chief Judge--The chief administrative law judge of SOAH.

(8) Confidential Information--confidential information includes:

(A) information made confidential by law;

(B) information otherwise protected from disclosure by law or order of the presiding judge; and

(C) documents submitted in camera, solely for the purpose of obtaining a ruling on the discoverability or admissibility of such documents.

(9) [~~(8)~~] Discovery--The process of compulsory disclosure by a party, upon another party's request, of information, including facts and documents, relating to a contested case.

(10) Electronic filing or filed electronically--The electronic transmission of documents filed in a contested case referred to SOAH by uploading the documents to the case docket using the electronic filing manager, eFileTexas.gov, established by the Office of Court Administration and an electronic filing service provider certified by the Office of Court Administration.

(11) Electronic Filing Service Provider or EFSP--An online web portal service offered by an independent third-party provider for use in electronically filing documents at SOAH and judicial courts of record, and acts as the intermediary between the filer and the eFileTexas.gov system. Filers must create an account with an EFSP that is certified by the Office of Court Administration in order to electronically file documents at SOAH. A list of EFSP's that have met the requirements for certification by the Office of Court Administration is available www.efiletexas.gov.

(12) Electronic signature or signed electronically--An electronic version of a person's signature that is the legal equivalent of the person's handwritten signature, unless the document is required to be notarized or sworn. Electronic signature formats include:

(A) an "/s/" and the person's name typed in the space where the signature would otherwise appear;

(B) an electronic graphical image or scanned image of the signature; or

(C) a "digital signature" based on accepted public key infrastructure technology that guarantees the signers identity and data integrity.

(13) Electronic service or served electronically--The electronic transmission of documents filed in a matter referred to SOAH to a party or a party's authorized representative by means of an Electronic Filing Service Provider.

(14) Ex Parte Communication--Direct or indirect communication between a state agency, person, or representative of those entities and the presiding judge or other SOAH hearings personnel in connection with an issue of law or fact in a contested case or arbitration under SOAH's jurisdiction where the other known parties to the proceeding do not have notice of the communication and an opportunity to participate. Ex parte communication does not include:

(A) communication where the parties to the proceeding have notice of the communication and an opportunity to participate;

(B) communication concerning uncontested administrative or uncontested procedural matters;

(C) consultation between the presiding judge and other SOAH judges or hearings personnel;

(D) consultation between the presiding judge and SOAH legal counsel or another disinterested expert on the law applicable to a proceeding before the judge;

(E) ex parte communications required for the disposition of an ex parte matter or otherwise expressly authorized by law; and

(F) communications between a state agency, party, person, or representative of those entities and a SOAH mediator made in an effort to evaluate a contested matter for mediation, or to mediate or settle matters.

(15) [~~(9)~~] Evidence--Testimony and exhibits admitted into the record to prove or disprove the existence of an alleged fact.

(16) [~~(10)~~] Exhibits--Documents, records, photographs, and other forms of data compilation, regardless of media, or other tangible objects offered by a party as evidence.

(17) Filed--The receipt and acceptance for filing by SOAH's docketing department.

(18) [~~(11)~~] IDEA--The Individuals with Disabilities Education Act.

(19) [~~(12)~~] Media or media agency--A person or organization regularly engaged in news gathering or reporting, including any newspaper, radio or television station or network, news service, magazine, trade paper, professional journal, or other news reporting or news gathering entity.

(20) [~~(13)~~] Mediation--A confidential, informal dispute resolution process in which an impartial person, the mediator, facilitates communication among the parties to promote settlement, reconciliation, or understanding.

(21) [~~(14)~~] Party--A person named or admitted to participate in a case before SOAH.

(22) [~~(15)~~] Person--An individual, representative, corporation, or other entity, including a public or non-profit corporation, or an agency or instrumentality of federal, state, or local government.

(23) Personal Identifier--A "personal identifier" is information that identifies a specific individual, and that alone or in combination with the person's name or first initial and last name, is protected from unlawful use or disclosure. Personal identifiers include: Social Security numbers, taxpayer identification numbers, driver's license numbers, passport numbers, other similar government-issued personal identification numbers, bank account numbers, credit card numbers or other financial account numbers, dates of birth, full names of minors, full names of patients or clients in a health care setting, full names of persons who are victims of crimes, addresses and telephone numbers of commissioned peace officers, expunged criminal records, or records subject to a non-disclosure order issued by SOAH or a court unless allowed by law.

(24) [~~(16)~~] Pleading--A filed document that requests procedural or substantive relief, makes claims, alleges facts, makes legal argument(s), or otherwise addresses matters involved in the case.

(25) [~~(17)~~] PUC--The Public Utility Commission of Texas.

(26) Redaction --To redact information means to remove confidential references from the document.

(27) [~~(18)~~] Referring agency--A state board, commission, department, agency, or other governmental entity that refers a contested case or other matter to SOAH.

(28) [~~(19)~~] SOAH--The State Office of Administrative Hearings.

(29) [~~(20)~~] Stipulation--A binding agreement among opposing parties concerning a relevant issue or fact.

(30) [~~(21)~~] TAC--The Texas Administrative Code.

(31) [~~(22)~~] TCEQ--The Texas Commission on Environmental Quality.

(32) [~~(23)~~] TRCP--The Texas Rules of Civil Procedure. The TRCP are found on the website of the Texas Supreme Court.

(33) [~~(24)~~] TRE--The Texas Rules of Evidence. The TRE are found on the website of the Texas Supreme Court.

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 August 24, 2020.

TRD-202003465
Shane Linkous
General Counsel
State Office of Administrative Hearings
Earliest possible date of adoption: October 4, 2020
For further information, please call: (512) 936-6624

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SUBCHAPTER B. DOCKETING--FILING A CONTESTED CASE

1 TAC §155.51, §155.53

Statutory Authority

The rule amendments are proposed under: (i) Texas Government Code §2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH; (ii) Texas Government Code §2003.0412, which requires the Chief Administrative Law Judge to adopt rules that prescribe the types of alternative dispute resolution procedures in which ex parte consultations are prohibited and the types of alternative dispute resolution procedures in which ex parte consultations are allowed (iii) Texas Government Code §2003.055, which provides that the Chief Administrative Law Judge shall develop and implement the effective use of technological solutions to improve the agency's ability to perform its functions; and (vi) Texas Government Code §2001.004, which requires the adoption of rules of practice setting forth the nature and requirements of formal and informal procedures under the Administrative Procedures Act.

Cross Reference to Statute

The proposed new rule affects Chapters 2001 and 2003 of the Texas Government Code.

§155.51. Jurisdiction.

(a) Acquisition of jurisdiction. SOAH acquires jurisdiction over a case when a referring agency completes and files a Request to Docket Case form. A separate Request to Docket Case form shall be completed and filed for each case referred to SOAH.

(b) When Request to Docket Case form is considered filed. A Request to Docket Case form shall be considered filed on the date the form is received and accepted by SOAH.

(c) Commencement of time periods. A period of time established by these rules shall not begin to run until SOAH acquires jurisdiction over a case.

(d) Effect of acquisition of jurisdiction by SOAH. After SOAH acquires jurisdiction, any party may initiate discovery or move for appropriate relief, including evidentiary rulings, continuances, summary disposition, and setting of proceedings. SOAH retains jurisdiction until it has concluded its involvement in the matter.

§155.53. Request to Docket Case.

(a) [~~Documents to be filed with~~] Request to Docket Case form. A referring agency shall file with SOAH a completed Request to Docket Case form for each matter referred to SOAH. [~~and the complaint, petition, application, or other pertinent documents describing the agency action giving rise to the case.~~]

(1) For contested cases, the Request to Docket Case form shall be submitted together with the complaint, petition, application, or other pertinent documents describing the agency action giving rise to the case.

(2) For matters referred for alternative dispute resolution or mediation evaluation, the Request for ADR form may be filed without accompanying documentation.

(b) Actions to be requested. A referring agency shall request one of the following actions on the Request to Docket Case form:

(1) setting of a hearing;

(2) assignment of a judge; or

(3) an ADR process.

(c) Request for setting of hearing. If a referring agency requests a setting of hearing, SOAH will attempt to set the hearing on the date and time requested, but the setting will be based on the availability

of hearing rooms and judges. SOAH will provide the agency with the date, time, and place of the setting.

(d) Request for assignment of judge. If a referring agency requests assignment of a judge, SOAH will assign a judge to handle the case.

(e) Request for ADR. If a referring agency requests ADR, SOAH will assign a judge, mediator, or arbitrator to handle the proceeding.

(f) Refusal of Request to Docket Case form. SOAH may refuse to accept for filing a Request to Docket Case form that has not been properly referred to SOAH or that does not substantially conform to the filing procedures of this chapter [~~section~~].

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

Filed with the Office of the Secretary of State on August 24, 2020.

TRD-202003469
Shane Linkous
General Counsel
State Office of Administrative Hearings
Earliest possible date of adoption: October 4, 2020
For further information, please call: (512) 936-6624

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SUBCHAPTER C. FILING AND SERVICE OF DOCUMENTS

1 TAC §§155.101, 155.103, 155.105

Statutory Authority

The rule amendments are proposed under: (i) Texas Government Code §2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH; (ii) Texas Government Code §2003.0412, which requires the Chief Administrative Law Judge to adopt rules that prescribe the types of alternative dispute resolution procedures in which ex parte consultations are prohibited and the types of alternative dispute resolution procedures in which ex parte consultations are allowed (iii) Texas Government Code §2003.055, which provides that the Chief Administrative Law Judge shall develop and implement the effective use of technological solutions to improve the agency's ability to perform its functions; and (vi) Texas Government Code §2001.004, which requires the adoption of rules of practice setting forth the nature and requirements of formal and informal procedures under the Administrative Procedures Act.

Cross Reference to Statute

The proposed new rule affects Chapters 2001 and 2003 of the Texas Government Code.

§155.101. Filing Documents.

(a) Filing and service required.

(1) All pleadings and other documents[~~, except for confidential materials (as described in §155.103 of this title),~~] shall be filed using one of the methods described in this rule.

(2) On the same date a document is filed, it shall also be served on all other parties as described in §155.105 of this chapter [~~title~~].

(b) Method and format of filing in all cases other than PUC, TCEQ, and [~~or~~] IDEA cases, or matters referred for mediation.

(1) Electronic Filing Required.

(A) Except as otherwise provided in this subchapter, attorneys, state agencies, and other governmental entities are required to file all documents, including exhibits, electronically in the manner specified on SOAH's website, www.soah.texas.gov. SOAH may require parties to electronically file documents through the electronic filing manager established by the Office of Court Administration and an electronic filing service provider certified by the Office of Court Administration. Parties not represented by an attorney are strongly encouraged to electronically file documents but may use alternative methods of filing described in paragraph (2) of this subsection.

(B) The electronic version of a document that has been electronically filed at SOAH shall be given the same legal status as the original [~~originally filed~~] document[~~, without regard to the original means of filing~~].

(C) In addition to the other requirements of this rule, electronic filings must comply with all requirements and procedures set forth on SOAH's website and electronic filing page, and the applicable technology standards of the Judicial Committee on Information Technology if filed through the electronic filing manager established by the Office of Court Administration.

(D) Formatting and submission. A [~~pleading or other~~] document filed electronically must:

(i) be legible and in text-searchable portable document format (PDF);

(ii) be directly converted to PDF rather than scanned, to the extent possible;

(iii) not be locked;

(iv) include the email address of a party, attorney, or representative [~~of a state agency~~] who electronically files the [~~a~~] document; [~~and~~]

(v) be accompanied by the entry of complete and accurate service contact information for all parties in the electronic filing manager;

(vi) [~~(v)~~] include the SOAH docket number and the name of the case in which it is filed, if not attached to a pleading or document that already contains this information;

(vii) be properly titled or described in the electronic filing manager in a manner that permits SOAH and the parties to reasonably ascertain its contents;

(viii) if the document submitted for filing contains confidential information, comply with the requirements of §155.103 of this chapter and be submitted separately from public pleadings, exhibits, or filings to the extent possible;

(ix) if the document submitted for filing is an exhibit, comply with the requirements of §155.429 of this chapter and be submitted separately from pleadings or other filings, unless the exhibit is attached as a necessary supporting document to a pleading; and

(x) if the document submitted for filing is a motion, the motion will comply with the requirements of §155.305 of this chapter and be submitted separately from pleadings or other filings.

[~~(E) Formatting. Other documents filed electronically, such as attachments to pleadings, exhibits, affidavits, letters, and appendices, must:~~]

[(i) ~~be in PDF format and, if possible, be text-searchable;]~~

[(ii) ~~be directly converted to PDF rather than scanned, if possible;]~~

[(iii) ~~not be locked;]~~

[(iv) ~~comply with the applicable technology standards of the Judicial Committee on Information Technology if filed through the electronic filing manager established by the Office of Court Administration;]~~

[(v) ~~if not attached to a pleading or document that already contains this information, include the email address of a party, attorney, or representative of a state agency who electronically files a document; and]~~

[(vi) ~~if not attached to a pleading or document that already contains this information, include the SOAH docket number and the name of the case in which it is filed.]~~

(E) [~~(F)~~] A pleading or document that is filed electronically is considered signed if the document includes an electronic signature.[~~:~~]

[(i) ~~an "/s/" and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or]~~

[(ii) ~~an electronic image or scanned image of the signature.]~~

(F) [~~(G)~~] Time of filing. Unless a document must be filed by a certain time of day, a document is considered timely filed if it is electronically filed at any time before midnight central time on the filing deadline. Once a document has been accepted for filing by SOAH, an electronically filed document is deemed filed on the date when transmitted to the filing party's electronic filing service provider, except: [~~The time and date of documents filed electronically shall be determined in accordance with TRCP Rule 21.~~]

(i) if a document is transmitted on a Saturday, Sunday, or legal holiday, it is deemed filed on the next business day; and

(ii) if a document requires a motion and an order allowing its filing, the document is deemed filed on the date that the motion is granted.

~~[(H) If deemed necessary by SOAH, alternative means of filing or maintaining documents may be established, including the filing and maintenance of the official file in a paper format.]~~

(G) [~~(I)~~] Written testimony [~~Testimony~~] and documents or exhibits offered at a hearing shall [~~will not~~] be filed electronically not later than the next business day after the conclusion of the hearing at which they were presented, unless otherwise ordered by the judge. [~~Confidential material filed or submitted pursuant to §155.103 of this title will not be publicly available.~~]

(2) Filings by unrepresented parties.

(A) Parties who are not represented by an attorney may file documents using any of the following methods [~~For unrepresented parties who cannot file documents electronically as described in paragraph (1) of this subsection, documents may be filed with SOAH~~]:

(i) electronically, in the manner and subject to the requirements specified in paragraph (b)(1) of this subsection and on SOAH's website, www.soah.texas.gov;

(ii) [~~(i)~~] by mail addressed to SOAH at P.O. Box 13025, Austin, Texas 78711-3025;

(iii) [~~(ii)~~] by hand-delivery to SOAH at 300 West 15th Street, Room 504;

(iv) [~~(iii)~~] by fax to the appropriate SOAH office location [~~at (512)~~ 322-2061]; or

(v) [~~(iv)~~] at the SOAH field office where the case is assigned, using the field office address [~~or fax number, which are~~] available at SOAH's website.

(B) All documents filed by unrepresented parties must:

(i) include the SOAH docket number and the name of the case in which it is filed; [~~.~~]

(ii) include the party's mailing address, email address (if available), and telephone number;

(iii) comply with the requirements of §155.103 of this chapter if the document submitted for filing contains confidential information; and

(iv) comply with the requirements of §155.429 of this chapter if the document submitted for filing is an exhibit.

(C) Time of filing for documents not filed electronically. With respect to documents filed by mail, fax, or hand-delivery, the time and date of filing shall be determined by the file stamp affixed by SOAH. Documents received after 5:00 p.m. or when SOAH is closed shall be deemed filed the next business day [~~SOAH is open~~].

(3) Filing Errors.

(A) Filers shall attempt, in good faith, to resolve filing and service errors in accordance with requisite standards of conduct and decorum towards counsel, opposing parties, the judge, and members of SOAH staff, including through timely correction and resubmission of any non-conforming documents.

(B) Non-conforming documents. SOAH's docketing department may not refuse to file a document that fails to conform with this rule. When a filed document fails to conform to this rule, the presiding judge or SOAH's docketing department may identify the errors to be corrected and state a deadline for the person, attorney, or agency to resubmit the document in conforming format.

(C) SOAH shall not be responsible for user or system errors of the filing party occurring in the electronic filing, transmission, or service of electronically filed documents.

(D) [~~(4)~~] Technical failure. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from the presiding judge. If the missed deadline is one imposed by SOAH's electronic filing rules, the filing party must be given a reasonable extension of time to complete the filing.

(4) For good cause, a judge may permit a party to file documents in paper or another acceptable form in a particular case.

(c) Method of filing in cases referred by the PUC.

(1) Except for exhibits offered at a prehearing conference or hearing, the original of all documents shall be filed at the PUC in accordance with the PUC rules.

(2) The party filing a document with the PUC (except documents provided in the discovery process that are not the subject of motions filed in a discovery dispute) shall serve the judge with electronic or hard copies of the document upon request or order of the judge [~~a copy of the document by delivery to SOAH on the same day as the filing~~].

(3) The court reporter shall provide the transcript and exhibits to the judge at the same time the transcript is provided to the requesting party. SOAH shall maintain the transcript and exhibits until they are released to the PUC by the judge. If no court reporter was requested by a party, SOAH shall maintain the recording of the hearing and the exhibits until they are released to the PUC by the judge.

(d) Method [~~Methods~~] of filing in cases referred by the TCEQ.

(1) Except for exhibits offered at a prehearing conference or hearing, the original of all documents shall be filed with the TCEQ's chief clerk in accordance with the TCEQ rules.

(2) The time and date of filing of these materials shall be determined by the file stamp affixed by the chief clerk, or as evidenced by the file stamp affixed to the document or envelope by the TCEQ mail room, whichever is earlier.

(3) The party filing a document with the TCEQ (except documents provided in the discovery process that are not the subject of motions filed in a discovery dispute) shall serve the judge with a copy of the document by delivery to SOAH on the same day as the filing by electronically filing the document in accordance with the method and format required by subsection (b) of this section.

(4) The court reporter shall provide the transcript and exhibits to the judge at the time the transcript is provided to the requesting party. SOAH shall maintain the transcript and exhibits until they are released to the TCEQ by the judge. If no court reporter was requested by a party, SOAH shall maintain the recording of the hearing and the exhibits until they are released to the TCEQ by the judge.

(e) Method of filing in matters referred for mediation or mediator evaluation.

(1) Documents or communications relating to matters referred for mediation, or for evaluation by a mediator to determine if mediation is appropriate, shall not be filed with SOAH's docketing department, except to the extent the following items are required for SOAH's administration of alternative dispute resolution procedures:

(A) A request for ADR as described in §155.53 of this chapter, if the matter is initially referred for mediation only;

(B) An order of the judge referring a case for evaluation or mediation, if the matter was initially referred for a contested case hearing;

(C) Any letter or notice issued by a SOAH mediator, providing the parties with notice of assignment of a SOAH mediator and/or setting the date and time for the evaluation or mediation;

(D) Any motion or other request of the parties seeking cancellation of the evaluation or mediation;

(E) The mediator's report, which shall include only the information as described in §155.351(f)(2) of this chapter;

(F) The evaluator's written recommendation described in §155.351(b)(3) of this chapter; and

(G) Any administrative dismissal of the matter from SOAH's docket.

(2) Documents filed with SOAH's docketing department as described in paragraph (1) of this subsection are subject to public disclosure, and shall not contain any confidential information relating to the subject matter of the dispute.

(3) All other documents or communications relating to the mediation or evaluation, except those described in paragraph (1) of this subsection, must be provided to the SOAH mediator and/or exchanged between the parties in a manner approved by the SOAH mediator.

§155.103. [~~Public and~~] Confidential Information.

(a) Records filed as part of a contested case proceeding at SOAH are presumed to be open to the public unless designated as confidential in accordance with this rule. [~~Documents filed in proceedings at SOAH are accessible to the public through SOAH's website unless the proceeding is designated as confidential by SOAH or the documents are designated as confidential pursuant to this rule.~~] A party filing or offering documents that contain confidential information and personal identifiers shall comply with this rule to prevent inadvertent public disclosure of such documents.

[~~(1) For purposes of this chapter, confidential information includes:~~]

[~~(A) information made confidential by law;~~]

[~~(B) information otherwise protected from disclosure by law; and~~]

[~~(C) documents filed *in camera,* solely for the purpose of obtaining a ruling on the discoverability or admissibility of such documents.~~]

[~~(2) A "personal identifier" is information that identifies a specific individual. Personal identifiers include: Social Security numbers, taxpayer identification numbers, driver's license numbers, passport numbers, other similar government-issued personal identification numbers, bank account numbers, credit card numbers or other financial account numbers, dates of birth, full names of minors, full names of patients or clients in a health care setting, full names of persons who are victims of crimes, addresses and telephone numbers of commissioned peace officers, expunged criminal records, or records subject to a non-disclosure order issued by a court unless allowed by law.~~]

(b) Documents filed in confidential cases.

(1) Confidential cases. The records of certain contested case proceedings at SOAH are designated as confidential and closed to the public because of the necessity to comply with applicable confidentiality laws. Confidential proceedings include, but are not limited to:

(A) Tax proceedings subject to Tex. Gov't Code, §2003.104 referred by the Comptroller of Public Accounts;

(B) License suspension proceedings referred by the Child Support Division of the Office of the Attorney General;

(C) Child abuse and neglect central registry proceedings referred by the Health and Human Services Commission;

(D) Proceedings involving public retirement system benefits;

(E) Workers' compensation benefits proceedings referred by the Texas Department of Insurance, Division of Workers' Compensation; and

(F) Proceedings related to a petition for correction of a peace officer separation report referred by the Texas Commission on Law Enforcement, unless the petitioner resigned or was terminated due to substantiated incidents of excessive force or violations of law other than traffic offenses.

(2) Filing documents in confidential cases. In addition to the requirements of §155.101 of this chapter, documents filed in confidential cases shall be submitted for filing as follows:

(A) Each page of the document shall be conspicuously marked "CONFIDENTIAL" in bold print, 12-point or larger type.

(B) Attorneys, state agencies, and other governmental entities required to electronically file documents in the manner specified by §155.101 of this chapter shall designate all such documents as "confidential" within the party's electronic filing service provider.

(C) Unless otherwise permitted by order of the presiding judge, only unrepresented parties may file documents in confidential proceedings by mail, hand-delivery, or fax, If filed by mail, fax, or hand-delivery, documents submitted for filing shall be accompanied by an explanatory cover letter that includes:

(i) the docket number and style of the case;

(ii) the filing party's name, address, email address (if available), and telephone number; and

(iii) conspicuous markings identifying the filing as "CONFIDENTIAL" in bold print, 12-point or larger type.

(c) Confidential information filed in public cases.

(1) [~~(b)~~] Redaction required. A person who files documents at SOAH in proceedings designated as open [~~accessible~~] to the public, including exhibits [~~offered at hearing~~], shall redact from the documents all confidential information and personal identifiers that are unnecessary for resolution of the case. A party may not file an unredacted [~~entire~~] document containing [~~as~~] confidential information or personal identifiers ~~and non-public~~] in a proceeding that is open to the public except as provided in subsection (c)(2) of this section.

(2) [~~(c)~~] Confidential documents necessary for resolution of the case. A party may designate an entire document or exhibit as confidential in a proceeding that is open to the public only if:

[~~(1)~~] [~~A party may designate an entire document or exhibit as confidential and non-public only if:~~]

(A) the entire document or exhibit contains confidential information or includes [~~is a~~] personal identifiers [~~identifier~~];

(B) redaction of the document or exhibit would remove confidential information or personal identifiers necessary to the resolution of the case; and [~~or~~]

(C) no less restrictive means other than withholding the information from public disclosure will adequately or effectively protect the specific confidentiality interest asserted [~~it would be unduly burdensome to redact confidential information or personal identifiers from the document or exhibit~~].

(D) A party may file a motion seeking an order for the protection of confidential information to be filed in a proceeding that is open to the public. Such motion should state with particularity:

(i) the identity of the movant and a brief, but specific description of the nature of the case and the records which are sought to be protected;

(ii) the applicable law or regulation requiring or authorizing the specific information at issue to be protected from public disclosure; and

(iii) any stipulation of the parties with respect to the use or disclosure of confidential information.

(3) [~~(2)~~] Filing confidential documents. In addition to the requirements of §155.101 of this chapter, a [~~A~~] party filing confidential documents in a proceeding accessible to the public shall submit documents for filing as follows: [~~must file them by delivery in a sealed and labeled package, accompanied by an explanatory cover letter. The cover letter shall identify the docket number and style of the case and shall explain the nature of the sealed materials. The outside of the package shall identify the docket number, style of the case, and name of the submitting party and shall be marked "CONFIDENTIAL" in bold print at least one inch in size. Each page of the confidential document shall be marked "CONFIDENTIAL" in bold print, 12-point type.~~]

(A) A party shall separate confidential documents or exhibits from non-confidential documents or exhibits at the time the records are submitted for filing. A party may not designate an entire series of documents or exhibits as confidential for purposes of filing if only a part of the records contains confidential information or personal identifiers.

(B) Each page of the document containing confidential information or personal identifiers shall be conspicuously marked "CONFIDENTIAL" in bold print, 12-point or larger type.

(C) Attorneys, state agencies, and other governmental entities required to electronically file documents in the manner specified by § 155.101 of this chapter shall designate all such documents as "confidential" within the party's electronic filing service provider.

(D) Unless otherwise permitted by order of the presiding judge, only unrepresented parties my file documents in confidential proceedings by mail, hand-delivery, or fax. If filed by mail, fax, or hand-delivery, documents submitted for filing shall be accompanied by an explanatory cover letter that includes:

(i) the docket number and style of the case;

(ii) the filing party's name, address, email address (if available), and telephone number; and

(iii) conspicuous markings identifying the filing as "CONFIDENTIAL" in bold print, 12-point or larger type.

(E) Documents filed pursuant to a protective order issued by the judge may be designated as "CONFIDENTIAL, FILED UNDER SEAL" in bold print, 12-point or larger type.

(d) Challenging confidentiality designations. A party may file a motion to challenge the redaction or confidential filing of any information, or the judge can raise the issue. If a confidentiality designation is challenged, the designating party has the burden of showing that the document should remain confidential.

(1) If the judge determines that a confidential filing under subsection (c) of this section is appropriate, the judge may allow the filing to remain inaccessible to the public on SOAH's website, admit the information into the evidentiary record under seal, or employ appropriate protective measures.

(2) If the judge determines that a confidential filing under subsection (c) is not appropriate, the offering party must redact the confidential information or the personal identifiers before resubmitting the document.

(e) Designation of a document as confidential in a SOAH proceeding is not determinative of whether that document would be subject to disclosure under Tex. Gov't Code Chapter 552 or other applicable law.

(f) In Camera Inspection. Documents presented for in camera inspection solely for the purpose of obtaining a ruling on their discoverability or admissibility shall not be filed, but shall be submitted only in the manner specified by the judge.

(g) Sanctions. The judge may issue an order imposing sanctions in the manner described in §155.157 of this chapter for the actions of a party in improperly filing or offering documents that contain con-

fidential information and personal identifiers, or for actions that result in the public disclosure of information that is confidential by law.

[(f) Documents in non-public cases. Certain SOAH proceedings are designated confidential. Hearings in those cases are not open to the public, and filings in these cases are not accessible through SOAH's public website.]

§155.105. Service of Documents on Parties.

(a) Method of service by parties in all cases other than those referred by PUC or TCEQ.

(1) Service on all parties. On the same date a document is filed, a copy shall also be sent to each party or the party's authorized representative [using the method of service] in the manner specified by this section [TRCP Rule 21a]. By order, the judge may exempt a party from serving certain documents or materials on all parties.

(A) Documents Filed Electronically. A document filed electronically in accordance with §155.101(b) of this chapter must be served electronically through the electronic filing manager if the email address of the party or attorney to be served is on file with the electronic filing manager. It is the responsibility of the parties to the case to ensure that all service contact information entered in the electronic filing manager is complete and accurate. If the email address of the party or attorney to be served is not on file with the electronic filing manager, the document may be served on that party or attorney under subparagraph (B) of this paragraph.

(B) Documents Not Filed Electronically. A document not filed electronically may be served in person, by mail, by commercial delivery service, by fax, by email, or by such other manner as directed by the judge.

(2) Certificate of service. A person filing a document shall include a certificate of service that certifies compliance with this section.

(A) A certificate of service shall be sufficient if it substantially complies with the following example: "Certificate of Service: I certify that on {date}, a true and correct copy of this {name of document} has been sent to {name of opposing party or authorized representative for the opposing party} by {specify method of delivery, e.g., electronic filing, regular mail, fax, certified mail.} {Signature} "

(B) If a filing does not certify service, SOAH may:

(i) return the filing;

(ii) send a notice of noncompliance to all parties, stating the filing will not be considered until all parties have been served; or

(iii) send a copy of the filing to all parties.

(3) Exemption. By order, the judge may exempt a party from serving certain documents or materials on all parties, unless such service is required by applicable law.

(4) [(3)] Presumed time of receipt of served documents. The following rebuttable presumptions shall apply regarding a party's receipt of documents served by another party:

(A) If a document was hand-delivered to a party, the judge shall presume that the document was received on the date of filing at SOAH.

(B) If a document was served by use of an electronic filing service or a commercial delivery service, the judge shall presume that the document was received no later than the next business day after filing at SOAH.

(C) If a document was served by mail, the judge shall presume that it was received no later than three days after mailing.

(D) If a document was served by fax or email before 5:00 p.m. on a business day, the judge shall presume that the document was received on that day; otherwise, the judge shall presume that the document was received on the next business day.

(5) [(4)] Burden on sender. The sender has the burden of proving date and time of service.

(b) Method of service by parties in all cases referred by PUC or TCEQ. The procedural rules of the PUC and TCEQ govern the parties' service of documents in cases referred by those agencies.

[(c) Service of SOAH-issued documents by email. Parties may be served all SOAH-issued orders, proposals for decision, decisions, and other SOAH-issued documents in each case to which the requestor is a party, by subscribing to SOAH's email service, subject to the following:]

[(1) Parties must access SOAH's public website, enter the link "Request Email Service," and submit a completed consent form "Request to be Served by E-mail."]

[(2) Parties requesting to be served SOAH-issued documents by email shall thereafter be served SOAH-issued documents only by email and shall no longer receive paper copies or any other form of service of such documents. Service of SOAH-issued documents by email applies to all SOAH dockets to which the requestor is a party.]

[(3) Parties who request service of SOAH-issued documents by email waive any right to confidentiality of their email address, which is added to the public service list for each SOAH docket to which the requestor is a party and is viewable on SOAH's public website.]

[(4) Parties requesting to be served SOAH-issued documents by email shall:]

[(A) maintain a current email address and provide that email address to SOAH through the consent form "Request to be Served by E-mail";]

[(B) notify SOAH of any change to their email address in writing; and]

[(C) ensure that email filters and settings allow the delivery of emails from SOAH.]

[(5) Parties may rescind the election to be served SOAH-issued documents by email, but the rescission will not be effective until communicated to SOAH and all other parties in writing.]

[(6) Service of SOAH-issued documents by email is not available for SOAH's non-public cases.]

[(7) Requesting and consenting to service by email of SOAH-issued documents does not affect a party's duties to serve other parties with filings at SOAH as described in this subchapter.]

[(8) SOAH reserves the right to discontinue the provision of email service as described in this subsection and replace such service with the use of the electronic filing manager established by the Office of Court Administration.]

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

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SUBCHAPTER E. REPRESENTATION OF PARTIES

1 TAC §155.201, §155.203

Statutory Authority

The rule amendments are proposed under: (i) Texas Government Code §2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH; (ii) Texas Government Code §2003.0412, which requires the Chief Administrative Law Judge to adopt rules that prescribe the types of alternative dispute resolution procedures in which ex parte consultations are prohibited and the types of alternative dispute resolution procedures in which ex parte consultations are allowed (iii) Texas Government Code §2003.055, which provides that the Chief Administrative Law Judge shall develop and implement the effective use of technological solutions to improve the agency's ability to perform its functions; and (vi) Texas Government Code §2001.004, which requires the adoption of rules of practice setting forth the nature and requirements of formal and informal procedures under the Administrative Procedures Act.

Cross Reference to Statute

The proposed new rule affects Chapters 2001 and 2003 of the Texas Government Code.

§155.201. Representation of Parties.

(a) Representation. A party may represent himself or herself or may appear by authorized representative. Parties that are not represented by an attorney may obtain information regarding contested case hearings on SOAH's public website at www.soah.texas.gov.

(b) Appearance by authorized representative. A party's authorized representative who has not entered an appearance as a matter of record in the proceeding shall enter an appearance by filing with SOAH appropriate documentation that contains the representative's mailing address, email address and telephone number [~~and fax numbers~~]. If the party's representative is not licensed to practice law in Texas and the authority of the representative is challenged, the representative must show authority to appear as the party's representative.

(c) Nonresident attorney. An attorney who is a resident of and licensed to practice law in another state and who is not an active member of the State Bar of Texas shall comply with the requirements of Tex. Gov't Code §82.0361 and Rule XIX of the Rules Governing Admission to the Bar of Texas before entering an appearance on behalf of a party at SOAH. Rule XIX may be found on the website of the Board of Law Examiners.

(d) Attorney in charge. When more than one attorney makes an appearance on behalf of a party, the attorney whose signature first appears on the initial pleading for a party shall be the attorney in charge for that party unless another attorney is specifically designated in writing. Unless otherwise ordered by the judge, all communications sent by SOAH or other parties regarding the matter shall be sent to the attorney in charge.

(e) This rule does not allow a person to engage in the unauthorized practice of law.

§155.203. Withdrawal of Counsel.

(a) An attorney may withdraw from representing a party only if a written motion showing good cause for withdrawal is filed by the withdrawing attorney, the substituting attorney, or the client.

(1) If another attorney is to be substituted as attorney for the party, the motion shall state: the substituted attorney's name, address, telephone number, and email address [~~fax number~~]; that the substituting attorney has been notified of all pending settings and deadlines; and that the substituting attorney approves the substitution.

(2) If the party has no substitute attorney, the motion shall state: the party's last known address, telephone number, and email address [~~fax number~~]; that the party has been notified of all pending settings and deadlines; and whether the party consents to the withdrawal. If the party does not consent to the withdrawal, the attorney also must affirm that the party has been served with a copy of the motion and informed of the right to object to the withdrawal.

(b) A motion to withdraw must be served on all parties and must comply with §155.305(b)(2) of this chapter.

(c) An attorney will remain a party's attorney of record until a filed motion to withdraw has been granted by the judge.

(d) If the motion to withdraw is granted, the withdrawing attorney shall immediately notify the party or substitute attorney in writing of any settings or deadlines of which the attorney has knowledge at the time of the withdrawal and about which the attorney has not already notified the party or substitute attorney.

(e) A state agency may substitute one attorney for another by providing written notice to all parties and the judge without necessity for a motion or order.

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SUBCHAPTER G. PLEADINGS AND MOTIONS

1 TAC §155.301

Statutory Authority

The rule amendments are proposed under: (i) Texas Government Code §2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH; (ii) Texas Government Code §2003.0412, which requires the Chief Administrative Law Judge to adopt rules that prescribe the types of alternative dispute resolution procedures in which ex parte consultations are prohibited and the types of alternative dispute resolution procedures in which ex parte consultations are allowed (iii) Texas Government Code §2003.055, which provides that the Chief Ad-

ministrative Law Judge shall develop and implement the effective use of technological solutions to improve the agency's ability to perform its functions; and (vi) Texas Government Code §2001.004, which requires the adoption of rules of practice setting forth the nature and requirements of formal and informal procedures under the Administrative Procedures Act.

Cross Reference to Statute

The proposed new rule affects Chapters 2001 and 2003 of the Texas Government Code.

§155.301. Required Form of Pleadings.

(a) Content generally. Written requests for action in a contested case shall be typewritten or printed legibly in [~~on~~] 8-1/2 x 11 inch format [~~paper~~] and timely filed at SOAH in accordance with the method and format required by §155.101 of this chapter. [~~Photocopies are acceptable if copies are clear and legible.~~] All filings shall contain or be accompanied by the following:

(1) the name of the party seeking action;

(2) the SOAH docket number;

(3) the parties to the case and their status as petitioner or respondent;

(4) a concise statement of the type of relief, action, or order desired by the pleader and identification of the specific reasons for and facts to support the action requested;

(5) a certificate of service, as required by §155.105(a)(2) of this chapter;

(6) any other matter required by statute or rule; and

(7) the signature of the submitting party or the party's authorized representative.

(b) Amendment or supplementation of pleadings. A party may amend or supplement its pleadings as follows:

(1) As to a proceeding in which a state agency has the burden of proof and intends to rely on a section of a statute or rule not previously referenced in the notice of hearing, the agency must amend the notice of hearing not later than the seventh day before the hearing. This subsection does not prohibit the state agency from filing an amendment during the hearing provided, if requested, the opposing party is granted a continuance of at least seven days to prepare its case.

(2) As to all other matters in a pleading, an amendment or supplementation that includes information material to the substance of the hearing, requests for relief, changes to the scope of the hearing, or other matters that unfairly surprise other parties may not be filed later than seven days before the date of the hearing, except by agreement of all parties or by permission of the judge.

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SUBCHAPTER H. MEDIATION

1 TAC §155.351

Statutory Authority

The rule amendments are proposed under: (i) Texas Government Code §2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH; (ii) Texas Government Code §2003.0412, which requires the Chief Administrative Law Judge to adopt rules that prescribe the types of alternative dispute resolution procedures in which ex parte consultations are prohibited and the types of alternative dispute resolution procedures in which ex parte consultations are allowed (iii) Texas Government Code §2003.055, which provides that the Chief Administrative Law Judge shall develop and implement the effective use of technological solutions to improve the agency's ability to perform its functions; and (vi) Texas Government Code §2001.004, which requires the adoption of rules of practice setting forth the nature and requirements of formal and informal procedures under the Administrative Procedures Act.

Cross Reference to Statute

The proposed new rule affects Chapters 2001 and 2003 of the Texas Government Code.

§155.351. Mediation.

(a) Requesting mediation.

(1) A party may request mediation in writing or orally during a prehearing conference or hearing.

(2) A request for mediation must be based on a good faith belief that the parties may be able to resolve all or a portion of their dispute in mediation.

(3) A party may object to a request for mediation orally or in writing.

(4) Mediation may not be used as a delay or discovery tactic.

(5) Mediation does not stay an existing procedural schedule unless ordered by the presiding judge.

(6) A judge may refer a case to mediation without agreement of all parties.

(7) An agency may refer a case for mediation only.

(b) Evaluation for Mediation.

(1) A party may request, or the presiding judge may order, that a mediator evaluate whether a case is appropriate for mediation. The presiding judge will refer the case to the SOAH ADR Team Leader for assignment of a mediation evaluator.

(2) The mediation evaluator may conduct confidential, ex parte communications with the parties during the course of the evaluation.

(3) The mediation evaluator will make a written recommendation to the presiding judge indicating whether the case is appropriate for mediation as of the time of the evaluation. The written recommendation will be served on all parties.

(c) Referral to mediation.

(1) If a request for mediation is granted, the presiding judge will refer the case to the SOAH ADR Team Leader for assignment of a mediator, unless the parties have notified the judge that they have agreed upon a non-SOAH mediator qualified in accordance with Tex.

Civ. Prac. & Rem. Code Chapter 154 and that they will be responsible for any costs and expenses of the non-SOAH mediator.

(2) The referral order may include requirements to facilitate the mediation.

(d) Assignment of SOAH mediators.

(1) The SOAH ADR Team Leader will assign a qualified judge or judges to serve as mediator or co-mediators.

(2) A party may object to an appointed mediator. Upon a timely showing of good cause for the objection, the SOAH ADR Team Leader will appoint another qualified judge to serve as mediator or co-mediator.

(3) The appointed mediator will not serve as presiding judge in the case.

(e) Use of non-SOAH mediators.

(1) Parties who agree to retain a non-SOAH qualified mediator shall notify the presiding judge within ten days of the mediator's retention.

(A) The notice must include the name, address, and telephone number of the non-SOAH mediator selected; a statement that the parties have entered into an agreement with the mediator regarding the mediator's rate and method of compensation; and an affirmation that the mediator is qualified to serve according to Tex. Civ. Prac. & Rem. Code Chapter 154.

(B) The presiding judge shall issue an order specifying the date by which the mediation must be completed.

(2) When a presiding judge refers a TCEQ case to mediation, the mediation will be conducted by a TCEQ mediator unless a party or TCEQ's Senior Mediator requests that SOAH conduct the mediation. TCEQ enforcement cases shall not be referred to mediation except on request of the Executive Director's representative.

(f) Confidentiality of mediation.

(1) The mediator may conduct confidential, ex parte communications with the parties during the course of the mediation.

(2) [~~(1)~~] All communications in a mediation are confidential and subject to the provisions of Tex. Gov't Code §2009.054 and TRE 408.

(3) [~~(2)~~] The mediator shall not communicate about the mediation with the presiding judge except to disclose in a written report, copied to all parties, whether the parties attended the mediation, whether the matter settled, and any other stipulations or matters the parties agree to be reported.

(4) [~~(3)~~] The mediator shall not be required to testify about communications that occur in mediation or to produce documents submitted to the mediator.

(g) Agreements reached in mediation.

(1) Agreements reached by the parties in mediation shall be reduced to writing and signed by the parties before the end of the mediation, if possible.

(2) Whether an agreement signed by a governmental entity is subject to disclosure shall be determined in accordance with applicable law.

(h) Limits on mediator's authority.

(1) A mediator has no authority to order the parties to settle their dispute.

(2) A mediator has no authority to issue orders in a case referred to mediation. Deadlines in the case may be extended only by order of the presiding judge.

(i) This section does not limit the parties' ability to settle cases without mediation.

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

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SUBCHAPTER J. DISPOSITION OF CASE

1 TAC §155.501, §155.503

Statutory Authority

The rule amendments are proposed under: (i) Texas Government Code §2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH; (ii) Texas Government Code §2003.0412, which requires the Chief Administrative Law Judge to adopt rules that prescribe the types of alternative dispute resolution procedures in which ex parte consultations are prohibited and the types of alternative dispute resolution procedures in which ex parte consultations are allowed (iii) Texas Government Code §2003.055, which provides that the Chief Administrative Law Judge shall develop and implement the effective use of technological solutions to improve the agency's ability to perform its functions; and (vi) Texas Government Code §2001.004, which requires the adoption of rules of practice setting forth the nature and requirements of formal and informal procedures under the Administrative Procedures Act.

Cross Reference to Statute

The proposed new rule affects Chapters 2001 and 2003 of the Texas Government Code.

§155.501. Failure to Attend Hearing and Default Proceedings.

(a) If a party [~~who does not bear the burden of proof and to whom a notice of hearing with factual allegations is served or provided~~] fails to appear for the hearing, the opposing party [~~judge~~] may move to proceed in that party's absence on a default basis.

(b) A motion for a default proceeding under this section must be supported by [~~requires~~] adequate proof of the following:

(1) the notice of hearing included a disclosure in at least 12-point, bold-face type that the factual matters asserted [~~allegations listed~~] in the notice or pleadings could be deemed admitted and that the relief sought [~~in the notice of hearing~~] might be granted by default against the party that fails to appear at the hearing;

(2) the notice of hearing satisfies the requirements of Tex. Gov't Code, §2001.051 and §2001.052, and §155.401 of this chapter; and

(3) the notice of hearing and any pleadings sought to be admitted were [~~was~~]:

(A) issued or received by the defaulting party; or

(B) properly served [~~sent by first class or certified mail~~] to the defaulting party [~~party's~~] or their attorney [~~last known address as shown by the referring agency's records, and the referring agency's statute or rules authorize service of the notice of hearing by sending it to the party's last known address~~].

(c) In the absence of a motion for default or adequate proof to support a default, the judge shall continue the case and direct the party responsible to provide adequate notice of hearing. If the responsible party persists in failing to provide adequate notice, the judge may dismiss the case from the SOAH docket for want of prosecution [~~without prejudice to refiling~~].

(d) Upon receiving a motion for default and the required showing of proof to support a default, the judge may grant the motion and issue one of the following:

(1) Default dismissal [~~and remand~~]. In default proceedings where SOAH is not authorized by law to render a final decision in the proceeding, upon motion for default dismissal, the judge may issue an order finding adequate notice, granting a default dismissal based on facts deemed to be admitted [~~conditionally dismissing the case from the SOAH docket, and conditionally remanding the case to the referring agency for informal disposition on a default basis in accordance with Tex. Gov't Code §2001.056~~].

(2) Default proposal for decision. In default proceedings where SOAH is not authorized by law to render a final decision in the proceeding, upon motion for a default proposal for decision, the judge may deem admitted the factual matters asserted [~~allegations~~] in the notice of hearing or the non-defaulting party's pleadings and issue a proposal for decision.

(3) Default decision. In default proceedings where SOAH is authorized by law to render a final determination in the proceeding, upon motion for a default decision, the judge may deem admitted the factual matters asserted [~~allegations~~] in the notice of hearing or the non-defaulting party's pleadings and issue a default decision.

(e) Default dismissals [~~and remands~~].

(1) An [~~A conditional~~] order of default dismissal [~~and remand~~] issued under subsection (d)(1) of this section shall inform the party of the opportunity to have the default set aside under this subsection by filing an adequate motion no later than 15 days after the issuance of the [~~conditional~~] order of default dismissal [~~and remand~~].

(2) If a motion to set aside a default dismissal is filed within 15 days after the issuance of an [~~a conditional~~] order of default dismissal [~~and remand~~], the judge will rule on the motion and either:

(A) grant the motion, set aside the default, and reopen the hearing for good cause shown [~~or in the interests of justice~~]; or

(B) issue an order denying [~~deny~~] the motion and [~~issue a final order of dismissal and~~] remand the case to the referring agency for informal disposition on a default basis in accordance with Tex. Gov't Code §2001.056.

(3) In the absence of a timely motion to set aside a default, the case will be remanded to the referring agency for informal disposition on a default basis in accordance with Tex. Gov't Code §2001.056 after the expiration of 15 days from the date of the [~~a conditional~~] order of default dismissal [~~and remand shall become final on the sixteenth day after its issuance without further action by the judge~~].

(4) Dismissal under this section removes the case from the SOAH docket without a decision on the merits.

(f) Default proposals for decision.

[~~(1)~~] A default proposal for decision issued under subsection (d)(2) of this section is subject to §155.507 of this chapter. [~~shall inform the party of the opportunity to have the default set aside under this subsection by filing an adequate motion no later than 15 days after the issuance of the default proposal for decision.~~]

[~~(2) If a motion to set aside a default is filed within 15 days after the issuance of a default proposal for decision, the judge may grant the motion, set aside the default, and reopen the hearing for good cause shown or in the interests of justice~~].

(g) Default decisions.

(1) Default decisions are subject to motions for rehearing as provided for in the APA.

(2) A default decision issued under subsection (d)(3) of this section shall inform the party of the opportunity to have the default set aside by filing a motion for rehearing under Tex. Gov't Code Chapter 2001, Subchapter F.

(h) Motions to Set Aside Default.

(1) A motion set aside default under this section shall set forth the grounds for reinstatement or rehearing and must be supported by affidavit of the movant or their attorney that:

(A) the party had no notice of the hearing;

(B) the party had no notice of the consequences for failure to appear; or

(C) although the party had notice, its failure to appear was not intentional or the result of conscious indifference, but due to reasonable mistake or accident that can be supported by adequate proof; and

(D) a statement of whether the motion is opposed, and if the motion is opposed, a list of dates and time for a hearing on the motion that are agreeable to both parties.

(2) Whether or not the motion is opposed, the judge may rule on the motion without setting a hearing or may set a hearing to consider the motion. If the judge finds good cause for the defaulting party's failure to appear, the judge shall vacate the default and reset the case for a hearing.

§155.503. Dismissal [~~Proceedings~~].

(a) Voluntary dismissal or non-suit.

(1) At any time before the date set by the judge for close of the record, the party that bears the burden of proof may move to dismiss a case or take a non-suit. Notice of the dismissal or non-suit shall be served on all parties in accordance with §155.105 of this chapter.

(2) Upon filing of a motion to dismiss or take a non-suit, the judge shall promptly dismiss the case from SOAH's docket, unless such disposition would prevent a party from seeking relief to which it would otherwise be entitled.

(3) Any dismissal under this subsection shall have no effect on any motion for sanctions or costs pending at the time of dismissal, as determined by the judge.

(b) Agreed dismissal; settlement.

(1) At any time before the date set by the judge for close of the record, the parties may jointly move to dismiss a case in accordance with the agreement of the parties. Such motion shall be signed by the parties or their attorneys and filed with SOAH or entered on the record

at the hearing or prehearing conference in accordance with §155.415 of this chapter.

(2) In accordance with an agreement of the parties, a severable portion of the proceeding may be disposed of under paragraph (1) of this subsection if it will not prejudice the proceedings as to any remaining parties.

(3) Upon filing or entering on the record of an agreed motion to dismiss, the judge shall promptly dismiss the case from SOAH's docket, or otherwise release any dismissed parties unless otherwise ordered by the judge in accordance with paragraph (2) of this subsection.

(c) [~~(a)~~] Failure to prosecute.

(1) A contested case may be dismissed in whole or in part for want of prosecution if the party seeking affirmative relief fails to prosecute the case in accordance with a requirement of statute, rule, or order of the judge. The order of dismissal shall:

~~(A) fails to appear for a hearing of which the party had notice; or~~

~~(B) fails to prosecute the case in accordance with a requirement of statute, rule, or order of the judge.~~

~~(2) The judge may dismiss the case by issuing a conditional order of dismissal that:~~

(A) explain [~~explains~~] the party's failure to prosecute;

(B) inform [~~informs~~] the party of an opportunity to seek reinstatement of the case [~~contest the dismissal~~]; and

(C) inform the party that the case is dismissed and will be remanded to the referring agency [~~states the order of dismissal will become final~~] unless:

(i) the party files a motion to reinstate [~~retain~~] the case on the docket not later than 15 days after the issuance of the order; and

(ii) the motion to reinstate [~~retain~~] specifies the basis [~~bases~~] for the motion and addresses the grounds for dismissal stated in the judge's order.

(2) [~~(3)~~] The judge may grant a motion to reinstate the case [~~retain in the interests of justice or~~] if the moving party shows good cause for the failure to prosecute.

(3) [~~(4)~~] In the absence of a timely motion to reinstate [~~retain~~] the case on the docket, the case will be remanded to the referring agency after the expiration of 15 days from the date of the order [~~the conditional order of dismissal shall become final on the sixteenth day after its issuance without further action by the judge~~].

(4) [~~(5)~~] Dismissal under this section removes the case from the SOAH docket without a decision on the merits.

(d) [~~(b)~~] Other Dismissal Actions.

(1) The judge may dismiss a case or a portion of the case from SOAH's docket for:

(A) lack of jurisdiction over the matter by the referring agency;

(B) lack of statute, rule, or contract authorizing SOAH to conduct the proceeding;

(C) mootness of the case;

(D) failure to state a claim for which relief can be granted;

(E) unnecessary duplication of proceedings; or

(F) abatement of the case for a period longer than 120 days. Dismissal under this subsection removes the case from the SOAH docket without prejudice to refiling. [~~withdrawal of a claim by a moving party; or~~]

[~~(G) full or partial settlement of a case.~~]

(2) The judge may issue an order in response to a party's motion or after the judge notifies the parties of an intent to dismiss a case and allows time for responses.

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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Shane Linkous
General Counsel
State Office of Administrative Hearings
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For further information, please call: (512) 936-6624

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TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 79. RESIDENTIAL MORTGAGE LOAN SERVICERS

SUBCHAPTER A. REGISTRATION

7 TAC §79.1, §79.2

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes amendments to existing rules at 7 Texas Administrative Code (TAC), Chapter 79, Subchapter A, §79.1 and §79.2. This proposal and the rules as amended by this proposal are referred to collectively as the "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 7 TAC Chapter 79 implement Finance Code, Chapter 158, Residential Mortgage Loan Servicers. The proposed rules were identified during the department's periodic review of Chapter 79, conducted pursuant to Government Code §2001.039. The proposed rules, if adopted, would make changes to modernize and update the rules including: adding and replacing existing language to improve clarity and readability; removing unnecessary provisions; updating terminology; and eliminating a form published by rule.

SUMMARY OF CHANGES

The proposed rules amend Subchapter A, Residential Mortgage Loan Servicers.

The proposed rules amend §79.1, Definitions. The proposed rules amend the implied subsection (a) to add language clarifying that the definitions are also used in the department's administration and enforcement of Finance Code, Chapter 158. The definition for commissioner at paragraph (1) is amended to clarify that the commissioner is that individual appointed under Finance

Code, Chapter 13. The definition for commissioner's designee at paragraph (2) is amended correct a minor error in grammar. The definition for the term "Nationwide Mortgage Licensing System and Registry" is amended to eliminate a definition adopted by reference to a statute unrelated to Finance Code, Chapter 158 and, instead adopt a definition set forth in the rule. The definition for person is amended to adopt by reference a statutory definition within Finance Code, Chapter 158, and reduce word count. The definition for "Act," creating a defined term for the entirety of Finance Code, Chapter 158, is amended to make it a definition for the two-word phrase "the Act," thereby organizing the definitions by alphabetical order.

The proposed rules amend §79.2, Required Disclosure. Subsection (a) is amended to combine the existing requirements of subsection (a) and (b), concerning the form and content of the required disclosure, into a single subsection. The graphic and form embedded in the rule after existing subsection (b) is eliminated. Instead, language is added to subsection (a) to state that the department will publish the form on its website. The remaining requirements of existing subsection (b), prohibiting provision of the disclosure by residential mortgage loan servicer registrants when servicing loans secured by real estate not located in Texas, are restated to improve clarity.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Florence, director of mortgage examination for the department (director), has determined that for the first five-year period the proposed rules are in effect, there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the proposed rules. The director has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue for the state or local governments as a result of administering or enforcing the proposed rules.

PUBLIC BENEFITS

The director 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 proposed rules will be to have rules that are easier to read and understand.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH THE PROPOSED RULES

The director has determined that for the first five years the proposed rules are in effect, there are no substantial economic costs anticipated to persons required to comply with the proposed rules.

ONE-FOR-ONE RULE ANALYSIS

Pursuant to Finance Code §16.002, the department is a self-directed and semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do not expand, limit, or eliminate an existing regulation (rule requirement); (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

LOCAL EMPLOYMENT IMPACT STATEMENT

No local economies are substantially affected by the rule. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

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

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons who are required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

TAKINGS IMPACT ASSESSMENT

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

PUBLIC COMMENTS

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, Associate General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

STATUTORY AUTHORITY

This proposal is made under the authority of Finance Code §158.003 which authorizes the commission to adopt rules necessary for the purposes of or to ensure compliance with Finance Code, Chapter 158.

This proposal affects the statutes contained in Finance Code, Chapter 158.

§79.1. Definitions.

As used in this chapter, and in the Department's administration and enforcement of Finance Code, Chapter 158, the following terms have the meanings indicated:

(1) "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code, Chapter 13.

(2) "Commissioner's designee" means an employee of the Department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in the Act.

(3) (No change.)

(4) "Nationwide Mortgage Licensing System and Registry" or "NMLS" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of state residential mortgage loan originators [~~has the meaning assigned by Finance Code §180.002(12)~~].

(5) "Person" has the meaning assigned by Tex. Fin. Code §158.002 [means an individual, corporation, company, limited liability company, partnership or association].

(6) "The Act" [The "Act"] means the Residential Mortgage Loan Servicer Registration Act, as provided by Tex. Fin. Code §158.001 [Finance Code, Chapter 158].

§79.2. Required Disclosure.

(a) Residential mortgage loan servicer registrants must include a written disclosure of the Department's regulatory oversight on all correspondence provided to the borrower, including all periodic statements. The disclosure must be in the current form prescribed by the Department and published on its website [For the servicing of residential mortgage loans on real estate located in Texas, pursuant to Texas Finance Code §158.101 a registrant shall provide to the borrower of each residential mortgage loan the disclosure contained in the following figure not later than the 30th day after the registrant begins servicing the loan].

(b) The requirements of this section apply only to residential mortgage loan registrants servicing residential mortgage loans secured by real estate located in Texas. Residential mortgage loan servicer registrants servicing mortgage loans secured by real estate not located in Texas must not include the written disclosure referenced by this section. [In order to let borrowers know how to file complaints with the Department, Residential Mortgage Loan Servicer registrants servicing residential mortgage loans on real estate located in Texas, must include the disclosure contained in the following figure in all correspondence provided to the borrowers. This written notice shall not be provided regarding the servicing of residential mortgage loans on real estate which is not located in Texas. Registrants servicing residential mortgage loans on real estate located in Texas, shall also post the disclosure in the following figure on their website, with a statement to reflect that such disclosure notice only applies to the residential mortgage loans on real estate located in Texas:
[Figure: 7 TAC §79.2(b)]

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 August 24, 2020.

TRD-202003486
Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: October 4, 2020
For further information, please call: (512) 475-1535

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 82. ADMINISTRATION

7 TAC §82.1, §82.2

The Finance Commission of Texas (commission) proposes amendments to §82.1 (relating to Custody of Criminal History Record Information) and §82.2 (relating to Public Information Requests; Charges) in 7 TAC, Chapter 82, concerning Administration.

In general, the purpose of the proposed amendments in 7 TAC Chapter 82 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 82 was published in the *Texas Register* on May 29, 2020 (45 TexReg 3643). The commission received no comments in response to that notice.

The OCCC distributed an early precomment draft of the proposed amendments to interested stakeholders for review, and then held a stakeholder webinar regarding the amendments. The OCCC received no informal precomments on the rule text draft.

The proposed amendments are intended to specify employees with access to criminal history information, to specify methods of sending public information request, and to use consistent terminology to refer to charges collected for public information requests.

In §82.1, a proposed amendment would remove the director of strategic communications, administration and planning from the list of employees authorized to access criminal history record information.

In §82.2, proposed amendments would clarify language on submitting public information requests and make terminology more consistent. Throughout §82.2, proposed amendments would replace current terminology such as "fee" and "cost" with "charge." These changes would make the rule more internally consistent, and more consistent with the term "charge" as used in the Texas Public Information Act, Texas Government Code, Chapter 552, as well as rules adopted by the Office of the Attorney General, such as 1 TAC §70.3 (relating to Charges for Providing Copies of Public Information). A proposed amendment would remove current §82.2(b)(3)(B), which describes requests submitted by fax and includes the OCCC's general fax number. By specifying that requests may be sent to a specified mailing address or to an email address designated by the OCCC, the rule will help ensure that any requests are promptly forwarded to the OCCC's public information officer. Proposed amendments to §82.2(e), regarding inspections of records, would clarify situations where the OCCC charges for labor or personnel time and does not charge for overhead.

Mirand Diamond, Director of Licensing and Registration, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for state or local government as a result of administering the rule amendments.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the amendments to 7 TAC Chapter 82 are in effect, the public benefits anticipated as a result of the change will be that the commission's rules will use more consistent language and will provide clearer guidance to stakeholders and OCCC staff.

There is no anticipated cost to individuals who are required to comply with the rule amendments as proposed.

The OCCC is not aware of any adverse economic effect on small businesses, micro-businesses, or rural communities resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the OCCC invites comments from interested stakeholders and the public on any economic impacts on small businesses, micro-businesses, and rural communities, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts.

During the first five years the proposal will be in effect, it will not create or eliminate a government program. Implementation of the proposal will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposal will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposal does not require an increase or decrease in fees paid to the OCCC. The proposal does not create a new regulation. The proposal does not expand or repeal an existing regulation. The proposal amends internal criminal history processes in the OCCC, and amends the means of receiving public information requests. The proposal does not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Audrey Spalding, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register.* At the conclusion of business on the 31st day after the proposal is published in the *Texas Register,* no further written comments will be considered or accepted by the commission.

The amendments are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §14.157 authorizes the commission to adopt rules governing the custody of criminal history record information obtained under Texas Finance Code, Chapter 14, Subchapter D. Texas Government Code, §552.230 authorizes governmental bodies to adopt reasonable rules of procedure under which public information may be inspected and copied.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 14.

§82.1. Custody of Criminal History Record Information.

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

(1) Commissioner--The Consumer Credit Commissioner of the State of Texas.

(2) Criminal history record information--Has the meaning provided by Texas Government Code, §411.082(2).

(3) OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(b) Use of criminal history record information. The OCCC may obtain criminal history record information under Texas Government Code, §411.095 and Texas Finance Code, Chapter 14, Subchapter D. The OCCC's use of criminal history information is limited to evaluating a person described by Texas Government Code, §411.095(a). All criminal history record information received by the OCCC is confidential and is for the exclusive use of the OCCC. The OCCC may not disclose criminal history record information except as provided by Texas Government Code, §411.095(b).

(c) Employee access. Access to criminal history record information maintained by the OCCC will be limited to the following persons:

(1) the commissioner;

(2) any assistant commissioner;

(3) any attorney employed by the OCCC or an assistant attorney general representing the interest of the OCCC;

(4) employees of the licensing section;

(5) the director of consumer protection;

(6) the public information officer;

~~[(7) the director of strategic communications, administration and planning;]~~

(7) [~~(8)~~] the human resources specialist;

(8) [~~(9)~~] any person appointed to act on behalf of or in the stead of any of the above; and

(9) [~~(10)~~] any employee of the OCCC who:

(A) requires access to criminal history record information in order to fulfill the employee's duties; and

(B) is approved by the commissioner or the director of consumer protection to view criminal history record information.

§82.2. Public Information Requests; Charges.

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

(1) Agency or OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(2) Commissioner--The Consumer Credit Commissioner of the State of Texas.

(3) Public information request--A written request made for public information pursuant to Texas Government Code, Chapter 552 (the Texas Public Information Act). Another name for a "public information request" is an "open records request," and these terms may be used synonymously.

(4) Readily available information--Public information that already exists in printed form, or information that is stored electronically, and is ready to be printed or copied without requiring any programming, but not information that is located in two or more separate buildings that are not physically connected with each other or information that is located in a remote storage facility as per Texas Government Code, §552.261.

(5) Standard paper copy--A printed impression on one side of a piece of paper that measures up to 8 1/2 inches by 14 inches. A piece of paper that is printed on both sides will be counted as two copies.

(b) Receipt of public information request.

(1) Generally. Upon receipt of a written public information request that [~~from a requesting party which~~] clearly identifies the public information [~~records~~] requested to be copied or examined pursuant to Texas Government Code, Chapter 552 (the Texas Public Information Act), the agency will make every reasonable effort to provide the information in the manner requested as quickly as possible without disruption of normal business activities. All requests will be processed in accordance with the Texas Public Information Act, and all requests will be treated equally.

(2) Requests by email directed to OCCC public information officer or designee. Public information requests submitted via

email must be sent to the OCCC's [~~designated~~] public information officer at an email address designated by the OCCC.

(3) Requests sent by mail or hand delivery [~~other methods~~]. Public information requests, other than email requests, may be submitted to the OCCC by mail or hand delivery. [~~as follows:~~]

[~~(A) By mail or hand delivery. Submit the request] to Public Information Officer, Office of Consumer Credit Commissioner, 2601 N. Lamar Blvd., Austin, TX 78705 [; or]~~

[~~(B) By fax. Submit the request to (512) 936-7610.]~~

(4) Confidential information. Information that is confidential by law will not be provided except under court order, attorney general directive, or other legal process.

(5) Charge [~~Fee~~] waiver or reduction. Charges [~~Fees~~] imposed by this section may be waived or reduced at the discretion of the commissioner as per Texas Government Code, §552.267.

(c) Copy and service charges. The cost to any person requesting copies of public information from the OCCC will be the applicable charges established by the Office of the Attorney General under 1 TAC [~~Title 1, Part 3,~~] Chapter 70 (relating to Cost of Copies of Public Information). This subsection outlines the OCCC's most common charges to produce copies of public information. These charges may be supplemented or modified as authorized by 1 TAC Chapter 70.

(1) Charges [~~Fees~~] not collected. No charge [~~fee~~] will be collected for requests resulting in charges of $5 or less.

(2) Application of charges. The following charges may apply to requests for public information:

(A) $0.10 copy charge per page if paper copies are requested;

(B) $15 per hour of labor or personnel time spent to locate (including pulling documentation from archives), compile, manipulate (including redacting mandated confidential information), reproduce, and prepare the information for delivery or inspection;

(C) 20% overhead charge, calculated by multiplying the total personnel cost under subparagraph (B) by 0.20.

(3) Certification. If certification of copies as true and accurate from the OCCC's records, or a certified statement verifying information on record with the OCCC is requested, an additional charge of $5 per certification will be added to the charges described by this subsection [~~computed fee~~]. The certification will include the signature of the commissioner, or a designated custodian of records for the information being certified, and the OCCC seal.

(4) Nonstandard copies. The charge [~~cost~~] for nonstandard copies will be determined by reference to any recommended standards promulgated by the Office of the Attorney General, 1 TAC [~~Title 1, Part 3,~~] Chapter 70 (relating to Cost of Copies of Public Information).

(5) Cost estimates.

(A) Over $40. If the anticipated charges under this subsection plus anticipated charges under subsection (d) of this section exceed $40, the agency will send an estimate outlining the estimated cost to fulfill the request as per Texas Government Code, §552.2615.

(B) Over $100. If the anticipated charges under this subsection plus anticipated charges under subsection (d) of this section exceed $100, the agency will send a cost estimate as provided in subparagraph (A) of this paragraph. In addition, the agency may require cash prepayment or bond equal to the total anticipated charges prior to providing copies of the requested information, as per Texas Government Code, §552.263.

(d) Delivery charges.

(1) U.S. mail. When public information is required to be mailed, the cost of postage will be added to the charges described by subsection (c) of this section [~~computed fee~~].

(2) Expedited delivery. When a requestor asks and the agency agrees to provide public information by overnight delivery service or other expedited delivery, the cost of the service will be added to the charges described by subsection (c) of this section, [~~computed fee~~] unless the requestor arranges to pay the delivery charges directly. The agency is not required to provide expedited delivery without payment for the service.

(e) Inspection of records.

(1) Generally. Records access for purposes of inspection will be by appointment only and will only be available during regular business hours of the agency. If the safety of any public record or the protection of confidential information is at issue, or when a request for inspection would be unduly disruptive to the ongoing business of the office, physical access may be denied and the option of receiving copies at the usual charges [~~fees~~] will be provided.

(2) Redaction of confidential information from paper records. If confidential information must be redacted prior to a requestor's inspection of paper records, $0.10 per page may be charged to prepare the inspection copies containing the remaining public information.

(3) Labor charges. The agency may assess charges for labor or personnel time, as described by subsection (c)(2) of this section, [~~Inspection of electronic information. Labor charges may be assessed~~] if production of the information requires programming or manipulation of data (including redaction). The agency will not charge overhead for an inspection where the requestor does not receive copies of documents. [~~Overhead is not charged.~~]

(4) Over $40. If a request for inspection would result in charges under Texas Government Code, §552.271 that exceed $40, the agency will send an estimate outlining the estimated cost to fulfill the request as per Texas Government Code, §552.2615.

(5) Over $100. If a request for inspection would result in charges of over $100, the agency may require a 50% cash prepayment or a bond equal to the total anticipated charges prior to providing access to the requested information, as per Texas Government Code, §552.263 and 1 TAC §70.7 (relating to Estimates and Waivers of Public Information Charges).

(f) Agency officer for public information. The commissioner or the commissioner's designee is the agency's officer for public information.

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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Audrey Spalding
Assistant General Counsel
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7659

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PART 8. JOINT FINANCIAL REGULATORY AGENCIES

CHAPTER 151. HOME EQUITY LENDING PROCEDURES

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") propose amendments to §151.1 (relating to Application for Interpretation); and propose the repeal of §151.2 (relating to Review of Request), §151.3 (relating to Initiation of Interpretation Procedure), §151.4 (relating to Notice of Proposed Interpretation), §151.5 (relating to Public Comment), §151.6 (relating to Action on Proposed Interpretation), and §151.7 (relating to Adoption of Interpretation) in 7 TAC, Chapter 151, concerning Home Equity Lending Procedures.

The rules in 7 TAC Chapter 151 govern the procedures for requesting, proposing, and adopting interpretations of the home equity lending provisions of Texas Constitution, Article XVI, Section 50 ("Section 50"). In general, the purpose of the proposed rule changes to 7 TAC Chapter 151 is to implement changes resulting from the commissions' review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 151 was published in the *Texas Register* on May 1, 2020 (45 TexReg 2897). The commissions received no comments in response to that notice.

The rules in 7 TAC Chapter 151 are administered by the Joint Financial Regulatory Agencies ("agencies"), consisting of the Texas Department of Banking, Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, and Texas Credit Union Department. The agencies distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held an online webinar regarding the proposed changes. The agencies received three informal precomments on the rule text draft. The agencies appreciate the thoughtful input provided by stakeholders.

Proposed amendments to §151.1 would amend current procedures for stakeholders to request interpretations of Section 50 from the commissions. Proposed amendments to §151.1 would also specify that the commissions will propose and adopt interpretations in accordance with Texas Government Code, Chapter 2001.

Currently, §151.1, §151.2, and §151.3 describe a procedure for an interested person to request an interpretation. Under this procedure, a person submits a request to the general counsel of the Office of Consumer Credit Commissioner, and the request must include legal and factual information supporting the request. The request is evaluated, and the requestor is notified if the commissions initiate an interpretation.

Currently, §151.4, §151.5, §151.6, and §151.7 describe the procedure for the commissions to propose and adopt interpretations. These provisions explain that notice of the proposed interpretation will be published in the *Texas Register* including an explanation that there will be an opportunity for public comment, that the commissions may adopt or decline to adopt the interpretations at a public meeting, and that an adopted interpretation will include a reasoned justification, restatement of affected provisions, and certification of legal authority.

There are three issues with the current procedures in §151.1 through §151.7. First, the procedure for requesting interpretations in current §151.1 through §151.3 has not been commonly used by stakeholders. Instead, most feedback about interpretations has come from informal comments resulting from constitutional amendments, litigation, or rule review. Second, the commissions already have separate rules on petitions for rulemaking, in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001 ("APA"). The Finance Commission's rule on petitions for rulemaking is codified at 7 TAC §9.82 (relating to Petitions to Initiate Rulemaking Proceedings), while the Credit Union Commission's rule is codified at 7 TAC §97.500 (relating to Petitions to Initiate Rulemaking Proceedings). The request procedure in §151.1 through §151.3 contains some, but not all, of the requirements for a formal petition for rulemaking, so it is unclear whether these requests must meet the requirements for a petition for rulemaking. Third, §151.4 through §151.7 describe some, but not all, of the APA's requirements for proposing and adopting rules.

The proposed amendments to §151.1 are intended to address these issues and provide clear guidelines on how interpretations are requested, proposed, and adopted. A proposed amendment to §151.1(a) would explain that the commissions will propose and adopt interpretations in accordance with the rulemaking requirements of the APA. Proposed new subsection (b) would explain that the agencies may recommend proposed interpretations to the commissions, and may seek informal input from stakeholders. Proposed new subsection (c) would explain that a person may submit an informal request to the agencies, and would describe items the request should include. Proposed new subsection (d) would explain that an interested person may file a petition to initiate rulemaking, and would include citations to the commissions' other rules that govern these petitions. The proposal would remove current subsection (b), which would be unnecessary because of the new guidelines described in proposed subsections (b) through (d). The title of §151.1 would be amended to state "Interpretation Procedures," to properly identify the scope of the rule.

The proposal would repeal §151.2 and §151.3. As discussed earlier, these sections currently describe the process used when a stakeholder requests an interpretation, and would be unnecessary because of the new guidelines described in the proposed amendments to §151.1. The commissions believe that these proposed amendments will provide a balanced approach, enabling stakeholders to use informal requests, while also preserving the important statutory right for an interested person to file a petition for rulemaking under the APA.

The proposal would repeal §151.4, §151.5, §151.6, and §151.7. As discussed earlier, these sections currently describe some, but not all, of the requirements for proposing and adopting rules under the APA. These sections would be unnecessary because of the updated language in the proposed amendments to §151.1(a). The commissions believe that these changes would simplify Chapter 151 to refer to the APA in a more straightforward manner, and would ensure that it is not necessary to update Chapter 151 each time the Texas Legislature amends the APA's rulemaking requirements.

Kurt Purdom (Deputy Commissioner, Texas Department of Banking), Antonia Antov (Director of Administration and Finance, Department of Savings and Mortgage Lending), Mirand Diamond (Director of Licensing and Registration, Office of Consumer Credit Commissioner), and John Kolhoff (Commissioner, Texas Credit Union Department) have determined that for the first five-year period the proposed rule changes are in effect,

there will be no fiscal implications for state or local government as a result of administering the rule changes.

Kurt Purdom (Deputy Commissioner, Texas Department of Banking), Tony Florence (Director of Mortgage Examination, Department of Savings and Mortgage Lending), Huffman Lewis (Director of Consumer Protection, Office of Consumer Credit Commissioner), and John Kolhoff (Commissioner, Texas Credit Union Department) have determined that for each year of the first five years the proposed rule changes are in effect, the public benefits anticipated as a result of the changes will be that the commissions' rules will be more easily understood by stakeholders, and will provide clearer methods for stakeholders to request interpretations.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the agencies, because the agencies are self-directed, semi-independent agencies that do not receive legislative appropriations. The proposed rule changes do not require an increase or decrease in fees paid to the agencies. The proposal would not create a new regulation. The proposal would expand current §151.1 to describe methods for submitting an informal or formal request for an interpretation, and would limit §151.1 by removing current language about requests. The proposal would repeal current §151.2, §151.3, §151.4, §151.5, §151.6, and §151.7. The proposed rule changes do not increase or decrease the number of individuals subject to the rules' applicability. The agencies do not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register.* At the conclusion of business on the 31st day after the proposal is published in the *Texas Register,* no further written comments will be considered or accepted by the commissions.

7 TAC §151.1

The rule changes are proposed under Texas Finance Code, §11.308 and §15.413, which authorize the commissions to issue interpretations of Texas Constitution, Article XVI, §50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001.

The constitutional and statutory provisions affected by the proposal are contained in Texas Constitution, Article XVI, §50, and Texas Finance Code, Chapters 11 and 15.

§151.1. [~~Application for~~] Interpretation Procedures.

(a) Issuing interpretations. The Finance Commission and Credit Union Commission may on their own motion issue interpretations of Section 50(a)(5) - (7), (e) - (p), and (t), Article XVI of the Texas Constitution. The commissions will propose and adopt interpretations in accordance with the rulemaking requirements of Texas Government Code, Chapter 2001, Subchapter B.

(b) Agency recommendations. The Office of Consumer Credit Commissioner, Department of Banking, or Department of Savings and Mortgage Lending may recommend proposed interpretations to the Finance Commission. The Credit Union Department may recommend proposed interpretations to the Credit Union Commission. The four agencies may seek informal input from stakeholders and the other agencies before recommending a proposed interpretation to the commissions.

(c) Informal request for interpretation. A person may submit an informal request for an interpretation of Section 50(a)(5) - (7), (e) - (p), or (t), Article XVI of the Texas Constitution. An informal request may be submitted to the Office of Consumer Credit Commissioner, Department of Banking, Department of Savings and Mortgage Lending, or Credit Union Department. A request should:

(1) cite the specific provision of the Texas Constitution to be interpreted;

(2) explain the factual and legal context for the request; and

(3) explain the requestor's opinion of how the request should be resolved.

(d) Petition for rulemaking. An interested person may formally request an interpretation of Section 50(a)(5) - (7), (e) - (p), or (t), Article XVI of the Texas Constitution by submitting a petition to initiate rulemaking.

(1) Any petition for the Finance Commission to issue an interpretation must be submitted to the Office of Consumer Credit Commissioner, and must include the information required by §9.82 of this title (relating to Petitions to Initiate Rulemaking Proceedings).

(2) Any petition for the Credit Union Commission to issue an interpretation must be submitted to the Credit Union Department, and must include the information required by §97.500 of this title (relating to Petitions to Initiate Rulemaking Proceedings).

[~~(b) An interested person may submit a request for an interpretation of Section 50(a)(5) - (7), (e) - (p), and (t), Article XVI of the Texas Constitution. All requests must:~~]

[~~(1) be directed to the general counsel for the Office of Consumer Credit Commissioner who will promptly distribute it to the general counsels for the Department of Banking, the Department of Savings and Mortgage Lending, and the Credit Union Department;~~]

[~~(2) contain an explicit statement that an interpretation approved by the Finance Commission and Credit Union Commission is desired;~~]

[~~(3) contain the reference to the specific applicable section, subsection and paragraph of the Texas Constitution of which the interpretation is requested;~~]

[~~(4) state with sufficient particularity the factual and legal context to which the application of the provision is vague or ambiguous; and~~]

[~~(5) indicate the requestor's opinion of how the legal issue should be resolved, the basis for that opinion, an analysis of any relevant court decisions, and all prior interpretations to which the request relates.~~]

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 August 21, 2020.

TRD-202003449
Matthew Nance
Deputy General Counsel, Office of Consumer Credit Commissioner
Joint Financial Regulatory Agencies
Earliest possible date of adoption: October 4, 2020
For further information, please call: (512) 936-7660

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7 TAC §§151.2 - 151.7

The rule changes are proposed under Texas Finance Code, §11.308 and §15.413, which authorize the commissions to issue interpretations of Texas Constitution, Article XVI, §50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001.

The constitutional and statutory provisions affected by the proposal are contained in Texas Constitution, Article XVI, §50, and Texas Finance Code, Chapters 11 and 15.

§151.2. Review of Request.

§151.3. Initiation of Interpretation Procedure.

§151.4. Notice of Proposed Interpretation.

§151.5. Public Comment.

§151.6. Action on Proposed Interpretation.

§151.7. Adoption of Interpretation.

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 August 21, 2020.

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CHAPTER 153. HOME EQUITY LENDING

7 TAC §§153.8, 153.11, 153.14, 153.15, 153.22, 153.26, 153.41

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") propose amendments to §153.8 (relating to Security of the Equity Loan: Section 50(a)(6)(H)), §153.11 (relating to Repayment Schedule: Section 50(a)(6)(L)(i)), §153.14 (relating to One Year Prohibition: Section 50(a)(6)(M)(iii)), §153.15 (relating to Location of Closing: Section 50(a)(6)(N)), §153.22 (relating to Copies of Documents: Section 50(a)(6)(Q)(v)), and §153.41 (relating to Refinance of a Debt Secured by a Homestead: Section 50(e)); and propose new §153.26 (relating to Acknowledgment of Fair Market Value: Section 50(a)(6)(Q)(ix)) in 7 TAC, Chapter 153, concerning Home Equity Lending.

7 TAC Chapter 153 contains the commissions' interpretations of the home equity lending provisions of Texas Constitution, Article XVI, Section 50 ("Section 50"). In general, the purpose of the proposed rule changes to 7 TAC Chapter 153 is to implement changes resulting from the commissions' review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 151 was published in the *Texas Register* on May 1, 2020 (45 TexReg 2897). The commissions received no comments in response to that notice.

The interpretations in 7 TAC Chapter 153 are administered by the Joint Financial Regulatory Agencies ("agencies"), consisting of the Texas Department of Banking, Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, and Texas Credit Union Department. The agencies distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held an online webinar regarding the proposed changes. The agencies received three informal precomments on the rule text draft. The agencies appreciate the thoughtful input provided by stakeholders.

A proposed amendment to §153.8(1)(C) would remove the word "or" to correct a list that unnecessarily includes the word "or" twice.

Proposed amendments to §153.11 would explain that the repayment schedule requirements in Section 50(a)(6)(L)(i) of the Texas Constitution apply at closing. Proposed new paragraph (1) would explain that this constitutional provision does not prohibit a lender from agreeing with the borrower to certain modifications, and would explain that a modification may include a deferment of the original obligation. A proposed amendment at §153.11(2) would explain that the modification does not affect the two-month time period described by Section 50(a)(6)(L)(i).

These amendments to §153.11 are based on the Texas Supreme Court's decision in *Sims v. Carrington Mortg. Servs., LLC,* 440 S.W.3d 10 (Tex. 2014). In *Sims,* the Texas Supreme Court analyzed a modification of a home equity loan where the borrower and lender agreed to capitalize past-due interest, fees, property taxes, and insurance premiums into the principal, and where the modification did not involve the satisfaction or replacement of the original note, an advancement of new funds, or an increase in the obligations created by the original note. The court held that because the modification was not a new extension of credit, it did not trigger reapplication of the constitutional requirements of Section 50. *Sims,* 440 S.W.3d at 18.

In an informal precomment, one precommenter recommended adding the following two sentences to §153.11 regarding which modifications are permissible: "Any deferment may include no payments or monthly payments in an amount that is less than the amount of accrued interest during the deferment period." and "No more than six (6) months of payments may be deferred in any twelve (12) month period." The commissions have not included this text in the current proposal, because the text appears to go beyond interpreting Section 50 of the Texas Constitution, and could be misunderstood to allow actions that are prohibited by other law. For example, for high-cost home loans, Texas Finance Code, §343.203 generally prohibits negative amortization (i.e., a payment schedule that causes the principal balance to increase).

Another precommenter suggested amending §153.11(1) to state that the two-month time period described by Section 50(a)(6)(L)(i) begins "on the day the loan is funded." Section 50(a)(6)(L)(i) provides that the payments must begin "no later than two months from the date the extension of credit is made." Currently, §153.11(1) explains that the two-month period begins "on the date of closing." The commissions believe that the

current text appropriately interprets the word "made" in the context of Section 50(a)(6)(L)(i), and have not included this suggested change in the proposal. *Cf.* Black's Law Dictionary, "make" (11th ed. 2019) (defining "make" to include "caus[ing] (something) to exist" and "legally perform[ing], as by executing, signing, or delivering (a document)").

Proposed amendments to §153.14 would describe states of emergency. Section 50(a)(6)(M)(iii) of the Texas Constitution generally prohibits a home equity loan from being closed within one year after another home equity loan on the same property, but includes an exception for a state of emergency declared by the president of the United States or the governor of Texas. Proposed amendments to §153.14 would describe this exception and explain that a state of emergency includes a national emergency declared by the president of the United States under the National Emergencies Act, 50 U.S.C. §§1601-1651, and a state of disaster declared by the governor of Texas under Texas Government Code, Chapter 418. The commissions believe that these federal and state statutes describe states of emergency within the meaning of Section 50(a)(6)(M)(iii).

Proposed amendments to §153.15 would describe permissible closing locations. Section 50(a)(6)(N) of the Texas Constitution provides that a home equity loan must be closed only at the office of a lender, an attorney at law, or a title company. Because of the pandemic resulting from the coronavirus and the disease COVID-19, lenders have expressed interest in closing loans in places where they can maintain social distancing, such as an office parking lot. A proposed amendment to §153.15(1) would explain that the closing may occur in any area located at the permanent physical address of the lender, attorney, or title company. Proposed amendments to paragraphs (2) and (3) would add references to the permanent physical address. The commissions believe that these amendments are consistent with the closing location requirement of Section 50(a)(6)(N), and clarify that lenders have this option to maintain social distancing while closing loans at their offices.

A proposed amendment to §153.22 describes requirements for electronic copies of loan documents. Section 50(a)(6)(Q)(v) of the Texas Constitution requires the lender to provide the owner with a copy of the loan application and all documents signed by the owner at closing. Proposed new §153.22(3) would explain that the lender may provide documents electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents, and would include references to the Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322, and the federal E-Sign Act, 15 U.S.C. §§7001-7006.

Proposed new §153.26 would describe the acknowledgment of fair market value. Under Section 50(a)(6)(Q)(ix) of the Texas Constitution, the owner of the homestead and the lender must sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made. Proposed new §153.26(1) would explain that the lender may sign the written acknowledgment before or at closing. Proposed new §153.26(2) would explain that an authorized agent may sign the written acknowledgment on behalf of the lender.

In an informal precomment, one precommenter recommended including a statement in §153.26(1) that the lender may sign the written acknowledgment "before, at or after closing." The commissions agree that the acknowledgment may be signed before or at closing. However, the commissions are uncertain about the legal and practical effects where the lender signs the acknowledgment after closing. Under Section 50(a)(6)(Q)(ix) of the Texas Constitution, the home equity loan must be "made on the condition that . . . the owner of the homestead and the lender sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made." The commissions invite official comments on whether the lender can sign the acknowledgment after closing, including the legal and practical effects on the home equity loan if the lender delays or fails to sign the acknowledgment.

A proposed amendment to §153.41 would remove the phrase "or (a)(7)" in the introductory paragraph. Section 50(e) of the Texas Constitution generally provides that if a refinance of debt against the homestead includes additional funds, the refinance must be described by Section 50(a)(6) (i.e., must be a home equity loan). Section 50(e) does not refer to Section 50(a)(7). The phrase "or (a)(7)" in the introductory paragraph of §153.41 appears to be a typographical error. For this reason, the proposed amendment removes this phrase.

Kurt Purdom (Deputy Commissioner, Texas Department of Banking), Antonia Antov (Director of Administration and Finance, Department of Savings and Mortgage Lending), Mirand Diamond (Director of Licensing and Registration, Office of Consumer Credit Commissioner), and John Kolhoff (Commissioner, Texas Credit Union Department) have determined that for the first five-year period the proposed rule changes are in effect, there will be no fiscal implications for state or local government as a result of administering the rule changes.

Kurt Purdom (Deputy Commissioner, Texas Department of Banking), Tony Florence (Director of Mortgage Examination, Department of Savings and Mortgage Lending), Huffman Lewis (Director of Consumer Protection, Office of Consumer Credit Commissioner), and John Kolhoff (Commissioner, Texas Credit Union Department) have determined that for each year of the first five years the proposed rule changes are in effect, the public benefits anticipated as a result of the changes will be that the commissions' rules will be more easily understood by stakeholders, and will provide clearer guidance to ensure that lenders comply with Section 50.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the agencies, because the agencies are self-directed, semi-independent agencies that do not receive legislative appropriations. The proposed rule changes do not require an increase or decrease in fees paid to the agencies. The proposal would create a new regulation at §153.26 to provide guidance relating to the acknowledgment of fair market value. The proposal would expand current §153.11, §153.14, §153.15, and §153.22 to provide additional guidance to lenders. The proposal would limit §153.41 by removing an incorrect citation. The proposal would not repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rules' applicability. The agencies do not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register.* At the conclusion of business on the 31st day after the proposal is published in the *Texas Register,* no further written comments will be considered or accepted by the commissions.

The rule changes are proposed under Texas Finance Code, §11.308 and §15.413, which authorize the commissions to issue interpretations of Texas Constitution, Article XVI, §50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001.

The constitutional provisions affected by the proposal are contained in Texas Constitution, Article XVI, §50. No statute is affected by this proposal.

§153.8. Security of the Equity Loan: Section 50(a)(6)(H).

An equity loan must not be secured by any additional real or personal property other than the homestead. The definition of "homestead" is located at Section 51 of Article XVI, Texas Constitution, and Chapter 41 of the Texas Property Code.

(1) A lender and an owner or an owner's spouse may enter into an agreement whereby a lender may acquire an interest in items incidental to the homestead. An equity loan secured by the following items is not considered to be secured by additional real or personal property:

(A) escrow reserves for the payment of taxes and insurance;

(B) an undivided interest in a condominium unit, a planned unit development, or the right to the use and enjoyment of certain property owned by an association;

(C) insurance proceeds related to the homestead; [~~or~~]

(D) condemnation proceeds;

(E) fixtures; or

(F) easements necessary or beneficial to the use of the homestead, including access easements for ingress and egress.

(2) A guaranty or surety of an equity loan is not permitted. A guaranty or surety is considered additional property for purposes of Section 50(a)(6)(H). Prohibiting a guaranty or surety is consistent with the prohibition against personal liability in Section 50(a)(6)(C). An equity loan with a guaranty or surety would create indirect liability against the owner. The constitutional home equity lending provisions clearly provide that the homestead is the only allowable collateral for an equity loan. The constitutional home equity provisions prohibit the lender from contracting for recourse of any kind against the owner or owner's spouse, except for provisions providing for recourse against the owner or spouse when the extension of credit is obtained by actual fraud.

(3) A contractual right of offset in an equity loan agreement is prohibited.

(4) A contractual cross-collateralization clause in an equity loan agreement is prohibited.

(5) Any equity loan on an urban homestead that is secured by more than ten acres is secured by additional real property in violation of Section 50(a)(6)(H).

§153.11. Repayment Schedule: Section 50(a)(6)(L)(i).

Unless an equity loan is a home equity line of credit under Section 50(t), the loan must be scheduled at closing to be repaid in substantially equal successive periodic installments, not more often than every 14 days and not less often than monthly, beginning no later than two months from the date the extension of credit is made, each of which equals or exceeds the amount of accrued interest as of the date of the scheduled installment.

(1) Section 50(a)(6)(L)(i) does not prohibit a lender from agreeing with a borrower to modify an equity loan if the modification does not satisfy and replace the original equity loan and does not create a new extension of credit. The modification may include a deferment of the borrower's original obligation, and may include amounts that are past due under the equity loan (e.g., accrued but unpaid interest, taxes and insurance).

(2) [~~(1)~~] The two month time period contained in Section 50(a)(6)(L)(i) begins on the date of closing. A modification described by paragraph (1) of this subsection does not affect the two month time period.

(3) [~~(2)~~] For purposes of Section 50(a)(6)(L)(i), a month is the period from a date in a month to the corresponding date in the succeeding month. For example, if a home equity loan closes on March 1, the first installment must be due no later than May 1. If the succeeding month does not have a corresponding date, the period ends on the last day of the succeeding month. For example, if a home equity loan closes on July 31, the first installment must be due no later than September 30.

(4) [~~(3)~~] For a closed-end equity loan to have substantially equal successive periodic installments, some amount of principal must be reduced with each installment. This requirement prohibits balloon payments.

(5) [~~(4)~~] Section 50(a)(6)(L)(i) does not preclude a lender's recovery of payments as necessary for other amounts such as taxes, adverse liens, insurance premiums, collection costs, and similar items.

§153.14. One Year Prohibition: Section 50(a)(6)(M)(iii).

An equity loan may not be closed before the first anniversary of the closing date of any other equity loan secured by the same homestead property, unless the owner on oath requests an earlier closing due to a state of emergency that has been declared by the president of the United States or the governor as provided by law, and applies to the area where the homestead is located.

(1) Section 50(a)(6)(M)(iii) prohibits an owner who has obtained an equity loan from:

(A) refinancing the equity loan before one year has elapsed since the loan's closing date; or

(B) obtaining a new equity loan on the same homestead property before one year has elapsed since the previous equity loan's closing date, regardless of whether the previous equity loan has been paid in full.

(2) Section 50(a)(6)(M)(iii) does not prohibit modification of an equity loan before one year has elapsed since the loan's closing date. A modification of a home equity loan occurs when one or more terms of an existing equity loan is modified, but the note is not satisfied and replaced. A home equity loan and a subsequent modification will be considered a single transaction. The home equity requirements of Section 50(a)(6) will be applied to the original loan and the subsequent modification as a single transaction.

(A) A modification of an equity loan must be agreed to in writing by the borrower and lender, unless otherwise required by law.

An example of a modification that is not required to be in writing is the modification required under the Servicemembers Civil Relief Act, 50 U.S.C. app. §§501-597b.

(B) The advance of additional funds to a borrower is not permitted by modification of an equity loan.

(C) A modification of an equity loan may not provide for new terms that would not have been permitted by applicable law at the date of closing of the extension of credit.

(D) The two percent limitation required by Section 50(a)(6)(E) applies to the original home equity loan and any subsequent modification as a single transaction.

(3) For purposes of Section 50(a)(6)(M)(iii), a state of emergency includes:

(A) a national emergency declared by the president of the United States under the National Emergencies Act, 50 U.S.C. §§1601-1651; and

(B) a state of disaster declared by the governor of Texas under Texas Government Code, Chapter 418.

§153.15. Location of Closing: Section 50(a)(6)(N).

An equity loan may be closed only at an office of the lender, an attorney at law, or a title company. The lender is anyone authorized under Section 50(a)(6)(P) that advances funds directly to the owner or is identified as the payee on the note.

(1) An equity loan must be closed at the permanent physical address of the office or branch office of the lender, attorney, or title company. The closing office must be a permanent physical address so that the closing occurs at an authorized physical location other than the homestead. The closing may occur in any area located at the permanent physical address of the lender, attorney, or title company (e.g., indoor office, parking lot).

(2) Any power of attorney allowing an attorney-in-fact to execute closing documents on behalf of the owner or the owner's spouse must be signed by the owner or the owner's spouse at the permanent physical address of an office of the lender, an attorney at law, or a title company. A lender may rely on an established system of verifiable procedures to evidence compliance with this paragraph. For example, this system may include one or more of the following:

(A) a written statement in the power of attorney acknowledging the date and place at which the power of attorney was executed;

(B) an affidavit or written certification of a person who was present when the power of attorney was executed, acknowledging the date and place at which the power of attorney was executed; or

(C) a certificate of acknowledgement signed by a notary public under Chapter 121, Civil Practice and Remedies Code, acknowledging the date and place at which the power of attorney was executed.

(3) The consent required under Section 50(a)(6)(A) must be signed by the owner and the owner's spouse, or an attorney-in-fact described by paragraph (2) of this subsection, at the permanent physical address of an office of the lender, an attorney at law, or a title company.

§153.22. Copies of Documents: Section 50(a)(6)(Q)(v).

At closing, the lender must provide the owner with a copy of the final loan application and all executed documents that are signed by the owner at closing in connection with the equity loan.

(1) One copy of these documents may be provided to married owners.

(2) This requirement does not obligate the lender to give the owner copies of documents that were signed by the owner prior to or after closing.

(3) A lender may provide documents electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322, and the federal E-Sign Act, 15 U.S.C. §§7001-7006, include requirements for electronic signatures and delivery.

§153.26. Acknowledgment of Fair Market Value: Section 50(a)(6)(Q)(ix).

The owner of the homestead and the lender must sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made.

(1) A lender may sign the written acknowledgment before or at closing.

(2) An authorized agent may sign the written acknowledgment on behalf of the lender.

§153.41. Refinance of a Debt Secured by a Homestead: Section 50(e).

A refinance of debt secured by a homestead and described by any subsection under Subsections (a)(1)-(a)(5) of Section 50 of the Texas Constitution that includes the advance of additional funds may not be secured by a valid lien against the homestead unless: (1) the refinance of the debt is an extension of credit described by Subsection (a)(6) [~~or (a)(7)~~] of Section 50 of the Texas Constitution; or (2) the advance of all the additional funds is for reasonable costs necessary to refinance such debt or for a purpose described by Subsection (a)(2), (a)(3), or (a)(5) of Section 50 of the Texas Constitution.

(1) Reasonableness and necessity of costs relate to the type and amount of the costs.

(2) In a secondary mortgage loan, reasonable costs are those costs which are lawful in light of the governing or applicable law that authorizes the assessment of particular costs. In the context of other mortgage loans, reasonable costs are those costs which are lawful in light of other governing or applicable law.

(3) Reasonable and necessary costs to refinance may include reserves or impounds (escrow trust accounts) for taxes and insurance, if the reserves comply with applicable law.

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

Filed with the Office of the Secretary of State on August 21, 2020.

TRD-202003450
Matthew Nance
Deputy General Counsel, Office of Consumer Credit Commissioner
Joint Financial Regulatory Agencies
Earliest possible date of adoption: October 4, 2020
For further information, please call: (512) 936-7660

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER C. TEXAS SUCCESS INITIATIVE

19 TAC §§4.56, 4.57, 4.62

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to the Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter C, §§4.56, 4.57, and 4.62, concerning the Texas Success Initiative. Specifically, these amendments will provide college readiness benchmarks for the revised assessment approved by the Board under this title and provide the final phase for implementation of corequisite models supporting underprepared students.

The amendment to §4.56 replaces the TSI Assessment, which expires in January 2021, with the TSI Assessment, Version 2.0 (TSIA2), as the Board-approved assessment instrument under this title. The amendment to §4.57 adds the college readiness benchmarks, based on faculty-driven, psychometric standard setting processes, for the TSIA2 and clarifies that results from both assessment instruments remain valid for the purposes of this title for five (5) years from date of testing. With regard to §4.62(8)(A)(iv), statewide developmental education (DE) outcomes data continue to demonstrate that underprepared students enrolled in corequisite models consistently and significantly outperform students in traditional stand-alone DE with regard to meeting college readiness and first college-level course completions. The amendment to §4.62 provides the final phase of corequisite implementation for 2021 and thereafter, ensuring eligible underprepared students are afforded the best opportunity in building momentum towards important milestones leading to certificate/degree completions and transfers.

R. Jerel Booker, J.D., Assistant Commissioner for College Readiness and Success, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules. There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Booker has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the improved outcomes for underprepared students entering public institutions of higher education. There are no anticipated economic costs to persons who are required to comply with the section as proposed.

Government Growth Impact Statement

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

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

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

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

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

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

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

Comments on the proposal may be submitted to Jerel Booker, Assistant Commissioner for College Readiness and Success, P.O. Box 12788, Austin, Texas, 78711, cri@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, Section 51.344, which provides the Coordinating Board with the authority to adopt rules to implement the provisions of Texas Education Code, Chapter 51, Subchapter F-1 concerning the Texas Success Initiative.

The proposed amendments affect Texas Education Code, Chapter 51, Subchapter F-1 concerning the Texas Success Initiative.

§4.56. Assessment Instrument.

Effective fall 2013, the Texas Success Initiative Assessment (TSIA) is the only Board-approved assessment instrument used under this title. The TSIA, Version 2.0 (TSIA2) will replace the TSIA on January 11, 2021, at which time the TSIA2 will be the only Board-approved assessment instrument offered under this title. [~~Beginning with the institution's first class day of Academic Year (fall) 2013, an institution of higher education shall use the TSI Assessment offered by the College Board as the only Board-approved assessment instrument under this title. Any previously-employed assessments (ACCUPLACER, Compass, THEA, Asset, Compass ESL, ACCUPLACER ESL) can no longer be used under this title for entering students who initially enroll in any course on or after the institution's first class day in fall 2013 or for any students retesting for TSI purposes.~~] Test administrators of the TSI Assessment must follow the requirements and processes for test administration as set forth by the THECB and the test vendor.

§4.57. College Ready Standards.

(a) Effective the institution's first class day of fall 2017, the following minimum college readiness [~~passing~~] standards (also known as "cut scores") for reading, mathematics, and writing on the TSI Assessment (TSIA) shall be used by an institution to determine a student's readiness to enroll in entry-level freshman coursework:

(1) Reading 351;

(2) Mathematics 350; and

(3) Writing:

(A) a placement score of at least 340, and an essay score of at least 4; or

(B) a placement score of less than 340 and an ABE Diagnostic level of at least 4 and an essay score of at least 5.

(b) Effective January 11, 2021, the following minimum college readiness standards (also known as "cut scores") for English Language Arts Reading (ELAR) and mathematics on the TSI Assessment, Version 2.0 (TSIA2) shall be used by an institution to determine a student's readiness to enroll in entry-level freshman coursework:

(1) Mathematics (for college-level coursework with mathematics-intensive designation by the offering institution):

(A) a College Readiness Classification (CRC) score of at least 950; or

(B) a CRC score below 950 and a Diagnostic level of 6.

(2) ELAR (for college-level coursework with reading, writing, or reading and writing-intensive designation by the offering institution):

(A) a College Readiness Classification (CRC) score of at least 945 and an essay score of at least 5; or

(B) a CRC score below 945 and a Diagnostic level of 5 or 6 and an essay score of at least 5.

(c) [~~(b)~~] Institutions must use the TSI Assessment (TSIA or TSIA2) diagnostic results, along with other holistic factors, in their consideration of courses and/or interventions addressing the educational and training needs of undergraduate students not meeting the college readiness standards as defined in subsection (a) or (b) of this section.

(d) [~~(c)~~] An institution shall not require higher or lower college readiness standards on any or all portions of the TSI Assessment (TSIA or TSIA2) to determine a student's readiness to enroll in entry-level freshman coursework.

(e) [~~(d)~~] For a student with an existing plan for academic success as required in §4.58 of this title (relating to Advisement and Plan for Academic Success), the institution must revise the plan as needed to align with the college readiness standards as defined in subsections (a) or (b), as applicable, of this section.

(f) [~~(e)~~] Both TSI Assessment (TSIA and TSIA2) results are valid for the purposes of this title for five (5) years from date of testing.

§4.62. Required Components of Developmental Education Programs.

(a) An institution of higher education must base developmental coursework on research-based best practices that include all of the following components:

(1) assessment;

(2) differentiated placement and instruction;

(3) faculty development;

(4) support services;

(5) program evaluation;

(6) integration of technology with an emphasis on instructional support programs;

(7) non-course-based developmental education interventions; and

(8) Each institution of higher education shall develop and implement corequisite model(s) as defined in §4.53(7) of this title (relating to Definitions) for developmental mathematics and integrated reading/writing (IRW) courses and interventions, and each institution must ensure that a minimum percentage of its undergraduate students other than those exempt as outlined in subparagraph (B) of this paragraph must be enrolled in such corequisite model(s).

(A) Each public institution of higher education must ensure that the institution's developmental courses and interventions comply with the requirements of this section according to the following schedule:

(i) for the 2018-2019 academic year, at least 25 percent of the institution's non-exempt students enrolled by subject area in developmental education must be enrolled in corequisite model(s);

(ii) for the 2019-2020 academic year, at least 50 percent of the institution's non-exempt students enrolled by subject area in developmental education must be enrolled in corequisite model(s);

(iii) for the 2020-2021 academic year, at least 75 percent of the institution's non-exempt students enrolled by subject area in developmental education must be enrolled in corequisite model(s);

(iv) for the 2021-2022 academic year and thereafter, 100 percent of the institution's non-exempt students enrolled by subject area in developmental education must be enrolled in corequisite model(s).

(B) The following students are exempt by subject area(s) from this requirement:

(i) students assessed at ABE Diagnostic levels 1-4 on the TSI Assessment;

(ii) students who are college ready;

(iii) students enrolled in adult education;

(iv) students enrolled in degree plans not requiring a freshman-level academic mathematics course;

(v) students who meet one or more of the exemptions as outlined in §4.54 (relating to Exemptions, Exceptions, and Waivers);

(C) Institutions of higher education must adhere to developmental education funding limitations per TAC §13.107 (relating to Limitation on Formula Funding for Remedial and Developmental Courses and Interventions).

(b) As part of subsection (a)(2) of this section, institutions shall offer Integrated Reading and Writing (IRW) course/intervention at the highest level (just below college-readiness as determined by the institution) by spring 2015.

(c) As part of subsection (a)(7) of this section, institutions shall offer at least one section of non-course competency-based intervention (NCBO) per developmental education subject area by spring 2015.

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 August 24, 2020.

TRD-202003490
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: October 4, 2020
For further information, please call: (512) 427-6247

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TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.11

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.11, Examinations.

The proposed amendments reduce the number of hours of additional education required when an applicant fails an examination three times and clarifies the type of education.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

- create or eliminate a government program;

- require the creation of new employee positions or the elimination of existing employee positions;

- require an increase or decrease in future legislative appropriations to the agency;

- require an increase or decrease in fees paid to the agency;

- create a new regulation;

- expand, limit or repeal an existing regulation; or

- increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee in this state that are in accordance with Chapter 1103 and consistent with applicable federal law.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§153.11. Examinations.

(a) Administration of Licensing Examinations.

(1) An examination required for any license issued by the Board will be conducted by the testing service with which the Board has contracted for the administration of examinations.

(A) The testing service shall schedule and conduct the examinations in the manner required by the contract between the Board and the testing service.

(B) Examinations shall be administered at locations designated by the exam administrator.

(C) The testing service administering the examinations is required to provide reasonable accommodations for any applicant with a verifiable disability. Applicants must contact the testing service to arrange an accommodation. The testing service shall determine the method of examination, whether oral or written, based on the particular circumstances of each case.

(2) Each examination shall be consistent with the examination criteria and examination content outline of the AQB for the category of license sought. To become licensed, an applicant must achieve a passing score acceptable to the AQB on the examination.

(3) Successful completion of the examination is valid for a period of 24 months.

(4) An applicant who fails the examination three consecutive times may not apply for reexamination or submit a new license application unless the applicant submits evidence satisfactory to the Board that the applicant has completed 15 [~~30~~] additional hours of qualifying [~~core~~] education after the date the applicant failed the examination for the third time.

(b) - (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.

Filed with the Office of the Secretary of State on August 24, 2020.

TRD-202003483
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: October 4, 2020
For further information, please call: (512) 936-3652

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22 TAC §153.18

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.18, Appraiser Continuing Education.

The proposed amendments reorganize the rule and outline requirements for acceptance of courses taken by a Texas license holder outside of Texas for continuing education credit.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed

amendments will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

- create or eliminate a government program;

- require the creation of new employee positions or the elimination of existing employee positions;

- require an increase or decrease in future legislative appropriations to the agency;

- require an increase or decrease in fees paid to the agency;

- create a new regulation;

- expand, limit or repeal an existing regulation; and

- increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee in this state that are in accordance with Chapter 1103 and consistent with applicable federal law.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§153.18. Appraiser Continuing Education (ACE).

(a) The purpose of ACE is to ensure that license holders participate in programs that maintain and increase their skill, knowledge, and competency in real estate appraising.

(b) To renew a license, a license holder must successfully complete the equivalent of at least 28 classroom hours of ACE courses approved by the Board, including the 7-hour National USPAP Update course during the license holder's continuing education cycle. An ACE course may not be repeated during the license holder's continuing education cycle [~~The courses must comply with the requirements set out in subsection (d) of this section~~].

(c) Awarding ACE credit. The Board will award credit to a license holder for an ACE course approved by the Board upon receipt of a course completion roster from an approved ACE provider as required under §153.40 of this title (relating to Approval of Continuing Education Providers and Courses).

(d) Continuing education credit for qualifying courses. License holders may receive continuing education credit for qualifying courses that have been approved by the Board, the AQB or another state appraiser regulatory agency.

(e) Continuing education credit for courses taken outside of Texas. An ACE course taken by a Texas license holder outside of Texas may be accepted on an individual basis for continuing education credit in Texas upon the Board's determination that:

(1) the ACE course was approved for continuing education credit by the AQB or another state appraiser regulatory agency at the time the course was taken;

(2) the Texas license holder's successful completion of the course has been evidenced by:

(A) a course completion certificate;

(B) a letter from the provider; or

(C) such other proof as is satisfactory to the Board; and

(3) the Texas license holder has filed an Out of State Course Credit Request form with the Board.

[~~(c) Until August 31, 2019, the Board will base its review and approval of ACE courses upon the appraiser qualifications criteria of the AQB.~~]

[~~(d) The following types of courses may be accepted for ACE:~~]

[~~(1) A course that meets the requirements for licensing also may be accepted for ACE if:~~]

[~~(A) The course is devoted to one or more of the appraisal related topics of the appraiser qualifications criteria of the AQB for continuing education;~~]

[~~(B) the course was not repeated within the license holder's continuing education cycle; and~~]

[~~(C) the course is at least two hours in length.~~]

[~~(2) The Board will accept as ACE any continuing education course that has been approved by the AQB course approval process or by another state appraiser licensing and certification board.~~]

[~~(A) Until August 31, 2019, course providers may obtain prior approval of ACE courses by filing forms approved by the Board and submitting a letter indicating that the course has been approved by the AQB under its course approval process or by another state appraiser licensing and certification board.~~]

[~~(B) Until August 31, 2019, approval of a course based on AQB approval expires on the date the AQB approval expires and is automatically revoked upon revocation of the AQB approval.~~]

[~~(C) Until August 31, 2019, approval of a course based on another state licensing and certification board shall expire on the earlier of the expiration date in the other state, if applicable, or two years from Board approval and is automatically revoked upon revocation of the other state board's approval.~~]

[~~(3) Until August 31, 2019, distance education courses may be accepted as ACE if:~~]

[~~(A) The course is:~~]

~~(i)~~ ~~Approved by the Board;~~]

~~(ii)~~ ~~Presented by an accredited college or university that offers distance education programs in other disciplines; or~~]

~~(iii)~~ ~~Approved by the AQB under its course approval process; and~~]

[~~(B) The student successfully completes a written examination proctored by an official approved by the presenting college, university, or sponsoring organization consistent with the requirements of the course accreditation; and~~]

[(C) A minimum number of hours equal to the hours of course credit have elapsed between the time of course enrollment and completion.]

[(e) Until August 31, 2019, to satisfy the USPAP ACE requirement, a course must:]

[(1) be the 7-hour National USPAP Update Course or its equivalent, as determined by the AQB;]

[(2) use the current edition of the USPAP;]

[(3) ensure each student has access to his or her own paper or electronic copy of the current USPAP; and]

[(4) be taught by at least one instructor who is an AQB-certified USPAP instructor and also licensed as a certified general or certified residential appraiser.]

[(f) Until August 31, 2019, providers of USPAP ACE courses may include up to one additional hour of supplemental Texas specific information. This may include topics such as the Act, Board Rules, processes and procedures, enforcement issues, or other topics deemed appropriate by the Board.]

(f) [(g)]Up to one half of a license holder's ACE requirements may be satisfied through participation other than as a student, in real estate appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching an ACE course, educational program development, authorship of real estate appraisal textbooks, or similar activities that are determined by the Board to be equivalent to obtaining ACE.

(g) [(h)] The following types of courses or activities may not be counted toward ACE requirements:

(1) Teaching the same ACE course more than once per license renewal cycle;

(2) "In house" education or training; or

(3) Appraisal experience.

(h) [(i)] ACE credit for attending a Board meeting.

(1) The Board may award a minimum of two hours and up to a maximum of 4 hours of ACE credit to a current license holder for attending the Board meeting held in February of an even numbered year.

(2) The hours of ACE credit to be awarded will depend on the actual length of the Board meeting.

(3) ACE credit will only be awarded in whole hour increments. For example, if the Board meeting is 2 and one half hours long, only 2 hours of ACE credit will be awarded.

(4) To be eligible for ACE credit for attending a Board meeting, a license holder must:

(A) Attend the meeting in person;

(B) Attend the entire meeting, excluding breaks;

(C) Provide photo identification; and

(D) Sign in and out on the class attendance roster for the meeting.

(5) No ACE credit will be awarded to a license holder for partial attendance.

(i) [(j)]ACE credit for attending presentations by current Board members or staff. As authorized by law, current members of the Board and Board staff may teach or guest lecture as part of an approved ACE course. To obtain ACE credit for attending a presentation by a current Board member or Board staff, the course provider must submit the applicable form and satisfy the requirements for ACE course approval in this section.

[(k) Until August 31, 2019, if the Board determines that an ACE course no longer complies with the requirements for approval, it may suspend or revoke the approval. Proceedings to suspend or revoke approval of a course shall be conducted in accordance with the Board's disciplinary provisions for licenses.]

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 August 24, 2020.

TRD-202003484
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: October 4, 2020
For further information, please call: (512) 936-3652

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TITLE 25. HEALTH SERVICES

PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §703.25

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") proposes an amendment to 25 Texas Administrative Code §703.25(e), relating to approval of budget requests by grant recipients.

Background and Justification

The proposed amendment to §703.25(e) requires that a grant recipient receive approval from the Institute for all budget changes or transfers. Currently, Institute approval is not required for budget changes or transfers that are ten percent (10%) or less of the project year budget and meet other criteria. The proposed amendment will provide consistent treatment for all budget requests and enable CPRIT program staff to ensure any budget change corresponds with the project's approved goals and objectives.

Fiscal Note

Kristen Pauling Doyle, Deputy Executive Officer and General Counsel for the Cancer Prevention and Research Institute of Texas, has determined that for the first five-year period the rule change is in effect, there will be no foreseeable implications relating to costs or revenues for state or local government due to enforcing or administering the rules.

Public Benefit and Costs

Ms. Doyle has determined that for each year of the first five years the rule change is in effect the public benefit anticipated due to enforcing the rule will be ensuring that grant budget changes comply with the project's goals and objectives.

Small Business, Micro-Business, and Rural Communities Impact Analysis

Ms. Doyle has determined that the rule change will not affect small businesses, micro-businesses, or rural communities.

Government Growth Impact Statement

The Institute, in accordance with 34 Texas Administrative Code §11.1, has determined that during the first five years that the proposed rule change will be in effect:

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

(2) implementation of the proposed rule change will not affect the number of employee positions;

(3) implementation of the proposed rule change will not require an increase or decrease in future legislative appropriations;

(4) the proposed rule change will not affect fees paid to the agency;

(5) the proposed rule change will not create new rule;

(6) the proposed rule change will not expand existing rule;

(7) the proposed rule change will not change the number of individuals subject to the rule; and

(8) The rule change is unlikely to have an impact on the state's economy. Although the change is likely to have neutral impact on the state's economy, the Institute lacks enough data to predict the impact with certainty.

Submit written comments on the proposed rule changes to Ms. Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711, no later than October 5, 2020. The Institute asks parties filing comments to indicate whether they support the rule revision proposed by the Institute and, if a change is requested, to provide specific text proposed to be included in the rule. Comments may be submitted electronically to kdoyle@cprit.texas.gov. Comments may be submitted by facsimile transmission to (512) 475-2563.

Statutory Authority

The Institute proposes the rule change under the authority of the Texas Health and Safety Code Annotated, §102.108, which provides the Institute with broad rule-making authority to administer the chapter. Ms. Doyle has reviewed the proposed amendment and certifies the proposal to be within the Institute's authority to adopt.

There is no other statute, article, or code affected by these rules.

§703.25. Grant Award Budget.

(a) The Grant Contract shall include an Approved Budget that reflects the amount of the Grant Award funds to be spent for each Project Year.

(b) All expenses charged to a Grant Award must be budgeted and reported in the appropriate budget category.

(c) Actual expenditures under each category should not exceed budgeted amounts authorized by the Grant Contract as reflected on the Approved Budget for each Grant Award.

(d) Recipients may make transfers between or among lines within budget categories listed on the Approved Budget so long as the transfer fits within the scope of the Grant Contract and the total Approved Budget; is beneficial to the achievement of project objectives; and is an efficient, effective use of Grant Award funds.

(e) All [~~Except as provided herein, all~~] budget changes or transfers require Institute approval.

[~~(1) The Grant Recipient may make budget changes or transfers without prior approval from the Institute for expenses not specified in the equipment category if:~~]

[~~(A) The total dollar amount of all changes of any single line item (individually and in the aggregate) within budget categories other than equipment is 10% or less of the total budget for the applicant grant year;~~]

[~~(B) The transfer will not increase or decrease the total grant budget; and~~]

[~~(C) The transfer will not materially change the nature, performance level, or scope of the project.~~]

[~~(2) The Institute may reverse one or more budget changes or transfers under subsection (1) if the Institute determines that the Grant Recipient made multiple individual budget changes or transfers within the same category that, if considered together, would require Institute approval.~~]

(f) A Grant Recipient awarded a Grant Award for a multiyear project that fails to expend the total Project Year budget may carry forward the unexpended budget balance to the next Project Year.

(1) If the amount of the unexpended balance for a budget line item in a Project Year exceeds twenty-five percent (25%) or more of the total budget line item amount for that year, Institute approval is required before the Grant Recipient may carry forward the unexpended balance to the next Project Year.

(2) For a budget carry forward requiring Institute approval, the Grant Recipient must provide justification for why the total Grant Award amount should not be reduced by the unexpended balance.

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 August 21, 2020.

TRD-202003441
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Earliest possible date of adoption: October 4, 2020
For further information, please call: (512) 305-8487

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.36

The General Land Office (GLO) proposes amendments to 31 Texas Administrative Code (TAC) §15.36, relating to Certification Status of the City of Galveston Dune Protection and Beach

Access Plan (Plan). The City of Galveston (City) has proposed amendments to the Plan that include increasing the beach user fee (BUF) amount at Seawall Beach Urban Park (the Seawall), replacing Exhibit B with updated maps of the current shoreline conditions, adding a requirement for notification of adjacent property owners where dune mitigation is required, adopting a prohibition on pools outside the footprint of a habitable structure in eroding areas and a variance for certain in-ground pools, incorporating changes previously adopted in Ordinance No. 18-005, and making changes necessary to incorporate Erosion Response Plan (ERP) provisions into the Plan, including a prohibition of ground-level enclosures below the base flood elevation within the Dune Conservation Area.

The GLO proposes to add new subsection 15.36(d) to conditionally certify the amendments to the Plan as consistent with state law. Since the City is not currently in compliance with certain beach access requirements under its existing Plan, it submitted a compliance plan, dated July 17, 2020 (Compliance Plan) to the GLO. The GLO is conditionally certifying the amended Plan as consistent with state law so long as the City meets the compliance milestones and implementation deadlines in the Compliance Plan and makes future amendments to its Plan as necessary to reflect any substantive changes needed to achieve compliance with state law. If the City does not comply with its Compliance Plan, the GLO may withdraw certification of a portion of the Plan or the entire Plan in accordance with 31 TAC §§15.10 and 15.21. If the GLO withdraws certification of a portion of or of the entire Plan, the City may lose the ability to collect the increased amount of the BUF as currently proposed in this amendment, may completely lose the ability to collect a BUF, may lose the authority to issue permits or certificates authorizing construction, or the certification of some other portion of its Plan may be withdrawn. The City agrees to report its progress with meeting the milestones and deadlines in the Compliance Plan to the GLO every 180 days for publishing in the *Texas Register* and to amend the Plan as necessary every 180 days. The City has set a deadline to achieve full compliance with the Compliance Plan by December 31, 2022.

Copies of the City's proposed Plan and the Compliance Plan can be obtained by contacting the GLO or the City of Galveston.

BACKGROUND OF THE PROPOSED AMENDMENTS

Pursuant to the Open Beaches Act (OBA), Texas Natural Resources Code (TNRC), Chapter 61; the Dune Protection Act, TNRC Chapter 63; 33 TNRC Section 607, and 31 Texas Administrative Code (TAC) §§15.3, 15.7, 15.8, and 15.17, a local government with jurisdiction over Gulf coast beaches must submit its Plan, ERP, and any proposed amendments to the Plan, ERP, or BUF Plan to the GLO for certification. If appropriate, the GLO will certify that the Plan, ERP, or BUF as consistent with state law by amendment of a rule, as authorized in TNRC §§61.011(d)(5), 61.015(b), and 63.121. The certification by rule reflects the state's certification of the Plan; however, the text of the Plan is not adopted by the GLO, as provided in 31 TAC §15.3(o)(4).

On January 25, 2018, the City Council adopted Ordinance No. 18-005, which added a requirement for notification of adjacent property owners where dune mitigation is required, adopted a prohibition on pools outside the footprint of a habitable structure in eroding areas and a variance for certain in-ground pools, and made changes necessary to incorporate Erosion Response Plan (ERP) provisions into the Plan. The GLO certified the ERP as consistent with state law on December 2, 2012 in 31 TAC §15.36(b). The City is now incorporating ERP provisions into the body of the Plan.

On January 24, 2019, the City Council adopted Ordinance No. 19-012, which incorporated Ordinance No. 18-005, to amend Chapter 29 of its Code of Ordinances. The proposed amendments to the Plan include increasing the beach user fee (BUF) amount at Seawall Beach Urban Park (the Seawall), replacing Exhibit B with updated maps of the current shoreline conditions, and prohibiting ground-level enclosures below the base flood elevation within the Dune Conservation Area. The Plan was submitted to the GLO with a request for certification of the amendments to the Plan as consistent with state law, and in accordance with 31 TAC §§15.3, 15.7, and 15.8 and TNRC Chapters 61 and 63.

The City is a coastal community in Galveston County, located on Galveston Island and bordering West Bay, Galveston Bay and the Gulf of Mexico. The City's Dune Protection and Beach Access Plan was first adopted on August 12, 1993 and most recently amended to adopt a BUF increase at Stewart Beach, R.A. Apffel Park, Dellanera Park, and Pocket Park Nos. 1-3, which was certified by the GLO as consistent with state law on June 23, 2016.

ANALYSIS OF PLAN AMENDMENTS AND GLO'S PROPOSED AMENDMENT TO 31 TAC 15.36.

As provided in 31 TAC §15.8, local governments may request authorization to increase the BUF provided that the local government demonstrates that the increased BUF corresponds to increased costs of the local government for providing public services and facilities directly related to the public beach. Pursuant to 31 TAC §§15.3 and 15.8, the City adopted a BUF on the Seawall and submitted a BUF Plan to the GLO with a request for certification that the BUF Plan is consistent with state law.

The proposed amendments to the BUF Plan increase the BUF for parking on the Seawall from $1 per hour to up to $2 per hour with a minimum purchase of two hours required, a maximum charge of $16 per vehicle per day, and an increase in annual passes from $25 to up to $45 per vehicle per year.. The City intends to charge the BUF for parking along the north and south sides of Seawall Boulevard, daily between the hours of 10:00 a.m. and 6:00 p.m.

The City has designated a minimum of ten percent of the number of required parking spaces in Seawall Beach Urban Park as free, as required by the City's existing Plan and 31 TAC §15.7. A total of 218 free parking spaces have been evenly distributed along the north and south sides of Seawall Boulevard, including 49 spaces between 12th and 19th Streets, 59 spaces between 33rd and 39th Streets, and 51 spaces between 53rd and 61st Streets, and 59 spaces between 85th Street and the 9200 block of the Seawall. Additional spaces have been located on streets adjacent to the Seawall, including 6 spaces on 11th Street, 15 spaces on 12th Street, 13 spaces on M 1/2 between 11th and 12th Streets, 11 spaces on 14th Street, 9 spaces on 15th Street, 19 spaces on 17th Street, and 12 parking spaces on 18th Street. At least 12 of these spaces must be free.

According to the City, the BUF increase is necessary due to the continuous rise of expenses for beach-related services, such as litter abatement and maintaining sanitary restrooms, and to support the cost of planned public beach access improvements on the Seawall. In the short term, the funds from the increase in the BUF will be used to construct a median refuge island on Seawall Boulevard to increase pedestrian safety and to provide better

access to the beach from parking located on the north side of Seawall Boulevard. The total estimated cost of the short-term project is $1.5 million, and implementation is expected to begin in 2021.

In the long term, the increase in the BUF will be used to implement improvements at Seawall Beach Urban Park that include constructing an additional five visitor stations with permanent restroom facilities and outdoor showers, pedestrian bollard lighting along the sidewalk on the south side of Seawall Boulevard, additional ADA ramps to the beach, bicycle racks, and other amenities. The total estimated cost of these activities is $3.6 million. The City estimates that it will have accumulated enough funds from the BUF increase to begin implementation of the long-term plans in the 2030s.

Another proposed long-term project is to construct an additional public beach access parking lot adjacent to Stewart Beach Park. The GLO has requested prioritization of this project. The City agreed in its Compliance Plan to determine whether it is feasible to construct a parking lot in this location by November 30, 2020. The minimum 85 required parking spaces, including 12 free spaces, that are proposed to be in this lot are currently located on streets adjacent to the Seawall. If the City determines it is not feasible to use the property as a parking lot, the parking will be located at another lot in the Stewart Beach vicinity and will be completed by May 30, 2021.

The City is also authorized to use the increase in BUF on the Seawall to fund repairs to and enhancements of public beach access on the West end of Galveston Island. Enhancing these access points may include improving public access points, increasing signage, and providing handicap access and may include projects to reduce erosion or enhance drainage efficiency.

Based on the information provided by the City, the GLO has determined that the BUF increase is reasonable. The BUF does not exceed the necessary and actual cost of providing reasonable beach-related facilities and services, including enhanced amenities, does not unfairly limit public use of and access to and from public beaches in any manner, and is consistent with 31 TAC §15.8 of the Beach/Dune Rules as well as the OBA.

Proposed amendments to the Plan also include a replacement of the maps in Exhibit B, Dune Conservation Area and Enhanced Construction Zone, with updated maps showing conditions of the shoreline. These updated maps include the approximate location of the north toe of the dune, mean high water, mean low water, the line of vegetation, as well as the boundaries of the Dune Conservation Area and Enhanced Construction Zone, based on surveys conducted in 2016 and 2017.

In addition, the City proposes to amend the building requirements section of the Plan to include a prohibition of ground-level enclosures below the base flood elevation within the Dune Conservation Area. The proposed amendment is consistent with 31 TAC §15.17.

The proposed amendments also reconcile inconsistencies between the Plan and the City's Erosion Response Plan. Current Section 29-90 of the Plan is being amended with provisions, terminology, and corresponding definitions from the Erosion Response Plan. The amendments consolidate all the permitting requirements for Beachfront Construction and Dune Protection Permits into one section of the Plan. The changes to the Plan reflect current permitting practices under the ERP and incorporate the ERP language that has previously been certified as consistent with state law by the GLO.

Another proposed Plan amendment is to prohibit in-ground swimming pools in eroding areas in the area seaward of 1,000 feet from mean high tide, with the exception of in-ground pools that may be constructed under the footprint of a habitable structure. The text of the ordinance inadvertently omitted the exception of swimming pools under the footprint of the habitable structure, but the City corrected the text in a July 21, 2020 letter to the GLO. The City also proposed a variance from 31 TAC §15.6(f) that would allow in-ground swimming pools in eroding areas that are located landward of large-scale, concrete, multi-family condominiums that had an existing in-ground swimming pool and concrete parking lot prior to the date beach dune rules came into effect. Under this variance, the permit applicant must demonstrate that the total amount of existing impervious cover on the site will not be increased by the construction of a pool that meets the above conditions. This variance is justified because it is appropriately limited in scope and ensures that there will not be an increase of existing impervious cover on a lot. Because the swimming pool is required to be sited landward of a large-scale multi-family condominium, the potential for the swimming pool becoming debris on the public beach requiring removal and public expenditures following a storm is thought to be small. This City has demonstrated that this variance will not adversely impact adjacent structures, increase storm damage losses, or exacerbate erosion rates, and it provides for sound management of coastal resources and compatible development while allowing multiple uses of the coastal zone. The Plan amendments also include administrative changes related to updating non-substantive Plan language to reflect language in 31 TAC Chapter 15 and updating relevant names of City departments that oversee coastal issues, among others.

Over the last several years, the GLO has been working with the City on compliance with the beach access provisions in the Plan, which are required to preserve beach access in areas where vehicles are prohibited from the public beach. More recently, the GLO was unable to certify any amendments to the City's Plan until the City could demonstrate compliance with its current Plan's requirements for beach access. During the last year, the City has made significant progress in resolving these issues. Understanding that some of the issues require time and capital to resolve, the GLO requested a compliance plan from the City that defines the remaining compliance issues and establishes timelines for resolution. Because the City has achieved partial compliance and provided an adequate compliance plan, the GLO has agreed to conditionally certify the current Plan amendments. The conditional certification of the amendments to the City's Plan as consistent with state law will remain in effect until the City has demonstrated full compliance with the Compliance Plan, the beach access requirements in the City's Plan, 31 TAC Chapter 15, and the OBA, and has amended its Plan as necessary. GLO expects full resolution of the remaining compliance issues no later than December 31, 2022.

The City has already made steady progress towards resolving beach access noncompliance by bringing multiple beach access points and parking areas into compliance with its Plan. The City has resolved the noncompliance issues at the following public beach access points (AP): AP 1 - Apffel Park, AP 1A - Beachtown, AP 1B - Palisade Palms, AP 1C - East Beach Drive, AP 4 - End of Seawall, AP 6 - Pocket Park #1, AP 7 - Sunny Beach Subdivision, AP 11 - Spanish Grant Subdivision, AP 22 - Holiday Inn Club Vacations Galveston Seaside Resort (formerly Silverleaf Resort), AP 30 - Gulf Boulevard/Isla Del Sol Subdivision, AP

33 - 2nd Street/Bay Harbor Subdivision, AP 34 - Miramar Subdivision, AP 36 - Salt Cedar Avenue, and AP 41 - Pointe San Luis.

The July 17, 2020 Compliance Plan describes the steps the City will take to resolve each outstanding instance of noncompliance and an estimated timeline with required progress milestones by which resolution of each instance of noncompliance will be completed. The City has divided the outstanding instances of beach noncompliance into four main categories: conspicuous signage, Seawall Beach Urban Park parking, west end parking shortfalls, and west end pedestrian access. The timeline and milestones associated with each category differ as some are more complicated and may include significant capital outlay.

The City's Plan requires 2,259 public beach access parking spaces for the Seawall Beach Urban Park to be in compliance with the requirements of 31 TAC §15.7. There are currently 1,933 parking spaces in Seawall Beach Urban Park, which is 266 spaces short of that requirement. To immediately accommodate for the parking shortfall, the City designated 85 public beach parking spaces on streets located adjacent to Seawall Boulevard, of which at least 12 must be free parking. In the long term, the City intends to relocate these 85 public beach parking spaces to a City lot adjacent to Stewart Beach Park if feasible. The City will determine the feasibility of using this lot for parking by November 30, 2020. If it is not feasible for the City to relocate the 85 spaces to this lot, the parking will be located to another lot in the Stewart Beach vicinity by May 31, 2021. Under the Compliance Plan, the City is required to locate the remaining 181 required parking spaces within a free parking area in Stewart Beach Park, as originally required during the certification of the 2004 amendment to the City's Plan, by October 9, 2020. A future Plan amendment will be required to incorporate the final parking plan.

The following access points have a lack of conspicuous signage identifying parking areas and access points and explaining the nature of vehicular controls as required by 31 TAC § 15.7(h): AP 8 - Beachside Village, AP 15A - Pirates Beach Subdivision, AP 15B - Palm Beach Subdivision, AP 15C - Pirates Beach West Subdivision, AP 19 - Karankawa Beach Subdivision, AP 21 - Kahala Beach Estates, AP 29 - Isla Del Sol Subdivision, AP 37 - Playa San Luis Subdivision, AP 38 - Pointe San Luis 1, AP 39 - Pointe San Luis 2, and AP 40 - Pointe San Luis 3. The City has agreed to install conspicuous signage at AP 8, AP 19, AP 21, AP 29, AP 37, AP 38, AP 39, and AP 40 by September 15, 2020 and at AP 15A, AP 15B, and AP 15C by October 15, 2020.

The following access points have a lack of conspicuous signage identifying parking areas and access points and do not have the adequate amount of public beach access parking to accommodate for the prohibition of vehicles from the beach as required by the City's existing Plan and 31 TAC §15.7. The following access points are short parking spaces: AP 12 - Bermuda Beach, AP 20 - Indian Beach, AP 23 - The Dunes of West Beach, AP 24 - Sandhill Shores, AP 27 - Sea Isle Parking Area, and AP 28 - Sea Isle Subdivision and Terramar Beach Subdivision. The subdivisions were notified about the noncompliance in writing by the City on May 20, 2020. The City has met with all of these subdivisions except Indian Beach. By September 1, 2020, the City is providing the GLO with a plan with enforceable timelines for each access point that will bring the access point into compliance. The plan must also have a timeline by which the parking solution and the installation of conspicuous signage will be implemented. If this information is not provided to the GLO by this deadline, the City has committed to restoring vehicular access to the beach at each access point for which a plan was not provided by November 1, 2020. If parking issues are not resolved at an access point by the timelines established by the City or, in no case later than September 2022, vehicular access must be restored at that access point. If the September 2022 deadlines are not met, the City will restore vehicular access to the beach. The vehicular access will be restored by November 1, 2022. The beach will then remain open to vehicular traffic until the Subdivision comes into compliance with the parking shortfall.

The plans for parking and signage solutions must contain milestones. The City has committed to fully implementing them by September 2022. Shorter deadlines will be required where practicable. If the access points are not compliant with parking and signage requirements by September 2022, the City will restore vehicular access at those access points by November 1, 2022.

The following access points have a lack of adequate pedestrian pathways to the beach as required by the City's existing Plan and state law: AP 20 - Indian Beach, AP 23 - The Dunes of West Beach, and AP 24 - Sandhill Shores. The City held at least two meetings with the subdivisions adjacent to each access point by July 15, 2020, except for Indian Beach. The City is meeting with Indian Beach as soon as possible. By September 1, 2020, the City is providing the GLO with a plan for each access point to restore pedestrian access to the beach. If this information is not provided to the GLO by this deadline, the City has committed to restoring vehicular access to the beach at each access point for which a plan was not provided by November 1, 2020. The plans for pedestrian pathways for the beach must contain milestones. The City has committed to be fully implementing them by September 2022. Shorter deadlines will be required where practicable. If the access points are not compliant with pedestrian pathways for the beach requirements by September 2022, the City will restore vehicular access at those access points by November 1, 2022. The beach will then remain open to vehicular access until the subdivision comes into compliance with the pedestrian access requirements.

Numerous dune walkovers at AP 12 - Bermuda Beach are encroaching on the public beach and impairing public use of the beach, which is inconsistent with the requirements of the City's existing Plan, 31 TAC §15, and the OBA. The City has already removed a dune walkover that was encroaching on the public beach easement. The remaining six dune walkovers must either be shortened to the most landward point of the public beach easement or be removed entirely. The City held at two meetings with the subdivision adjacent to the access point. By September 1, 2020, the City will provide a plan to the GLO to resolve each instance of encroachment on the public beach that includes a deadline of September 2022 by which the resolution will be completed. If this information is not provided to the GLO by this deadline, the City will restore vehicular access to the beach at this access point by November 1, 2020.

In addition, the following beach parks do not have the adequate amount of off-beach parking or pedestrian pathways to the beach as required by the City's existing Plan and 31 TAC §15.7: AP 9 - Pocket Park No. 2, AP 13 - Pocket Park No. 3, and AP 32 - Pocket Park No. 4. The construction of the required off-beach parking lot and dune walkover at Pocket Park No. 2 is fully funded and is anticipated to begin by September 1, 2020. Within 6 months of this conditional certification, the City will determine the cost of compliance for Pocket Park Nos. 3 and 4. The City has applied for CMP Cycle 26 grant funding to bring Pocket Park No. 3 into compliance and will apply for CMP Cycle 27

grant funding to bring Pocket Park No. 4 into compliance. If awarded the funding, construction of the off-beach parking areas and pedestrian pathways to the beach is anticipated to be complete by December 31, 2021 for Pocket Park No. 3 and by December 31, 2022 for Pocket Park No. 4. In the interim, the City has relocated the bollards at Access Point 33 - Bay Harbor farther east to expand the size of the on-beach parking area to accommodate for the lack of the required off-beach parking and pedestrian pathway to the beach at Pocket Park No. 3. The City will relocate the bollards at Access Point 33 farther east to also accommodate for the lack of off-beach parking at Pocket Park No. 4 by November 20, 2020.

FISCAL AND EMPLOYMENT IMPACTS

Ms. Melissa Porter, Deputy Director for the GLO's Coastal Resources Division, has determined that for each year of the first five years the amended rule as proposed is in effect, there will be minimal, if any, fiscal implications to the state government as a result of enforcing or administering the amended rule.

Ms. Porter has determined that the proposed amendment will not affect the costs of compliance for small businesses as the proposed changes relate to individual permits for parking on the beach and are not related to the permitting or restriction of business activities. The impact of the fee increase is mitigated by the existence of intermittently spaced no-fee areas throughout Seawall Beach Urban Park and the morning and evening hours when no fee is charged. The other Plan amendments will primarily affect private residences and will have minimal impact on small businesses. Ms. Porter has also determined that for each year of the first five years the proposed amendments are in effect, there will be no impacts to the local economy.

GLO has determined that the proposed rulemaking will have no adverse local employment and that no impact statement is required pursuant to Texas Government Code §2001.022.

PUBLIC BENEFIT

Ms. Porter has determined that the public will be affected by the increase of the BUF. Individuals will be required to pay larger hourly, daily, and annual fees. However, the Plan includes no-fee areas of public beach parking as required by 31 TAC §15.8(h), mitigating the impact of the BUF increase on individuals. The City Plan designates a minimum of ten percent of the number of required parking spaces in Seawall Beach Urban Park as free. A total of 218 free parking spaces are evenly distributed along the north and south sides of Seawall Boulevard, and at least 12 additional free parking spaces will be located on streets adjacent to Seawall Boulevard until they can be moved to a lot adjacent to the beach. In addition, there is no BUF charged at any access area on the west end of Galveston.

Ms. Porter has determined that the BUF benefits the public and beachgoers because the increased fees are necessary for the City to continue to fund and provide adequate and improved beach-related services to the public. The BUF specifically benefits the public and beachgoers by funding beach-related services such as safer pedestrian access to the beach, trash collection, improvements to beach access and parking signage, and providing beachgoers with enhanced amenities such as permanent restrooms, outdoor showers, and pedestrian bollard lighting.

Ms. Porter has determined that the public will benefit from the adoption of updated maps in Exhibit B that more accurately reflect shoreline conditions. The amendment of language that makes the Plan and the ERP consistent with each other benefits the public because clarity and guidance regarding permit conditions and construction requirements will be more easily available before property is purchased for development. Specifically, incorporating the ERP provisions into the Plan will provide more clarity on the prohibitions and exceptions that are applicable to construction activities that may be proposed within 50 feet of the north toe of the dune. Clarity on these requirements will also help reduce proposals and authorizations that may increase public expenditures associated storm damage.

Ms. Porter has determined that the public will benefit from the adoption of the prohibition on enclosures below base flood elevation within the Dune Conservation Area because of reduced public expenditures associated with damage to or loss of structures and public infrastructure due to storm damage and erosion.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendments are proposed under Texas Natural Resources Code §§61.011, 61.015(b), 61.022 (b) & (c), 61.070, and 63.121, which provide the GLO with the authority to adopt rules governing the preservation and enhancement of the public's right to use and access public beaches, imposition or increase of beach user fees, and certification of local government beach access and use plans as consistent with state law. The proposed amendments do not exceed federal or state requirements.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The GLO has determined that the proposed amendments do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §§17 and 19 of the Texas Constitution. The GLO has also determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to property or use of that property. The BUF increase applies to public property owned by either the City of Galveston or Galveston County, not private real property. The updated maps are meant to be guidance and are not detailed enough to determine the location of the north toe of the dune, which is determined by an official survey of property. Therefore, the maps do not affect real property owners in a way that would require them to be compensated.

The City of Galveston's Erosion Response Plan establishes and implements a building set-back line and includes guidelines providing exemptions for property for which the owner has demon-

strated that no practicable alternatives to construction seaward of the building set-back line exist. The definition of the term "practicable" in 31 TAC §15.2(55) allows a local government to consider the cost of implementing a technique such as the set-back provisions in determining whether it is "practicable" in a particular application for development. In applying its regulation, the City of Galveston will determine on a case-by-case basis whether to permit construction of habitable structures in the area seaward of the building set-back line and landward of the line of vegetation if it would cause severe and unavoidable economic impacts and thus avoid an unconstitutional taking. In addition, a building set-back line adopted by local governments under that section would not constitute a statutory taking under the Private Real Property Rights Preservation Act inasmuch as Texas Natural Resources Code §33.607(h) as added by HB 2819 provides that Chapter 2007, Government Code, does not apply to a rule or local government order or ordinance authorized by §33.607. GLO has therefore determined that the proposed rulemaking will not result in a taking of private property and that there are no adverse impacts on private real property interests.

GOVERNMENT GROWTH IMPACT STATEMENT

The GLO prepared a Government Growth Impact Statement for this proposed rulemaking. Since the proposed rule simply certifies the amendments to City of Galveston's Dune Protection and Beach Access Plan (Plan), it will not affect the operations of the General Land Office. The proposed rulemaking does not create or eliminate a government program, will not require an increase or decrease in future legislative appropriations to the agency, will not require the creation of new employee positions nor eliminate current employee positions at the agency, nor will it require an increase or decrease in fees paid to the General Land Office. The proposed rule amendments do not create, limit, or repeal existing agency regulations, but rather certify the amendments to the Plan as consistent with state law. The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability.

During the first five years that the proposed rules would be in effect, it is not anticipated that there will be an adverse impact on the state's economy. The proposed amendments are expected to improve environmental protection and safety and to reduce public expenditures associated with loss of structures and public infrastructure due to storm damage and erosion, disaster response costs, and loss of life.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The proposed rulemaking is subject to the Coastal Management Program as provided for in Texas Natural Resources Code §33.2053 and 31 TAC §§505.11(a)(1)(J) and 505.11(c) (relating to Actions and Rules Subject to the CMP). GLO has reviewed this proposed action for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations and has determinate that the proposed action is consistent with the applicable CMP goals and policies. The applicable goals and policies are found at 31 TAC §501.12 (relating to Goals) and §501.26 (relating to Policies for Construction in the Beach/Dune System).

The proposed amendments are consistent with the CMP goals outlined in 31 TAC §501.12(5). These goals seek to balance the benefits of economic development and multiple human uses, the benefits of protecting, preserving, restoring, and enhancing coastal natural resource areas (CNRAs), and the benefits from public access to and enjoyment of the coastal zone. The proposed amendments are consistent with 31 TAC §501.12(5) as they provide the City with the ability to enhance public access and enjoyment of the coastal zone, protect and preserve and enhance the CNRA, and balance other uses of the coastal zone.

The proposed rules are also consistent with CMP policies in 31 TAC §501.26(a)(4) because they enhance and preserve the ability of the public, individually and collectively, to exercise rights of use of and access to and from public beaches.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking or its consistency with the CMP goals and policies, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, TX 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendments are proposed under Texas Natural Resources Code §§33.602, 33.607, 61.011, 61.015(b), 61.022 (b) & (c), 61.070, 63.091, and 63.121, which provide the GLO with the authority to adopt rules governing the preservation and enhancement of the public's right to access and use public beaches, imposition or increase of beach user fees, the preparation and implementation by a local government of a plan for reducing public expenditures for erosion and storm damage losses to public and private property, and certification of local government beach access and use plans as consistent with state law.

Texas Natural Resources Code §§33.602, 33.607, 61.011, 61.015 61.022, 61.070, and 63.121 are affected by the proposed amendments.

§15.36. Certification Status of City of Galveston Dune Protection and Beach Access Plan.

(a) - (c) (No change.)

(d) The General Land Office conditionally certifies as consistent with state law amendments to the City of Galveston's Dune Protection and Beach Access Plan as amended on January 24, 2019 by Ordinance No. 19-012. The amendments include an increase in the Beach User Fee on the Seawall, the adoption of updated maps in Exhibit B, and a variance for certain in-ground pools. The amendments were adopted by City Council in Ordinance No. 19-012 on January 24, 2019, which incorporated previously adopted Ordinance No. 18-005.

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 August 24, 2020.

TRD-202003462
Mark Havens
Deputy Land Commissioner and Chief Clerk
General Land Office
Earliest possible date of adoption: October 4, 2020
For further information, please call: (512) 475-1859

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER I. VALUATION PROCEDURES

34 TAC §9.4011

The Comptroller of Public Accounts proposes amendments to §9.4011, concerning appraisal of timberlands. These amendments are to reflect updates and revisions to the manual for the appraisal of timberland. The proposed amended manual may be viewed at https://comptroller.texas.gov/taxes/property-tax/rules/index.php.

The comptroller amends the Manual for the Appraisal of Timberland, adopted by reference, to update and revise the manual for the appraisal of timberland that has been in effect since May 2004. The manual sets forth the methods to apply and the procedures to use in qualifying and appraising land used for timber production under Tax Code, Chapter 23, Subchapters E and H. The updates and revisions to the manual generally reflect statutory changes; changes dictated by case law; changes to examples to reference more current prices, expenses and values; changes to organization names and information available from different sources; and the addition of footnotes for citations to Tax Code sections and case law referenced. The proposed amendments also provide that appraisal districts are required by law to use this manual in qualifying and appraising timberland. Pursuant to Tax Code, §23.73(b), these rules have been approved by the Comptroller with the review and counsel of the Texas A&M Forest Service.

Tom Currah, 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 the current rule.

Mr. Currah 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 improving the administration of local property valuation and taxation. 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 Korry Castillo, 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.*

The comptroller proposes these amendments under Tax Code, §§5.05 (Appraisal Manuals and Other Materials), 23.73 (Appraisal of Timber Land), and 23.9803 (Appraisal of Restricted-use Timber Land), which provide the comptroller with the authority to prepare and issue publications relating to the appraisal of property and to promulgate rules specifying methods to apply and the procedures to use in appraising qualified timberland and restricted-use timberland for ad valorem tax purposes.

These amendments implement Tax Code §23.73 (Appraisal of Timber Land) and §23.9803 (Appraisal of Restricted-use Timber Land).

§9.4011. Appraisal of Timberlands.

Adoption of the Manual for the Appraisal of Timberland. This manual sets out both the eligibility requirements for timberland to qualify for productivity appraisal and the methodology for appraising qualified timberland and restricted use timberland. Appraisal districts are required by law to follow the procedures and methodology set out in this manual. The Comptroller of Public Accounts adopts by reference the Manual for the Appraisal of Timberland. Copies of this manual can be obtained from the Comptroller of Public Accounts, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528 or from the Property Tax Assistance Division website. Copies may also be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999. From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099, toll free. In Austin, the local TDD number is (512) 463-4621. This manual and those that have been superseded are available from the Comptroller's office as well as the State Archives.

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 August 19, 2020.

TRD-202003417
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: October 4, 2020
For further information, please call: (512) 475-2220

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER M. SUBSTITUTE-CARE SERVICES

DIVISION 1. GENERAL

40 TAC §700.1334

The Department of Family and Protective Services (DFPS) proposes new rule §700.1334 in Chapter 700, concerning Child Protective Services.

BACKGROUND AND PURPOSE

The purpose of the rule change is to comply with House Bill (HB) 781, which was enacted into law by the 86th Texas Legislature September 1, 2019. HB 781, among other things, requires DFPS by rule to establish DFPS's strategy to develop trauma-informed protocols for reducing the number of incidents in which a child in the conservatorship of DFPS runs away from a residential treatment center; and balance measures aimed at protecting child safety with federal and state requirements related to normalcy and decision making under the reasonable and pru-

dent parent standard prescribed by 42 U.S.C. §675 and Family Code §§264.001 and 264.125. Recognizing the importance of having a runaway prevention strategy that encompasses all children and youth in DFPS conservatorship, the rule includes all contracted and non-contracted placements, in addition to residential treatment centers.

SECTION-BY-SECTION SUMMARY

New rule §700.1334 provides that DFPS has established policy and protocols that guide caseworkers in providing support and information to kinship and non-contracted caregivers of children in DFPS conservatorship to prevent and reduce the occurrence of runway incidents. The rule also provides that all DFPS contracts with residential child care providers for children in DFPS conservatorship include a provision requiring the providers to maintain such policies and protocols. These protocols address child safety while promoting normalcy; include guidelines for identifying children that might be at risk of running away from their placement; require caregivers to use the reasonable and prudent parent standard when making decisions regarding the child; and be trauma-informed. The rule also provides definitions for terms used in the rule, including for "normalcy", "reasonable and prudent parent standard", "runaway incident", "unauthorized absence", and "trauma-informed".

FISCAL NOTE

David Kinsey, Chief Financial Officer of DFPS, has determined that for each year of the first five years that the rule will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the rule as proposed. Any cost of implementation will be absorbed into current caseworker workload utilizing existing resources.

GOVERNMENT GROWTH IMPACT STATEMENT

DFPS has determined that during the first five years that the proposed rule will be in effect:

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

(2) implementation will not affect the number of employee positions;

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

(4) the proposed rule will not affect fees paid to the agency;

(5) the proposed rule will create a new regulation only to the extent that DFPS is adopting a new rule as mandated by SB 781, 86th Legislature, R.S. (2019);

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

(7) the proposed rule will not increase the number of individuals subject to the rule; and

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

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

Mr. Kinsey has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule does not apply to small or micro-businesses, or rural communities.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Pursuant to subsection (c)(7) of Texas Government Code, §2001.0045, the statute does not apply to a rule that is adopted by DFPS.

PUBLIC BENEFIT

Deneen Dryden, Associate Commissioner for Child Protective Services, has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule is that it will further efforts to prevent youth in DFPS conservatorship from running away from their placement, thereby promoting child safety and well-being.

REGULATORY ANALYSIS

DFPS has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments and questions on this proposal must be submitted within 30 days of publication of the proposal in the *Texas Register*. Electronic comments and questions may be submitted to RULES@dfps.state.tx.us. Hard copy comments may be submitted to the DFPS Rules Coordinator, Legal Services 20R03, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030.

STATUTORY AUTHORITY

The proposed rule implements Human Resources Code §40.043, enacted pursuant to HB 781, 86th Legislature, R.S. (2019).

The rule is proposed under Human Resources Code (HRC) §40.027, which provides that the DFPS commissioner shall adopt rules for the operation and provision of services by the department.

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

§700.1334. What strategies does DFPS implement to reduce the number of incidents in which a child in its conservatorship runs away?

(a) DFPS has established policy and protocols that guide caseworkers in providing support and information to kinship and other non-contracted caregivers of children in DFPS conservatorship to prevent and reduce the occurrence of runaway incidents. The protocols:

(1) address child safety while promoting normalcy;

(2) include guidelines for identifying children that might be at risk of running away from their placement;

(3) require caregivers to use the reasonable and prudent parent standard when making decisions regarding the child; and

(4) are trauma-informed.

(b) DFPS contracts with residential child care providers include a provision that requires the providers to maintain policy and

protocols to prevent and reduce the occurrence of runaway incidents by children in DFPS conservatorship that are placed in their operations and/or foster homes. The contracts require that the protocols:

(1) address child safety while promoting normalcy;

(2) include guidelines for identifying children who might be at risk of running away from their placement;

(3) require caregivers to use the reasonable and prudent parent standard when making decisions regarding the child; and

(4) be trauma-informed.

(c) In this section, the following terms have the following meaning:

(1) "Normalcy" has the same definition as specified in §748.701 of title 26 (relating to What is "normalcy"?) and §749.2601 of title 26 (relating to What is "normalcy"?). For purposes of this DFPS section, "age-appropriate normalcy activity" means an activity or experience as defined in Texas Family Code §264.001(1).

(2) "Reasonable and prudent parent standard" has the same definition as specified in §748.705 of title 26 (relating to What is the "reasonable and prudent parent standard"?) and §749.2605 of title 26 (relating to What is the "reasonable and prudent parent standard"?).

(3) "Runaway" incident is defined as a type of unauthorized absence where a child who has left the child's placement on the child's own accord and without permission from the caregiver, does not appear to have the intent to return and is unable to be located. An unauthorized absence in which the child has temporarily left the placement without permission from the caregiver but intends to return, is not considered a runaway incident for purposes of this DFPS section. For the definition of an unauthorized absence, see §748.301(3) of title 26 (relating to What do certain terms mean in this subchapter?) and §749.501(3) of title 26 (relating to What do certain terms mean in this subchapter?) for the definition of an unauthorized absence.

(4) "Trauma-informed" has the same definition as specified in §748.43(70) of title 26 (relating to What do certain words and terms mean in this chapter?) and §749.43(72) of title 26 (relating to What do certain words and terms mean in this chapter?).

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

Filed with the Office of the Secretary of State on August 21, 2020.

TRD-202003437
Tiffany Roper
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: October 4, 2020
For further information, please call: (512) 438-3397

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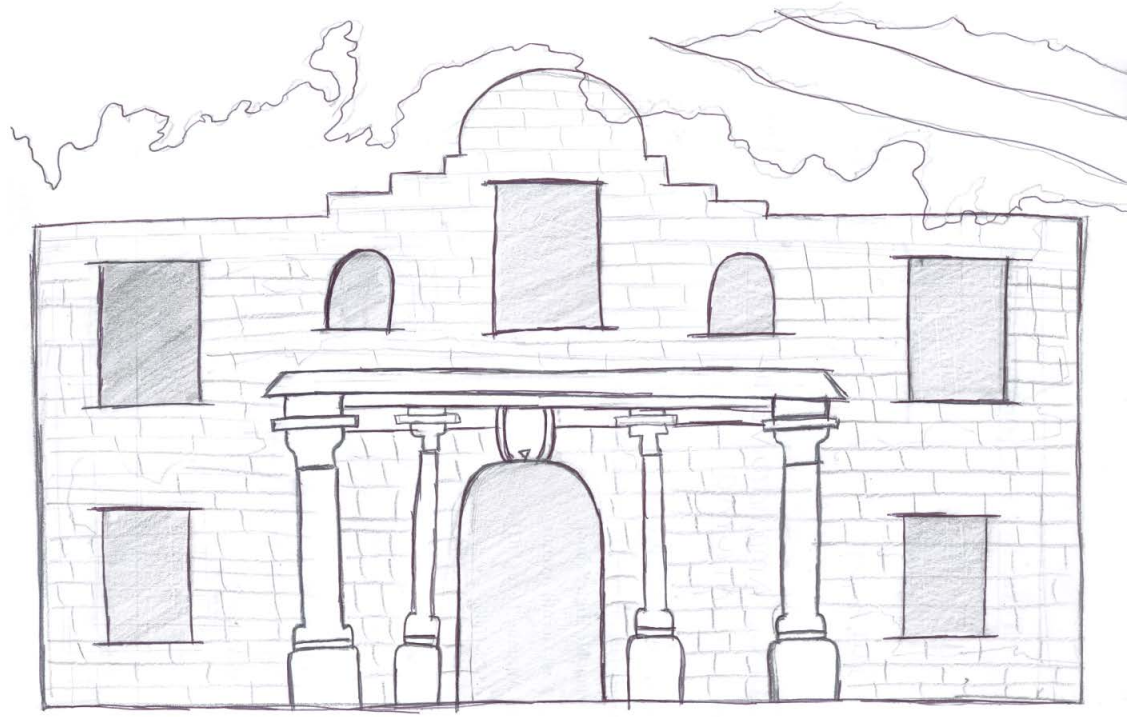

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 108. PROFESSIONAL CONDUCT

SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.7

The State Board of Dental Examiners withdraws the emergency adoption of the amendment to §108.7, which appeared in the May 8, 2020, issue of the *Texas Register* (45 TexReg 2944).

Filed with the Office of the Secretary of State on August 24, 2020.

TRD-202003503
Casey Nichols
General Counsel
State Board of Dental Examiners
Effective date: August 24, 2020
For further information, please call: (512) 305-9380

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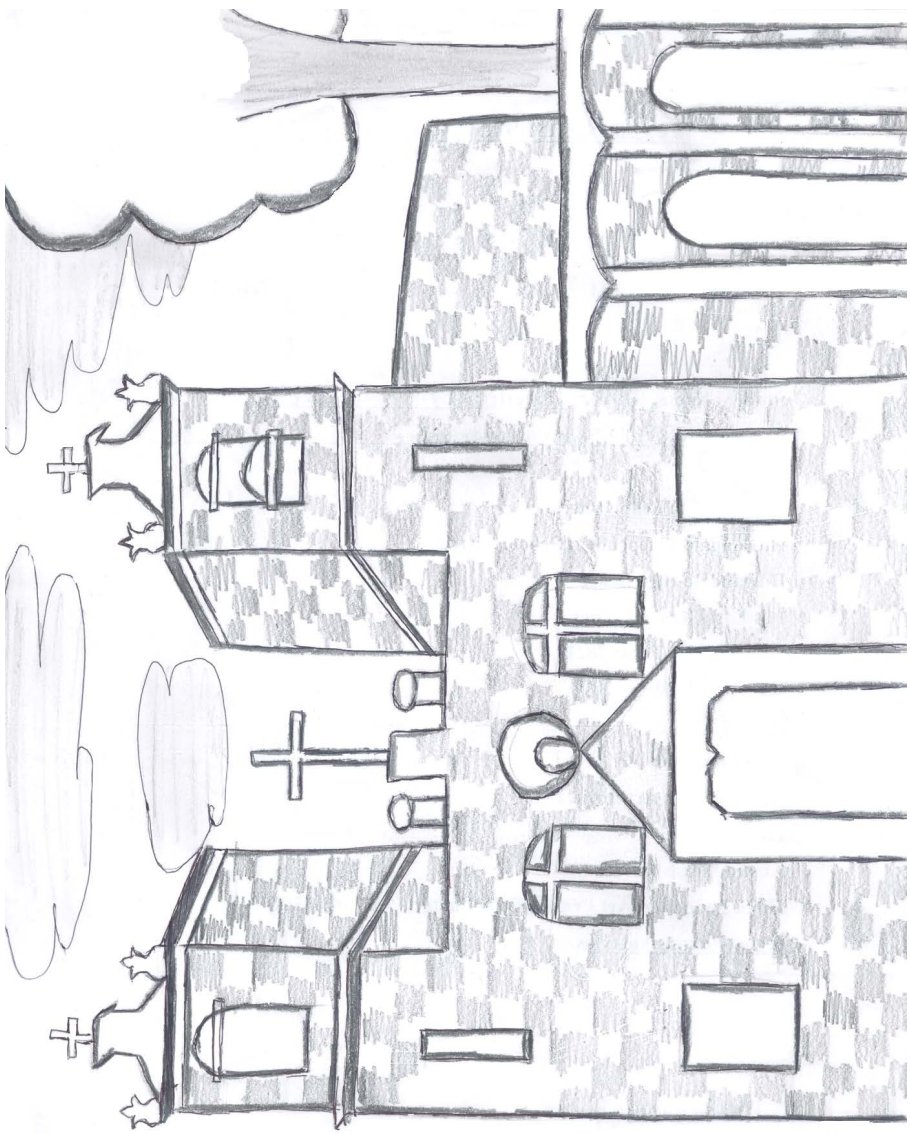

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 54. SPECIAL PROGRAMS

SUBCHAPTER D. REPORTS CONCERNING HUMAN TRAFFICKING CASES

1 TAC §54.90, §54.91

The Office of the Attorney General (OAG) adopts a new Subchapter D of Chapter 54, consisting of two new sections, §54.90 and §54.91. The rules are adopted without changes to the proposed text published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4603), and the rules will not be republished.

The rules implement House Bill 3800, 86th Legislature, Regular Session (2019), concerning required reporting of human trafficking cases by certain law enforcement entities and prosecutors. Section 54.90 applies to the Department of Public Safety and certain entities in counties with a population of more than 500,000. Section 54.91 applies to certain entities in counties with a population of 500,000 or less.

No written comments were received regarding the rules.

Sections 54.90 and 54.91 are adopted in accordance with Code of Criminal Procedure Article 2.305(e), which requires the OAG to adopt rules concerning required reporting of human trafficking cases by certain law enforcement entities and prosecutors.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2020.

TRD-202003416
Lesley French
General Counsel
Office of the Attorney General
Effective date: September 8, 2020
Proposal publication date: July 10, 2020
For further information, please call: (512) 475-3210

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PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 204. INTERAGENCY CONTRACTS FOR INFORMATION RESOURCES TECHNOLOGIES

The Texas Department of Information Resources (department) adopts the repeal of 1 TAC Chapter 204, §§204.1 - 204.3, 204.10 - 204.12, 204.30 - 204.32, concerning Interagency Contracts for Information Resources Technologies. The adoption is made with no changes to the proposed repeals as published in the May 29, 2020, issue of the *Texas Register* (45 TexReg 3559); therefore, the rules will not be republished. The repeal of these rules will more accurately reflect legislative actions. The repeal is necessary as the result of passage of Senate Bill 64, effective on September 1, 2019. The legislation repealed Texas Government Code §2054.119, which provided DIR's rulemaking authority for the rules governing interagency contracts promulgated by Chapter 204.

The changes to the chapter apply to state agencies and institutions of higher education. The assessment of the impact of the adopted changes on institutions of higher education was prepared in consultation with the Information Technology Council for Higher Education (ITCHE) in compliance with Texas Government Code §2054.121(c). ITCHE determined that there was no fiscal impact upon institutions of higher education as a result of the proposed repeal.

Hershel Becker, the department's Chief Procurement Officer, has determined that for each year of the first five years following the repeal of Chapter 204, there will be no fiscal impact on state agencies, institutions of higher education, and local governments resulting from compliance with such changes to the rule. The elimination of unnecessary and duplicative rules reduces bureaucracy and the risk of inconsistences in duplicative laws and increase flexibility in the conduct of business for the department and its constituency.

The department received no comments to the proposed rulemaking during the 30-day comment period.

SUBCHAPTER A. DEFINITIONS

1 TAC §§204.1 -204.3

The repeals are adopted under Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054, in addition to Senate Bill 64, which rescinds the department's specific rulemaking authority granted by repealed Texas Government Code § 2054.119.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2020.

TRD-202003478
Katherine Rozier Fite
Interim General Counsel
Department of Information Resources
Effective date: September 13, 2020
Proposal publication date: May 29, 2020
For further information, please call: (512) 475-4552

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SUBCHAPTER B. STATE AGENCY INTERAGENCY CONTRACTS

1 TAC §§204.10 - 204.12

The repeals are adopted under Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054, in addition to Senate Bill 64, which rescinds the department's specific rulemaking authority granted by repealed Texas Government Code § 2054.119.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2020.

TRD-202003479
Katherine Rozier Fite
Interim General Counsel
Department of Information Resources
Effective date: September 13, 2020
Proposal publication date: May 29, 2020
For further information, please call: (512) 475-4552

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SUBCHAPTER C. INSTITUTION OF HIGHER EDUCATION INTERAGENCY CONTRACTS

1 TAC §§204.30 - 204.32

The repeals are adopted under Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054, in addition to Senate Bill 64, which rescinds the department's specific rulemaking authority granted by repealed Texas Government Code § 2054.119.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2020.

TRD-202003480
Katherine Rozier Fite
Interim General Counsel
Department of Information Resources
Effective date: September 13, 2020
Proposal publication date: May 29, 2020
For further information, please call: (512) 475-4552

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CHAPTER 216. PROJECT MANAGEMENT PRACTICES

SUBCHAPTER B. PROJECT MANAGEMENT PRACTICES FOR STATE AGENCIES

1 TAC §216.11

The Texas Department of Information Resources (department) adopts amendments to 1 TAC Chapter 216, §216.11, without changes to the proposal as published in the May 29, 2020, issue of the *Texas Register* (45 TexReg 3560); therefore, the rules will not be republished. The amended rule is necessary as a result of SB 65 [86(R) Legislative Session.

The adopted amendment to 1 TAC §216.11 implements the additional and reduced monitoring guidelines necessary to comply with Texas Government Code §2261.258(e).

The proposed amendment applies to state agencies. The amendment does not apply to institutions of higher education. DIR submitted the proposed amendments to the Information Technology Council of Higher Education for their review and impact assessment. ITCHE had no comments and determined that there was no impact on institutions of higher education.

The department received no comments in response to the publication of the proposed amendments.

The amendment is proposed pursuant to Texas Government Code §2261.258(e), mandating the department create guidelines by rule for additional or reduced monitoring of state agencies, and Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code, Chapter 2054.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2020.

TRD-202003477
Katherine Rosier Fite
Interim General Counsel
Department of Information Resources
Effective date: September 13, 2020
Proposal publication date: May 29, 2020
For further information, please call: (512) 475-4552

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 5. FUEL QUALITY

4 TAC §§5.1, 5.3 - 5.7

The Texas Department of Agriculture (Department) adopts the repeal of rules at 4 Texas Administrative Code (TAC), Chapter 5, §§5.1 and 5.3 - 5.7, regarding Fuel Quality. The repeal is adopted without changes to the proposed text as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4869). The rules will not be republished.

The adoption of the repeal is in response to Senate Bill (SB) 2119, 86th Legislature, Regular Session (2019), which transferred the Motor Fuel Metering and Quality Program (Program) from the Department to the Texas Commission of Licensing and Regulation (Commission) and the Texas Department of Licensing and Regulation (TDLR) and which, effective September 1, 2020, creates new Texas Occupations Code, Chapter 2310, Motor Fuel Metering and Quality. The Commission has proposed new 16 TAC, Chapter 97, to administer and regulate the Program.

The Department received no comments regarding the proposed repeal.

The repeal is adopted under Section 12.016 of the Agriculture Code, which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2020.

TRD-202003432
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Effective date: September 9, 2020
Proposal publication date: July 17, 2020
For further information, please call: (512) 936-9360

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CHAPTER 12. WEIGHTS AND MEASURES

The Texas Department of Agriculture (Department) adopts amendments to 4 Texas Administrative Code (TAC), Chapter 12, Subchapter A, §12.1; Subchapter B, §§12.11 - 12.13, 12.15; and Subchapter E, §12.40, regarding Weights and Measures. The amendments are adopted without changes to the proposed text as published in the July 17, 2020, edition of the *Texas Register* (45 TexReg 4870). The rules will not be republished.

The adopted amendments are in response to Senate Bill (SB) 2119, 86th Legislature, Regular Session (2019), which transferred the Motor Fuel Metering and Quality Program (Program) from the Department to the Texas Commission of Licensing and Regulation (Commission) and the Texas Department of Licensing and Regulation (TDLR) and which, effective September 1, 2020, creates new Texas Occupations Code, Chapter 2310, Motor Fuel Metering and Quality. The Commission has proposed new 16 TAC, Chapter 97, to administer and regulate the Program.

The Department received no comments regarding the proposed amendments.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §12.1

The amendments are adopted under Section 12.016 of the Agriculture Code, which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2020.

TRD-202003434
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Effective date: September 9, 2020
Proposal publication date: July 17, 2020
For further information, please call: (512) 936-9360

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SUBCHAPTER B. DEVICES

4 TAC §§12.11 - 12.13, 12.15

The rules are adopted under Section 12.016 of the Agriculture Code, which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the code.

The statutory provisions affected by the adoption are those set forth in Texas Agriculture Code, Chapter 13. No other statutes, articles, or codes are affected by the adopted rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2020.

TRD-202003435
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Effective date: September 9, 2020
Proposal publication date: July 17, 2020
For further information, please call: (512) 936-9360

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SUBCHAPTER E. SERVICE COMPANIES

4 TAC §12.40

The rules are adopted under Section 12.016 of the Agriculture Code, which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the code.

The statutory provisions affected by the adoption are those set forth in Texas Agriculture Code, Chapter 13. No other statutes, articles, or codes are affected by the adopted rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2020.

TRD-202003436
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Effective date: September 9, 2020
Proposal publication date: July 17, 2020
For further information, please call: (512) 936-9360

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TITLE 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 12. LOANS AND INVESTMENTS

SUBCHAPTER D. INVESTMENTS

7 TAC §12.91

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §12.91, concerning other real estate owned (OREO) by state banks. The amendments are adopted without changes to the proposed text as published in the July 3, 2020, issue of the *Texas Register* (45 TexReg 4437). The amended rule will not be republished.

REASONED JUSTIFICATION

These amendments extend the initial appraisal deadline to within 90 days of OREO acquisition by state banks and enable the Texas Banking Commissioner (commissioner) to extend this deadline and the three-year re-appraisal deadline where appropriate.

The amendments also reduce the scope of the OREO appraisal rule by raising the recorded book value threshold for OREO subject to the rule. Specifically, the amendments only require initial appraisals and three-year re-appraisals for OREO with recorded book values of more than $500,000, raising the existing threshold amount from $250,000.

SUMMARY OF PUBLIC COMMENTS & RESPONSES THERETO

A comment supporting the adoption of the amendments was received from Independent Bankers Association of Texas (IBAT), which represents various state banks. IBAT states that the amendments will provide helpful regulatory relief to state banks and are consistent with changes by federal regulators. In addition, IBAT states that the increase from 60 to 90 days for the time to obtain an appraisal on OREO after acquisition will also be helpful for state banks.

One additional comment regarding the amendments was received from International Bancshares Corporation (IBC), which owns a state bank. IBC supports the amendments because they ease regulatory complexity, foster uniformity among the banking industry, give state banks greater opportunities to serve small businesses, and reduce the risks of transactions of OREO from failing where an appraiser is not available.

However, IBC urges the commission to go further and raise the mandatory OREO appraisal threshold to at least $750,000 or preferably $1,000,000. IBC notes that the National Credit Union Administration raised analogous OREO appraisal thresholds for credit unions relating to commercial real estate transactions to $1,000,000 and argues that further increases to the commission's appraisal would allow Texas state banks to more fairly compete with credit unions.

The department believes that raising the threshold further as proposed by IBC would create undesirable risks for the safety and soundness of state banks. Appraisals by licensed or certified appraisers tend to be more accurate, and accurate valuations of OREO owned by state banks is important for ensuring the financial soundness of those state banks. In addition, increasing the OREO appraisal threshold to $500,000 under the amendments is consistent with recent updates to federal bank regulations at Title 12 of the Code of Federal Regulations, §225.63 and §323.3, which now require state banks to obtain appraisals for commercial real estate loans and other commercial real estate transactions with a transaction value of more than $500,000.

STATUTORY AUTHORITY

The amendments are adopted pursuant to Texas Finance Code (Finance Code), §11.301, which authorizes the commission to adopt rules applicable to state banks, and Finance Code, §31.003, which authorizes the commission to adopt rules necessary to preserve or protect the safety and soundness of state banks.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 21, 2020.

TRD-202003438
Catherine Reyer
General Counsel
Texas Department of Banking
Effective date: September 10, 2020
Proposal publication date: July 3, 2020
For further information, please call: (512) 475-1301

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PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 76. MISCELLANEOUS

SUBCHAPTER F. FEES AND CHARGES

7 TAC §76.98

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts amendments to Title 7, Texas Administrative Code (TAC), Part 4, Chapter 76, Subchapter F, §76.98. The rule is adopted with changes to the text published in the July 3, 2020 issue of the *Texas Register* (45 TexReg 4439) and is republished to reflect such changes. The changes regulate no new parties and affect no new subjects of regulation. As a result, the rule will not be republished as a proposed rule for comment.

Explanation of and justification for the rule

7 TAC Chapter 76 contains the department's rules concerning charges and fees imposed on regulated state savings banks. Existing §76.98 imposes an annual assessment fee on state sav-

ings banks to fund the operations of the department and provide for the supervision and examination of state savings banks by the department. Under the requirements of existing §76.98, regulated state savings banks are assessed a fee that is based on their size as reflected by their total assets. By assessing a fee based on asset size, a state savings bank is meant to pay an assessment fee proportionate to the cost of its required supervision and examination. The amendments allow the department to also consider a state savings bank's total risk-weighted assets as a basis on which to establish the amount of its assessment fee. A risk-weighted asset approach takes into consideration not only the state savings bank's asset size, but also the character of its operations as revealed by its investment positions and associated risk profile. The department asserts a risk-weighted asset approach promotes more equitable fees for state savings banks. A state savings bank taking riskier investment positions is more likely to raise safety and soundness concerns, and typically requires closer supervision and additional scrutiny during examination, leading to increases in attendant costs disproportionate to a similarly-sized state savings bank with equivalent total assets but more conservative investment positions. As a result, the requirements of the existing rule have the tendency to distort the actual costs required for the supervision and examination of regulated state savings banks, and in some instances resulting in inflated assessment fees outsizing the actual cost of regulation. The department anticipates that administering and enforcing the amended rule will result in reduced assessment fees for regulated state savings banks overall. Existing §76.98 has been in place and stood largely unchanged since its adoption in 2012. The underlying requirements of the rule have been in place since 1993 when they were initially adopted by the department (at that time, the Texas Savings and Loan Department; 7 TAC §76.98; 18 TexReg 6100). With the advent of modern capital requirements based on risk weighting, the department has ready access to data for most state savings banks with which to apply a risk-weighted asset approach in assessing fees. Specifically, implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 at the federal level (Public Law No. 111-203, 124 Stat. 1376, 1435-38 (2010)) and application of the Basel III standards of the Basel Committee for Banking Supervision in federal law means many state savings banks already regularly report data concerning their total risk-weighted assets for purposes of their minimum capital requirements. Such data may be easily repurposed by the department for use in assessing fees on a risk-weighted asset basis. In consideration of the foregoing, the department determined that assessments based on total risk-weighted assets would result in fees that are more equitable and better reflect the true cost of regulation. The amendments to §76.98 effectuate such change.

Summary of public comments

Publication of the department's proposal to amend 7 TAC §76.98 recited a deadline of 30 days to receive public comments, or August 2, 2020. A public hearing in accordance with Government Code §2001.029 was not required. The department received one comment made on behalf of the Texas Bankers Association (TBA) indicating it was in favor of the amendments as initially proposed.

Statutory Authority

Amended 7 TAC §76.98 is adopted under the authority of Finance Code §91.007(1)(A), which requires the commission to adopt rules for fees and charges related to the supervision and examination of state savings banks. Amended 7 TAC §76.98 is further adopted under the authority of Finance Code §16.003(c), which provides that the department may set the amounts of fees, penalties, charges, and revenues as necessary for the purpose of carrying out the functions of the department.

The adoption of amended 7 TAC §76.98 affects the statutes administered and enforced by the department's commissioner with respect to state savings banks, contained in Finance Code, Subtitle C.

§76.98. Annual Assessments.

(a) Annual assessment. All savings banks chartered under the laws of the state and all foreign savings banks organized under the laws of another state of the United States holding a certificate of authority to do business in this state shall pay to the department an annual assessment fee in an amount determined by the commissioner as provided by subsection (c) of this section in accordance with the rate requirements set by the Finance Commission of Texas, and subject to the maximum assessment rates established by subsection (d) of this section. The department will maintain on its website information concerning current rate requirements.

(b) Payment of Assessment. The annual assessment shall be paid in quarterly installments. Upon receipt of a written invoice from the department, the savings bank shall pay the assessment fee by electronic/ACH payment, or by another method, if directed to do so by the department.

(c) Determination of assessment. The assessment shall be determined based on either the total assets, or total risk-weighted assets of the savings bank, whichever results in the lowest fee being assessed. The valuation of assets shall be determined as of the close of the calendar quarter immediately preceding the effective date of the assessment. A savings bank's total assets or total risk-weighted assets shall be derived from the savings bank's Federal Financial Institutions Examination Council (FFIEC) consolidated report of condition and income (call report), filed in accordance with federal law. If a savings bank is not required by applicable federal law to disclose its total risk-weighted assets in the call report, the savings bank may voluntarily report to the commissioner information concerning its total risk-weighted assets for purposes of calculating its assessment, which shall be provided to the commissioner in the manner and within the time prescribed by the commissioner; otherwise, the assessment will be based on the savings bank's total assets.

(d) Maximum Assessment Rates. The assessment rates set by the Finance Commission of Texas shall not exceed the maximum rates established in the following rate schedule:
Figure: 7 TAC §76.98(d)

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2020.

TRD-202003461
Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending
Effective date: September 13, 2020
Proposal publication date: July 3, 2020
For further information, please call: (512) 475-1535

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 85. PAWNSHOPS AND CRAFTED PRECIOUS METAL DEALERS
SUBCHAPTER B. RULES FOR CRAFTED PRECIOUS METAL DEALERS

7 TAC §85.1012

The Finance Commission of Texas (commission) adopts the repeal of §85.1012 (relating to Registration System Transition), in 7 TAC, Chapter 85, Subchapter B, concerning Rules for Crafted Precious Metal Dealers.

The commission adopts the repeal of §85.1012 without changes to the proposed text as published in the July 3, 2020, issue of the *Texas Register* (45 TexReg 4449). The repeal will not be republished.

The commission received no written comments on the proposal.

In general, the purpose of the proposed repeal in 7 TAC Chapter 85, Subchapter B is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 85, Subchapter B was published in the *Texas Register* on March 27, 2020 (45 TexReg 2211). The commission received no comments in response to that notice.

The OCCC distributed an early precomment draft of the proposed repeal to interested stakeholders for review, and then held a stakeholder webinar regarding the repeal. The OCCC received no informal precomments on the rule text draft.

The adopted repeal deletes a section of 7 TAC Chapter 85, Subchapter B that expired by its own terms on January 1, 2020. This provision was meant to transition crafted precious metal dealers from a registration system in the Department of Public Safety to one in the OCCC.

The repeal is adopted under Texas Occupations Code, §1956.0611, which authorizes the commission to adopt rules to implement and enforce Texas Occupations Code, Chapter 1956.

The statutory provisions affected by the adoption are contained in Texas Occupations Code, Chapter 1956.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 21, 2020.

TRD-202003445
Audrey Spalding
Assistant General Counsel
Office of Consumer Credit Commissioner
Effective date: September 10, 2020
Proposal publication date: July 3, 2020
For further information, please call: (512) 936-7659

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 72. FEES, LICENSE APPLICATIONS, AND RENEWALS

22 TAC §72.14

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §72.14 (License Renewal), without changes to the proposed text as published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3972). The rule will not be republished. The Board will adopt a new §72.14 in a separate rulemaking. As part of the Board's comprehensive rule revision effort, the purpose of the repeal is to make the Board's licensing rules simpler and easier to navigate.

The Board received no comments concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this repeal.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 21, 2020.

TRD-202003451
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: September 10, 2020
Proposal publication date: June 12, 2020
For further information, please call: (512) 305-6700

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22 TAC §72.14

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §72.14 (Renewing a License), with non-substantive changes to the proposed text as published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3972). The rule will be republished.

As part of the Board's comprehensive rule revision effort, the new rule will remove unnecessary text and make the Board's rules simpler and easier to navigate.

The new rule removes language in current subsections (c) through (e) concerning nonrenewal for student loan defaults made invalid by changes to Texas Occupations Code Chapter 56 in the last legislative session. The rule further removes outdated language related to facilities in current subsection (b), which is now addressed in current §75.2 (Place of Business). The new rule also removes duplicative language in current subsection (f) concerning appealing a Board decision to not renew a license, which is now contained in current §72.10 (Appealing a Denied Application or Permit).

The Board received no comments concerning the new rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this new rule.

§72.14. License Renewal.

(a) A licensee shall renew a license every two years on or before the first day of the licensee's birth month.

(b) A licensee may submit a license renewal application no sooner than 60 days before the first day of the licensee's birth month of the licensee's renewal year.

(c) To renew a license, a licensee shall submit to the Board the license renewal form and the renewal fee.

(d) The Board may not consider a renewal application that is incomplete.

(e) A licensee who fails to renew a license under subsection (a) of this section shall be considered by the Board as practicing without a license and subject to disciplinary action.

(f) A licensee may apply for inactive status before the licensee's renewal deadline.

(g) An individual with a license that has been expired for less than one year may renew a license by complying with subsection (a) of this section and paying the applicable late fee.

(h) An individual with a license that has been expired for one year or longer may not renew a license but may obtain a new license by completing all requirements for obtaining an initial license.

(i) For a license that has been expired for one year but not more than three years, the Board may waive subsection (h) of this section if the individual can show evidence of good cause satisfactory to the Board and by paying all applicable late fees.

(j) The Board shall grant a military service member who holds a license an additional two years to complete any continuing education requirements and any other requirements related to the renewal of the license, including any late fees.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 21, 2020.

TRD-202003452
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: September 10, 2020
Proposal publication date: June 12, 2020
For further information, please call: (512) 305-6700

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22 TAC §72.15

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §72.15 (Temporary License), without changes to the proposed text as published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3974). The rule will not be republished.

The Board will adopt a new §72.15 in a separate rulemaking. As part of the Board's comprehensive rule revision effort, the purpose of the repeal is to make the Board's licensing rules simpler and easier to navigate.

The Board received no comments concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this repeal.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2020.

TRD-202003491
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: September 13, 2020
Proposal publication date: June 12, 2020
For further information, please call: (512) 305-6700

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22 TAC §72.15

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §72.15 (Temporary License) with non-substantive changes as published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3974). The rule will be republished.

As part of the Board's comprehensive rule revision effort, the new rule removes unnecessary text and makes the Board's licensing rules simpler and easier to navigate.

The new §72.15 makes it easier for an individual to apply for a temporary license. The new rule removes old language requiring the submission of a letter of good standing from the individual's licensing jurisdiction and documentation from the individual's employer or other person that the individual has been asked to temporarily perform services in Texas.

The Board received no comments concerning the new rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this new rule.

§72.15. Temporary License.

(a) An individual licensed to practice chiropractic in another state, the District of Columbia, or a United States territory may provide chiropractic services in Texas for no more than 30 days within a calendar year under a temporary license.

(b) An individual seeking a temporary license shall hold an active unrestricted license, without any pending disciplinary action, in another state, the District of Columbia, or United States territory.

(c) An individual seeking a temporary license shall apply to the Board at least 14 days before the date work in Texas will begin.

(d) An individual shall submit with the application:

(1) a copy of the individual's active license with a signed statement from the individual that the individual holds an active unre-

stricted license without any pending disciplinary action in that or any other jurisdiction;

(2) a description of where and when chiropractic services are to be performed, the type of services, and a general description of the individuals who will receive those services; and

(3) the name of the business entity, person, or event with which the individual will be associated or will be employed by while working under the temporary license.

(e) An individual granted a temporary license may not provide chiropractic services to the general public.

(f) An individual granted a temporary license shall comply with Texas Occupations Code Chapter 201 and Board rules and practice only within the scope of practice in Texas.

(g) An individual granted a temporary license who violates Texas Occupations Code Chapter 201 or Board rules is subject to disciplinary action.

(h) This section does not apply to individuals residing in Texas, establishing residence in Texas, or seeking to practice under a regular Board-issued license.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2020.

TRD-202003492
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: September 13, 2020
Proposal publication date: June 12, 2020
For further information, please call: (512) 305-6700

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CHAPTER 78. SCOPE OF PRACTICE

22 TAC §78.14

The Texas Board of Chiropractic Examiners (Board) adopts amended 22 TAC §78.14 (Acupuncture). The amended rule is adopted without changes to the proposed text as published in the June 19, 2020, issue of the *Texas Register* (45 TexReg 4134) and will not be republished.

The Board's amendments to §78.14 clarify the conditions under which a licensed chiropractor may request a permit from the Board to practice acupuncture, specifically those chiropractors with extensive post-graduate training and experience who have already been safely practicing acupuncture for several years under the chiropractic scope of practice.

The Board received one comment concerning the proposed amendments during the statutory comment period from Larry Montgomery, D.C. Dr. Montgomery stated that doctors of chiropractic have an extensive educational background and are primary care providers who should, with the proper post-graduate training of 100 additional hours in acupuncture, be allowed to practice acupuncture to the fullest extent within their scope of practice. The Board concurs with Dr. Montgomery's comments.

The amended section is adopted under Occupations Code §201.152, which authorizes the Board to adopt rules to perform its duties and regulate the practice of chiropractic, and Occupations Code §201.1525, which authorizes the Board to adopt rules clarifying what activities are included within the scope of practice.

No other statute, article, or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 21, 2020.

TRD-202003439
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: September 10, 2020
Proposal publication date: June 19, 2020
For further information, please call: (512) 305-6700

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CHAPTER 79. UNPROFESSIONAL CONDUCT

22 TAC §79.1

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §79.1 (Unprofessional Conduct) as published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3983). The rule will not be republished.

The Board will adopt a new §79.1 in a separate rulemaking. As part of the Board's comprehensive rule revision effort, the purpose of the repeal is to make the Board's disciplinary rules simpler and easier to navigate.

The Board received no comments concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this repeal.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2020.

TRD-202003464
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: September 13, 2020
Proposal publication date: June 12, 2020
For further information, please call: (512) 305-6700

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22 TAC §79.1

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §79.1 (Inappropriate Sexual Conduct), with non-substantive changes to the proposed text as published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3983). The rule will be republished.

As part of the Board's comprehensive rule revision effort, the overall purpose of the new rule is to remove unnecessary text

and to make the Board's rules simpler and easier to navigate, and to clarify the defense to disciplinary action for a consensual relationship.

In its modification of the former §79.1 (Unprofessional Conduct), the Board has removed the provisions about financial misconduct and moved those to a new §79.3 (Financial Misconduct), which will be adopted in a separate rulemaking action. The Board has renamed the new §79.1 to make clear the rule covers only sexual misconduct. The Board also makes clear in subsection (b) that it is a defense to disciplinary action if a consensual sexual relationship between a licensee, chiropractic college student, or recent graduate and an individual existed before the doctor-patient relationship began.

The Board made two non-substantive changes to the rule as proposed. In subsection (a)(5), "request to date a patient" has been changed to "request to initiate an intimate relationship with a patient". In subsection (a)(8), the word "inappropriately" has been inserted before the word "expose".

The Board received no comments concerning the new rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this new rule.

§79.1. Inappropriate Sexual Conduct.

(a) A licensee, or a chiropractic college student or recent graduate employed by or under the supervision of a licensee, may not:

(1) engage in a consensual sexual relationship with a patient;

(2) inappropriately touch an individual's genitals, anus, or breasts;

(3) make any statements, gestures, or expressions, using any means, towards an individual which may reasonably be interpreted as sexual in nature;

(4) request unnecessary details of an individual's sexual history or sexual preferences;

(5) request to initiate an intimate relationship with a patient;

(6) discuss the licensee's sexual desires, problems, preferences, or fantasies;

(7) request sexual acts or favors in exchange for services;

(8) inappropriately expose genitalia or other customarily covered body parts to an individual; or

(9) masturbate in the presence of an individual.

(b) It is a defense to disciplinary action under subsection (a)(1) of this section if the consensual sexual relationship began more than three months after the doctor-patient relationship ended, or existed before the doctor-patient-relationship began.

(c) It is not a defense to subsection (a)(2) to (9) of this section if the acts occurred:

(1) with the individual's consent; or

(2) outside the place of business used for the practice of chiropractic.

(d) A licensee, student, or recent graduate is subject to disciplinary action for violating this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2020.

TRD-202003468
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: September 13, 2020
Proposal publication date: June 12, 2020
For further information, please call: (512) 305-6700

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22 TAC §79.3

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §79.3 (Financial Misconduct) without changes to the rule text as published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3984). The rule will not be republished.

As part of the Board's comprehensive rule revision effort, the overall purpose of the new rule is to remove unnecessary text and to make the Board's rules simpler and easier to navigate.

This new §79.3 contains provisions relating to financial misconduct that were in the former §79.1 (Unprofessional Conduct). The new §79.1 addresses sexual misconduct while the new §79.3 only contains prohibitions relating to financial matters.

The Board received no comments concerning the new rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this new rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2020.

TRD-202003485
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: September 13, 2020
Proposal publication date: June 12, 2020
For further information, please call: (512) 305-6700

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CHAPTER 80. COMPLAINTS

22 TAC §80.2

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §80.2 (Complaint Procedures) as published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3985). The rule will not be republished.

The Board will adopt a new §80.2 in a separate rulemaking. As part of the Board's comprehensive rule revision effort, the purpose of the repeal is to make the Board's rules relating to complaints simpler and easier to navigate.

The Board received no comments concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic, and Texas Occupations Code §201.205, which requires the Board to adopt rules concerning the investigation of complaints.

No other statutes or rules are affected by this repeal.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2020.

TRD-202003458
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: September 13, 2020
Proposal publication date: June 12, 2020
For further information, please call: (512) 305-6700

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22 TAC §80.2

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §80.2 (Complaint Procedures), without changes to the proposed text as published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3986). The rule will not be republished.

As part of the Board's comprehensive rule revision effort, the new rule will remove unnecessary text and make the Board's rules simpler and easier to navigate.

This new §80.2 makes explicit that the Board will seek, if possible, to informally settle complaints without the need for an administrative hearing. In addition to adopting this new §80.2, the Board is also adopting a new §80.11, which moves the provisions about informal settlement conferences in the former §80.2 into a stand-alone rule.

The Board received no comments concerning the new rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic, and Texas Occupations Code §201.205, which requires the Board to adopt rules concerning the investigation of complaints.

No other statutes or rules are affected by this new rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2020.

TRD-202003459
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: September 13, 2020
Proposal publication date: June 12, 2020
For further information, please call: (512) 305-6700

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22 TAC §80.8

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §80.8 (Default on Student Loans), without changes to the proposed text as published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3987). The rule will not be republished.

In 2019, the Texas Legislature repealed the requirement in Texas Occupations Code Chapter 56 that required state agencies take administrative action against licensees for being in default of student loans (Senate Bill 37, 86th Legislature, Regular Session) and prohibited agencies from doing so (Occupations Code §56.003). That legislative action made §80.8 void. This repeal removes invalid agency rules and brings the Board's rules into compliance with Occupations Code §56.003. The Board received no comments concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by the adopted repeal.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 21, 2020.

TRD-202003440
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: September 10, 2020
Proposal publication date: June 12, 2020
For further information, please call: (512) 305-6700

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22 TAC §80.11

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §80.11 (Informal Settlement Conferences), without changes to the proposed text as published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3988). The rule will not be republished.

As part of the Board's comprehensive rule revision effort, the overall purpose of the new rule is to make the Board's rules easier to navigate by separating language dealing with multiple subjects into individual rules. New §80.11 moves language relating to informal settlement conferences in the former §80.2 (Complaint Procedures) into a stand alone rule; a new §80.2 is being adopted in a separate rulemaking action.

The new §80.11 clarifies that informal settlement conferences may be held at the Enforcement Committee's discretion if the committee believes the conference could settle a complaint without further administrative action. The rule also makes clear that a member of the committee who attends an informal conference that later results in a Proposal for Decision (PFD) after a hearing at the State Office of Administrative Hearings may not participate in any consideration or discussion of that PFD in a formal Board meeting.

The Board received no comments concerning the new rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic, and Texas Occupations Code §201.205, which requires the Board to adopt rules concerning the investigation of complaints.

No other statutes or rules are affected by this new rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2020.

TRD-202003460
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: September 13, 2020
Proposal publication date: June 12, 2020
For further information, please call: (512) 305-6700

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CHAPTER 82. INTERNAL BOARD PROCEDURES

22 TAC §82.4

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §82.4 (Private Donors), without changes to the proposed text as published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3989). The rule will not be republished.

During a review of 22 TAC Chapter 82 (Internal Board Procedures) done under Texas Government Code §2001.039, the Board determined that it does not have the legal authority to accept gifts or donations as required by Government Code §575.003 (Acceptance of Gift by State Agency Governing Board), thus making §82.4 void. This repeal removes unnecessary agency rules and brings the Board into compliance with Government Code §575.003.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by the adopted repeal.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 21, 2020.

TRD-202003448
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: September 10, 2020
Proposal publication date: June 12, 2020
For further information, please call: (512) 305-6700

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PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.19

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to §153.19, Licensing for Persons with Criminal History and Fitness Determination without changes to the proposed text as published in the June 5, 2020, issue of the *Texas Register* (45 TexReg 3727). The rule will not be republished.

The amendments correct a reference within the rule.

No comments were received on the amendments as published.

The amendments are adopted under Occupations Code §1103.151, which allows TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee in this state that are in accordance with Chapter 1103 and consistent with applicable federal law.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2020.

TRD-202003481
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Effective date: September 13, 2020
Proposal publication date: June 5, 2020
For further information, please call: (512) 936-3652

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22 TAC §153.24

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to §153.24, Complaint Processing, without changes to the proposed text as published in the June 5, 2020, issue of the *Texas Register* (45 TexReg 3727). The rule will not be republished.

The amendments specify who can sign an agreed order in lieu of the chair of the Board, should the chair not be available or need to recuse him or herself.

No comments were received on the amendments as published.

The amendments are adopted under Occupations Code §1103.151, which allows TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee in this state that are in accordance with Chapter 1103 and consistent with applicable federal law.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2020.

TRD-202003482
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Effective date: September 13, 2020
Proposal publication date: June 5, 2020
For further information, please call: (512) 936-3652

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PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER C. DISCIPLINARY GUIDELINES

22 TAC §281.65

The Texas State Board of Pharmacy adopts amendments to §281.65, concerning Schedule of Administrative Penalties. These amendments are adopted without changes to the proposed text as published in the July 3, 2020, issue of the *Texas Register* (45 TexReg 4456). The rule will not be republished.

The amendments add an administrative penalty for the violation of failing to access the Prescription Monitoring Program for a patient's information before dispensing opioids, benzodiazepines, barbiturates, or carisoprodol, and update a citation reference.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2020.

TRD-202003429
Allison Vordenbaumen Benz, R.Ph., R.S.
Executive Director
Texas State Board Pharmacy
Effective date: September 9, 2020
Proposal publication date: July 3, 2020
For further information, please call: (512) 305-8010

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CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.9

The Texas State Board of Pharmacy adopts amendments to §291.9, concerning Prescription Pick Up Locations. These amendments are adopted without changes to the proposed text as published in the July 3, 2020, issue of the *Texas Register* (45 TexReg 4458). The rule will not be republished.

The amendments remove an outdated reference to Class H pharmacies, which no longer exist.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2020.

TRD-202003428
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Effective date: September 9, 2020
Proposal publication date: July 3, 2020
For further information, please call: (512) 305-8010

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SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

22 TAC §291.121

The Texas State Board of Pharmacy adopts amendments to §291.121, concerning Remote Pharmacy Services. These amendments are adopted without changes to the proposed text as published in the July 3, 2020, issue of the *Texas Register* (45 TexReg 4459). The rule will not be republished.

The amendments allow remote pharmacies services to be provided using an automated pharmacy system to be provided at healthcare facilities regulated under Chapter 241 and remove the limitation that the services may only be provided to inpatients of the remote site.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2020.

TRD-202003430
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Effective date: September 9, 2020
Proposal publication date: July 3, 2020
For further information, please call: (512) 305-8010

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SUBCHAPTER H. OTHER CLASSES OF PHARMACY

22 TAC §291.153

The Texas State Board of Pharmacy adopts amendments to §291.153, concerning Central Prescription Drug or Medication Order Processing Pharmacy (Class G). These amendments are adopted without changes to the proposed text as published in the July 3, 2020, issue of the *Texas Register* (45 TexReg 4471). The rule will not be republished.

The amendments remove the requirement for a Class G pharmacy to have a sink exclusive of restroom facilities, and correct grammatical errors.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2020.

TRD-202003431
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Effective date: September 9, 2020
Proposal publication date: July 3, 2020
For further information, please call: (512) 305-8010

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TITLE 28. INSURANCE

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

CHAPTER 132. DEATH BENEFITS--DEATH AND BURIAL BENEFITS

28 TAC §132.7

The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts an amendment to §132.7, relating to Duration of Death Benefits for Eligible Spouse, without changes to the proposed text as published in the June 19, 2020, issue of the *Texas Register.* The rule will not be republished. The purpose of this amendment is to align the rule with Texas Labor Code §408.183, as amended by House Bill (HB) 2503, 86th Legislature, Regular Session (2019), effective September 1, 2019. The Legislature amended §408.183 to expand eligibility of spouses who may receive death benefits for life, regardless of remarriage, to spouses of peace officers as described in Texas Code of Criminal Procedures Article 2.12, intrastate fire mutual aid system team members and regional incident management team members.

REASONED JUSTIFICATION. Amended §132.7(f) adds the words "or an individual described by Government Code §615.003(1) or Labor Code §501.001(5)(F)." The amendment also adds the words in §132.7(f)(1) "of first responders, as defined by Labor Code §504.055" to include those eligible spouses. New subsection §132.7(f)(2) is added, which states the amendment applies to "eligible spouses of individuals, as defined by Government Code §615.003(1) or Labor Code §501.001(5)(F), who remarry on or after September 1, 2019."

The amendment does not alter the distribution of death benefits under §132.11 or the redistribution of death benefits under §132.12. If there is an eligible child or grandchild and an eligible spouse, death benefits continue to be divided between the beneficiaries, with half paid to the eligible spouse and half paid in equal shares to the eligible children.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: DWC received two comments. The Office of Injured Employee Counsel commented in support of the proposal. United Fire Group Insurance commented against the proposal.

Comment on §132.7. Commenter supports the proposed amendments to conform with the statutory changes in Labor Code §408.183, which the Texas Legislature amended under HB 2503, effective September 1, 2019. DWC's actions to conform the rules with amendments to the Labor Code benefits the injured employees of Texas.

Agency Response to Comment on §132.7. DWC acknowledges the supportive comment.

Comment on §132.7. Commenter opposes the amendment to §132.7. Commenter states that workers' compensation benefits were created to provide benefit to an injured employee or wage replacement to a beneficiary in the event of a spouse's fatality on the job. Commenter explains that the long-standing rule and intent of workers' compensation has been that, when a widow or widower remarries, the earning capacity of a relationship is restored, and the wage loss is no longer applicable. As proposed, commenter believes this amendment to §132.7 is prejudicial to the industry because it breaches the law of indemnification by creating a windfall for the surviving spouse.

Agency Response to Comment on §132.7. DWC acknowledges the comment and currently declines to make a change to the text. The amendment to §132.7 conforms the existing rule with

statutory amendments to Labor Code §408.183, which became effective September 1, 2019.

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to 28 TAC §132.7 under Government Code §615.003, and Labor Code §§401.011, 402.00111, 402.00116, 402.061, 408.181, 408.182, 408.183, 408.184, 415.002, and 501.001:

--Government Code §615.003 lists the various eligible survivors and the applicability of Chapter 615 to eligible individuals.

--Labor Code §401.011 provides general definitions under the Texas Workers' Compensation Act.

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

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

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

--Labor Code §408.181 provides the obligation an insurance carrier must satisfy in paying death and burial benefits.

--Labor Code §408.182 provides how the insurance carrier should distribute the death benefits and defines eligible beneficiaries.

--Labor Code §408.183 outlines the duration of death benefits for legal beneficiaries.

--Labor Code §408.184 provides for the redistribution of death benefits if necessary.

--Labor Code §415.002 outlines insurance carrier administrative violations.

--Labor Code §501.001 defines a peace officer employed by a political subdivision, while the peace officer is exercising authority granted under the Code of Criminal Procedure Article 2.12 or the Code of Criminal Procedure Articles 14.03(d) and (g).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2020.

TRD-202003418
Kara Mace
Deputy Commissioner of Legal Services
Texas Department of Insurance, Division of Workers' Compensation
Effective date: September 8, 2020
Proposal publication date: June 19, 2020
For further information, please call: (512) 804-4703

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TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 75. HAZARDOUS PROFESSION DEATH BENEFITS

34 TAC §§75.1 - 75.3

The Employees Retirement System of Texas (ERS) adopts amendments to 34 Texas Administrative Code (TAC) §75.1 (Filing of Claims), §75.2 (Additional Benefit Claims), and new §75.3 (Adjustments to Payments). Section 75.1 (Filing of Claims) was adopted without changes to the proposed text as published in the July 3, 2020, issue of the *Texas Register* (45 TexReg 4476). This section will not be republished. Section 75.2 (Additional Benefit Claims) and §75.3 (Adjustments to Payments) were adopted with changes. The text of these sections will be republished.

The amendments were approved by the ERS Board of Trustees at its August 19, 2020, meeting. Section 75.1, concerning Filing of Claims, and §75.2, concerning Additional Benefit Claims, are amended to provide that the Executive Director's designee whose responsibility it is to administer Chapter 615 benefits may receive and process claims and request additional information in order to accurately and effectively process such claims. In addition, the rules are amended to require that certain workers' compensation claims information related to Chapter 615 claims filed with ERS be provided to the Executive Director or designee because the information relates to the claim for benefits.

Section 75.3, concerning Adjustments to Payments, is added to comply with the requirements of Chapter 1181 (H.B. 3635), Acts of the 86th Legislature, Regular Session, 2019. H.B. 3635 amended Tex. Gov't Code §615.022 to require ERS, beginning on September 1, 2020, and on each September 1 thereafter, to adjust the lump sum benefit payable to eligible survivors by an amount that is equal to the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for the previous calendar year. The proposed new rule provides for the ERS Executive Director to approve an annual adjustment to the lump sum benefit payment required by Tex. Gov't Code §615.022. The amount of the annual adjustment will be equal to the percentage change in the CPI-U for the previous calendar year as reported by ERS' actuary.

No comments were received regarding the proposed amendments or new rule.

The amendments and new rule are adopted under Texas Government Code §815.102, which provides authorization for the ERS Board of Trustees to adopt rules for the administration of the funds of the retirement system and the transaction of any other business by the board, and Tex. Gov't Code §615.022, which requires ERS to adopt rules to implement that statute.

§75.2. Additional Benefit Claims.

(a) In addition to the documents required under §75.1 of this chapter (relating to Filing of Claims), the following documents shall be submitted in an application for benefits under Texas Government Code, Chapter 615, Subchapter F, unless the executive director or designee waives their submission:

(1) a sworn statement from the person making the claim that:

(A) the decedent, on the date of death, was not receiving and was not eligible to receive an annuity under an employee retirement plan;

(B) the surviving spouse, if any, of the decedent has not remarried;

(C) the surviving spouse, if any, of the decedent is not retired and is not eligible to retire under an employee retirement plan; and

(D) the surviving spouse, if any, of the decedent is not receiving and is not eligible to receive social security benefits; and

(2) an itemized statement of funeral expenses incurred, if the application includes a claim for payment of funeral expenses.

(b) Except as provided in subsection (c) of this section, an annuity payable to a surviving spouse who is eligible for benefits under Texas Government Code, Chapter 615, Subchapter F, shall be computed as provided by Texas Government Code §814.105 as if the decedent, on the date of death:

(1) was employed by the Texas Department of Public Safety at the lowest salary provided by the General Appropriations Act for a peace officer position, if the decedent held a peace officer position on the date of death, or by the Texas Department of Criminal Justice at the lowest salary provided by the General Appropriations Act for a custodial personnel position, if the decedent held a custodial personnel position on the date of death;

(2) had accrued 10 years of service credit in the applicable position; and

(3) was eligible to retire without regard to any age requirement.

(c) In lieu of the amount computed under subsection (b), an annuity shall be paid in the amount the decedent would have been eligible to receive under the decedent's employee retirement plan if the decedent had been eligible to retire at the age and with the service attained on the last day of the month of the decedent's death if:

(1) the person making the claim requests payment of the amount computed under this subsection before any payment computed under subsection (b) is made;

(2) an authorized representative of the employee retirement plan in which the decedent was a participant certifies the amount computed under this subsection; and

(3) the amount computed under this subsection is greater than the amount computed under subsection (b) of this section.

(d) The reduction factors applied to a death benefit plan administered by the system shall be applied in the same manner to an annuity computed under either subsection (b) or subsection (c) of this section.

(e) As a condition of receipt of an annuity under Texas Government, Chapter 615, Subchapter F, an eligible surviving spouse shall agree to annually certify the spouse's eligibility under Subparagraphs (1)(B), (1)(C), and (1)(D) of subsection (a) of this section and to notify the system of any change in circumstances affecting the spouse's continued eligibility. Failure to comply with this requirement or to provide the agreed certification is a basis for suspension of annuity payments until such time as compliance occurs.

(f) The amount reimbursed for funeral expenses under Texas Government Code, Chapter 615, Subchapter F, shall not exceed the lesser of $6,000 or the amount of funeral expenses actually incurred.

(g) The executive director or designee may require additional information or affidavits as necessary to establish the validity of any claim under this section.

§75.3. Adjustments to Payments.

Beginning on September 1, 2020, and on each September 1 thereafter, any lump sum payment payable to eligible survivors under Section 615.022(d), Texas Government Code, shall be adjusted annually by an amount equal to the percentage change in the Consumer Price Index for All Urban Consumers for the previous calendar year. The annual adjustment will be an amount as reported by the system's consulting actuary and approved by the executive director.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2020.

TRD-202003419
Paula A. Jones
Deputy Executive Director and General Counsel
Employees Retirement System of Texas
Effective date: September 8, 2020
Proposal publication date: July 3, 2020
For further information, please call: (877) 275-4377

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CHAPTER 81. INSURANCE

34 TAC §§81.1, 81.7, 81.12

The Employees Retirement System of Texas (ERS) adopts amendments to 34 Texas Administrative Code (TAC) §81.1 (Definitions), §81.7 (Enrollment and Participation), and adds new rule §81.12 (HealthSelectShoppERS), without changes to the proposed text as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4711) and the correction published in the July 24, 2020, issue of the *Texas Register* (45 TexReg 5224). The amendments and new rule were approved by the ERS Board of Trustees at its August 19, 2020 meeting. These sections will not be republished.

Section 81.1, concerning Definitions, is amended to add new definitions for the terms "Tobacco Product" and "Tobacco User" consistent with ERS' administration of the tobacco user premium differential assessment.

Section 81.7, concerning Enrollment and Participation, is amended to incorporate the requirements and administration of the tobacco user premium differential assessment as authorized by Tobacco User Premium Differential, §1551.3075, Texas Insurance Code, and §1551.055, Texas Insurance Code, regarding the Board's general powers regarding coverage plans. Effective September 1, 2020, the ERS Board of Trustees adopted a new tobacco policy that included changes to the definition of Tobacco Product to include electronic cigarettes and vaping products. This change is expected to reduce the negative cost and health impact of electronic cigarette and vaping products on the health benefit plan and health benefit plan participants.

Section 81.12, concerning HealthSelectShoppERS, is added to establish the HealthSelectShoppERS program within the GBP in accordance with Rider 16 of the Employees Retirement System of Texas bill pattern in Article I of the General Appropriations Act (House Bill 1) of the 86th Legislature. The program provides an incentive for eligible GBP health benefit plan participants to seek and obtain lower cost medical services or procedures by certain network facilities. Eligible GBP members would receive an employer contribution by the GBP member's health benefit plan to a health care reimbursement account or limited purpose health care reimbursement account. The participant, and the GBP member if the participant is not the GBP member,

must meet all the requirements as specified in §81.12 and §85.8 for the GBP member to receive the employer contribution. GBP members may then use their health care reimbursement account or limited purpose health care reimbursement account funds to offset their cost of future medical services and procedures. ERS anticipates the program will lower the cost of medical services and procedures for the GBP health benefit plans and health benefit plan participants.

No comments were received regarding the proposed amendments or new rule.

The amendments and new rule are adopted under Texas Insurance Code, §1551.052, which provides authorization for the ERS Board of Trustees to adopt rules necessary to carry out its statutory duties and responsibilities. The amendments are also adopted in accordance with the ERS Board of Trustees' authority to administer and implement Chapter 1551, Texas Insurance Code, and under Texas Insurance Code, §1551.055 in connection with the Board's general powers regarding coverage plans.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2020.

TRD-202003420
Paula A. Jones
Deputy Executive Director and General Counsel
Employees Retirement System of Texas
Effective date: September 8, 2020
Proposal publication date: July 10, 2020
For further information, please call: (877) 275-4377

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CHAPTER 85. FLEXIBLE BENEFITS

34 TAC §§85.1, 85.3, 85.4, 85.7 - 85.9, 85.13, 85.17

The Employees Retirement System of Texas (ERS) adopts amendments to 34 Texas Administrative Code (TAC) §§85.1 (Introduction and Definitions), 85.3 (Eligibility and Participation), 85.4 (Separate Plans), 85.7 (Enrollment), 85.9 (Payment of Claims from Reimbursement Accounts), 85.13 (Funding), 85.17 (Grievance Procedure), and adds new rule §85.8 (HealthSelectShoppERS). Sections 85.4 (Separate Plans), 85.9 (Payment of Claims from Reimbursement Accounts), 85.17 (Grievance Procedure), and new rule §85.8 (HealthSelectShoppERS) are adopted without changes to the proposed text as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4723). These sections will not be republished. Nonsubstantive changes have been made to §§85.1 (Introduction and Definitions), 85.3 (Eligibility and Participation), 85.7 (Enrollment), and 85.13 (Funding). The text of these sections will be republished. The amendments and new rule were approved by the ERS Board of Trustees at its August 19, 2020, meeting.

Section 85.1, concerning Introduction and Definitions, is amended to change the term "Texas Employees Group Benefits Program" to "Texas Employees Group Benefits Program (GBP)" and to include "vision" in the list of program coverages.

Section 85.3, concerning Eligibility and Participation, is amended to reflect a waiting period prior to the effective date of a health care reimbursement plan elected by an employee that is equivalent to the waiting period for health insurance coverage for employees enrolling in a GBP health benefit plan.

Section 85.4, concerning Separate Plans, is amended to add a reference to the new rule §85.8 (HealthSelectShoppERS) in §85.4(b).

Section 85.7, concerning Enrollment, is amended to allow health care reimbursement account participants, who were previously limited to carryover amounts in excess of $25, to carryover unexpended balance amounts of $25 or less if the participant reenrolls in the plan for the subsequent plan year, to clarify that any carryover that rolls over into subsequent plan years does not affect the maximum amount of participant contributions permitted under §125(i) of the Internal Revenue Code, and to update the reference to the amount of unspent flexible savings account plan dollars that may be carried over to the immediately following plan year. Because these IRS limits are expected to periodically change with indexing, ERS is amending this rule to permit ERS administration to increase the permitted carryover amount while staying in compliance with those IRS limits.

Section 85.8, concerning the HealthSelectShoppERS program, is added to specify the requirements related to employer contributions by the health benefit plan to health care reimbursement accounts or limited purpose health care reimbursement accounts under the HealthSelectShoppERS program added in Title 34, Part 4, Chapter 81, TAC, in accordance with Rider 16 of the Employees Retirement System of Texas bill pattern in Article I of the General Appropriations Act (House Bill 1) of the 86th Legislature. The program provides an incentive to eligible GBP health benefit plan participants who obtain lower cost medical services or procedures by certain network facilities with an employer contribution by the GBP member's health benefit plan to the GBP member's TexFlex health care reimbursement account or limited purpose health care reimbursement account. Employer contributions by the health benefit plan under the HealthSelectShoppERS program must meet all the requirements as specified in §85.8, which include classification of the incentive as employer contributions, the maximum annual contribution amount, and establishment of an account for any GBP member who receives a contribution but does not have an established account. GBP members may use their TexFlex health care reimbursement account or limited purpose health care reimbursement account funds, including employer contributions, to offset their cost of future medical services and procedures.

Section 85.9, concerning Payment of Claims from Reimbursement Accounts, is amended to limit health care reimbursement for an eligible period of coverage in a plan year to the combined employee election and employer contribution amount.

Section 85.13, concerning Funding, is amended to change "§85.13(b) Contributions" to "§85.13(b) Employee Contributions" and to add §85.13(c) Employer Contributions to specify that employer contributions made in connection with the HealthSelectShoppERS program are the only employer contributions available under the TexFlex program.

Section 85.17, concerning Grievance Procedure, is amended to change "Program" to "TexFlex program."

No comments were received regarding the proposed amendments or new rule.

The amendments and new rule are adopted under Texas Insurance Code, §1551.052, which authorizes the ERS Board of Trustees to adopt rules necessary to carry out its statutory duties

and responsibilities, and Texas Insurance Code, §1551.206(b), which authorizes the Board to include in the TexFlex cafeteria plan any benefit that may be included in a cafeteria plan under federal law.

§85.1. Introduction and Definitions.

(a) Summary. The purpose of these rules is to govern the flexible benefits program. These rules constitute the Plan document for the State of Texas Employees Flexible Benefit Program (TexFlex). The flexible benefits plan (the plan) includes reimbursement account arrangements with optional benefits available for selection by participants as described in the plan and these rules. The plan is intended to be qualified under the Internal Revenue Code (the Code), §125, as amended from time to time, and is intended to continue as long as it qualifies under §125 and is advantageous to the state and institutions of higher education employees. Optional benefits offered under the plan for individual selection consist only of a choice between cash and certain statutory nontaxable fringe benefits as defined in the Code, §125, and regulations promulgated under the Code, §125. The plan may also include separate benefits as defined in the Code, §132, and regulations promulgated under the Code, §132, separate from the cafeteria plan, and governed by individual plan documents.

(b) Applicability of rules.

(1) These rules are applicable only to employees as defined in these rules, and terminated employees, as described in §85.3(b)(1)(B) and (C) of this title (relating to Eligibility and Participation).

(2) An employee who retired or separated from employment prior to September 1, 1988, shall not be entitled to benefits under the provisions of the plan and these rules, unless the employee is rehired and then becomes eligible for benefits.

(c) Definitions. The following words and terms when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise, and wherever appropriate, the singular includes the plural, the plural includes the singular, and the use of any gender includes the other gender.

(1) Act--The state law that authorized the establishment of a flexible benefits plan and is designated in the Texas Insurance Code, Chapter 1551, as amended.

(2) Account--A record keeping account established by the Employees Retirement System of Texas or its designee in the name of each participant for the purpose of accounting for contributions made to the account and benefits paid to a participant.

(3) Active duty--The expenditure of time and energy in the service of an employer as defined in these rules. An employee will be considered to be on active duty on each day of a regular paid vacation or on a non-work day, on which the employee is not disabled, if the employee was on active duty on the last preceding work day.

(4) Board of trustees--The board of trustees of the Employees Retirement System of Texas (ERS).

(5) Code--The Internal Revenue Code, as amended from time to time.

(6) Compensation--A participant's base salary, including amounts that would otherwise qualify as compensation but are not received directly by the participant pursuant to a good faith, voluntary, written or electronic salary reduction agreement in order to finance payments to a deferred compensation or tax sheltered annuity program specifically authorized by state law or to finance benefit options under this plan, plus longevity and hazardous duty pay and including non-monetary compensation, the value of which is determined by the Employees Retirement System of Texas, but excluding overtime pay.

(7) Debit Card--A bank issued convenience card or similar technology approved by the plan administrator and permitted to be used by participants as an optional method to pay for eligible transactions. Use of the card is governed by the plan administrator and issuing financial institution. The card is referred to as the Flex Debit Card.

(8) Dependent--An individual who qualifies as a dependent under the Code, §152, and when applicable taking into account the Code, §105, or any individual who is:

(A) a dependent of the participant who is under the age of 13 and with respect to whom the participant is entitled to an exemption under the Code, §151, or, is otherwise, a qualifying individual as provided in the Code, §21; or

(B) a dependent or spouse of the participant who is physically or mentally incapable of caring for himself or herself.

(9) Dependent care reimbursement account--The bookkeeping account maintained by the plan administrator or its designee used for crediting contributions to the account and accounting for benefit payments from the account.

(10) Dependent care reimbursement plan--A separate plan under the Code, §129, adopted by the board of trustees, and designed to provide payment or reimbursement for dependent care expenses as described in §85.5(c) of this title (relating to Benefits).

(11) Dependent care expenses--Expenses incurred by a participant which:

(A) are incurred for the care of a dependent of the participant;

(B) are paid or payable to a dependent care service provider or to the participant as reimbursement for such expenses; and

(C) are incurred to enable the participant to be gainfully employed for any period for which there are one or more dependents with respect to the participant. Dependent care expenses shall not include expenses incurred for the services outside the participant's household for the care of a dependent, unless such dependent is a dependent under the age of 13 with respect to when the participant is entitled to a tax deduction under the Code, §151, or a dependent who is physically or mentally incapable of self support. In the event that the expenses are incurred outside the dependent's household, the dependent must spend at least eight hours each day in the participant's household. Dependent care expenses shall be deemed to be incurred at the time the services to which the expenses relate are rendered.

(12) Dependent care service provider--A person or a dependent care center (as defined in the Code, §21) who provides care or other services described in the definition of "dependent care expenses" in this section, but shall not include:

(A) a related individual described in the Code, §129; or

(B) a dependent care center which does not meet the requirements of the Code, §21.

(13) Effective date of the plan--September 1, 1988.

(14) Election form--A paper or electronic form provided by the Employees Retirement System of Texas that is an agreement by and between the employer and the participant, entered into prior to an applicable period of coverage, in which the participant agrees to a reduction in compensation for purposes of purchasing benefits under the plan.

(15) Eligible employee--An employee who has satisfied the conditions for eligibility to participate in the plan in accordance with the plan and §85.3(a)(1), and (b)(1) of this title, and, to the extent necessary, a retired or terminated employee who is entitled to benefit payments under the plan.

(16) Employee--A person who is eligible to participate in the Texas Employees Group Benefits Program as an employee.

(17) Employer--The State of Texas, its agencies, commissions, institutions of higher education, and departments, or other governmental entity whose employees are authorized to participate in the Texas Employees Group Benefits Program.

(18) Expenses incurred--Expenses for services received or performed and for which the participant is legally responsible.

(19) Executive director--The executive director of the Employees Retirement System of Texas.

(20) Flexible benefit dollars--The dollars available to a participant which may be used for purposes of purchasing benefits under the plan.

(21) General purpose health care reimbursement account--The account described in §85.5(b)(1) of this title.

(22) Grace period--A two (2) month and 15 day period, adopted by the TexFlex plan pursuant to IRS Notice 2005-42, immediately following the end of the plan year during which participants may continue to incur expenses for reimbursement from the prior year account balance. The grace period does not apply to a health care reimbursement plan year that begins on or after September 1, 2014, but does apply to the dependent care reimbursement plan.

(23) Health care expenses--Any expenses incurred by a participant, or by a spouse or dependent of such participant, for health care as described in or authorized in accordance with the Code, §105 and §213, but only to the extent that the participant or other person incurring the expense is not reimbursed for the expense by insurance or other means. The types of expenses include, but are not limited to, amounts paid for hospital bills, doctor bills, prescription drugs, hearing exams, vision exams, and eye exams.

(24) Health care reimbursement account--The bookkeeping account maintained by the plan administrator or its designee used for crediting contributions to the account and accounting for benefit payments from the account.

(25) Health care reimbursement plan--A separate plan, under the Code, §105, adopted by the board of trustees, and designed to provide health care expense reimbursement as described in §85.5(b) of this title (relating to Benefits).

(26) Institution of higher education--All public community/junior colleges, senior colleges or universities, or any other agency of higher education within the meaning and jurisdiction of the Education Code, Chapter 61, except the University of Texas System and the Texas A&M University System.

(27) Leave of absence without pay--The status of an employee who is certified monthly by an agency or institution of higher education administrator to be absent from duty for an entire calendar month, and who does not receive any compensation for that month.

(28) Limited purpose health care reimbursement account--The account described in §85.5(b)(3) of this title.

(29) Option--Any specific benefit offering under the plan.

(30) Participant--An eligible employee who has elected to participate in the plan for a period of coverage.

(31) Period of coverage--The plan year during which coverage of benefits under the plan is available to and elected by a participant; however, an employee who becomes eligible to participate during the plan year may elect to participate for a period lasting until the end of the current plan year. In such case, the interval commencing on such employee's entry date and ending as of the last day of the current period of coverage shall be deemed to be such participant's period of coverage.

(32) Plan--The flexible benefits plan established and adopted by the board of trustees pursuant to the laws of the state of Texas and any amendments which may be made to the plan from time to time. The plan is referred to herein as TexFlex, and is comprised of a dependent care reimbursement plan, a health care reimbursement plan, an insurance premium conversion plan, and a qualified transportation benefit plan.

(33) Plan administrator--The board of trustees of the Employees Retirement System of Texas or its designee.

(34) Plan year--A 12-month period beginning September 1 and ending August 31.

(35) Run-out period--The period following the end of the plan year between September 1 and December 31, during which participants may file claims for reimbursement of expenses incurred during the plan year.

(36) Statutory nontaxable benefit--A benefit provided to a participant under the plan, which is not includable in the participant's taxable income by reason of a specific provision in the Code and is permissible under the plan in accordance with the Code, §125.

(37) Spouse--The person to whom the participant is married. Spouse does not include a person separated from the participant under a decree of divorce, or annulment.

(38) TexFlex--The flexible benefits plan adopted by the board of trustees.

(39) Texas Employees Group Benefits Program (GBP)--The employee insurance benefits program administered by the Employees Retirement System of Texas, pursuant to Texas Insurance Code, Chapter 1551. The program consists of health, voluntary accidental death and dismemberment, optional term life, dependent term life, short and long term disability, vision, and dental insurance coverages.

(40) Third Party Administrator or TPA--The vendor, administrator or firm selected by the plan administrator to perform the day-to-day administrative responsibilities of the TexFlex program for participants of the Texas Employees Group Benefits Program who enroll in either the health care reimbursement plan, dependent care reimbursement plan or both.

§85.3. Eligibility and Participation.

(a) Dependent care reimbursement plan.

(1) Eligibility. Any employee eligible to participate in the Texas Employees Group Benefits Program may elect to participate in the dependent care reimbursement account.

(2) Participation.

(A) An employee who is eligible under paragraph (1) of this subsection may elect to participate by completing and submitting an election form either in writing or electronically on, or within 30 days after, the date on which the employee begins active duty. An employee, upon executing an election form for participation, either in writing or electronically, shall be deemed to have consented to and be bound by all the terms, conditions, and limitations of the plan, any and all amendments hereto, any administrative rules adopted by the plan

administrator, and any decision or determinations made by the plan administrator with respect to the participant's eligibility, obligations, rights and benefits available under the plan. An election made on the date on which the employee begins active duty becomes effective on that date. An election made after the date on which the employee begins active duty becomes effective on the first day of the month following the date on which the employee begins active duty.

(B) An employee who is otherwise eligible to participate in the Texas Employees Group Benefits Program but who declined participation in the dependent care reimbursement account prior to the beginning of a plan year, and who, after the beginning of a plan year, has a qualifying life event, as defined in §85.7(c) of this title (relating to Enrollment), may elect to participate in the dependent care reimbursement account as provided in §85.7(c) of this title.

(C) A qualifying life event as defined in §85.7(c) of this title will permit a change or revocation of participation during the plan year as provided in §85.7(c) of this title.

(D) An eligible employee shall have an opportunity to enroll or change benefit options during the annual enrollment period. The annual enrollment period shall be prior to the beginning of a new plan year. Elections and changes in elections made during the annual enrollment period become effective on the first day of the plan year.

(E) The plan administrator shall maintain and update the participant enrollment records. Any and all changes will be communicated to the TPA via weekly file transfer protocol (FTP), tapes or other selected media.

(3) Duration of participation.

(A) An employee's election to participate or to waive participation in the dependent care reimbursement plan shall be irrevocable for the plan year unless there is a qualifying life event as defined in §85.7(c) of this title.

(B) An employee returning to active duty following termination of employment, or following a period of approved leave without pay, during the same plan year shall reinstate the election in effect on the employee's last previous active duty date. Reinstatement becomes effective on the date on which the employee resumes active duty, unless the employee requests a change in election as provided in §85.7(c) of this title.

(b) Health care reimbursement plan.

(1) Eligibility.

(A) Any employee eligible to participate in the Texas Employees Group Benefits Program may elect to participate in a health care reimbursement account, except that an employee participating in a consumer directed health plan with a health savings account, as permitted under Subchapter J, Chapter 1551, Insurance Code, may only participate in the limited purpose health care reimbursement account described by §85.5(b)(3), of this title (relating to Benefits). Only participants in a consumer directed health plan are eligible to elect to participate in the limited purpose health care reimbursement account described by §85.5(b)(3) of this title.

(B) Prior to September 1, 2014, an employee whose employment has been terminated, voluntarily or involuntarily, and who had a health care reimbursement account at the time of termination, shall retain the health care reimbursement account for the applicable period of election. The terminated employee must pre-pay, on a monthly basis, the elected amount and any administrative fee for the plan year. Payments are due on the first day of each month and must be received no later than the 30th day of the month. Failure to pay will automatically cancel enrollment.

(C) On and after September 1, 2014, the employee's period of coverage ends on the date of termination of employment.

(2) Participation.

(A) An employee who is eligible under paragraph (1) of this subsection may elect to participate by completing and submitting an election form either in writing or electronically on, or within 30 days after, the date on which the employee begins active duty. An employee, upon executing an election form for participation, either in writing or electronically, shall be deemed to have consented to and be bound by all the terms, conditions, and limitations of the plan, any and all amendments hereto, any administrative rules adopted by the plan administrator, and any decision or determinations made by the plan administrator with respect to the participant's eligibility, obligations, rights and benefits available under the plan. An election made by an employee to participate in the health care reimbursement plan shall be effective on the date that the employee's coverage in a GBP health benefit plan begins. But if an employee opts out or waives GBP health coverage as provided in §81.8 of this title (relating to Waiver of Health Coverage), the employee's election shall become effective on the first day of the calendar month following 60 days of employment.

(B) An employee who is eligible but who declined participation in the health care reimbursement account prior to the beginning of a plan year, and who, after the beginning of a plan year, has a qualifying life event, as defined in §85.7(c) of this title, may elect to participate in a health care reimbursement account as provided in §85.7(c) of this title.

(C) A qualifying life event as defined in §85.7(c) of this title will permit the following changes in election during the plan year, as provided in §85.7(c) of this title:

(i) an increase in the election amount, if the increase is consistent with the qualifying life event; or

(ii) a decrease in the election or election amount, if the decrease is consistent with the qualifying life event.

(D) An eligible employee shall have an opportunity to enroll or to change benefit options during the annual enrollment period. The annual enrollment period shall be prior to the beginning of a new plan year. Elections and changes in elections made during the annual enrollment period become effective on the first day of the plan year.

(E) The plan administrator shall maintain and update the participant enrollment records. Any and all changes will be communicated to the TPA via weekly file transfer protocol (FTP), tapes or other selected media.

(F) If an eligible employee elects to enroll in a consumer directed health plan with a health savings account, any unspent flexible benefit plan dollars in the employee's health care reimbursement account at the end of the previous plan year shall automatically be transferred to and carryover into a limited purpose account as described by §85.5(b)(3) of this title, up to the maximum carryover permitted by the IRS. Such carryover shall comply with §85.7(g) of this title. Any flexible benefit plan dollars remaining that exceed the maximum carryover permitted by the IRS will be forfeited by the employee.

(3) Duration of participation.

(A) Except as otherwise provided in paragraph (2)(C)(ii) or (D) of this subsection, an employee's election to or not to participate in a health care reimbursement account shall be irrevocable for the plan year.

(B) An employee returning to active duty following termination of employment, or following a period of leave without pay,

during the same plan year shall reinstate the election in effect on the employee's last previous active duty date. Reinstatement becomes effective on the date on which the employee resumes active duty, unless the employee requests a change in election as provided in §85.7(c) of this title or a different requirement is imposed by the Family and Medical Leave Act of 1993 (FMLA).

(C) For plan years beginning before September 1, 2014, an employee who is enrolled in a health care reimbursement account who terminates employment during the plan year must retain the health care account for the remainder of the plan year and prepay premiums or make monthly premium payments due for the remainder of the plan year, as described in paragraph (1)(B) of this subsection.

(D) For plan years beginning on and after September 1, 2014, an employee who is enrolled in a health care reimbursement account who terminates employment during the plan year does not retain the health care account for the remainder of the plan year. The employee's period of coverage ends on the date of termination. An employee may only file a claim for reimbursement for expenses incurred before the date of termination.

(E) Notwithstanding any provision to the contrary in this Plan, if an employee goes on a qualifying unpaid leave under the Family Medical Leave Act (FMLA), to the extent required by the FMLA, the plan administrator will continue to maintain the employee's health care reimbursement account on the same terms and conditions as though he were still an active employee (i.e., the plan administrator or its designee will continue to provide benefits to the extent the employee opts to continue his coverage). If the employee opts to continue his coverage, the employee shall pay his or her contribution in the same manner as a participant on the non-FMLA leave, including payment with after-tax dollars while on leave. The employee may also be given the option to pre-fund all or a portion of the contribution for the expected duration of the leave on a pre-tax salary reduction basis out of his pre-leave compensation by making a special election to that effect prior to the date such compensation would normally be made available to him (provided, however, that pre-tax dollars may not be utilized to fund coverage during the next plan year).

§85.7. Enrollment.

(a) Election of benefits.

(1) An eligible employee may elect to participate in the health care and/or dependent care reimbursement accounts within the flexible benefits plan by making an election and executing an election form or enrolling electronically.

(2) An employee who becomes eligible after the beginning of a plan year has 30 days from the date of eligibility to elect or decline benefits by executing an election form.

(3) By enrolling in the plan, the employee agrees to a reduction in compensation or agrees to after-tax payments equal to the participant's share of the cost and any fees for each reimbursement account selected.

(4) An election to participate in a reimbursement plan must be for a specified dollar amount plus any administrative fee.

(5) An annual enrollment period will be designated by the Employees Retirement System of Texas and shall be prior to the beginning of a new plan year. The annual enrollment period shall provide an opportunity to change and to elect or decline benefit options.

(6) An active employee who is enrolled in reimbursement accounts immediately prior to the annual enrollment period will be automatically re-enrolled with the same elections and contribution amounts for the new plan year unless the active employee takes action during the annual enrollment period to change contribution amounts or to decline participation.

(b) Effects of failure to elect.

(1) If the Employees Retirement System of Texas does not receive an election form from an eligible employee to participate in the reimbursement accounts by the due date, it shall be deemed an express election and informed consent by the eligible employee to:

(A) receive cash compensation as a benefit by reason of failure to purchase optional benefits in lieu of cash compensation; or

(B) in the case of automatic re-enrollment during the annual enrollment period, to continue participation in the reimbursement accounts with the same contributions for the new plan year.

(2) To the extent an eligible employee does not elect the maximum permissible participation amounts hereunder, he shall be deemed to have elected cash compensation.

(c) Benefit election irrevocable except for qualifying life event.

(1) An election to participate shall be irrevocable for the plan year unless a qualifying life event occurs, and the change in election is consistent with the qualifying life event. The plan administrator may require documentation in support of the qualifying life event.

(2) A qualifying life event occurs when an employee experiences one of the following changes:

(A) change in marital status;

(B) change in dependent status;

(C) change in employment status;

(D) change of address that results in loss of benefits eligibility;

(E) change in Medicare or Medicaid status, or Children's Health Insurance Program (CHIP) status;

(F) significant cost of benefit or coverage change imposed by a third party provider other than a provider through the Texas Employees Group Benefits Program; or

(G) change in coverage ordered by a court.

(3) An election form requesting a change in election must be submitted on, or within 30 days after, the date of the qualifying life event, provided, however, a change in election due to CHIP status under paragraph (2) of this subsection must be submitted on, or within 60 days after, the change in CHIP status.

(4) A change in election as provided in this subsection becomes effective on the first day of the month following the date of the qualifying life event.

(d) Payment of flexible benefit dollars.

(1) Flexible benefit dollars from an active duty employee shall be recovered through payroll withholding at least monthly during the plan year and remitted to the Employees Retirement System of Texas for the purpose of purchasing benefits. For the health care reimbursement account only, and except as otherwise provided in §85.3(b)(3)(D) of this title (relating to Eligibility and Participation), flexible benefit dollars from employees on leave without pay status or who have insufficient funds for any month shall be recovered through direct after-tax payment from the employee or upon the return of the employee to active duty status from payroll withholding, for the total amount due.

(2) An employee's flexible benefit dollars with respect to any month during the plan year shall be equal to the authorization on the employee's election form plus any administrative fees.

(3) Flexible benefit dollars received by the Employees Retirement System of Texas shall be credited to the participant's dependent care reimbursement account and/or health care reimbursement account, as appropriate.

(e) Forfeiture of account balances.

(1) The amount credited to a participant's reimbursement account for each benefit election for any plan year will be used to reimburse or pay qualified expenses incurred during the eligible employee's period of coverage in such plan year, if the claim is electronically adjudicated or if the participant files a correctly completed claim for reimbursement on or before December 31 following the close of the plan year.

(2) Except as provided by subsection (g) of this section, any balances remaining after payment of all timely and correctly filed claims postmarked no later than December 31 following the close of the plan year, shall be forfeited by the participant and be available to pay administrative expenses of the flexible benefits program.

(3) An unexpended balance in an amount of $25 or less is not eligible for carryover under subsection (g) of this section if the participant does not reenroll in the plan for the subsequent plan year. The unexpended balance shall be forfeited by the participant and will be available to pay administrative expenses of the flexible benefits program.

(f) Reimbursement report to participant. The plan administrator or its designee may provide to the participant periodic reports on each reimbursement account, showing the account transactions (disbursements and balances) during the plan year. These reports may be provided periodically through electronic means.

(g) Carryover of unexpended balances. Under IRS regulations, a participant may be permitted to carry over a specific amount of unspent flexible benefit plan dollars to the immediately following plan year. The flexible benefit dollars carried over may be used to pay or reimburse incurred expenses under the health care reimbursement plan during the entire plan year to which the dollars are carried over. A participant is entitled to carry over a designated amount set by the Employees Retirement System of Texas and publicly posted; such designated amount shall not exceed the maximum of the indexed amount of the carryover limit set by the Internal Revenue Service, and any balance in excess of this designated amount is forfeited as provided by subsection (e) of this section. Any amount of carryover that rolls over into the new plan year does not affect the maximum amount of participant contributions permitted under §125(i) of the Code.

§85.13. Funding.

(a) Expenses of administration. Any expenses incurred in the administration of the flexible benefits plan will be paid from the State Employees Cafeteria Trust Fund. An administrative fee to defray costs of administering the plan may be imposed on any, or each, reimbursement account as the board of trustees determines to be necessary.

(b) Employee Contributions.

(1) Contributions to the flexible benefits plan by active duty employees may be made only through payroll salary reduction. An employee who elects to participate in the health care and dependent care reimbursement plans must authorize, on an election form, the exact amount of salary reduction, in addition to any monthly administrative fee.

(2) Eligible health care reimbursement account participants on inactive employment status must continue to contribute to their health care reimbursement account with after-tax dollars paid directly to the Employees Retirement System of Texas in the exact amount of the election, plus any administrative fees.

(3) The minimum amount a participant may elect to reduce his salary on a monthly basis for each reimbursement account is $15. The maximum amount an employee may elect to reduce his salary on a monthly basis for each reimbursement account is limited to the amount stipulated in §85.5(b) and (c) of this title (relating to Benefits). Any administrative fee for a reimbursement account is in addition to these minimum and maximum amounts.

(4) When a participant receives no salary in a pay period, no salary reduction will be made for that pay period and no catch-up salary reduction will subsequently be permitted, except as described in §85.9(d)(2) of this title (relating to Payment of Claims from Reimbursements Accounts) for health care reimbursement account participants.

(5) In situations where there are insufficient salary dollars to fund the amount of the salary reduction and fees, no salary reduction will be made, except as indicated in paragraph (6) of this subsection, for that pay period and no catch-up reduction will subsequently be permitted, except as described in §85.9(d)(2) of this title for health care reimbursement account participants.

(6) In the event an employee has elected to participate in more than one flexible benefits plan optional benefit and the employee's pay is sufficient to pay for one or more, but not all of the flexible benefits plan contributions, then payment of the flexible benefits plan contributions shall be made in the following order: health care reimbursement and dependent care reimbursement.

(7) If a participant elects to change contributions due to a qualifying life event (QLE), the plan administrator shall reimburse eligible claims based on the contribution in place when they occurred. Claims incurred during the initial enrollment period shall be reimbursed up to the amount of the participant's original contribution election. The plan administrator shall treat the remainder of the plan year following the QLE as a new coverage period, and claims incurred in this time period shall be reimbursed up to the amount of the new contribution election.

(c) Employer Contributions. The employer contributions referenced in §85.8(b) of this title made to active duty employees' health care reimbursement accounts or limited purpose health care reimbursement accounts in connection with the HealthSelectShoppERS program are the only Employer Contributions available under the TexFlex Program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2020.

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Paula A. Jones
Deputy Executive Director and General Counsel
Employees Retirement System of Texas
Effective date: September 8, 2020
Proposal publication date: July 10, 2020
For further information, please call: (877) 275-4377

PART 6. TEXAS MUNICIPAL RETIREMENT SYSTEM

CHAPTER 121. PRACTICE AND PROCEDURE REGARDING CLAIMS

The Board of Trustees (Board) of the Texas Municipal Retirement System (TMRS or the System) adopts the repeal of current 34 TAC Chapter 121 (Chapter 121), relating to practice and procedure regarding claims before TMRS without changes to the text as published in the June 5, 2020, issue of the *Texas Register* (45 TexReg 3747). The repeals will not be republished.

TMRS repeals the following rules: 34 TAC §121.1, Definitions; 34 TAC §121.2, Scope of Rules; 34 TAC §121.3, Filing of Documents; 34 TAC §121.4, Computation of Time; 34 TAC §121.5, Applications for Benefits or Asserting Other Claims; 34 TAC §121.6, Time for Filing of Retirement Applications; 34 TAC §121.7, Supporting Documents To Be Submitted; 34 TAC §121.8, Service Retirement Benefits May Be Approved by Director Without Hearing; 34 TAC §121.9, Disability Retirement Applications Referred to Medical Board; 34 TAC §121.10, Approval Without Hearing Where Medical Board Certifies Entitlement; 34 TAC §121.11, Summary Disposition of Other Approved Applications; 34 TAC §121.12, Contest of Application: Form and Content; 34 TAC §121.13, Notice of Prehearing Disposition; 34 TAC §121.14, Procedure for Obtaining Hearing of Claim Denied in Whole or in Part by Director; 34 TAC §121.15, Hearing of Conflicting and Protested Claims; 34 TAC §121.16, Conduct of Contested Case Hearings; 34 TAC §121.17, Proposal for Decision; 34 TAC §121.18, Filing of Exceptions to Proposal, Briefs, and Replies; 34 TAC §121.19, Board Consideration and Action; 34 TAC §121.20, Final Decisions and Orders; 34 TAC §121.21, When Decisions Become Final; 34 TAC §121.22, Motions for Rehearing; 34 TAC §121.23, Rendering of Final Decision or Order; 34 TAC §121.24, The Record; 34 TAC §121.25, Proceedings for Review, Suspension, or Revocation of Disability Benefit; 34 TAC §121.26, Applicability to Pending Proceedings; 34 TAC §121.27, Subpoenas; and, 34 TAC §121.28, Depositions.

The Board of TMRS adopts new Chapter 121, relating to practice and procedure regarding claims before TMRS without changes to the proposed text as published in the June 5, 2020, issue of the *Texas Register* (45 TexReg 3749). The rules will not be republished. TMRS adopts the following rules: 34 TAC §121.1, Definitions; 34 TAC §121.2, Scope of Rules and Application; 34 TAC §121.3, Filing of Documents; 34 TAC §121.4, Computation of Time; 34 TAC §121.5, Forms and Applications for Benefits, or Asserting Other Claims; 34 TAC §121.6, Time for Filing of Retirement Applications; 34 TAC §121.7, Supporting Documents To Be Submitted; 34 TAC §121.8, Service Retirement Benefits May Be Approved by Director Without Hearing; 34 TAC §121.9, Disability Retirement Applications Referred to Medical Board; 34 TAC §121.10, Approval Without Hearing Where Medical Board Certifies Entitlement; 34 TAC §121.11, Summary Disposition of Other Approved Applications; 34 TAC §121.12, Contest of Application: Form and Content; 34 TAC §121.13, Notice of Prehearing Disposition; 34 TAC §121.14, Procedure for Obtaining Hearing of Claim Denied in Whole or in Part by Director; 34 TAC §121.15, Hearing of Conflicting and Protested Claims; 34 TAC §121.16, Subpoenas; 34 TAC §121.17, Depositions; 34 TAC §121.18, Conduct of Contested Case Hearings; 34 TAC §121.19, Proposal for Decision; 34 TAC §121.20, Filing of Exceptions to Proposal, Briefs, and Replies; 34 TAC §121.21, Closing of Hearing; 34 TAC §121.22, Board Consideration and Action; 34 TAC §121.23, Board Decisions and Orders; 34 TAC §121.24, Motions for Rehearing; 34 TAC §121.25, When Decisions Become Final; 34 TAC §121.26, The Record; and, 34 TAC §121.27, Reaffirmation of Occupational Disability Benefit.

BACKGROUND AND PURPOSE

New Chapter 121 is adopted to update and modernize the benefit claims and administrative appeals processes, to implement certain provisions of Senate Bill 1337 (SB 1337), which was enacted by the 86th Legislature (2019) and, pursuant to the Board's review of its rules in accordance with Government Code §2001.039.

The new rules make the following changes: (i) new definitions added (in §121.1); (ii) delegation of authority to the Executive Director for ease of administration with respect to: granting an exception to the operation of a TMRS rule in certain limited circumstances to avoid undue hardship where it does not prejudice TMRS or another person (in §121.2); receipt of notices, applications, beneficiary designations, elections, petitions, complaints, replies, or other pleadings required to be delivered to TMRS (in §121.3); approval of all forms required for the administration and operations of the System (in §121.5); and approval of an alternative method for the receipt of confidential information required for the administration of benefits that is designed to protect the confidential information (in §121.5); and (iii) substantive clarifications or modernizations to: provide for electronic filing of records and providing forms electronically to members and municipalities (in §121.3 and §121.5); allow for default in a contested claim if the claimant does not comply with certain rules (in §121.12); provide a thirty day period for a contestant to file a written request for hearing of a denied claim (in §121.14); clarify provisions regarding TMRS witnesses and records at hearings, the official record of hearings, and interpreters for hearings (in §121.18); clarify when a hearing is considered closed (in §121.21); clarify the board of trustees' ability to accept, modify, or refuse to accept proposed findings or proposals for decision received from an administrative law judge in a contested case (in §121.22); and clarify timeframes for the filing of motions for rehearing and responses in a contested case (in §121.24).

Additionally, the following rules implement SB 1337 as follows: (i) §121.2 and §121.9 clarify that neither the Chapter 121 rules nor any of the other TMRS rules (found in Part 6 of Title 34, Administrative Code) have the effect of waiving any immunities of TMRS or its trustees, officers, employees, or medical board; and (ii) §121.27 provides that: (a) TMRS may determine when to require an occupational disability retiree to undergo a medical examination and provide additional medical or other information to the System to reaffirm the status of the retiree as meeting the requirements of occupational disability retirement; (b) TMRS or its medical board may specify the physician or type of specialized physician that is required to perform the examination; and, (c) if a retiree has had his or her annuity suspended under Government Code §854.409 due to failure to comply with TMRS' request for a medical examination or other information and dies without complying, then if the death is within 4 years of the request for examination or information, the retiree's beneficiaries will be entitled to a lump sum payment of suspended annuity payments, but if the death is more than 4 years after the request, then suspended payments are forfeited.

No comments were received regarding the adoption of the repeal and new Chapter 121.

34 TAC §§121.1 - 121.28

STATUTORY AUTHORITY

The repeal of Chapter 121 is adopted under Government Code §855.102, which allows the Board to adopt rules it finds necessary or desirable for the efficient administration of the System and Government Code §2001.039, which grants that Board the authority to review and repeals rules after assessment of whether the reasons for initially adopting the rule continue to exist.

CROSS-REFERENCE TO STATUTES

Texas Government Code: §§851.001, 851.004, 854.101 - 854.105, 854.409, 854.411, 855.102 and 855.116.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2020.

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Christine M. Sweeney
General Counsel
Texas Municipal Retirement System
Effective date: September 13, 2020
Proposal publication date: June 5, 2020
For further information, please call: (512) 225-3710

♦ ♦ ♦

34 TAC §§121.1 - 121.27

STATUTORY AUTHORITY

New Chapter 121 is adopted pursuant to Government Code §855.102, which allows the Board to adopt rules it finds necessary or desirable for the efficient administration of the System; Government Code §854.411, which allows the Board to adopt rules necessary or desirable to implement Chapter 854, Subchapter E, which relates to optional disability retirement benefits; Government Code §855.116, which allows the Board to adopt rules and procedures relating to the electronic filing of documents with the System and the delivery of information electronically by the System; and Government Code §2001.039, which grants that Board the authority to review and readopt, readopt with amendments, or repeal rules after assessment of whether the reasons for initially adopting the rule continue to exist.

CROSS-REFERENCE TO STATUTES

Texas Government Code: §§851.001, 851.004, 854.101 - 854.105, 854.409, 854.411, 855.102 and 855.116.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2020.

TRD-202003476
Christine M. Sweeney
General Counsel
Texas Municipal Retirement System
Effective date: September 13, 2020
Proposal publication date: June 5, 2020
For further information, please call: (512) 225-3710

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 150. MEMORANDUM OF UNDERSTANDING AND BOARD POLICY STATEMENTS

SUBCHAPTER A. PUBLISHED POLICIES OF THE BOARD

37 TAC §150.55

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 150, §150.55, concerning memorandum of understanding and board policy statements. The rule is adopted without changes to the proposed text as published in the June 5, 2020, issue of the *Texas Register* (45 TexReg 3755). The text of the rule will not be republished.

No public comments were received regarding adoption of these amendments.

The amended rule is adopted under Subtitle B, Ethics, Chapter 572 and Section 508.0441 Government Code. Subtitle B, Chapter 572 is the ethics policy of this state for state officers or state employees. Section 508.0441 requires the Board to implement a policy which clearly defines under which circumstances a Board member or parole commissioner should disqualify himself or herself on parole or mandatory supervision decisions.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2020.

TRD-202003401
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Effective date: September 8, 2020
Proposal publication date: June 5, 2020
For further information, please call: (512) 406-5478

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Texas

REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Office of the Attorney General

Title 1, Part 3

The Office of the Attorney General (OAG) files this notice of its intent to review 1 TAC Chapter 53, Municipal Securities. The review is conducted in accordance with Government Code §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During the review, the OAG will assess whether the reasons for initially adopting the rules continue to exist.

For 30 days following the publication of this notice, the OAG will accept public comments regarding the review. Comments should be directed to Leslie Brock, Division Chief, Public Finance Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, Leslie.Brock@oag.texas.gov.

Any proposed changes to these rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption.

TRD-202003545
Lesley French
General Counsel
Office of the Attorney General
Filed: August 26, 2020

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Texas Board of Professional Engineers and Land Surveyors

Title 22, Part 6

The Texas Board of Professional Engineers and Land Surveyors will review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 22, Part 6, Chapter 131, Organization and Administration.

This review is conducted pursuant to §2001.039 of the Government Code.

In conducting its review, the Board will determine whether the reasons for each rule continue to exist. The rule review will also determine whether each rule is obsolete, reflects current legal and policy considerations, and reflects current procedures of the Board.

Any comments pertaining to this notice may be submitted within the next 30 days to Lance Kinney, Executive Director, Texas Board of Professional Engineers and Land Surveyors, 1917 S. Interstate 35, Austin, Texas 78741 or sent by email to rules@pels.texas.gov. Any proposed changes to the rules as a result of this review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional comment period prior to final adoption or repeal by the Board.

TRD-202003453
Lance Kinney
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Filed: August 24, 2020

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The Texas Board of Professional Engineers and Land Surveyors will review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 22, Part 6, Chapter 133, Licensing.

This review is conducted pursuant to §2001.039 of the Government Code.

In conducting its review, the Board will determine whether the reasons for each rule continue to exist. The rule review will also determine whether each rule is obsolete, reflects current legal and policy considerations, and reflects current procedures of the Board.

Any comments pertaining to this notice may be submitted within the next 30 days to Lance Kinney, Executive Director, Texas Board of Professional Engineers and Land Surveyors, 1917 S. Interstate 35, Austin, Texas 78741 or sent by email to rules@pels.texas.gov. Any proposed changes to the rules as a result of this review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional comment period prior to final adoption or repeal by the Board.

TRD-202003454
Lance Kinney
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Filed: August 24, 2020

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The Texas Board of Professional Engineers and Land Surveyors will review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 22, Part 6, Chapter 135, Firm Registration.

This review is conducted pursuant to §2001.039 of the Government Code.

In conducting its review, the Board will determine whether the reasons for each rule continue to exist. The rule review will also determine whether each rule is obsolete, reflects current legal and policy considerations, and reflects current procedures of the Board.

Any comments pertaining to this notice may be submitted within the next 30 days to Lance Kinney, Executive Director, Texas Board of Pro-

fessional Engineers and Land Surveyors, 1917 S. Interstate 35, Austin, Texas 78741 or sent by email to rules@pels.texas.gov. Any proposed changes to the rules as a result of this review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional comment period prior to final adoption or repeal by the Board.

TRD-202003455
Lance Kinney
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Filed: August 24, 2020

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The Texas Board of Professional Engineers and Land Surveyors will review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 22, Part 6, Chapter 137, Compliance and Professionalism.

This review is conducted pursuant to §2001.039 of the Government Code.

In conducting its review, the Board will determine whether the reasons for each rule continue to exist. The rule review will also determine whether each rule is obsolete, reflects current legal and policy considerations, and reflects current procedures of the Board.

Any comments pertaining to this notice may be submitted within the next 30 days to Lance Kinney, Executive Director, Texas Board of Professional Engineers and Land Surveyors, 1917 S. Interstate 35, Austin, Texas 78741 or sent by email to rules@pels.texas.gov. Any proposed changes to the rules as a result of this review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional comment period prior to final adoption or repeal by the Board.

TRD-202003456
Lance Kinney
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Filed: August 24, 2020

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The Texas Board of Professional Engineers and Land Surveyors will review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 22, Part 6, Chapter 139, Enforcement.

This review is conducted pursuant to§2001.039 of the Government Code.

In conducting its review, the Board will determine whether the reasons for each rule continue to exist. The rule review will also determine whether each rule is obsolete, reflects current legal and policy considerations, and reflects current procedures of the Board.

Any comments pertaining to this notice may be submitted within the next 30 days to Lance Kinney, Executive Director, Texas Board of Professional Engineers and Land Surveyors, 1917 S. Interstate 35, Austin, Texas 78741 or sent by email to rules@pels.texas.gov. Any proposed changes to the rules as a result of this review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional comment period prior to final adoption or repeal by the Board.

TRD-202003457
Lance Kinney
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Filed: August 24, 2020

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Adopted Rule Reviews

Department of Savings and Mortgage Lending

Title 7, Part 4

The Department of Savings and Mortgage Lending (department), on behalf of the Finance Commission of Texas (commission), has completed its review of the following chapters of the Texas Administrative Code (TAC), Title 7, Part 4:

Chapter 79, Residential Mortgage Loan Servicers (§§79.1 - 79.5, 79.20, 79.30, 79.40, 79.50);

Chapter 80, Texas Residential Mortgage Loan Companies (§§80.1 - 80.5, 80.100, 80.102 - 80.104, 80.106, 80.107, 80.200 - 80.206, 80.300 - 80.302); and

Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators (§§81.1 - 81.5, 81.100 - 81.109, 81.200 - 81.206, 81.300 - 81.302).

The review of 7 TAC Chapters 79 - 81 was conducted in accordance with Government Code §2001.039. Notice of the review was published in the October 25, 2019, issue of the *Texas Register* (44 TexReg 6377). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting the rules reviewed continue to exist and readopts 7 TAC Chapters 79 - 81.

TRD-202003489
Iain Berry
Associate General Counsel
Department of Savings and Mortgage Lending
Filed: August 24, 2020

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Office of Consumer Credit Commissioner

Title 7, Part 5

The Finance Commission of Texas (commission) has completed the rule review of Texas Administrative Code, Title 7, Part 5, Chapter 82, concerning Administration, in its entirety. The rule review was conducted under Texas Government Code, §2001.039.

Notice of the review of 7 TAC Chapter 82 was published in the *Texas Register* on May 29, 2020 (45 TexReg 3643). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

As a result of internal review by the Office of Consumer Credit Commissioner, the commission has determined that certain revisions are appropriate and necessary. Those proposed changes are published elsewhere in this issue of the *Texas Register.*

As a result of the rule review, the commission finds that the reasons for initially adopting the rules in 7 TAC Chapter 82 continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202003443
Audrey Spalding
Assistant General Counsel
Office of Consumer Credit Commissioner
Filed: August 21, 2020

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The Finance Commission of Texas (commission) has completed the rule review of Texas Administrative Code, Title 7, Part 5, Chapter 87,

concerning Tax Refund Anticipation Loans, in its entirety. The rule review was conducted under Texas Government Code, §2001.039.

Notice of the review of 7 TAC Chapter 87 was published in the *Texas Register* on May 29, 2020 (45 TexReg 3643). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

As a result of the rule review, the commission finds that the reasons for initially adopting the rules in 7 TAC Chapter 87 continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202003444
Audrey Spalding
Assistant General Counsel
Office of Consumer Credit Commissioner
Filed: August 21, 2020

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Joint Financial Regulatory Agencies

Title 7, Part 8

The Finance Commission of Texas and the Texas Credit Union Commission (commissions) have completed the rule review of the following chapters in Texas Administrative Code, Title 7, Part 8, in their entirety: Chapter 151, concerning Home Equity Lending Procedures; Chapter 152, concerning Repair, Renovation, and New Construction on Homestead Property; and Chapter 153, concerning Home Equity Lending. The rule review was conducted under Texas Government Code, §2001.039.

Notice of the review of 7 TAC Chapters 151, 152, and 153 was published in the *Texas Register* on May 1, 2020 (45 TexReg 2897). The commission received no comments in response to that notice. The commissions believe that the reasons for initially adopting the rules contained in these chapters continue to exist.

Before publishing notice of the review in the *Texas Register,* the Joint Financial Regulatory Agencies (Texas Department of Banking, Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, and Texas Credit Union Department) issued an informal advance notice of the rule review to stakeholders. The agencies received six informal precomments in response to the advance notice. The agencies appreciate the thoughtful input provided by stakeholders.

As a result of stakeholder input and internal review by the agencies, the commissions have determined that certain revisions are appropriate and necessary in 7 TAC Chapters 151 and 153. Those proposed changes are published elsewhere in this issue of the *Texas Register.*

As a result of the rule review, the commissions find that the reasons for initially adopting the rules in 7 TAC Chapters 151, 152, and 153, continue to exist, and readopt these chapters in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202003446
Matthew Nance
Deputy General Counsel, Office of Consumer Credit Commissioner
Joint Financial Regulatory Agencies
Filed: August 21, 2020

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Texas State Board of Pharmacy

Title 22, Part 15

The Texas State Board of Pharmacy adopts the review of Chapter 291, (§§291.71 - 291.77), concerning Pharmacies (Institutional Pharmacy (Class C)), Chapter 303, (§§303.1 - 303.3), concerning Destruction of Drugs, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules. The proposed review was published in the July 3, 2020, issue of the *Texas Register* (45 TexReg 4535).

No comments were received.

The agency finds the reason for adopting the rule continues to exist.

TRD-202003427
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Filed: August 20, 2020

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Employees Retirement System of Texas

Title 34, Part 4

Pursuant to the notice of the proposed rule review published in the November 24, 2017, issue of the *Texas Register* (42 TexReg 6633), the Employees Retirement System of Texas (ERS) reviewed 34 Texas Administrative Code (TAC) Chapter 75, Hazardous Profession Death Benefits, pursuant to Texas Government Code §2001.039, to determine whether the reason for adopting the rules in Chapter 75 continues to exist. No comments were received concerning the proposed review.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reason for adopting the rules in 34 TAC Chapter 75 continues to exist, and, therefore, the Board readopts Chapter 75 with amendments as published in the July 3, 2020, issue of the *Texas Register* (45 TexReg 4476). This completes ERS' review of 34 TAC Chapter 75, Hazardous Profession Death Benefits.

TRD-202003422
Paula A. Jones
Deputy Executive Director and General Counsel
Employees Retirement System of Texas
Filed: August 19, 2020

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Pursuant to the notice of the proposed rule review that was published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1244), the Employees Retirement System of Texas (ERS) reviewed 34 Texas Administrative Code (TAC), Chapter 85, Flexible Benefits, pursuant to Texas Government Code §2001.039, to determine whether the reason for adopting the rules in Chapter 85 continues to exist. No comments were received concerning the proposed review.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reason for adopting the rules in 34 TAC Chapter 85 continues to exist, and, therefore, the Board readopts Chapter 85 with the amendments as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4723) and adopted by the Board at its August 19, 2020, meeting. This completes ERS' review of 34 TAC Chapter 85, Flexible Benefits.

TRD-202003423
Paula A. Jones
Deputy Executive Director and General Counsel
Employees Retirement System of Texas
Filed: August 19, 2020

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Texas Board of Pardons and Paroles

Title 37, Part 5

The Texas Board of Pardons and Paroles (Board) files this notice of readoption of 37 TAC, Part 5, Chapter 150, Memorandum of Understanding and Board Policy Statements. The review was conducted pursuant to Government Code, §2001.039. Notice of the Board's intention to review was published in the May 3, 2019, issue of the *Texas Register* (44 TexReg 2274).

As a result of the review, the Board has determined that the original justifications for these rules continue to exist. The Board readopts §150.55 with amendments as published in the Adopted Rules section of this issue of the *Texas Register.* The Board readopts the remainder of the sections in Chapter 150 without amendments.

No comments on the proposed review were received.

This concludes the review of 37 TAC Chapter 150, Memorandum of Understanding and Board Policy Statements.

TRD-202003400
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Filed: August 19, 2020

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 7 TAC §76.98(d)

DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

MAXIMUM ANNUAL ASSESSMENT RATE SCHEDULE

Assets Over	Not Over	Amount	Plus	Over
$0	$2 million	$5,548	0.000000000	$0
2 million	20 million	5,548	0.000219058	2 million
20 million	100 million	9,491	0.000175245	20 million
100 million	200 million	23,510	0.000113940	100 million
200 million	1 billion	34,900	0.000096381	200 million
1 billion	2 billion	112,004	0.000078857	1 billion
2 billion	6 billion	190,861	0.000070094	2 billion
6 billion	20 billion	471,237	0.000059643	6 billion
20 billion	40 billion	1,306,239	0.000044928	20 billion
40 billion	250 billion	2,204,799	0.000035103	40 billion
250 billion		9,576,429	0.000034751	250 billion

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Water Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code.

Case Title and Court: *Ector County, Texas and the State of Texas, acting by and through the Texas Commission on Environmental Quality, a Necessary and Indispensable Party v. Road Ranger LLC,* Cause No. D-1-GN-19-005597 in the 261st Judicial District Court, Travis County, Texas.

Nature of the Suit: Defendant Road Ranger LLC ("Defendant") is the owner of real property in Odessa, Ector County, Texas. Ector County's petition alleged that the septic system at the property has breached in 2018 and discharged septic waste into an impounding reservoir. Ector County initiated the suit against Defendant with the State of Texas, on behalf of the Texas Commission on Environmental Quality, as a necessary and indispensable party.

Proposed Agreed Judgment: The proposed Agreed Final Judgment includes a permanent injunction ordering Defendant to retain an environmental consultant to prepare a site assessment report that will evaluate the septic drain field and adjacent down-gradient area located at the property and to implement the corrective actions identified in the report. The Judgment also assesses against Defendant civil penalties in the amount of $75,000 to be equally divided between Ector County and the State; and attorney's fees in the amount of $5,000 to Ector County and $2,000 to the State.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Ekaterina DeAngelo, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, phone (512) 463-2012, facsimile (512) 320-0911, or email: ekaterina.deangelo@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202003516
Lesley French
General Counsel
Office of the Attorney General
Filed: August 25, 2020

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/31/20 - 09/06/20 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/31/20 - 09/06/20 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-202003510
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 25, 2020

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Texas Education Agency

Correction of Error Relating to Adopted New 19 TAC Chapter 103, Health and Safety, Subchapter CC, Commissioner's Rules Concerning School Safety and Discipline, §103.1209, Mandatory School Drills

The Texas Education Agency (TEA) filed adopted amendment to 19 TAC §103.1209 on August 17, 2020, for publication in the August 28, 2020 issue of the *Texas Register* (45 TexReg 6110).

Due to error by TEA, two non-substantive, technical corrections have been identified subsequent to filing the adoption.

In subsection (c), which describes the minimum frequency of drills, paragraph (2) should read "Lockdown--Two per school year (once per semester)," and paragraph (6) should read, "Fire evacuation drill--Four per school year (two per semester). In addition, school districts and open-enrollment charter schools should consult with their local fire marshal and comply with their local fire marshal's requirements and recommendations."

The corrected language encloses the minimum frequency per semester in parentheses rather than using the word "or" to provide clarity.

Issued in Austin, Texas, on August 26, 2020.

TRD-202003541
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: August 26, 2020

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Request for Applications Concerning the 2021-202 Principal Residency Cycle 4 Grant

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-20-128 is authorized by Elementary and Sec-

ondary Education Act of 1965 (ESEA), as amended by P.L. 114-95, Every Student Succeeds Act (ESSA), Title II, Part A.

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under RFA #701-20-128 from eligible applicants, which include local education agencies (LEAs) with at least one campus that received an "F" rating overall under the 2019 Accountability Ratings and/or with at least one campus labeled Targeted, Additional Targeted, or Comprehensive under the 2019-2020 Title I Status.

Description. This grant program seeks to provide LEAs with an opportunity to increase the number of well prepared, diverse instructional leaders by building sustainable leadership pipelines and growing quality principal residency programs.

LEAs that are awarded this grant will do the following: (1) identify strong principal residents from among their current staff through a targeted recruitment and selection process; (2) partner with an effective principal educator preparation program (EPP) that provides residents with course content focused on best practices in campus leadership, including a concentrated focus on instructional leadership; and (3) design and implement a year-long, full-time residency with a focus on authentic campus-based leadership experiences in partnership with the EPP.

A full-time, year-long residency is defined as a program in which residents are consistently engaged in authentic campus-based leadership experiences in a clinical setting for a minimum of one school year. Residents may not have significant classroom responsibilities during this time period.

Dates of Project. The 2021-2022 Principal Residency Cycle 4 Grant will be implemented during the 2020-2021 school year through the 2021-2022 school year. Applicants should plan for a starting date of no earlier than March 9, 2021, and an ending date of no later than September 30, 2022.

Project Amount. Approximately $5,830,092 is available for funding the 2021-2022 Principal Residency Cycle 4 Grant. It is anticipated that approximately 15 grants will be awarded up to $700,000. This project is funded 100% with federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. The complete RFA will be posted on the TEA Grant Opportunities web page at http://tea4avoswald.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to Heather.Salaz@tea.texas.gov, the TEA email address identified in the Program Guidelines of the RFA, no later than October 8, 2020. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by October 15, 2020. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be submitted to competitivegrants@tea.texas.gov. Applications must be received no later than 11:59 p.m. (Central Time), October 22, 2020, to be considered eligible for funding.

Issued in Austin, Texas, on August 26, 2020.

TRD-202003542
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: August 26, 2020

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 6, 2020.** TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commissions orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commissions central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **October 6, 2020.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: CHAMPS C-STORE LLC; DOCKET NUMBER: 2020-0484-PST-E; IDENTIFIER: RN101882728; LOCATION: Jacksonville, Cherokee County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $3,107; ENFORCEMENT COOR-

DINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: City of Dell City; DOCKET NUMBER: 2020-0544-PWS-E; IDENTIFIER: RN101210409; LOCATION: Dell City, Hudspeth County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(M), by failing to provide a suitable sampling cock on the discharge pipe of the facility's well pump prior to any treatment; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.44(h)(1)(A), by failing to ensure additional protection was provided at all residences or establishments where an actual or potential contamination hazard exists in the form of an air gap or backflow prevention assembly, as identified in 30 TAC §290.47(f); 30 TAC §290.46(f)(2) and (3)(A)(i)(III), (ii)(III), and (iv) and (B)(iii) and (v), (D)(i) and (vii), and (E)(ii), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's elevated storage tank and three ground storage tanks annually; 30 TAC §290.46(m)(6), by failing to maintain all pumps, motors, valves, and other mechanical devices in good working condition; 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; and 30 TAC §290.121(a) and (b), by failing to develop and maintain an accurate and up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: $4,777; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(3) COMPANY: City of Livingston; DOCKET NUMBER: 2020-0190-PWS-E; IDENTIFIER: RN101232874; LOCATION: Livingston, Polk County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain sanitary control easements that cover the land within 150 feet of the Center Street Well and Ogletree Well; 30 TAC §290.41(c)(3)(J), by failing to provide the well with a concrete sealing block that extends a minimum of three feet from the well casing in all directions with a minimum thickness of six inches and sloped to drain away at not less than 0.25 inches per foot; 30 TAC §290.41(c)(3)(K), by failing to seal the wellhead by a gasket or sealing compound and provide a well casing vent for the well that is covered with a 16-mesh or finer corrosion-resistant screen, facing downward, elevated and located so as to minimize the drawing of contaminants into the well; 30 TAC §§290.41(c)(3)(O), 290.42(m) and 290.43(e), by failing to protect the facility's wells, each water treatment plant, potable water storage tanks, and pressure maintenance facilities with an intruder-resistant fence with a lockable gate or enclose the well units in a locked and ventilated well house with lockable gates; 30 TAC §290.41(c)(3)(Q), by failing to ensure that all openings to the atmosphere are covered with a 16-mesh or finer corrosion-resistant screening material or an acceptable equivalent; 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.42(m) and §290.43(e), by failing to provide an intruder-resistant fence around each water treatment plant, potable water storage tank, pressure maintenance facility, and related appurtenances that remains locked during periods of darkness and when the facility is unattended; 30 TAC §290.45(b)(2)(F) and Texas Health and Safety Code, §341.0315(c), by failing to provide two or more service pumps with a minimum combined capacity of 0.6 gallons per minute per connection; 30 TAC §290.46(f)(2) and (3) and (B)(iv) and (ix), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; 30 TAC §290.46(j), by failing to complete a Customer Service Inspection certificate prior to providing continuous water service to new construction or any existing service when the water purveyor has reason to believe cross-connections or other potential contamination hazards exists; 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals; 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meters for the three emergency wells at least once every three years; 30 TAC §290.110(c)(4)(B), by failing to monitor the disinfectant residual at representative locations in the distribution system at least once per day; and 30 TAC §290.110(c)(5), by failing to conduct chloramine effectiveness sampling to ensure that monochloramine is the prevailing chloramine species and that nitrification is controlled; PENALTY: $17,502; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: Grace Chapel Assembly of God of Magnolia; DOCKET NUMBER: 2020-0467-PWS-E; IDENTIFIER: RN105817951; LOCATION: Magnolia, Montgomery County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(n)(1), by failing to maintain, at the facility, accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; PENALTY: $60; ENFORCEMENT COORDINATOR: Julianne Dewar, (817) 588-5861; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: INVISTA S.a.r.l.; DOCKET NUMBER: 2020-0589-AIR-E; IDENTIFIER: RN104392626; LOCATION: Orange, Orange County; TYPE OF FACILITY: industrial organic chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Numbers 1302 and 1303, Special Conditions Number 1, Federal Operating Permit Numbers 01897 and O1898, General Terms and Conditions and Special Terms and Conditions Numbers 19 and 27, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $14,925; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $5,970; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: JAPPA Corporation dba Tiger Corner; DOCKET NUMBER: 2020-0525-PST-E; IDENTIFIER: RN103052635; LOCATION: Glen Rose, Somervell County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,561; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: KW Homes LLC; DOCKET NUMBER: 2020-1037-WQ-E; IDENTIFIER: RN111043964; LOCATION: Weatherford, Parker, County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Alyssa Loveday, (512) 239-5540; REGIONAL

OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: LOGAN AND SON USED TIRE SERVICE, INCORPORATED; DOCKET NUMBER: 2019-1238-MSW-E; IDENTIFIER: RN103101317; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: scrap tire transportation business and a tire dealer and repair shop; RULES VIOLATED: 30 TAC §328.56(d)(2) and §328.60(a) and Texas Health and Safety Code, §361.112(a), by failing to obtain a scrap tire storage site registration for the site prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed and lockable containers; 30 TAC §328.57(c)(3), by failing to ensure that used or scrap tires or tire pieces are transported to an authorized scrap tire facility; 30 TAC §328.57(d) and §328.58(f), by failing to retain all manifests, work orders, and invoices showing the collection and disposition of all used or scrap tires and tire pieces for three years; and 30 TAC §328.58(a) and (b), by failing to accurately and fully complete all required information on scrap tire manifests; PENALTY: $13,500; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: M & B CONSTRUCTION LLC; DOCKET NUMBER: 2019-1592-WQ-E; IDENTIFIER: RN110773447; LOCATION: Pilot Point, Denton County; TYPE OF FACILITY: residential construction site; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR15430X, Part III, Section D.1, by failing to maintain a complete stormwater pollution prevention plan and make it readily available for review; 30 TAC §305.125(1) and TPDES General Permit Number TXR15430X, Part III, Section F.2(b)(iii) and F.4(d), by failing to install and maintain best management practices (BMPs) at the site; and 30 TAC §305.125(1), TWC, §26.121(a), and TPDES General Permit Number TXR15430X, Part III, Section F.2(a)(ii) and F.6(d), by failing to install and maintain BMPs at the site which resulted in a discharge of pollutants; PENALTY: $3,281; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Miles Construction Company Incorporated; DOCKET NUMBER: 2020-1018-WQ-E; IDENTIFIER: RN111041430; LOCATION: Tyler, Smith County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Christopher Moreno, (254) 761-3038; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: Motiva Enterprises LLC; DOCKET NUMBER: 2019-1618-AIR-E; IDENTIFIER: RN100209451; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review (NSR) Permit Numbers 6056 and 8404, PSDTX1534, PSDTX1062M1 and PSDTX1062M2, Special Conditions (SC) Number 1, Federal Operating Permit (FOP) Numbers 01386 and O3387, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Numbers 19 and 22, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), NSR Permit Numbers 8404 and PSDTX1062M1, SC Number 1, FOP Number O3387, GTC and STC Number 22, and THSC, §382.085(b), by failing to submit a final record for a reportable emissions event no later than two weeks after the end of the emissions event; 30 TAC §101.201(a)(1)(B) and §122.143(4), FOP Numbers 01386 and O3387, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; and 30 TAC §101.201(c) and §122.143(4), FOP Number O1386 and O3387, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to submit a final record for a reportable emissions event no later than two weeks after the end of the emissions event; PENALTY: $34,565; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $17,282; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(12) COMPANY: Motiva Enterprises LLC; DOCKET NUMBER: 2019-1374-MLM-E; IDENTIFIER: RN100209451; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §335.4 and §335.4(1) and TWC, §26.121(c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of industrial solid waste (ISW); 30 TAC §335.6(b), by failing to immediately provide notice to the executive director of the disposal of ISW; 30 TAC §335.8, Hazardous Waste (HW) Permit Number 50188, XI. Corrective Measures, H.6. Corrective Action and Interim Corrective Measures for Solid Waste Management Units-Corrective Measures Implementation (CMI)/Remedial Action Plan, by failing to properly follow the approved CMI Plan; 30 TAC §§335.62, 335.503, and 335.504 and 40 Code of Federal Regulations (CFR) §262.11, by failing to conduct hazardous waste determinations and waste classifications; 30 TAC §335.152(a)(1), 40 CFR §264.14(c), HW Permit Number 50188, III. Facility Management, C.1. Security, by failing to post warning signs at all points of access to the active waste management portion(s) of the facility and along the natural and/or artificial barriers in sufficient numbers to be seen from any approach to those portions of the facility; 30 TAC §335.152(a)(2), 40 CFR §264.32(c), HW Permit Number 50188, II. General Facility Standards, C.1.n and C.2.b. State Regulations and General Facility Standards, III. Facility Management, E.5.a. Contingency Plan-Preparedness and Prevention, Table III.E.3-Emergency Equipment, by failing to equip the solid waste management facility office building with two air packs as required by the permit; 30 TAC §335.152(c)(5), 40 CFR §270.30(a), HW Permit Number 50188, V. Authorized Units and Operations, A.1. Authorized Units, by failing to clearly identify all authorized facility units with signage indicating the Unit Number; and 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 6056 and 8404, PSDTX1062M1, PSDTX1062M2, GHGPSDTX121, and PSDTX1534, Special Conditions Number 1, Federal Operating Permit Numbers O1386 and 03387, General Terms and Conditions and Special Terms and Conditions Numbers 19 and 22, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $284,148; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $113,659; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(13) COMPANY: Nester Romell Estate and Caleb Environmental Corporation dba Summit Landscape & Design; DOCKET NUMBER: 2020-0699-MLM-E; IDENTIFIER: RN110912409; LOCATION: Dunlay, Medina County; TYPE OF FACILITY: unauthorized disposal site; RULES VIOLATED: 30 TAC §111.201 and Texas Health and Safety Code, §382.085(b), by failing to not cause, suffer, allow, or permit outdoor burning within the State of Texas; and 30 TAC §330.15(a), by failing to not cause, suffer, allow, or permit the unauthorized storage, processing, and/or disposal of municipal solid waste; PENALTY: $2,229; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(14) COMPANY: Paso Del Norte Materials, LLC; DOCKET NUMBER: 2020-0117-AIR-E; IDENTIFIER: RN105931737; LOCATION:

El Paso, El Paso County; TYPE OF FACILITY: rock crusher and hot mix asphalt plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(E)(i) and (c), New Source Review (NSR) Permit Number 101079L001, Special Conditions (SC) Numbers 18.B and 18.C, and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain records containing the information and data sufficient to demonstrate compliance with the permit; 30 TAC §116.115(c) and §116.116(a)(1), NSR Permit Number 101079L001, SC Number 15.E.(1), and THSC, §382.085(b), by failing to comply with the representations with regard to construction plans and operation procedures in a permit application, and failing to locate the rock crushing facility and all associated sources at a minimum of 1,260 feet from the property line; 30 TAC §116.115(c), NSR Permit Number 101079L001, SC Number 2, and THSC, §382.085(b), by failing to comply with the maximum sulfur content limit for the fuel for the internal combustion engine; and 30 TAC §116.115(c), NSR Permit Number 101079L001, SC Number 7, and THSC, §382.085(b), by failing to perform quarterly visible emissions observations of the fugitive emissions leaving the property; PENALTY: $48,270; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(15) COMPANY: QUICK TRACK INCORPORATED; DOCKET NUMBER: 2020-0577-PST-E; IDENTIFIER: RN103028874; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every 30 days; 30 TAC §334.50(d)(9)(A)(v) and §334.72, by failing to report a suspected release to the TCEQ within 72 hours of discovery for a report with inconclusive results; and 30 TAC §334.74, by failing to investigate and confirm all suspected releases of regulated substances requiring reporting under 30 TAC §334.72 (relating to Reporting of Suspected Releases) within 30 days; PENALTY: $19,177; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Salzgitter Mannesmann Stainless Tubes USA, Incorporated; DOCKET NUMBER: 2019-0052-AIR-E; IDENTIFIER: RN100210962; LOCATION: Houston, Harris County; TYPE OF FACILITY: stainless tubes manufacturer; RULES VIOLATED: 30 TAC §116.115(c), New Source Review Permit Number 76509, Special Conditions Number 4, and Texas Health and Safety Code, §382.085(b), by failing to comply with the minimum removal efficiency; PENALTY: $16,800; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: Southwest Shipyard, L.P.; DOCKET NUMBER: 2020-0367-AIR-E; IDENTIFIER: RN100248749; LOCATION: Channelview, Harris County; TYPE OF FACILITY: a barge cleaning and repair operation; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 4759, Special Conditions Number 13.A, Federal Operating Permit Number O1260, General Terms and Conditions and Special Terms and Conditions Number 12, and Texas Health and Safety Code, §382.085(b), by failing to maintain the firebox exit temperature at or above the exit temperature established during the most recent satisfactory stack test for the Bekaert Clean Enclosed Burner Vapor Combustor; PENALTY: $15,902; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: Targa Midstream Services LLC; DOCKET NUMBER: 2020-0612-AIR-E; IDENTIFIER: RN100222900; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: $13,125; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $5,250; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: TriStar Convenience Stores, Incorporated dba Handi Stop 41; DOCKET NUMBER: 2020-0623-PST-E; IDENTIFIER: RN102466612; LOCATION: Hempstead, Waller County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.603(b)(2) and §334.606, by failing to maintain a current and correct list of all Class C operators who have been trained for the facility, and failing to maintain operator training certification records on-site and make them available for review upon request by agency personnel; PENALTY: $5,398; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: Undine Texas, LLC; DOCKET NUMBER: 2020-0516-PWS-E; IDENTIFIER: RN101192078; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: $1,725; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202003508
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 25, 2020

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Enforcement Orders

A default order was adopted regarding Gustavo Garcia dba Gugaru's Body Shop, Car Wash, and Detail, Docket No. 2017-1538-AIR-E on August 26, 2020, assessing $1,312 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ian Groetsch, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding JLS CONSULTING LLC, Docket No. 2018-1079-PST-E on August 26, 2020, assessing $1,312 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Kevin R. Bartz, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Blanchard Refining Company LLC, Docket No. 2018-1308-AIR-E on August 26, 2020, assessing $14,250 in administrative penalties with $2,850 deferred. Information concerning any aspect of this order may be obtained by contacting

Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Kaufman, Docket No. 2018-1353-MLM-E on August 26, 2020, assessing $36,650 in administrative penalties with $7,329 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding SADAF GLOBAL CORPORATION, Docket No. 2018-1493-PST-E on August 26, 2020, assessing $5,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting John S. Merculief II, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Bell-Milam-Falls Water Supply Corporation, Docket No. 2018-1527-MLM-E on August 26, 2020, assessing $8,460 in administrative penalties with $1,692 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Thind Holdings LLC dba On The Road 104, Docket No. 2019-0049-PST-E on August 26, 2020, assessing $9,187 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting John S. Merculief II, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CATEX Acquisitions, LLC, Docket No. 2019-0401-PWS-E on August 26, 2020, assessing $17,899 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Clayton Smith, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Chico, Docket No. 2019-0525-PWS-E on August 26, 2020, assessing $1,380 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WESTROAD BUSINESS, INC. dba Kroozin Market, Docket No. 2019-0712-PST-E on August 26, 2020 assessing $14,439 in administrative penalties with $2,887 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MILLER WASTE MILLS, INCORPORATED, Docket No. 2019-0803-IWD-E on August 26, 2020, assessing $22,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Harris County Water Control and Improvement District No. 70, Docket No. 2019-0867-MWD-E on August 26, 2020, assessing $27,392 in administrative penalties with $5,478 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Post, Docket No. 2019-0950-MSW-E on August 26, 2020, assessing $35,751 in administrative penalties with $7,150 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Tokai Carbon CB Ltd., Docket No. 2019-1288-AIR-E on August 26, 2020, assessing $20,962 in administrative penalties with $4,192 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lumberton Municipal Utility District, Docket No. 2019-1324-MWD-E on August 26, 2020, assessing $21,000 in administrative penalties with $4,200 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie Frederick, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding J & J Excavating & Materials Co., Docket No. 2019-1328-MLM-E on August 26, 2020, assessing $45,938 in administrative penalties with $9,187 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding H2 Transport, LLC, Docket No. 2019-1446-PST-E on August 26, 2020, assessing $17,834 in administrative penalties with $3,566 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Smith, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding West Harris County Municipal Utility District No. 9, Docket No. 2019-1450-PWS-E on August 26, 2020, assessing $345 in administrative penalties with $345 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding DCP Operating Company, LP, Docket No. 2019-1456-AIR-E on August 26, 2020, assessing $20,850 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Johnson Bros. Corporation, a Southland Company, Docket No. 2019-1486-WQ-E on August 26, 2020, assessing $18,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Targa Midstream Services LLC, Docket No. 2019-1601-AIR-E on August 26, 2020, assessing $25,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Phillips 66 Company, Docket No. 2019-1729-AIR-E on August 26, 2020 assessing $19,689 in ad-

ministrative penalties with $3,937 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WestRock Texas, L.P., Docket No. 2019-1782-AIR-E on August 26, 2020 assessing $13,013 in administrative penalties with $2,602 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MAXWELL Water Supply Corporation, Docket No. 2020-0084-PWS-E on August 26, 2020, assessing $3,450 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Webb County, Docket No. 2020-0213-PWS-E on August 26, 2020, assessing $2,100 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Monarch Utilities I L.P., Docket No. 2020-0221-PWS-E on August 26, 2020, assessing $3,510 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Amanda Conner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202003548
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 26, 2020

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Notice of Correction to Default Order Number 1

In the August 14, 2020, issue of the *Texas Register* (45 TexReg 5674), the Texas Commission on Environmental Quality (commission) published a notice of a Default Order, specifically item Number 1, for Traveling Tigers Centers LLC. The error is as submitted by the commission.

The reference to the Rules Violated should be corrected to read: "30 TAC §290.46(f)(2) and (3)(A)(i)(III)."

For questions concerning this error, please contact Taylor Pearson at (512) 239-5937.

TRD-202003506
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 25, 2020

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Notice of Public Meeting for TDPES Permit for Municipal Wastewater: New Permit No. WQ0015668001

APPLICATION. City of Fort Worth, 200 Texas Street, Fort Worth, Texas 76102, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015668001, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 15,000,000 gallons per day.

The facility will be located at 11091 Chapin Road, in the City of Fort Worth, Tarrant County, Texas 76108. The treated effluent will be discharged to Mary's Creek, thence to Clear Fork Trinity River **Below Benbrook Lake** in Segment No. 0829 of the Trinity River Basin. The unclassified receiving water use is high aquatic life use for Mary's Creek. The designated uses for Segment No. 0829 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Code §307.5 and the TCEQ implementation procedures (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Mary's Creek, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-97.53%2C32.7312&level=12

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments about this application. The TCEQ will hold a public meeting on this application because of significant public interest.

The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Monday, October 5, 2020 at 7:00 P.M.

Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast by following this link: https://www.gotomeeting.com/webinar/join-webinar and entering Webinar ID 911-820-667. It is recommended that you join the webinar and register for the public meeting at least 15 minutes before the meeting begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access may call (512) 239-1201 at least one day prior to the meeting for assistance in accessing the meeting and participating telephonically. Members of the public who wish to only listen to the meeting may call, toll free, (213) 929-4212 and enter access code 162-625-512. Additional information will be available on the agency calendar of events at the following link:

https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html.

INFORMATION. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en Español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our web site at www.tceq.texas.gov.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Fort Worth City Hall, Water Department, 200 Texas Street, Fort Worth, Texas. Further information may also be obtained from City of Fort Worth at the address stated above or by calling Ms. Stacy Walters at (817) 392-8203.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Issuance Date: August 21, 2020

TRD-202003538
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 26, 2020

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Notice of Request for Public Comment and Notice of a Public Meeting on Two Draft Total Maximum Daily Loads for Indicator Bacteria in Corpus Christi Bay Beaches, Cole Park and Ropes Park

The Texas Commission on Environmental Quality (TCEQ, commission, or agency) has made available for public comment two draft Total Maximum Daily Loads (TMDLs) for indicator bacteria in Corpus Christi Bay Beaches, Cole Park and Ropes Park, of the Nueces-Rio Grande Coastal Basin, within Nueces County.

The purpose of the public meeting is to provide the public an opportunity to comment on the draft TMDLs in two assessment units: Cole Park 2481CB_03 and Ropes Park 2481CB_04.

A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water in order to restore and maintain designated uses. The commission requests comments on each of the major components of the TMDL: problem definition, endpoint identification, source analysis, linkage analysis, margin of safety, pollutant load allocation, seasonal variation, public participation, and implementation and reasonable assurances.

After the public comment period, TCEQ may revise the draft TMDLs if appropriate. The final TMDLs will then be considered by the commission for adoption. Upon adoption of the TMDLs by the commission, the final TMDLs and a response to all comments received will be made available on TCEQ's website. The TMDLs will then be submitted to the United States Environmental Protection Agency (EPA), Region 6 office for final action by EPA. Upon approval by EPA, the TMDLs will be certified as an update to the State of Texas Water Quality Management Plan.

The public meeting for the draft TMDLs will be held via video conference on **September 17, 2020, at 6:00 p.m.** To join the meeting follow the link *https://tinyurl.com/CARPPublicMeeting.***Please place your computer's microphone or telephone on MUTE so that background noise is not heard and turn your video OFF.** Meeting documents are available on the project webpage at *https://www.tceq.texas.gov/waterquality/tmdl/97-corpusbeachesbacteria.html.*

Please periodically check ***https://www.tceq.texas.gov/waterquality/tmdl/tmdlnews.html*** before the meeting date for meeting related updates.

During this meeting, individuals will have the opportunity to present oral statements. An agency staff member will give a brief presentation at the start of the meeting and will be available to answer questions before and after all public comments have been received.

Written comments on the draft TMDLs should be submitted to Gerrad Hofmans, Water Quality Planning Division, Texas Commission on Environmental Quality, MC 203, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to *fax4808@tceq.texas.gov.* Comments may also be submitted electronically to *https://www6.tceq.texas.gov/rules/ecomments/.* All comments must be received at TCEQ by midnight on September 29, 2020, and should reference Two Total Maximum Daily Loads for Indicator Bacteria in Corpus Christi Bay Beaches, Cole Park and Ropes Park.

For further information regarding the draft TMDLs, please contact Gerrad Hofmans at *Gerrad.Hofmans@tceq.texas.gov*. The draft TMDLs can be obtained via TCEQ's website at *https://www.tceq.texas.gov/waterquality/tmdl/tmdlnews.html.*

Persons with disabilities who have special communication or other accommodation needs who are planning to participate in the meeting should contact Gerrad Hofmans at *Gerrad.Hofmans@tceq.texas.gov.* Requests should be made as far in advance as possible.

TRD-202003559
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: August 26, 2020

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Notice of Water Quality Application

The following notice was issued on August 14, 2020.

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

Aqua Texas, Inc. has applied for a minor amendment to the Texas Pollutant Discharge Elimination System Permit No. WQ0014032001 to authorize the addition of the Interim II phase. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located at 15515 Stable Park Drive, in Harris County, Texas 77429.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-202003539
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 26, 2020

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Notice of Water Rights Application

Notice issued August 21, 2020

APPLICATION NO. 12938; River Mountain Ranch Property Owners Association, 103 Timber View Drive, Boerne, Texas 78006-7887; applicant has applied for a water use permit to maintain a reservoir on Spring Creek, Guadalupe River Basin, impounding 50 acre-feet of water for recreation purposes in Kendall County. The application and partial fees were received on October 10, 2012. Additional information and fees were received on November 21, 2012, and June 21, 2019. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on January 11, 2013. The Executive Director has completed the technical review of the application and prepared a draft Water Use Permit. The draft Water Use Permit, if granted, would contain special conditions including, but not limited to, streamflow restrictions and installing a measuring device to record the water surface level of the reservoir. The application, technical memoranda, and Executive Director's draft Water Use Permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building. F, Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results. A public meeting is intended for the taking of public comment, and is not a contested case hearing. The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement [I/we] request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns.

Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-202003540
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 26, 2020

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Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report in reference to the specified filing deadline. If you have any questions, you may contact Sue Edwards at (512) 463-5800.

Deadline: Lobby Activities Report due May 11, 2020

Thomas C. Holloway, 504 W. 12th St., Austin, Texas 78701

Chuck Rice, Jr., 909 Garner Ave., Austin, Texas 78704

Patrick R. Tarlton, 3702 Alamo Cove, Lago Vista, Texas 78645

Deadline: Lobby Activities Report due April 10, 2020

Lorena I. Campos, 1005 Congress Ave., Ste. 152, Austin, Texas 78701

Thomas Coleman, 1293 Eldridge Parkway, Houston, Texas 77077

Thomas C. Holloway, 504 W. 12th St., Austin, Texas 78701

Frank R. Santos, 4014 Trailview Mesa Dr., Austin, Texas 78746

Deadline: Lobby Activities Report due February 10, 2020

Patrick R. Tarlton, 3702 Alamo Cove, Lago Vista, Texas 78645

Deadline: Lobby Activities Report due January 10, 2020

Kym Nicole Olson, 1220 Colorado St., Ste. 350, Austin, Texas 78701

Christine Yanas, 4507 Medical Dr., San Antonio, Texas 78229

Deadline: Lobby Activities Report due January 10, 2019

Kym Nicole Olson, 1220 Colorado St., Ste. 350, Austin, Texas 78701

Deadline: Personal Financial Statement due February 12, 2020

Jenifer Rene Pool, P.O. Box 572211, Houston, Texas 77257

TRD-202003425
Anne Temple Peters
Executive Director
Texas Ethics Commission
Filed: August 20, 2020

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Texas Department of Insurance

Company Licensing

Application for General Fidelity Life Insurance Company, a foreign life, accident and/or health company, to change its name to Coefficient Insurance Company. The home office is in South San Francisco, California.

Application for Philadelphia Reinsurance Corporation, a foreign fire and/or casualty company, to change its name to Bondsman Insurance Company. The home office is in Harrisburg, Pennsylvania.

Application to do business in the state of Texas for ARI Insurance Company, a foreign fire and/or casualty company. The home office is in Newtown, Pennsylvania.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Robert Rudnai, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-202003543
James Person
General Counsel
Texas Department of Insurance
Filed: August 26, 2020

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Texas Lottery Commission

Scratch Ticket Game Number 2260 "LADY LUCK 7"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2260 is "LADY LUCK 7". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2260 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2260.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, DIAMOND SYMBOL, 7X SYMBOL, $5.00, $10.00, $20.00, $50.00, $100, $500, $700, $5,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2260 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI

40	FRTY
DIAMOND SYMBOL	WIN$
7X SYMBOL	WINX7
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$500	FVHN
$700	SVHN
$5,000	FVTH
$100,000	100TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2260), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2260-0000001-001.

H. Pack - A Pack of the "LADY LUCK 7" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "LADY LUCK 7" Scratch Ticket Game No. 2260.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "LADY LUCK 7" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-six (46) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "DIAMOND" Play Symbol, the player wins the prize for that symbol instantly. If the player reveals a "7X" Play Symbol, the player wins 7 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly forty-six (46) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly forty-six (46) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the forty-six (46) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the forty-six (46) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

C. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 05 and $5).

D. KEY NUMBER MATCH: No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

E. KEY NUMBER MATCH: No matching WINNING NUMBERS Play Symbols on a Ticket.

F. KEY NUMBER MATCH: A non-winning Prize Symbol will never match a winning Prize Symbol.

G. KEY NUMBER MATCH: A Ticket may have up to three (3) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

H. KEY NUMBER MATCH: The "7X" (WINX7) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

I. KEY NUMBER MATCH: The " DIAMOND" (WIN$) Play Symbol may appear multiple times on intended winning Tickets, unless restricted by other parameters, play action or prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "LADY LUCK 7" Scratch Ticket Game prize of $5.00, $10.00, $20.00, $35.00, $50.00, $70.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $35.00, $50.00, $70.00, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LADY LUCK 7" Scratch Ticket Game prize of $700, $5,000 or $100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LADY LUCK 7" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "LADY LUCK 7" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "LADY LUCK 7" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 9,000,000 Scratch Tickets in Scratch Ticket Game No. 2260. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2260 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5.00	930,000	9.68
$10.00	690,000	13.04
$20.00	120,000	75.00
$35.00	120,000	75.00
$50.00	146,400	61.48
$70.00	12,000	750.00
$100	28,125	320.00
$500	1,350	6,666.67
$700	375	24,000.00
$5,000	8	1,125,000.00
$100,000	5	1,800,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.39. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2260 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2260, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202003544
Bob Biard
General Counsel
Texas Lottery Commission
Filed: August 26, 2020

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Application for Waiver and Adoption of Rate Settlement

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on August 21, 2020, under 16 Texas Administrative Code §25.247.

Style and Number: Application of Lone Star Transmission, LLC for Good Cause Waiver of Rate Filing Requirement Under 16 TAC §25.247 and Adoption of Rate Settlement, Docket Number 51206.

The Application: Under 16 Texas Administrative Code §25.247(c)(2)(A), Lone Star is required to submit to a rate review before the commission on or before December 8, 2020. In anticipation and satisfaction of the rate review requirement, Lone Star Transmission, LLC, on behalf of itself and the Steering Committee of Cities Served by Oncor, the Office of Public Utility Counsel, Texas Industrial Energy Consumers, and commission staff, reached an agreement that will allow Lone Star Transmission, LLC's wholesale transmission rates to be modified in a manner that avoids the need for litigation and alleviates the need for a comprehensive rate review proceeding. The agreement between the above parties provides for a $5.3 million reduction to Lone Star Transmission, LLC's wholesale transmission revenue requirement.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 51206.

TRD-202003537
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: August 26, 2020

♦ ♦ ♦

Supreme Court of Texas

Order Amending Texas Rules of Civil Procedure 47, 169, 190, 192, 193, 194, and 195

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 20-9101

ORDER AMENDING TEXAS RULES OF CIVIL PROCEDURE 47, 169, 190, 192, 193, 194, AND 195

ORDERED that:

1. In accordance with the Act of May 27, 2019, 86th Leg., R.S., ch. 696 (SB 2342), the Supreme Court approves the following amendments to Rules 47, 169, 190, 192, 193, 194, and 195 of the Texas Rules of Civil Procedure.

2. The amendments take effect January 1, 2021, and apply to cases filed on or after January 1, 2021, except for those filed in justice court.

3. The amendments may be changed before January 1, 2021, in response to public comments. Written comments should be sent to rulescomments@txcourts.gov. The Court requests that comments be sent by December 1, 2020.

4. Because the Court previously approved amendments to Rule 47, effective September 1, 2020 (Misc. Dkt. No. 20-9070), the amendments to Rule 47 approved in this Order are shown in redline against the version of Rule 47 that takes effect September 1, 2020.

5. The Clerk is directed to:

   a. file a copy of this Order with the Secretary of State;

   b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

   c. send a copy of this Order to each elected member of the Legislature; and

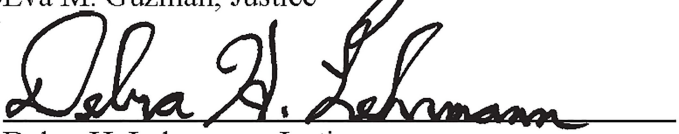
   d. submit a copy of the Order for publication in the *Texas Register*.

Dated: August 21, 2020

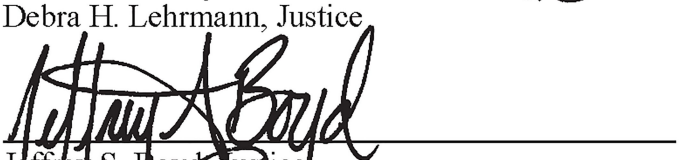
Nathan L. Hecht, Chief Justice

Paul W. Green, Justice

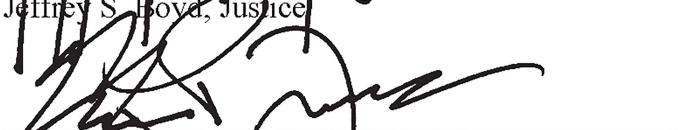
Eva M. Guzman, Justice



Debra H. Lehrmann, Justice

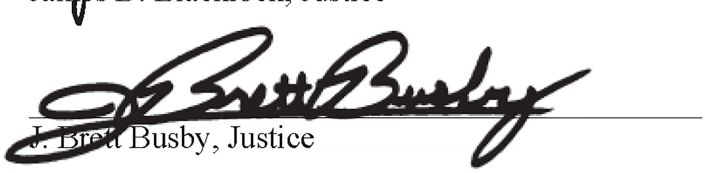


Jeffrey S. Boyd, Justice



John P. Devine, Justice

James D. Blacklock, Justice



J. Brett Busby, Justice

Jane N. Bland, Justice

RULE 47. CLAIMS FOR RELIEF

An original pleading which sets for a claim for relief, whether an original petition, counterclaim, cross-claim, or third party claim, shall contain:

(a) a short statement of the cause of action sufficient to give fair notice of the claim involved;

(b) a statement that the damages sought are within the jurisdictional limits of the court;

(c) except in suits governed by the Family Code, a statement that the party seeks:

(1) only monetary relief of $~~$100,000~~250,000 or less, ~~including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees~~excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs; ~~or~~

(2) monetary relief of $~~$100,000~~250,000 or less and non-monetary relief; ~~or~~

~~(3) monetary relief over $100,000 but not more than $250,000; or~~

(~~4~~3) monetary relief over $250,000 but not more than $1,000,000; or

(~~5~~4) monetary relief over $1,000,000; and

(d) a demand for judgment for all the other relief to which the party deems himself entitled.

Relief in the alternative or of several different types may be demanded; provided, further, that upon special exception the court shall require the pleader to amend so as to specify the maximum amount claimed. A party that fails to comply with (c) may not conduct discovery until the party's pleading is amended to comply.

Comment to 2021 change: Rule 47 is amended to implement section 22.004(h-1) of the Texas Government Code. A suit in which the original petition contains the statement in paragraph (c)(1) is governed by the expedited actions process in Rule 169.

RULE 169. EXPEDITED ACTIONS

(a) *Application.*

~~(1)~~ The expedited actions process in this rule applies to suit in which all claimants, other than counter-claimants, affirmatively plead that they seek only monetary relief aggregating $~~$100,000~~250,000 or less, ~~including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees~~excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs.

~~(2) The expedited actions process does not apply to a suit in which a party has filed a claim governed by the Family Code, the Property Code, the Tax Code, or Chapter 74 of the Civil Practice & Remedies Code.~~

(b) *Recovery.* In no event may a party who prosecutes a suit under this rule recover a judgment in excess of ~~$100,000~~250,000, excluding ~~post-judgment~~ interest, statutory or punitive damages and penalties, and attorney's fees and costs.

(c) *Removal from Process.*

(1) A court must remove a suit from the expedited actions process:

(A) on motion and a showing of good cause by any party; or

(B) if any claimant, other than a counter-claimant, files a pleading or an amended or supplemental pleading that seeks any relief other than the monetary relief allowed by (a)~~(1)~~.

(2) A pleading, amended pleading, or supplemental pleading that removes a suit from the expedited actions process may not be filed without leave of court unless it is filed before the earlier of 30 days after the discovery period is closed or 30 days before the date set for trial. Leave to amend may be granted only if good cause for filing the pleading outweighs any prejudice to an opposing party.

(3) If a suit is removed from the expedited actions process, the court must reopen discovery under Rule 190.2(c).

(d) *Expedited Actions Process.*

(1) Discovery. Discovery is governed by Rule 190.2.

(2) Trial Setting; Continuances. On any party's request, the court must set the case for a trial date that is within 90 days after the discovery period in Rule 190.2(b)(1) ends. The court may continue the case twice, not to exceed a total of 60 days.

(3) Time Limits for Trial. Each side is allowed no more than eight hours to complete jury selection, opening statements, presentation of evidence, examination and cross-examination of witnesses, and closing arguments. On motion and a showing of good cause by any party, the court may extend the time limit to no more than twelve hours per side.

(A) The term "side" has the same definition set out in Rule 233.

(B) Time spent on objections, bench conferences, bills of exception, and challenges for cause to a juror under Rule 228 are not included in the time limit.

(4) Alternative Dispute Resolution.

(A) Unless the parties have agreed not to engage in alternative dispute resolution, the court may refer the case to an alternative dispute resolution procedure once, and the procedure must:

(i) not exceed a half-day in duration, excluding scheduling time;

(ii) not exceed a total cost of twice the amount of applicable civil filing fees; and

(iii) be completed no later than 60 days before the initial trial setting.

(B) The court must consider objections to the referral unless prohibited by statute.

(C) The parties may agree to engage in alternative dispute resolution other than that provided for in (A).

(5) Expert Testimony. Unless requested by the party sponsoring the expert, a party may only challenge the admissibility of expert testimony as an objection to summary judgment evidence under Rule 166a or during the trial on the merits. This paragraph does not apply to a motion to strike for late designation.

Comment to 2021 change: Rule 169 is amended to implement section 22.004(h-1) of the Texas Government Code—which calls for rules to promote the prompt, efficient, and cost-effective resolution of civil actions filed in county courts at law in which the amount in controversy does not exceed $250,000—and changes to section 22.004(h) of the Texas Government Code. Certain actions are exempt from Rule 169's application by statute. *See e.g.*, TEX. ESTATES CODE §§ 53.107, 1053.105.

RULE 190. DISCOVERY LIMITATIONS

190.1 Discovery Control Plan Required.

Every case must be governed by a discovery control plan as provided in this Rule. A plaintiff must allege in the first numbered paragraph of the original petition whether discovery is intended to be conducted under Level 1, 2, or 3 of this Rule.

190.2 Discovery Control Plan - Expedited Actions and Divorces Involving $~~50,000~~250,000 or Less (Level 1)

(a) **Application.** This subdivision applies to:

(1) any suit that is governed by the expedited actions process in Rule 169; and

(2) unless the parties agree that rule 190.3 should apply or the court orders a discovery control plan under Rule 190.4, any suit for divorce not involving children in which a party pleads that the value of the marital estate is more than zero but not more than ~~$50,000~~250,000.

(b) **Limitations.** Discovery is subject to the limitations provided elsewhere in these rules and to the following additional limitations:

(1) **Discovery period.** All discovery must be conducted during the discovery period, which begins when ~~the suit is filed~~initial disclosures are due and continues until 180 days after the date the ~~first request for discovery of any kind is served on a party~~initial disclosures are due.

(2) **Total time for oral depositions.** Each party may have no more than ~~six~~20 hours in total to examine and cross-examine all witnesses in oral depositions. ~~The parties may agree to expand this limit up to ten hours in total, but not more except by court order.~~ The court may modify the deposition hours so that no party is given unfair advantage.

(3) **Interrogatories.** Any party may serve on any other party no more than 15 written interrogatories, excluding interrogatories asking a party only to identify or authenticate specific documents. Each discrete subpart of an interrogatory is considered a separate interrogatory.

(4) **Requests for Production.** Any party may serve on any other party no more than 15 written requests for production. Each discrete subpart of a request for production is considered a separate request for production.

(5) **Requests for Admissions.** Any party may serve on any other party no more than 15 written requests for admissions. Each discrete subpart of a request for admission is considered a separate request for admission.

~~(6) **Requests for Disclosure**. In addition to the content subject to disclosure under Rule 194.2, a party may request disclosure of all documents, electronic information, and tangible items that the disclosing party has in its possession, custody or control and may use to support its claims or defenses. A request for disclosure made pursuant to this paragraph is not considered a request for production.~~

(c) **Reopening Discovery.** If a suit is removed from the expedited actions process in Rule 169 or, in a divorce, the filing of a pleading renders this subdivision no longer applicable, the discovery period reopens, and discovery must be completed within the limitations provided in Rules 190.3 or 190.4, whichever is applicable. Any person previously deposed may be redeposed. On motion of any party, the court should continue the trial date if necessary to permit completion of discovery.

190.3 Discovery Control Plan - By Rule (Level 2)

(a) **Application.** Unless a suit is governed by a discovery control plan under Rules 190.2 or 190.4, discovery must be conducted in accordance with this subdivision.

(b) **Limitations.** Discovery is subject to the limitations provided elsewhere in these rules and to the following additional limitations:

(1) **Discovery period.** All discovery must be conducted during the discovery period, which begins when ~~suit is filed~~initial disclosures are due and continues until:

(A) 30 days before the date set for trial, in cases under the Family Code; or

(B) in other cases, the earlier of

(i) 30 days before the date set for trial, or

(ii) nine months after the ~~earlier of the date of the first oral deposition or the due date of the first response to written discovery~~initial disclosures are due.

(2) **Total time for oral depositions.** Each side may have no more than 50 hours in oral depositions to examine and cross-examine parties on the opposing side, experts designated by those parties, and persons who are subject to those parties' control. "Side" refers to all the litigants with generally common interests in the litigation. If one side designates more than two experts, the opposing side may have an additional six hours of total deposition time for each additional expert designated. The court may modify the deposition hours and must do so when a side or party would be given unfair advantage.

(3) **Interrogatories.** Any party may serve on any other party no more than 25 written interrogatories, excluding interrogatories asking a party only to identify or authenticate specific documents. Each discrete subpart of an interrogatory is considered a separate interrogatory.

* * *

Comment to 2021 change: Rule 190.2 is amended to implement section 22.004(h-1) of the Texas Government Code, which calls for rules "to promote the prompt, efficient, and cost-effective resolution of civil actions filed in county courts at law in which the amount in controversy does not exceed $250,000" that "balance the need for lowering discovery costs in these actions against the complexity of and discovery needs in these actions." Under amended Rule 190.2, Level 1 discovery limitations now apply to a broader subset of civil actions: expedited actions under Rule 169, which is also amended to implement section 22.004(h-1) of the Texas Government Code, and divorces not involving children in which the value of the marital estate is not more than $250,000. Level 1 limitations are revised to impose a twenty-hour limit on oral deposition. Disclosure requests under Rule 190.2(b)(6) and Rule 194 are now replaced by required disclosures under Rule

194, as amended. The discovery periods under Rules 190.2(b)(1) and 190.3(b)(1) are revised to reference the required disclosures.

RULE 192. PERMISSIBLE DISCOVERY: FORMS AND SCOPE; WORK PRODUCT; PROTECTIVE ORDERS; DEFINITIONS

192.1 Forms of Discovery.

Permissible forms of discovery are:

(a) ~~requests for~~required disclosures;

(b) requests for production and inspection of documents and tangible things;

(c) requests and motions for entry upon and examination of real property;

(d) interrogatories to a party;

(e) requests for admission;

(f) oral or written depositions; and

(g) motions for mental or physical examinations.

192.2 Timing and Sequence of Discovery.

(a) **Timing.** Unless otherwise agreed to by the parties or ordered by the court, a party cannot serve discovery until after the initial disclosures are due.

(b) **Sequence.** The permissible forms of discovery may be combined in the same document and may be taken in any order or sequence.

* * *

192.7 Definitions.

As used in these rules

(a) *Written discovery* means ~~requests for~~required disclosures, requests for production and inspection of documents and tangible things, requests for entry onto property, interrogatories, and requests for admission.

(b) *Possession, custody, or control* of an item means that the person either has physical possession of the item or has a right to possession of the item that is equal or superior to the person who has physical possession of the item.

(c) A *testifying expert* is an expert who may be called to testify as an expert witness at trial.

(d) A *consulting expert* is an expert who has been consulted, retained, or specially employed by a party in anticipation of litigation or in preparation for trial, but who is not a testifying expert.

RULE 193. WRITTEN DISCOVERY: RESPONSE; OBJECTION; ASSERTION OF PRIVILEGE; SUPPLEMENTATION AND AMENDMENT; FAILURE TO TIMELY RESPOND; PRESUMPTION OF AUTHENTICITY

193.1 Responding to Written Discovery; Duty to Make Complete Response.

A party must respond to written discovery in writing within the time provided by court order or these rules. When responding to written discovery, a party must make a complete response, based on all information reasonably available to the responding party or its attorney at the time the response is made. The responding party's answers, objections, and other responses must be preceded by the request or required disclosure to which they apply.

* * *

193.3 Asserting a Privilege

A party may preserve a privilege from written discovery in accordance with this subdivision.

(a) **Withholding privileged material or information.** A party who claims that material or information responsive to written discovery is privileged may withhold the privileged material or information from the response. The party must state—in the response (or an amended or supplemental response) or in a separate document—that:

(1) information or material responsive to the request or required disclosure has been withheld,

(2) the request or required disclosure to which the information or material relates, and

(3) the privilege or privileges asserted.

(b) **Description of withheld material or information.** After receiving a response indicating that material or information has been withheld from production, ~~the~~a party seeking discovery may serve a written request that the withholding party identify the information and material withheld. Within 15 days of service of that request, the withholding party must serve a response that:

(1) describes the information or materials withheld that, without revealing the privileged information itself or otherwise waiving the privilege, enables other parties to assess the applicability of the privilege, and

(2) asserts a specific privilege for each item or group of items withheld.

(c) **Exemption.** Without complying with paragraphs (a) and (b), a party may withhold a privileged communication to or from a lawyer or lawyer's representative or a privileged document of a lawyer or lawyer's representative

(1) created or made from the point at which a party consults a lawyer with a view to obtaining professional legal services from the lawyer in the prosecution or defense of a specific claim in the litigation in which discovery is requested or required, and

(2) concerning the litigation in which the discovery is requested or required.

(d) **Privilege not waived by production.** A party who produces material or information without intending to waive a claim of privilege does not waive that claim under these rules or the Rules of Evidence if—within ten days or a shorter time ordered by the court, after the producing party actually discovers that such production was made—the producing party amends the response, identifying the material or information produced and stating the privilege asserted. If the producing party thus amends the response to assert a privilege, ~~the requesting~~any party who has obtained the specific material or information must promptly return the specified material or information and any copies pending any ruling by the court denying the privilege.

193.4 Hearing and Ruling on Objections and Assertions of Privilege.

(a) **Hearing.** Any party may at any reasonable time request a hearing on an objection or claim of privilege asserted under this rule. The party making the objection or asserting the privilege must present any evidence necessary to support the objection or privilege. The evidence may be testimony presented at the hearing or affidavits served at least seven days before the hearing or at such other reasonable time as the court permits. If the court determines that an *in camera* review of some or all of the requested discovery or required disclosure is necessary, that material or information must be segregated and produced to the court in a sealed wrapper within a reasonable time following the hearing.

(b) **Ruling.** To the extent the court sustains the objection or claim of privilege, the responding party has no further duty to respond to that request or required disclosure. To the extent the court overrules the objection or claim of privilege, the responding party must produce the requested or required material or information within 30 days after the court's ruling or at such time as the court orders. A party need not request a ruling on that party's own objection or assertion of privilege to preserve the objection or privilege.

(c) **Use of material or information withheld under claim of privilege.** A party may not use—at any hearing or trial—material or information withheld from discovery under a claim of privilege, including a claim sustained by the court, without timely amending or supplementing the party's response to that discovery.

* * *

RULE 194. ~~REQUESTS FOR~~REQUIRED DISCLOSURES

194.1 ~~Request~~Duty to Disclose; Production.

~~A party may obtain disclosure from another party of the information or material listed in Rule 194.2 by serving the other party no later than 30 days before the end of any applicable discovery period the following request: "Pursuant to Rule 194, you are requested to disclose, within 30 days of service of this request, the information or material described in Rule [state rule, *e.g.*, 194.2, or 194.2(a), (e), and (f), or 194.2(d) (g)]."~~

(a) **Duty to Disclose.** Except as exempted by Rule 194.2(d) or as otherwise agreed by the parties or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties the information or material described in Rule 194.2, 194.3, and 194.4.

(b) **Production.** Copies of documents and other tangible items ordinarily must be served with the response. But if the responsive documents are voluminous, the response must state a reasonable time and place for the production of documents. The responding party must produce the documents at the time and place stated, unless otherwise agreed by the parties or ordered by the court, and must provide the requesting party a reasonable opportunity to inspect them.

194.2 ~~Content~~Initial Disclosures.

(a) **Time for Initial Disclosures.** A party must make the initial disclosures at or within 30 days after the filing of the first answer unless a different time is set by the parties' agreement or court order. A party that is first served or otherwise joined after the filing of the first answer must make the initial disclosures within 30 days after being served or joined, unless a different time is set by the parties' agreement or court order.

(b) **Content.** Without awaiting a discovery request, ~~A~~a party ~~may request disclosure of any or all of the following~~must provide to the other parties:

(~~a~~1) the correct names of the parties to the lawsuit;

(~~b~~2) the name, address, and telephone number of any potential parties;

(~~c~~3) the legal theories and, in general, the factual bases of the responding party's claims or defenses (the responding party need not marshal all evidence that may be offered at trial);

(~~d~~4) ~~the amount and any method of calculating economic damages~~a computation of each category of damages claimed by the responding party—who must also make available for inspection and copying the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered;

(~~e~~5) the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case;

(6) a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the responding party has in its possession, custody, or control, and may use to support its claims or defenses, unless the use would be solely for impeachment;

~~(f) for any testifying expert:~~

~~(1) the expert's name, address, and telephone number;~~

~~(2) the subject matter on which the expert will testify;~~

~~(3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information.~~

~~(4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:~~

~~(A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and~~

~~(B) the expert's current resume and bibliography;~~

(~~g~~7) any indemnity and insuring agreements described in Rule 192.3(f);

(~~h~~8) any settlement agreements described in Rule 192.3(g);

(~~i~~9) any witness statements described in Rule 192.3(h);

(~~j~~10) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills;

(~~k~~11) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party; and

(~~l~~12) the name, address, and telephone number of any person who may be designated as a responsible third party.

(c) **Content in Certain Suits Under the Family Code.**

(1) In a suit for divorce or annulment, a party must, without awaiting a discovery request, provide to the other party a copy of:

(A) all documents pertaining to real estate;

(B) all documents pertaining to any pension, retirement, profit-sharing, or other employee benefit plan, including the most recent account statement for any plan;

(C) all documents pertaining to any life, casualty, liability, and health insurance; and

(D) the most recent statement pertaining to any account at a financial institution, including banks, savings and loans institutions, credit unions, and brokerage firms.

(2) In a suit in which child or spousal support is at issue, a party must, without awaiting a discovery request, provide to the other party a copy of:

(A) all policies, statements, and the summary description of benefits for any medical and health insurance coverage that is or would be available for the child or the spouse;

(B) the party's income tax returns for the previous two years or, if no return has been filed, the party's Form W-2, Form 1099, and Schedule K-1 for such years; and

(C) the party's two most recent payroll check stubs.

(d) **Proceedings Exempt from Initial Disclosure.** The following proceedings are exempt from initial disclosure, but a court may order the parties to make particular disclosures and set the time for disclosure:

(1) an action for review on an administrative record;

(2) a forfeiture action arising from a state statute; and

(3) a petition for habeas corpus.

~~**194.3 Response.**~~

~~The responding party must serve a written response on the requesting party within 30 days after service of the request, except that:~~

~~(a) a defendant served with a request before the defendant's answer is due need not respond until 50 days after service of the request, and~~

~~(b) a response to a request under Rule 194.2(f) is governed by Rule 195.~~

194.3 Testifying Expert Disclosures.

In addition to the disclosures required by Rule 194.2, a party must disclose to the other parties testifying expert information as provided by Rule 195.

~~**194.4 Production.**~~

~~Copies of documents and other tangible items ordinarily must be served with the response. But if the responsive documents are voluminous, the response must state a reasonable time and place for the production of documents. The responding party must produce the documents at the time and place stated, unless otherwise agreed by the parties or ordered by the court, and must provide the requesting party a reasonable opportunity to inspect them.~~

194.4 Pretrial Disclosures.

(a) **In General.** In addition to the disclosures required by Rule 194.2 and 194.3, a party must provide to the other parties and promptly file the following information about the evidence that it may present at trial other than solely for impeachment:

(1) the name and, if not previously provided, the address, and telephone number of each witness—separately identifying those the party expects to present and those it may call if the need arises;

(2) an identification of each document or other exhibits, including summaries of other evidence—separately identifying those items the party expects to offer and those it may offer if the need arises.

(b) **Time for Pretrial Disclosures.** Unless the court orders otherwise, these disclosures must be made at least 30 days before trial.

194.5 No Objection or Assertion of Work Product.

No objection or assertion of work product is permitted to a ~~request~~disclosure under this rule.

194.6 Certain Responses Not Admissible.

A ~~response to requests~~disclosure under Rule 194.2(~~e~~b)(3) and (~~d~~4) that has been changed by an amended or supplemental response is not admissible and may not be used for impeachment.

Comment to 2021 change: Rule 194 is amended to implement section 22.004(h-1) of the Texas Government Code, which calls for rules "to promote the prompt, efficient, and cost-effective

resolution of civil actions filed in county courts at law in which the amount in controversy does not exceed $250,000" that "balance the need for lowering discovery costs in these actions against the complexity of and discovery needs in these actions." Rule 194 is amended based on Federal Rule of Civil Procedure 26(a) to require disclosure of basic discovery automatically, without awaiting a discovery request. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures. As with other written discovery responses, required disclosures must be signed under Rule 191.3, complete under Rule 193.2, served under Rule 191.5, and timely amended or supplemented under Rule 193.5.

RULE 195. DISCOVERY REGARDING TESTIFYING EXPERT WITNESSES

195.1 Permissible Discovery Tools.

A party may ~~request another party to designate and disclose~~obtain information concerning testifying expert witnesses only through ~~a request for~~ disclosure under Rule 194 and this rule and through depositions and reports as permitted by this rule.

195.2 Schedule for Designating Experts.

Unless otherwise ordered by the court, a party must designate experts—that is, furnish information ~~requested under~~described in Rule ~~194.2(f)~~195.5(a)—by the ~~later of the~~ following ~~two~~ dates: ~~30 days after the request is served, or~~

(a) with regard to all experts testifying for a party seeking affirmative relief, 90 days before the end of the discovery period;

(b) with regard to all other experts, 60 days before the end of the discovery period.

* * *

195.4 Oral Deposition.

In addition to the information disclos~~ure~~ed under Rule 194~~5~~.5(a), a party may obtain discovery concerning the subject matter on which the expert is expected to testify, the expert's mental impressions and opinions, the facts known to the expert (regardless of when the factual information was acquired) that relate to or form the basis of the testifying expert's mental impressions and opinions, and other discoverable matters, including documents not produced in disclosure, only by oral deposition of the expert and by a report prepared by the expert under this rule.

195.5 ~~Court Ordered~~Expert Disclosures and Reports.

(a) **Disclosures**. Without awaiting a discovery request, a party must provide the following for any testifying expert:

(1) the expert's name, address, and telephone number;

(2) the subject matter on which the expert will testify;

(3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;

(4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:

(A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony;

(B) the expert's current resume and bibliography;

(C) the expert's qualifications, including a list of all publications authored in the previous 10 years;

(D) a list of all other cases in which, during the previous four years, the expert testified as an expert at trial or by deposition; and

(E) a statement of the compensation to be paid for the expert's study and testimony in the case.

(b) **Expert Reports.** If the discoverable factual observations, tests, supporting data, calculations, photographs, or opinions of an expert have not been recorded and reduced to tangible form, the court may order these matters reduced to tangible form and produced in addition to the deposition.

* * *

Comment to 2021 change: Rule 195 is amended to reflect changes to Rule 194. Amended Rule 195.5(a) lists the disclosures for any testifying expert, which are now required without awaiting a discovery request, that were formerly listed in Rule 194(f). Amended Rule 195.5(a) also includes three new disclosures based on Federal Rule of Civil Procedure 26(a)(2)(B).

TRD-202003512
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: August 25, 2020

♦ ♦ ♦

Order Amending Texas Rules of Civil Procedure 106 and 108a

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 20-9103

ORDER AMENDING TEXAS RULES OF CIVIL PROCEDURE 106 AND 108a

ORDERED that:

1. In accordance with the Act of May 27, 2019, 86th Leg., R.S., ch. 606 (SB 891), the Supreme Court approves the following amendments to Texas Rules of Civil Procedure 106 and 108a.

2. The amendments take effect December 31, 2020.

3. The amendments may be changed before December 31, 2020, in response to public comments. Written comments should be sent to rulescomments@txcourts.gov. The Court requests that comments be sent by December 1, 2020.

4. The Clerk is directed to:

   a. file a copy of this order with the Secretary of State;

   b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

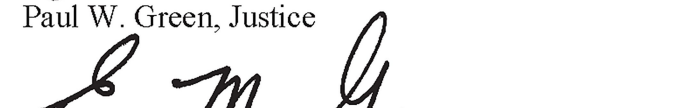
   c. send a copy of this order to each elected member of the Legislature; and

   d. submit a copy of the order for publication in the *Texas Register*.

Dated: August 21, 2020

Nathan L. Hecht, Chief Justice

Paul W. Green, Justice



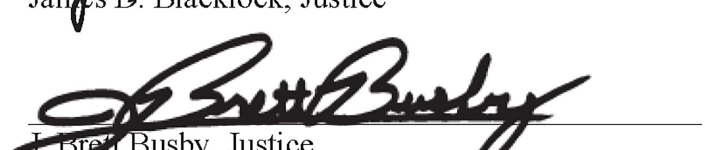
Eva M. Guzman, Justice

Debra H. Lehrmann, Justice

Jeffrey S. Boyd, Justice

John P. Devine, Justice

James D. Blacklock, Justice



J. Brett Busby, Justice

Jane N. Bland, Justice

RULE 106. METHOD OF SERVICE

(a) Unless the citation or ~~an~~court order ~~of the court~~ otherwise directs, the citation ~~shall~~must be served ~~by any person authorized by Rule 103~~ by:

(1) delivering to the defendant, in person, a ~~true~~ copy of the citation, ~~with~~showing the delivery date, ~~of delivery endorsed thereon with a copy~~and of the petition ~~attached thereto~~;; or

(2) mailing to the defendant by registered or certified mail, return receipt requested, a ~~true~~ copy of the citation ~~with a copy~~and of the petition ~~attached thereto~~.

(b) Upon motion supported by ~~affidavit stating~~a statement—sworn to before a notary or made under penalty of perjury—listing ~~the~~any location ~~of the defendant's usual place of business or usual place of abode or other place~~ where the defendant can probably be found and stating specifically the facts showing that service has been attempted under ~~either~~ (a)(1) or (a)(2) at the location named in ~~such affidavit~~the statement but has not been successful, the court may authorize service:

(1) by leaving a ~~true~~ copy of the citation~~, with a copy~~ and of the petition ~~attached,~~ with anyone ~~over~~older than sixteen ~~years of age~~ at the location specified in ~~such affidavit,~~the statement; or

(2) in any other manner, including electronically by social media, email, or other technology, that the ~~affidavit~~statement or other evidence ~~before the court~~ shows will be reasonably effective to give the defendant notice of the suit.

Comment to 2020 Change: Rule 106 is revised in response to section 17.033 of the Civil Practice and Remedies Code, which calls for rules to provide for substituted service of citation by social media. Amended Rule 106(b)(2) clarifies that a court may, in proper circumstances, permit service of citation electronically by social media, email, or other technology. In determining whether to permit electronic service of process, a court should consider whether the technology actually belongs to the defendant and whether the defendant regularly uses or recently used the technology. Other clarifying and stylistic changes have been made.

RULE 108a. SERVICE OF PROCESS IN FOREIGN COUNTRIES

(~~1~~a) ~~**Manner.**~~*Method.* Service of process may be effected ~~up~~on a party in a foreign country if ~~service of~~ the citation and petition is ~~made~~served:

(~~a~~1) ~~in the manner~~as prescribed by the foreign country's law ~~of the foreign country~~ for service in that country in an action in ~~any of~~ its courts of general jurisdiction; ~~or~~

(~~b~~2) as ~~directed by~~ the foreign authority directs in response to a letter rogatory or ~~a~~ letter of request; ~~or~~

(~~c~~3) ~~in the manner~~as provided by Rule 106(a); ~~or~~

(~~d~~4) pursuant to the terms and provisions of any applicable ~~treaty or convention~~international agreement; ~~or~~

(~~e~~5) by diplomatic or consular officials when authorized by the United States Department of State; or

(~~f~~6) by ~~any~~ other means ~~directed by the court that is~~ not prohibited by international agreement or the foreign country's law ~~of the country where service is to be made~~, as the court orders.

The method for service of process in a foreign country must be reasonably calculated, under all of the circumstances, to give actual notice of the proceedings to the defendant in time to answer and defend. A defendant served with process under this rule ~~shall be required to~~must appear and answer in the same manner and time and under the same penalties as if the defendant had been personally served with citation within this state to the full extent that the defendant may be required to appear and answer under the Constitution of the United States or under any applicable ~~convention or treaty~~international agreement in an action either in rem or in personam.

(~~2~~b) ~~**Return.**~~*Return.* Proof of service may be made as prescribed by the foreign country's law ~~of the foreign country~~, by court order ~~of the court~~, by Rule 107, or by a method provided in any applicable ~~treaty or convention~~international agreement.

Comment to 2020 Change: Rule 108a is revised to provide that "other means" of service ordered under (a)(6) must not be prohibited by international agreement. Other clarifying and stylistic changes have been made.

TRD-202003513
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: August 25, 2020

♦ ♦ ♦

Texas Veterans Commission

The Fund for Veterans' Assistance Announcement of the Release of the Grant Programs' Request for Applications for the 2021 - 2022 Grant Period

The Texas Veterans Commission ("TVC") announces September 5, 2020, as its posting and release date of the Fund for Veterans' Assistance ("FV") Request for Applications ("RF") for the 2021-2022 grant cycle. The deadline to submit all applications is November 5, 2020, at 5:00 p.m. (CDST).

Through its forthcoming RFA, FVA is requesting applications from organizations eligible to apply for grant funding under the following general purposes, terms, and conditions:

Eligible Applicants. Eligible Applicants are units of local government, under IRS Code §501(c)(19); posts or organizations of past or present members of the Armed Forces, under IRS Code §501(c)(3); private nonprofit corporations authorized to conduct business in Texas and veterans service organizations, under IRS Code §501(c)(4); and nonprofit organizations authorized to do business in Texas with experience providing services to veterans.

Purpose. The purpose of the RFA is to:

1. Provide an overview of FVA grant programs, including detailed descriptions of service categories, service areas, program goals and guidelines;

2. Solicit grant applications from eligible applicants for the 2021-2022 grant period;

3. Provide application instructions and specific information on grant eligibility; and,

4. Provide information about the FVA grant application and awarding process.

Description. The RFA details funding opportunities and requirements for FVA's five grant programs: General Assistance, Housing for Texas Heroes, Veterans Mental Health, Veteran Treatment Courts, and Veteran County Service Officer.

All grant programs and opportunities function as reimbursement grants. Grants are awarded by the TVC Commissioner, based on a competitive application and awarding process. TVC Staff initially review applications for eligibility, and the all-volunteer FVA Advisory Committee review the eligibility-screened applications to make a recommendation to the Commission for its final consideration and awards.

FVA's grant programs and service categories are:

1. The General Assistance (GA) grant includes seven service categories that provide employment support, financial assistance, homeless veteran support, *pro bono* legal services, referral services, supportive services, and transportation programs and services to veterans, dependents, and surviving spouses who live in Texas;

2. The Housing for Texas Heroes (H4TXH) grant provides home modifications and home repair for veterans and their families, as well as qualifying rent and utilities' assistance;

3. The Veterans Mental Health (VMH) grant includes two service categories--Clinical Counseling Services and Peer-Support Services--which provide counseling and treatment to veterans and their families in addressing diagnosed conditions to improve their quality of life, relationships, outlook, and successful integration with their communities;

4. The Veterans Treatment Court (VTC) grant supports eligible units of local government in providing services through VTC programs established under Texas Government Code §124.001-.006. Grant funding is intended to support rehabilitation for justice-involved veterans to best prepare them for reintegration into their communities; and,

5. The Veteran County Service Officer (VCSO) grant includes all the service categories listed above. (1-4). Veteran County Service Officers are eligible to submit one application for any of the service categories above and must serve as the project coordinator for the services if awarded the grant.

Note: For FVA grant programs that have multiple service categories, applicants should select the service category that their organization would best serve and develop their project narratives and budgets to illustrate how they will successfully provide those services.

FVA Program Goals.

TVC Commissioners have established the following goals for successful grant applicants:

1. Provide support, services, and resources to veterans, their families, and surviving spouses to improve their quality of life and strengthen their connections and integration within their communities;

2. Responsively serve eligible TVC grant beneficiaries to meet the justice-involved veterans' acute and chronic needs;

3. Provide grant-funded services and resources that have measurable and positive outcomes;

4. Ensure grant-funded projects are available to veterans, dependents, and surviving spouses across the state;

5. Ensure that a diversity of grant-funded services are available within geographic regions; and,

6. Fully fund grant projects that support FVA's overall and specific program goals approved by the Commission.

Funding Priorities for 2021-22 FVA Grants. The Commission has established the following priorities to provide guidance to the FVA Advisory Committee in developing funding recommendations to the Commission in making its final decision on grant awards. In sum, the FVA Advisory Committee shall provide funding recommendations for grant applications that: (1) Meet the FVA program goals; (2) Provide services and resources available through FVA grant programs to veterans and their families based upon their expressed needs for their county or region; (3) Place a high priority on budgeting for client services; and (4) Fund organizations with a demonstrated history of meeting grant performance benchmarks.

Grant Funding Period.. Awarded grants will commence on July 1, 2021, and end on June 30, 2022. All grants are reimbursement grants. Reimbursements are permitted only for eligible expenses that are incurred within the term of the grant. No pre-award spending will be reimbursed.

* *Grant Amounts.* Eligible Applicants can request the specific funding amounts for their grant-funded projects from the options in the table below:

Funding Amount Requested	General Assistance Grants	Housing for Texas Heroes Grants	Veterans Mental Health Grants	Veteran Treatment Court Grants	Veteran County Service Officer Grants
$5,000	Local, County, and Regional Applications	Local, County, Regional, & Statewide Applications	Local, County, Regional, & Statewide Applications	County-level & Regional Veteran Treatment Courts	County-level Services in GA (or) H4TXH (or) VMH
$15,000					
$20,000					
$30,000					
$50,000					
$75,000					
$100,000					
$150,000					
$200,000					
$250,000					
$300,000					
$500,000	Statewide only				VMH & H4TXH Services only

**Grant Amount options.*

Number of Grants to be Awarded and Total Available The anticipated amount of grant funding available for all 2021-2022 FVA grant programs, including VCSO funding and potential grant renewals, is $30,000,000. The number of awards made will be contingent upon the amount of grants renewed from the 2020-2021 grant period and funding requested and awarded to eligible applicants from the 2020-2022 RFA. The total amount of grant funding is subject to change depending on the availability of funds.

Selection Criteria. TVC staff use an eligibility checklist and evaluation rubric to review all applications for eligibility. Eligible applications will be forwarded to the FVA Advisory Committee for review and consideration. The FVA Advisory Committee will prepare a funding recommendation to be presented to the Commission for action. Again, the Commission makes all final funding decisions. Applications shall address all requirements of the RFA to be considered for funding by the Commission.

TVC is not obligated to approve an application, provide funds, or endorse any application submitted in response to the RFA solicitation. Applicants should have no expectation of continued funding. Neither this notice nor the RFA obligates the Commission to award a grant or pay any costs incurred in preparing an application.

Requesting the Materials Needed to Complete an Application. All information needed to respond to the RFA solicitation will be posted on the TVC website (www.tvc.texas.gov/grants/) and the TVC GovGrants portal (http://tvcportal.force.com/) on September 5, 2020. All applications must be timely submitted electronically through the TVC GovGrants portal. No paper applications or other methods of submission will be considered for funding.

Further Information. In order to assure that no prospective applicant obtains a competitive advantage because of information unknown to other prospective applicants, all applicants' questions must be submitted *via* email to rfaquestions@tvc.texas.gov. All questions and the written answers will be posted on the TVC GovGrants portal in the "Frequently Asked Questions" (FAQs) tab. The last day to submit questions regarding the RFA is October 28, 2020 at 5:00 pm (CDST).

Deadline for Receipt of Applications. Applications must be submitted to the TVC GovGrants portal by 5:00 p.m. (CDST) on November 5, 2020, to be considered for funding. Applications received after the deadline or submitted through other means will not be considered for processing or funding. As such, Applicants are strongly encouraged to submit their applications at least three days prior to the deadline to ensure that there is sufficient time to address any validation or error messages generated by the GovGrants program, which prevents submission until resolved.

Funding Authority. The Fund For Veterans' Assistance is authorized by Texas Government Code, Section 434.017.

TRD-202003558
Madeleine Connor
General Counsel
Texas Veterans Commission
Filed: August 26, 2020

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TEXAS

How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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